

Our Reference: PSW/2020/5933
 CS Portal Reference: N/A
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**Development Application Decision Notice
 REFUSAL
 Planning Act 2016 Section 63**

David John Pemberton
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 NORTH TOOWOOMBA QLD 4350

Email: davep@logit.com.au

5 November 2021

Dear Sir

Location: 68 Hume Street, NORTH TOOWOOMBA QLD 4350
Property Description: Lots 12 & 23 RP16720
Relevant Planning Scheme: Toowoomba Regional Planning Scheme 2012

The Development Application for Building Work – Demolition of a Neighbourhood Character Place at the abovementioned property has been refused. The decision was made on 1 November 2021. The following provides all the relevant details:

Details of Refusal

The assessment manager was not directed to refuse the application by a referral agency.

Reasons for refusal

The application is refused on the basis that it does not comply with the following assessment benchmarks:

	Assessment Benchmark	Non Compliance
	Strategic Framework - Community Identity and Diversity	
1.	<u>Element – Toowoomba City identity – 3.5.3.1 Specific outcomes</u> 1) <i>Toowoomba is a compact city which is characterised by its rural context and heritage; it has a vibrant cosmopolitan heart as well as diverse neighbourhoods with their own distinct character and identity.</i> 2) <i>Places of cultural heritage and neighbourhood character significance are conserved</i>	<p>The proposal is the demolition of a Neighbourhood Character Place that is considered to contribute positively to the existing and historical character of the surrounding section of Hume Street and the neighbourhood.</p> <p>Evidence has not been provided to demonstrate that the Neighbourhood Character Place does not contribute positively to the established character and identity of the neighbourhood.</p> <p>Sufficient evidence has not been provided to demonstrate that the Neighbourhood Character Place is beyond being conserved and enhanced rather than being demolished.</p>

	<i>and enhanced.</i>	It is therefore considered that the applicant has not demonstrated that demolishing the existing Neighbourhood Character Place at 68 Hume Street, North Toowoomba complies with the relevant provisions of the Strategic Framework of the Planning Scheme.
	Neighbourhood Character Overlay Code	
2.	<p><u>Purpose</u> <i>The purpose of the Neighbourhood Character Overlay Code is to conserve and enhance buildings and streetscapes which contribute to the character of the local area and to ensure new development is sympathetic to the nature and character of those areas.</i></p>	<p>The proposal is the demolition of a Neighbourhood Character Place that is considered to contribute positively to the existing and historical character of the surrounding section of Hume Street and the neighbourhood.</p> <p>Evidence has not been provided to demonstrate that the Neighbourhood Character Place does not contribute positively to the established character and identity of the neighbourhood.</p> <p>Sufficient evidence has not been provided to demonstrate that the Neighbourhood Character Place is beyond being conserved and enhanced rather than being demolished.</p> <p>It is therefore considered that the applicant has not demonstrated that demolishing the existing Neighbourhood Character Place at 68 Hume Street, North Toowoomba complies with the Purpose of the Neighbourhood Character Overlay Code.</p>
3.	<p><u>Overall Outcome (a)</u> <i>The purpose of the code will be achieved through the following overall outcomes:</i> <i>(a) buildings and features which contribute to the established local streetscape character are retained</i></p>	<p>The proposal is the demolition of a Neighbourhood Character Place that is considered to contribute positively to the existing character of the surrounding section of Hume Street and the neighbourhood. Therefore, the proposal does not comply with Overall Outcome (a).</p>
4.	<p><u>Performance Outcome PO₁ (Table 8.3.2:2)</u> <i>The Neighbourhood Character Place is retained unless:</i> <i>(a) it is structurally unsound and uneconomically repairable; or</i> <i>(b) does not make a positive contribution to the character of the local streetscape.</i></p>	<p>The development application proposes demolition of a Neighbourhood Character Place, being an existing dwelling house and ancillary carport, located at 68 Hume Street, North Toowoomba. The existing dwelling house was constructed in the early 20th century and has been modified from its original form through enclosure of the front verandah. The property comprises two separate lots, being Lots 12 and 23 RP16720, with Lot 12 fronting Hume Street (west) and Lot 23 fronting Sir Street (east). The dwelling house (located entirely within Lot 12) is provided with vehicular access via a crossover to Sir Street.</p> <p>In support of the proposal the applicant has submitted the following documentation:</p> <ul style="list-style-type: none"> • A Structural Engineering Report prepared by Ipswich Consulting Engineers dated 17 December 2020; • A Timber Pest Inspection Report prepared by Kieran Mortimer Pest Control dated 19 December 2020; • A Building Report prepared by Baker Rossow Consulting Engineers (RPEQ), dated 15 February 2021; • An additional letter from Ipswich Consulting Engineers dated 3 March 2021, confirming that it is their opinion that the building at 68 Hume Street is structurally unsound; • A real estate market valuation report prepared by McGrath Real Estate dated 22 February 2021;

- Quotations from Renovare (dated 4 February 2021) for:
 - Renovation/Extension of the existing dwelling house at 68 Hume Street; and
 - Construction of a new Carport.
- Sample plan designs for proposed new residences prepared by Log-IT Solutions and Gordon Burke Constructions.

The submitted information includes reporting that demonstrates that the existing Neighbourhood Character Place requires a degree of structural repair. However, the applicant was advised in an Information Request, a Further Advice letter and subsequent email correspondence that in order for Council to accurately ascertain the scope of necessary repairs, this reporting would need to be peer reviewed by a suitably qualified consultant Structural Engineer. The cost of the peer review and associated inspection would be reimbursed to Council by the applicant prior to Council deciding the application. In response the applicant advised Council officers that *"we do not support the proposal for TRC to engage a third RPEQ Engineer to undertake a further assessment and will not be paying for the costs incurred for this assessment should TRC wish to proceed with this approach"*. As a consequence Council officers have not been able to conclusively determine that the Neighbourhood Character Place is *"structurally unsound"*.

Additionally, the applicant was also advised that any submitted structural engineering reporting would need to demonstrate the extent of structural repairs in the Neighbourhood Character Place through inclusion of plans of the existing framing and structural elements and plans detailing the structural elements that are intact and the extent of repairs required. This information, and associated plans, was not provided.

The applicant was advised prior to lodgement of the development application in Prelodgement Advice and during assessment of the development application in an Information Request, a Further Advice letter and subsequent email correspondence that in order to demonstrate that the Neighbourhood Character Place is *"uneconomically repairable"* it would be necessary to provide a schedule of costs (and scope of works) to repair any existing structural damage to a structurally sound state. This advice was reiterated in both the Structural Engineering Report prepared by Ipswich Consulting Engineers and the Building Report prepared by Baker Rossow Consulting Engineers submitted by the applicant. The applicant was also explicitly advised that *"the schedule of costs must consider those works which are required to make the building structurally sound and safe to occupy, as distinct from other cosmetic upgrades for example, new painting, fixtures, joinery, roof sheeting, internal wall sheeting and external wall cladding etc"*.

As noted above the applicant submitted two quotations from building company Renovare, one for a complete renovation and extension of the existing dwelling house and one for a new carport. The applicant proposed that these quotations demonstrate that the Neighbourhood Character Place is *"uneconomically repairable"*. However, the submitted

	<p>quotations provide a broad schedule of costs for the full renovation of the existing dwelling house and the construction of a new carport. The submitted schedule does not provide a breakdown of costs which enable Council officers to determine what the cost would be to repair existing structural damage within the dwelling to a structurally sound state. Therefore, it is considered that the applicant has not provided evidence to demonstrate that the Neighbourhood Character Place is <i>“uneconomically repairable”</i>. As such it is concluded that the applicant has not demonstrated that the proposal achieves compliance with item (a) of Performance Outcome PO₁ of Table 8.3.2:2 of the Neighbourhood Character Overlay Code.</p> <p>The applicant also has not provided evidence to demonstrate that the Neighbourhood Character Place <i>“does not make a positive contribution to the character of the local streetscape”</i>. As such it is concluded that the applicant has not demonstrated that the proposal achieves compliance with item (b) of Performance Outcome PO₁ of Table 8.3.2:2 of the Neighbourhood Character Overlay Code.</p> <p>The applicant has not provided the information necessary to demonstrate that the existing Neighbourhood Character Place located at 68 Hume Street, North Toowoomba <i>“is structurally unsound and uneconomically repairable”</i> or that it <i>“does not make a positive contribution to the character of the local streetscape”</i>. Therefore, it is considered that the proposal to demolish the Neighbourhood Character Place does not comply with Performance Outcome PO₁ of Table 8.3.2:2 of the Neighbourhood Character Overlay Code.</p>
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Referral Agencies

Concurrence Agencies Name & Address: N/A

Advice Agencies Name & Address: N/A

Submissions

Number of properly made submissions: Nil

Rights of Appeal

Attached is an extract from the *Planning Act 2016* which details your appeal rights regarding this decision.

The *Planning Act 2016* via:

<https://www.legislation.qld.gov.au/LEGISLTN/CURRENT/P/PlanningA16.pdf>.

Yours faithfully



Krys den Hertog
Acting Principal Planner, Development Services

Chapter 6, Part 1 of the Planning Act 2016 Appeal rights

229 Appeals to tribunal or P&E Court

- (1) Schedule 1 states—
 - (a) matters that may be appealed to—
 - (i) either a tribunal or the P&E Court; or
 - (ii) only a tribunal; or
 - (iii) only the P&E Court; and
 - (b) the person—
 - (i) who may appeal a matter (the appellant); and
 - (ii) who is a respondent in an appeal of the matter; and
 - (iii) who is a co-respondent in an appeal of the matter; and
 - (iv) who may elect to be a co-respondent in an appeal of the matter.
- (2) An appellant may start an appeal within the appeal period.
- (3) The appeal period is—
 - (a) for an appeal by a building advisory agency—10 business days after a decision notice for the decision is given to the agency; or
 - (b) for an appeal against a deemed refusal—at any time after the deemed refusal happens; or
 - (c) for an appeal against a decision of the Minister, under chapter 7, part 4, to register premises or to renew the registration of premises—20 business days after a notice is published under section 269(3)(a) or (4); or
 - (d) for an appeal against an infrastructure charges notice—20 business days after the infrastructure charges notice is given to the person; or
 - (e) for an appeal about a deemed approval of a development application for which a decision notice has not been given—30 business days after the applicant gives the deemed approval notice to the assessment manager; or
 - (f) for an appeal relating to the Plumbing and Drainage Act 2018—
 - (i) for an appeal against an enforcement notice given because of a belief mentioned in the Plumbing and Drainage Act 2018, section 143(2)(a)(i), (b) or (c)—5 business days after the day the notice is given; or
 - (ii) for an appeal against a decision of a local government or an inspector to give an action notice under the Plumbing and Drainage Act 2018—5 business days after the notice is given; or
 - (iii) otherwise—20 business days after the day the notice is given; or
 - (g) for any other appeal—20 business days after a notice of the decision for the matter, including an enforcement notice, is given to the person.

Note— See the P&E Court Act for the court's power to extend the appeal period.
- (4) Each respondent and co-respondent for an appeal may be heard in the appeal.
- (5) If an appeal is only about a referral agency's response, the assessment manager may apply to the tribunal or P&E Court to withdraw from the appeal.
- (6) To remove any doubt, it is declared that an appeal against an infrastructure charges notice must not be about—
 - (a) the adopted charge itself; or
 - (b) for a decision about an offset or refund—
 - (i) the establishment cost of trunk infrastructure identified in a LGIP; or
 - (ii) the cost of infrastructure decided using the method included in the local government's charges resolution.

230 Notice of appeal

- (1) An appellant starts an appeal by lodging, with the registrar of the tribunal or P&E Court, a notice of appeal that—
 - (a) is in the approved form; and
 - (b) succinctly states the grounds of the appeal.
- (2) The notice of appeal must be accompanied by the required fee.
- (3) The appellant or, for an appeal to a tribunal, the registrar must, within the service period, give a copy of the notice of appeal to—
 - (a) the respondent for the appeal; and
 - (b) each co-respondent for the appeal; and

- (c) for an appeal about a development application under schedule 1, section 1, table 1, item 1—each principal submitter for the application whose submission has not been withdrawn; and
- (d) for an appeal about a change application under schedule 1, section 1, table 1, item 2—each principal submitter for the application whose submission has not been withdrawn; and
- (e) each person who may elect to be a co-respondent for the appeal other than an eligible submitter for a development application or change application the subject of the appeal; and
- (f) for an appeal to the P&E Court—the chief executive; and
- (g) for an appeal to a tribunal under another Act—any other person who the registrar considers appropriate.

(4) The service period is—

- (a) if a submitter or advice agency started the appeal in the P&E Court—2 business days after the appeal is started; or
 - (b) otherwise—10 business days after the appeal is started.
- (5) A notice of appeal given to a person who may elect to be a co-respondent must state the effect of subsection (6).
 - (6) A person elects to be a co-respondent to an appeal by filing a notice of election in the approved form—
 - (a) if a copy of the notice of appeal is given to the person—within 10 business days after the copy is given to the person; or
 - (b) otherwise—within 15 business days after the notice of appeal is lodged with the registrar of the tribunal or the P&E Court.
 - (7) Despite any other Act or rules of court to the contrary, a copy of a notice of appeal may be given to the chief executive by emailing the copy to the chief executive at the email address stated on the department's website for this purpose.

231 Non-appealable decisions and matters

- (1) Subject to this chapter, section 316(2) schedule 1 and the P&E Court Act, unless the Supreme Court decides a decision or other matter under this Act is affected by jurisdictional error, the decision or matter is non-appealable.
- (2) The *Judicial Review Act 1991*, part 5 applies to the decision or matter to the extent it is affected by jurisdictional error.
- (3) A person who, but for subsection (1) could have made an application under the *Judicial Review Act 1991* in relation to the decision or matter, may apply under part 4 of that Act for a statement of reasons in relation to the decision or matter.
- (4) In this section—

decision includes—

 - (a) conduct engaged in for the purpose of making a decision; and
 - (b) other conduct that relates to the making of a decision; and
 - (c) the making of a decision or the failure to make a decision; and
 - (d) a purported decision; and
 - (e) a deemed refusal.

non-appealable, for a decision or matter, means the decision or matter—

- (a) is final and conclusive; and
- (b) may not be challenged, appealed against, reviewed, quashed, set aside or called into question in any other way under the *Judicial Review Act 1991* or otherwise, whether by the Supreme Court, another court, any tribunal or another entity; and
- (c) is not subject to any declaratory, injunctive or other order of the Supreme Court, another court, any tribunal or another entity on any ground.

232 Rules of the P&E Court

- (1) A person who is appealing to the P&E Court must comply with the rules of the court that apply to the appeal.
- (2) However, the P&E Court may hear and decide an appeal even if the person has not complied with rules of the P&E Court.