



Development Tribunal – Decision Notice

Planning Act 2016, section 255

Appeal Number: 21-064
Appellants: Bradley Nash
**Respondent
(Assessment Manager):** Noosa Shire Council

Site Address: Lot 192 MCH 976 / 79 Garnet Street Cooroy – the subject site

Appeal

Appeal under section 229 and schedule 1, section 1, table 1, item 1(a) of the *Planning Act 2016* (PA) against the refusal of a Development Application for Building Works to erect a Shed associated with an existing Dwelling House. Council determined that the proposal did not meet all of the Performance and Overall Outcomes of the Biodiversity Overlay and Rural Residential Zone Code provisions as set out in the Noosa Plan 2020.

Date and time of hearing: 10.00 am, 17 March 2022
Place of hearing: The subject site
Tribunal: Debbie Johnson - Chair
Nicole Prentice - Member
Present: Appellant – Bradley Nash and Lisa Nash
Max Potter - Council Representative
Patrick Murphy – Council Representative

Decision:

The Development Tribunal (Tribunal), in accordance with section 254(2)(a) of the *Planning Act 2016* (PA), confirms the decision of the assessment manager dated 28 October 2021, refusing the development application for building works sought to construct a shed.

Background

1. The subject site is rectangular and has an area of 2.2 hectares. The site contains an established single storey dwelling in the southeast portion of the site. The home was built almost twenty years ago. There are several class 10 structures sited near the dwelling, these are used for garage and residential storage purposes.
2. The predominant feature of the site is the rather beautiful native vegetation and waterway corridor that runs lengthwise north-south through the site. This native corridor and waterway extends to the southwest and the north of the site, feeding into Cooroy Creek.

3. The property's size and character are unique to that of the neighbouring sites as a result of the waterway that passes through it. Along the east and western boundaries, adjoining home sites are much smaller and suburban in nature. There are six residential properties sharing the western boundary and seven allotments sharing the eastern boundary of the subject site.
4. These adjoining sites had already been developed when the appellant purchased his property in November 2017. By April 2020 all but one of these sites had been built upon and the last vacant site was occupied by May 2021. The adjoining properties sit higher than the subject site, as you might reasonably expect given the natural watercourse follows the lowest contour.
5. The subject site is substantially identified by the Noosa Plan's Biodiversity, Waterways and Wetlands Overlay Map as being a riparian buffer area. The existing dwelling and associated sheds are sited in the rear southeast corner of the property, clear of the riparian buffer. Near the centre of the site, adjacent to the western boundary there is a cleared portion within the riparian buffer area.
6. While this part of the site is clear of native vegetation the land falls naturally to the waterway. The appellant had chosen to build a steel framed steel shed, being 20m long, 10m wide and 6m high in this cleared area. In April 2021, the appellant engaged Fluid Building Approvals seeking a building approval for a shed in this location.
7. As the building application triggered code assessment against the planning scheme provisions Fluid Building Approvals, on behalf of the appellant, made an application for the building works assessable against the planning scheme to Council.
8. Council had received a complaint regarding three trucks being stored in this part of the property in April 2021. Council subsequently contacted the property owner concerning the subject site being used as a Transport Depot (as defined by Noosa Plan) and the construction of a gravel driveway within the riparian buffer area.
9. Council's records show that:
 - on 28 April 2021, the building works application for the shed was properly made;
 - on 27 May 2021 Council issued an information request;
 - on 14 June 2021 the information response was received; and
 - on 28 October 2021 a decision notice was issued refusing the application.
10. On 19 November 2021 the appellant paid the relevant appeal fee and a Form 10 – Notice of Appeal was subsequently lodged with the Registrar.

Jurisdiction

11. This Tribunal has jurisdiction to hear this appeal under the PA section 229(1)(a)(i) and Schedule 1, sections 1(2)(g) and Table 1 item 1(a) being an appeal by the Appellant against the refusal of the development application by the Assessment Manager.

Table 1

1. Development applications

For a development application other than an excluded application, an appeal may be made against—

(a) the refusal of all or part of the development application.

12. The tribunal is satisfied that the development application to Council satisfies that requirement being a development application for a building works assessable against the provisions of the Noosa Plan

2020, for a shed in a riparian buffer area and exceeding 500 sq/m gross floor area for all buildings on site.

13. The refusal by Council has enlivened the jurisdiction of the Tribunal.

Decision framework

14. Section 246 of the PA provides as follows (omitting the examples contained in the section):

The registrar may, at any time, ask a person to give the registrar any information that the Registrar reasonably requires for the proceedings.

The person must give the information to the registrar within 10 business days after the registrar asks for the information.

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.

15. Section 254 of the PA deals with how an appeal such as this may be decided. The first three subsections of that section (omitting section 254(2)(e), as it relates to a deemed refusal and not relevant here) 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

The material considered in arriving at this decision comprises:

1. Form 10 – Appeal Notice, grounds for appeal and correspondence accompanying the appeal lodged with the Tribunals Registrar on 22 November 2021.
2. Noosa Council's Development Assessment Delegated Report authored by Maxwell Potter and provided at the hearing on 17 March 2022.
3. Approved Plans for OPW21/0175 Noosa council dated 6 August 2021.
4. Google maps and street view images.

5. Nearthmaps satellite images from 2010 to current date.
6. RP Data Professional site history for 79 Garnet St Cooroy.
7. The Planning Act 2016 (PA).
8. The Planning Regulation 2017 (PR).
9. The Development Application Rules.
10. The Building Act 1975 (BA).
11. The Building Regulation 2006 (BR).
12. The Noosa Plan 2020.
13. The National Construction Code 2019 (NCC).
14. The verbal submissions made by the parties at the hearing and during the site inspection.

Findings of Fact

16. The hearing for the appeal was held at the appellants' home and therefore at the subject site, on 17 March 2022. The Tribunal had the opportunity to view the existing dwelling, associated sheds and that portion of the site where the proposed shed was to be constructed. The tribunal also traversed the site to investigate other potential locations that might accommodate the proposed shed.
17. At the hearing, areas in the immediate vicinity of the existing dwelling were considered and discussed to determine if there was potential to site the proposed shed, given this part of the site is clear of the riparian buffer. The appellant was not receptive to this suggestion so the idea was not pursued.
18. The property is very tidy with many sections covered in natural vegetation while the cleared areas were mown and well maintained. Due to the depth of the site, topography and extent of mature native vegetation, the existing dwelling and associated sheds are not visible when viewed from the road frontage. By contrast, the clearing chosen to accommodate the new shed is visible from the road frontage, however that area is set back considerably negating any concerns in respect to streetscape.
19. According to the written submission provided to Council by the Building Certifier when making the building works application, the proposed shed is 200sq/m in area and the intended use within the shed was for the parking, repairing and restoring of vehicles. The submission states that the total gross floor areas for all buildings on site including the proposed shed would be greater than 500sq/m.
20. At the hearing, the appellant explained that he owned and operated a bulk haulage business and had previously brought truck and dog trailers onto the property. These were kept temporarily in that portion of the land where the shed is to be sited. Council had received complaints about these trucks and their movements and contacted the appellant. The appellant advised that these vehicles are no longer brought onto site as he now has an industrial site for this activity.
21. The land is located within the Rural Residential zone and the Cooroy Local Plan pursuant to the Noosa Plan 2020 (effective 31 July 2020) (Planning Scheme). The site triggers assessment against overlay codes and these provisions must be considered as part of any future development of the site. The relevant overlays include the Biodiversity, Waterways and Wetland Overlay

(Riparian Buffer). Other Noosa Plan provisions apply to this site, namely the rural Residential Zone Code, the Low Density Housing Code and Works Codes.

22. Following their assessment Council determined to refuse the application for the following reasons:

The proposed development is contrary to the Performance and Overall Outcomes of the Biodiversity Overlay Code as the proposed shed is located within an identified riparian buffer for the waterway that transverses the site and the proposed works and consequent ongoing use of the shed will adversely impact this ecologically important area.

The proposed development is contrary to the Overall and Performance Outcomes of the Rural Residential Code as the proposed shed is not inconspicuous, will not present as part of the existing house, and will lead to adverse impacts for nearby residents.

23. The land has a rural residential zoning designation. Under Table 5.7.1 of the Noosa Plan carrying out building work (on rural residential land) not associated with a material change of use is accepted development and may be assessed and determined by a private certifier if, involving a Dwelling house, or a Class 10 structure, provided the proposed development meets all of the provisions stated at Acceptable Outcomes AO1.2, AO2, AO5, AO6, AO8, AO10, and AO11 of the Rural Residential Zone Code and Acceptable Outcomes AO2.1, AO3, AO15, AO16, AO18 and AO22 of the Low Density Housing Code.

24. Where development does not meet these provisions, a code assessment is triggered, and Council must be the assessment manager to consider and determine if the proposed development meets the relevant performance outcomes.

25. Acceptable Outcome AO5.5 states:

The total gross floor area of all buildings on site does not exceed 500m².

26. Noosa Plan defines gross floor area for a building as the total floor area of all storeys of the building, measured from the outside of the external walls and the centre of any common walls of the building, and in part, other than areas used for parking, loading or manoeuvring vehicles.

27. The appellant's submission for the building application has concluded that the total gross floor area on the site exceeds 500sq/m. While Council through assessment has determined that the total gross floor area would be calculated at 627 sq/m. Given the definition for gross floor area, the use of the proposed shed is a relevant consideration. Where the vehicles in the shed are to be maintained and/ or restored, this area must be taken into account as gross floor area.

28. Performance Outcome PO5 states:

Buildings and other structures:

(a) are low rise;

(b) do not present an appearance of bulk to adjacent properties, roads or other areas in the vicinity of the site;

(c) have a low site impact to maximise the opportunity to retain natural site characteristics, such as native vegetation and natural landforms;

(d) respect the scale of surrounding vegetation; and

(e) are no more than two storeys in height.

29. Acceptable Outcome AO 6.4 states in part: *building and structures meet the following minimum boundary setbacks as alternative provisions to the Queensland Development Code (QDC).*

(a) 15 metres from a property boundary adjoining land in the Environmental management and conservation zone;

(b) 40 metres from mean high water spring of a waterway or as otherwise prescribed through the Queensland Government Erosion Prone Area Maps;

(c) 10 metres from the road frontage;

(d) 10 metres from the side and rear boundaries or 6 metres where the lot area does not exceed 1 hectare, with the exception that if the height of the building or structure exceeds 9 metres the setback to the side and rear boundaries is equal to twice its height in metres.

30. Performance Outcome PO6 states in part: *Buildings and other 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, access to breezes and protection from noise, odour or artificial lighting;*
 - (b) provide adequate distance from adjoining land uses and avoid conflict with existing or future rural uses and activities on adjoining properties; 10 metres from the road frontage;*
 - (c) allow for space and landscaping to be provided between buildings;*
 - (d) preserve existing vegetation that will help buffer development;*
 - (e) protect the natural character and avoid adverse impacts on ecologically important areas such as national parks, waterways and wetlands.*
31. Performance Outcome PO7 further states: *Development does not result in an adverse change to the light, air quality, noise, accessibility or other conditions enjoyed by residents of associated, adjoining or nearby premises.*
32. Table of assessment 5.9.2 for the Biodiversity Waterways and Wetlands Overlay states that building work not associated with a material change of use, excluding demolition work is code assessable for that part of the premises identified as riparian buffer area on a Biodiversity, Waterways and Wetlands Overlay map.
33. As the siting for the proposed shed is within the riparian buffer, a code assessment is triggered and Council must be the assessment manager to consider and determine if the proposed development meets the relevant performance outcomes.
34. Acceptable Outcome AO6.1 of the Biodiversity Waterways and Wetlands Overlay code states in part: *Development and clearing of vegetation does not occur within,*
- (a) a riparian buffer area;*
 - (b) a wetland area; or*
 - (c) 10 metres either side of the centre line of other waterways identified on a Biodiversity, Waterways and Wetlands Overlay Map.*
35. Performance Outcome PO6 of the Biodiversity Waterways and Wetlands Overlay code states in part:
- The biodiversity and ecosystem values of waterways, wetlands and adjacent riparian zones are protected by:*
- (a) avoiding any new development in a riparian buffer area and wetland area;*

Reasons for the Decision

The Tribunal finds that the scale of the proposed shed and the nature of the activity proposed is not conducive of ensuring protection of the native vegetation and the waterway that transverses the site.

The Tribunal also finds that the scale of the development and the nature of the activity given the proposed siting of the shed, will significantly detract from the amenity enjoyed by neighbouring residents.

In the circumstances, the appellant has not satisfied the Tribunal that the appeal should be upheld.



Debbie Johnson

Development Tribunal Chair
Date: 30 May 2022

Appeal Rights

Schedule 1, Table 2, item 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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