



Development Tribunal – Decision Notice

Planning Act 2016, section 255

Appeal number:	25-009
Appellant:	Carolyn Stephens and David Swanson
Respondent (Assessment manager):	Rob Wibrow
Co-respondent (Concurrence agency):	Noosa Shire Council
Site address:	24 Southern Cross Parade, Sunrise Beach Qld 4567 described as Lot 633 of RP221142 – the subject site

Appeal

Appeal under section 229(1)(a)(i) and schedule 1, section 1, table 1(a) of the *Planning Act 2016* against the refusal of a Development Application for Building Work for Class 10a structures, being a carport within the statutory road boundary setback on a residential site. The decision following a referral agency response by the Noosa Shire Council directing refusal of the application on the grounds that the proposed carport does not comply and cannot be conditioned to comply with provisions of the Noosa Plan 2020, Low Density residential Zone Code P09 (a) *provide a high level of amenity to users of the subject site and adjoining premises including provision of visual and acoustic privacy and access to sunlight* and (f) *be consistent with the predominant character of the streetscape*. (Reference Building Approvals United Qld Reference Number 25-5940 Noosa Shire Council).

Date and time of Hearing:	11:00am, 12 June 2025
Place of Hearing:	The subject site
Tribunal:	Victor Feros OAM—Chair Elizabeth Anderson—Member
Present:	Carolyn Stephens —Appellant Marcus Brennan, Brennan Planning Pty Ltd—Appellant’s agent Jason Devine for Noosa Shire Council—Co-Respondent

Decision:

The Development Tribunal (Tribunal), in accordance with section 254(2)(c) of the *Planning Act 2016* (PA) replaces the decision of the Assessment Manager dated 10th April 2025 with another decision, namely to approve the application subject to the following conditions:

- (1) the carport to be designed and sited in accordance with the plans provided by Accolade Building Designs drawings Page 1 to 11 for 24 Southern Cross Parade, Sunrise Beach – dated 16 September 2025, Reference 0620SDSC.
- (2) any additional conditions imposed by the Assessment Manager to ensure compliance with the *Building Act 1975*.

Background

1. The subject site, described as Lot 633 of RP221142, situated at 24 Southern Cross Parade, Sunrise Beach, is rectangular in shape, having an area of 763m², with frontage to Southern Cross Parade of 20m. The lot slopes substantially away from Southern Cross Parade and is developed as a stepped detached house. The subject lot is zoned Low Density Residential under the Noosa Plan 2020. Southern Cross Parade is a wide through street.
2. The proposed carport is sited over the existing driveway that leads to the previous double garage within the house structure, located 3m from the front boundary and separated by 1m from the existing house. The Northwest side boundary setback of the proposed carport aligns with the existing house. The proposed carport is 5.5m deep and 6.4m wide and approximately 35sqm in area. The proposed carport has a gable roof and is designed at a maximum 3.7m height above the proposed level of the carport slab, which is to be determined to coincide with existing ground level.
3. The drawings submitted with the application do not show an existing unapproved storage shed located within the 6 metre street front setback.
4. On 22 January 2024, the Appellant lodged a Request for a Referral Agency Response under schedule 9, part 3, division 2, table 3 of the *Planning Regulation 2017* with the Noosa Shire Council for building work relating to carport and storeroom in the front setback over the subject site.
5. On 15 March 2024, Council issued a Referral Agency Response directing the Assessment Manager to refuse the application for the reasons state in their response.
6. On 26 August 2024, the Appellant appealed to the Development Tribunals (Appeal number 24-040) against the Assessment Manager's refusal of the application.
7. On 3 December 2024, the Development Tribunal (Appeal number 24-040) issued a Decision Notice confirming the decision of the Assessment Manager to refuse the application.
8. The Appellant subsequently lodged a new application over the subject land for a carport with the removal of the proposed storage shed. As the proposed development triggers assessment against the relevant performance criteria of the Noosa Plan 2020 due to the proposed siting within the required 6.0m road boundary setback, the Assessment Manager lodged with the Noosa Shire Council (under schedule 9, part 3, division 2, table 3 of the *Planning Regulation 2017*) a Request for a Concurrence Agency Response for building works involving additions to a dwelling house (carport).

9. On 10 April 2025, the Assessment Manager refused the application as directed by Council in Council's referral agency role, on the grounds that the proposed development does not comply with and cannot be conditioned to comply with the following performance criteria for the stated reasons:

Noosa Plan 2020 – Low Density Residential Zone Code

P09 building and structures are designed and sited to:

- a) provide a high level of amenity to users of the subject site and adjoining premises, including provision of visual and acoustic privacy and access to sunlight;

It is Council's view that the amenity of secure covered car-parking previously provided to the users of the subject site was taken away when the existing double garage was converted into a habitable area without the necessary approvals in place. This unapproved building work does not provide Council with any further justification for allowing a carport and storeroom to be located within the front boundary setback.

- f) be consistent with the predominant character of the streetscape;

It has been considered that the location of the proposed carport and storeroom within the front boundary setback is not consistent with the predominant character of the streetscape.

It is Council's view that the predominant character of the streetscape with respect to building location consists of building and structures providing a greater road boundary setback than that of the current proposal. Additionally, the current proposal provides for an exceedingly dominant structure located within the boundary setback.

10. The Assessment Manager's decision of 10 April 2025 is the subject of this appeal.

Jurisdiction

11. This Appeal has been made under section 229 of the PA, as a matter that may be appealed to a Tribunal.
12. Schedule 1 of PA, section 1(2) however states table 1 may apply to a tribunal only if the matter involves one of the circumstances set out in paragraphs (a) to (l) of that section. Paragraph (g) of section 1(2) states: 'a matter under this Act, to the extent the matter relates to the Building Act, other than a matter under the Act that may or must be decided by the Queensland Building and Construction Commission'.
13. The Tribunal has determined that the application lodged with the assessment manager and the referral of the development application to Council satisfies that requirement, being a development application for approval of building works under the section 33 of the *Building Act 1975*, which allows alternative provisions to QDC boundary clearance and site cover provisions for particular buildings.

14. The Application was subsequently refused by the assessment manager as directed by Council as the referral agency. Table 1 item 1(a) in schedule 1 of the PA provides that for a development application an appeal may be made to a tribunal against the refusal or all or part of the development application.
15. The refusal directed by Council and the refusal made by the Assessment Manager have enlivened the jurisdiction of the Tribunal.

Decision framework

16. Section 246 of the PA provides as follows:
 - (1) *The Registrar may, at any time, ask a person to give the Registrar any information that the Registrar reasonably requires for the proceedings. (...)*
 - (2) *The person must give the information to the registrar within 10 business days after the registrar asks for the information.*
17. Section 253 of the PA sets out matters relevant to the conduct of this Appeal. Subsections (2), (4) and (5) of that section are as follows:
 - (2) *Generally, the Appellant must establish the Appeal should be upheld.*
 - (4) *The Tribunal must hear and decide the Appeal by way of a reconsideration of the evidence that was before the person who made the decision appealed against.*
 - (5) *However, the Tribunal may, but need not, consider— other evidence presented by a party to the Appeal with leave of the Tribunal; or any information provided under section 246.*
18. Section 254 of the PA addresses how an appeal such as this may be decided and the first three subsections of that section (omitting section 254(2)(e), as it relates to a deemed refusal (not relevant here) and are as follows:
 - (1) *This section applies to an appeal to a tribunal against a decision.*
 - (2) *The tribunal must decide the appeal by-*
 - (a) *confirming the decision; or*
 - (b) *changing the decision; or*
 - (c) *replacing the decision with another decision; or*
 - (d) *setting the decision aside, and ordering the person who made the decision to remake the decision by a stated time; or*
 - (e) *[not relevant].*
 - (3) *However, the tribunal must not make a change, other than a minor change, to a development application.*

Material considered

19. The material considered in determining this decision includes:

- (a) Proposed building works plans submitted by Accolade Building Designs – Drawings Pages 2-15, 24 Southern Cross Parade, Sunrise Beach, dated 8 December 2024, Reference 0620SDSC
- (b) Noosa Shire Council Request for Referral Agency Response for Building Works dated 17 January 2025
- (c) Lodgement of Concurrence Agency Response from Brennan Planning Pty Ltd to Noosa Shire Council, 17 February 2025
- (d) Decision Notice Refusal for Application, prepared by Building Approvals United Qld, dated 10 April 2025, Application No. 25-5940
- (e) Appeal to the Development Tribunals, Appeal No. 25-009 duly instituted 12 May 2025
- (f) Noosa Shire Council advice to Brennan Planning Pty Ltd suggesting submission of revised Plans reducing height (to approximately 2.5m) and increasing setback to 3m, sent 13 June 2025
- (g) Material provided in response to the Tribunal's Directions issued on 1 July 2025 to the parties for submission of any amended plans—for the Tribunal's use in determining whether compliance with the assessment benchmarks could be achieved by the imposition of conditions—addressing setbacks at least to 3m, redesign as a skillion roof not more than 2.6m height and removal of storage shed, in particular:
 - a. amended drawings submitted by Accolade Building Designs – Drawings pages 1-15, 27 July 2025, submitted by the Appellant's agent to the Registrar on 29 July 2025
 - b. Council's submission in response to those amended drawings, given to the Registrar on 8 August 2025
- (h) Material provided in response to the Tribunal's Directions issued on 1 September 2025 for submission of any further amended plans—for the Tribunal's use in determining whether compliance with the assessment benchmarks could be achieved by the imposition of conditions—addressing carport floor levels, ramp gradients, carport height, front and side boundary setbacks, and storage shed removal, in particular:
 - a. Amended Accolade Building Designs Drawings, pages 1-11, dated 16 September 2025, submitted by Brennan Planning on 19 September 2025.

Council did not provide a submission in response to the Tribunal's invitation to respond to the drawings submitted by the Appellant's agent, outlined at paragraph 19(h)a.

Findings of fact

20. The proposed carport is sited over the existing driveway that leads to a previous double car garage within the house structure, which garage is now re-purposed.

21. The Tribunal finds that the imposition of conditions in accordance with amended plans submitted during the proceeding (outlined at paragraph 19(h)a.) above), including the removal of the existing storage shed and the insertion of skillion roofing, would address issues identified by the Tribunal relating to carport floor levels, ramp gradients, carport height, insertion of skillion roofing, front and side boundary setbacks.
22. The above-referred amended plans display, with particularity, the following characteristics, which would result in compliance with the assessment benchmarks:
 - (a) a carport floor level of RL48.7m AHD
 - (b) ramp transitions to be compliant with the Institute of Public Works Engineering Australasia Standard Drawing RS-050 – Driveways (Residential Driveways) Plan 2 of 2, Review E, 6 June 2014
 - (c) replacement skillion carport roofing, 2.6m maximum height above approved slab RL
 - (d) removal of existing storage shed previously sited within a 6.0m setback
 - (e) minimum 3.0m building (carport) front setback
 - (f) minimum 3.2m building (carport) side setbacks.
23. Conditions in accordance with the revised drawings – to be specific Accolade Building Designs Drawings, Page 1-11, 24 Southern Cross Parade, Sunrise Beach, Reference 0620SDSC, dated 16 September 2026, are a 'Minor Change', with reference to the Drawings identified in the Notice of Appeal (the subject Appeal), that is, compliant with the definition for 'Minor Change' in Schedule 2 'Dictionary' of the PA.
24. With specificity, the change, addressed above:
 - (a) does not introduce any new impacts to which regard must be had;
 - (b) does not result in substantially different development as defined in Schedule 1 of the Development Assessment Rules;
 - (c) will not cause development, which is otherwise prohibited;
 - (d) were the application for the approval to be remade to include the change, would not require the application to be referred to any additional referral agencies; and
 - (e) would not cause public notification

To remove any doubt, the removal of the existing storage shed adjacent to the proposed carport, from within a 6m building line setback whether or not lawfully constructed, does not constitute 'Minor Change', as defined (as addressed above).

25. With reference to the Noosa Plan 2000 – Low Density Residential Zone Code, at PO9(a), the Tribunal finds as follows:
 - (a) the proposed structure, conditioned as outlined above, is designed to provide, and will provide, an appropriate level of amenity to the users of the subject site and

adjoining premises, including provision of visual and acoustic privacy and access to sunlight.

26. With reference to PO9(f) of the Code, the Tribunal finds as follows:

- (a) the proposed structure, conditioned as outlined above, will be consistent with the predominant character of the streetscape.

In particular, the proposed design, conditioned to include modified skillion roofing, of greater setback, of reduced height and of compliant floor level and ramp gradients should, and would, facilitate a consistency with, and acceptance within the predominant character of the streetscape.

Reasons for the decision

27. Mitigating grounds considered instructive in the subject instance to any favourable consideration of this matter are the amendments—reflected in the conditions imposed by the Tribunal on its decision to approve the application—with particular reference to altered roofing form, reduced building height, increased building line setbacks, compliant floor levels and ramp gradients, and the removal of the existing storage shed from within the prescribed building line setbacks, with which the Co-Respondent has previously signified general, though qualified, partial concurrence.

Victor Feros OAM LFPIA
Development Tribunal Chair
Date: 17 October 2025

Appeal rights

Schedule 1, table 2(1) of the *Planning Act 2016* provides that an Appeal may be made against a decision of a Tribunal to the Planning and Environment Court, other than a decision under section 252, on the ground of -

- (a) an error or mistake in law on the part of the Tribunal; or
- (b) jurisdictional error.

The Appeal must be started within 20 business days after the day notice of the Tribunal decision is given to the party.

The following link outlines the steps required to lodge an Appeal with the Court.

<http://www.courts.qld.gov.au/courts/planning-and-environment-court/going-to-planning-and-environment-court/starting-proceedings-in-the-court>

Enquiries

All correspondence should be addressed to:

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