



Development Tribunal – Decision Notice

Planning Act 2016

Appeal Number:	2021 - 058
Appellant:	Tyler Wade
Respondent (Assessment Manager):	Ken Murray of AAA Building Consultants
Co-respondent (Concurrence Agency):	Noosa Shire Council
Site Address:	4 Ransome Street Pamona and described as Lot 24 on RP 803964 – the subject site

Appeal

Appeal under section 229 of the *Planning Act 2016* (PA) against the decision of the Assessment Manager to refuse a Development Permit for Building Works (a Shed) on the basis that the proposal conflicts with the nominated code provisions contained within the *Noosa Plan 2020*.

Date and time of hearing:

Place of hearing: Online via *Microsoft Teams*

Tribunal: Stephanie Raven– Chair
Rebecca Moore - Member

Present: Tyler Wade – Appellant
Brad Geaney - Council representative
Matt Adamson - Council representative

Decision:

The Development Tribunal (Tribunal), in accordance with section 254(2)(c) of the PA, replaces the decision of Council to refuse the Development Permit for Building Works (a Shed), with a decision to allow the Development Permit to proceed subject to:

- (a) the shed being located 6.0 metres off the rear boundary and 4.0m off the side boundary;
and
- (b) the total area of the shed must not exceed 220m², comprising of 12.0m x 11.0m enclosed area and 8.0m x 11.0m open carport / awning.

The Shed should be constructed generally in accordance with the plans prepared by Lockyer Sheds (referenced Project 591 / Quote 1) dated 'Mon 21st Feb'.

The appellant shall, prior to any building work commencing onsite, apply for and gain, a Development Permit for the Building Works. Any future development permit must be conditioned with the following conditions, as well as any additional conditions attached to the building approval by the building certifier to address the requirements of the *Building Act 1975*.

- (a) The carport (8.0m x 11.0m) must not be fitted with a roller/panel lift door.
- (b) The sides of the carport must not be enclosed or otherwise screened with louvers, slats, battens etc.
- (c) The shed has a maximum eave height of 3.2 metres from *ground level* as defined by the Noosa Plan 2020.

The conditions mentioned above are to be referred to and checked prior to the issue of the final inspection certificate.

Background

The Subject Site is located at 4 Ransome Street, Pamona, more formally described as Lot 24 on RP 803964.

The Subject Site is included in the 'Rural Residential Zone' of the *Noosa Plan 2020*. The subject site comprises of 4805m² in area, the site contains an existing single storey dwelling with carport, shed, pool and pool shelter. The surrounding area comprise of similar sized lots also falling within the Rural Residential Zone and within the Urban Footprint of the SEQ Regional Plan.

The proposal involved the replacement of the existing 13.0m x 13.0m Shed with a 24.0m x 12.0m Shed. The proposed Shed was sited within the required 6.0m side & rear boundary setback as prescribed by the Rural Residential Zone Code (RRZC), Acceptable Outcome A06.4 (d) of the *Noosa Plan*.

The application for a Development Permit for Building Works was referred to Noosa Shire Council, as the Concurrency Agency, on the 10 August 2021, pursuant to Planning Regulation 2017 Schedule 9, Part 3, Division 2, Table 3 - *Building work for design and siting*.

On the 15 October 2021, Council responded to the referral, directing the Assessment Manager, Ken Murray of AAA Building Consultants, to refuse the application for Building Works.

On the 20 October 2021, the assessment manager issued a Decision Notice refusing the application for a Development Permit, and on the same day the Appellant lodged an appeal against this Decision with the Development Tribunal.

A Tribunal was established on 01 December 2021, the Chairperson undertook a site inspection on the 14 January 2022 and an online hearing was held on the 18 January 2022.

During the hearing, verbal representations were made by Council and the Appellant. The hearing was held online via *Microsoft Teams*.

During the assessment of the Development Permit, Council issued a referral response directing the assessment manager to refuse the development permit on the basis that it did not comply with Performance Outcome PO6 (a) & (b) of the RRZC. The referral response included the following findings:

"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;*

It has been considered that due to the building location being in close proximity of both the rear and side boundaries, the proposed shed has the potential to adversely impact the amenity of the adjoining land users. Furthermore, due to the design and proposed reduction to the prescribed boundary setbacks, the shed will fail to preserve the acoustic privacy of the neighbouring properties.

- b) *provide adequate distance from adjoining land uses and avoid conflict with existing or future rural uses and activities on adjoining properties;*

It has been considered that the building location does not provide adequate distance from the adjoining land use. It is also noted that there is sufficient area on site for the shed to be designed and sited in a position that can achieve the setbacks required under the Acceptable Outcome AO6.4.”

The Tribunal is of the opinion that the original shed proposal comprising of an area of 24.0m x 12.0m, is inconsistent with the Purpose and overall outcomes of the RRZC, in particular overall outcome 2(b) which states, ‘*Development is low density and semi-rural in nature with houses on large lots being the dominant form of development*’.

This is substantiated by the Code’s Acceptable Outcome A05.4 which states ‘*Individual buildings or roofed structures do not cover more than 500m² of the site*’. The proposed shed comprises of an area of 288m² which will see the Individual buildings or roofed structures exceed the 500m² requirement.

The Tribunal is of the view that that the proposed building work (a Shed) needed to have complied with Acceptable Outcomes A05.1 - A05.5 of the RRZC to remain as *accepted development*.

The Tribunal emailed the parties to the appeal on the 21 January 2022 to seek advice as to whether they would be agreeable with a reduced size of the proposed Shed.

On the 25 January 2022 the Appellant provided the Development Tribunal with a revised design proposal incorporating a reduction to the size of the Shed to an area of 220m², comprising of a 12.0m x 11.0m enclosed area and an 8.0m x 11.0m open carport / awning. The Shed setbacks were also increased incorporating a compliant 6.0m setback from the rear boundary and a 4.0m setback from the side boundary.

On the 27 January 2022, Council responded to the appellant’s revised design and siting proposal, stating that ‘*Council records indicate that a 9x6 metre shed is approved at 3.0 metres from the side boundary. Therefore, any additions to that original design should not be taken into consideration when looking to justify a further reduction to the prescribed side boundary setbacks and to allow for the significant increase to the size of the sheds footprint.*’ The Council also suggested that the shed be reduced in width by an extra 1.0m to achieve a 5.0m setback from the side boundary.

Council records indicate that a Shed 9.0m x 6.0m was approved by the Council 1998. The shed was approved with a 3.0m setback from the side boundary.

The lodged documents ‘Shed Feasibility Proposal’ indicates that the site currently contains a 13.5m x 13.5m (182m²) Shed with a varied setback of 1.6m – 3.0m from the side boundary. The existing shed is generally enclosed the full length alongside the side boundary. Noosa Council’s ‘Intramaps’ indicate that the shed additions appear to have been there since 2015.

The revised proposal seeks to replace the existing shed with a 12.0m x 11.0m enclosed shed extending to an 8.0m x 11.0m open carport / awning. The Shed is proposed 4.0m from the side boundary and 6m from the rear boundary

The RRZC A06.4(d) allows for reduced setbacks where the lot area does not exceed 1 hectare, allowing a reduction from a 10.0m setback requirement, to a 6.0m setback requirement. The subject site in this instance is less than half a hectare in size and proposes a 4.0m setback variation to the 6.0m setback requirement. Therefore, the revised Shed design must demonstrate compliance with Performance Outcome P06 of the RRZC.

The Tribunal has found the revised size and siting of the shed demonstrates compliance with Performance Outcome P06 of the RRZC in that:

- the revised shed design provides provisions of visual and acoustic privacy, access to breezes and protection from noise.
- The site contains established landscaping along the side boundary which will provide some visual screening and privacy to the neighbours.
- The future Use of the shed will need to ensure it complies with any other relevant codes, policies, and/or relevant legislation. The appellant advised the Tribunal that the shed will be used for the parking of vehicles and storage, the Tribunal does not consider this use will result in any detrimental amenity impacts in relation to noise, odour and artificial lighting.

The increase in setback from the varied 1.6m - 3.0m, to a setback of 4.0m together with the relocation of the shed to an area which is heavily vegetated along the side boundary is considered a significant improvement from the existing conditions.

The Tribunal considered the character of the Rural Residential lot. These lots are generally set aside for semi-rural lifestyles. The minimum lot sizes contained in Table 9.5.1.4 of the *Noosa Plan* for subdivisions in this zone is 1.5 hectares. The subject site only has an area of 4805m² which is significantly less than the desirable area of the Rural Residential lot. The adjoining property has an area 6680m². Therefore, given the size of these lots, the Tribunal finds it highly unlikely that the reduced setback in this instance would result in any adverse conflicts with future rural land uses on the adjoining lot as required by P06(b).

Overall, the Tribunal has found the revised design proposal to demonstrate compliance with Performance Outcomes P06 (a) & (b) of the RRZC and therefore recommends the decision of Council be replaced to allow the Development Permit to proceed.

On the 27 January 2022 the Council provided a list of preferred conditions that any future approval should contain, including:

- The carport must not be fitted with a roller/panel lift door.
- The sides of the carport must not be enclosed or otherwise screened with louvers, slats, battens etc.
- The shed has a maximum eave height of 3.2 metres from *ground level* as defined by the Noosa Plan 2020.

The Tribunal agrees that the above conditions should be included in any decision notice issued.

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 20/10/21
2. Decision Notice – Refusal for Development Permit for Building Works (Shed) dated 20/10/21
3. Aerial Site Plan, Floor Plan, Elevations and Perspective drawing (Job number 42546).
4. MultiBuild Specification Sheet dated 06/09/21

5. Noosa Council Concurrence Agency Response (RAB21/0170) and accompanying plans – directing the assessment manager to refuse the application dated 15/10/21
6. Shed Feasibility Proposal including site context, new shed proposal, evaluations and photographs
7. Email communication between the Building Certifier from Noosa Council dated 24/08/21, 23/08/21 & 19/08/21
8. Neighbours consent dated 23/08/21
9. Planning Act 2016
10. Planning Regulation 2017
11. Noosa Plan 2020
12. Verbal representations by the Appellant at the hearing 18/01/22
13. Verbal representations by the Council at the hearing 18/01/22
14. Further information submitted by Appellant on the 20/01/22 annexed with photograph of hedge on property boundary, revised site layout plan, neighbour consent and site context report
15. Revised size and location of the Shed submitted by Appellant on the 25/01/22
16. Additional information and comments provided by the Council on the 27/01/22
17. Revised Shed Plans comprising of Site Layout Plan (Aerial layout), Floor Plan (pg. 1 of 2) and Elevations (pg. 2 of 2) prepared by Lockyer Sheds (Project 591 / Quote 1) dated 'Mon 21st Feb' submitted by Appellant on the 22/02/22

Findings of Fact

The Tribunal makes the following findings of fact:

- The application for a Development Permit for Building Works (a Shed), was made to Ken Murray of AAA Building Consultants, as the Assessment Manager, and was referred to Noosa Shire Council, as the Concurrence Agency under the Planning Regulation 2017, Schedule 9, Part 3, Division 2, Table 3.
- The referral to the Concurrence Agency, Noosa Council, involved the assessment of the setbacks from the side and rear boundary against Part 6 RRZC, 6.8.4, Acceptable Outcomes AO6.4 (d) and Performance Outcome P06 (a) and (b) in relation to boundary setbacks.
- The Concurrence Agency Response stated the reasons for refusal was due to the development not demonstrating compliance with the Noosa Plan 2020, Part 6 RRZC, 6.8.4, Performance Outcomes PO6 (a) and (b).
- Pursuant to the Noosa Plan 2020, Building work is *accepted development*, unless the tables of assessment state otherwise or unless otherwise prescribed within the Act or the Regulation.
- Table 5.7.1 of the Noosa Plan 2020 requires building work to comply with the relevant acceptable outcomes of the identified applicable code(s). A development application and approval from Council under the planning scheme is required where the proposed

development cannot meet one or more of the relevant acceptable outcomes of the applicable code(s).

- Accepted development that does not comply with one or more of the nominated acceptable outcomes in the relevant parts of the applicable code(s) becomes code assessable development unless otherwise specified.

Where Acceptable Outcomes (AOs) are listed as requirements for accepted development, if all the sub-sections of an AO against a particular Performance Outcome apply (for example AO1.1, AO1.2, AO1.3) only the parent AO number is listed (AO1). If sub-numbers appear it means not all the AOs against that specific Performance Outcome apply, just those listed.

- The Tribunal is of the view that the proposed building work (a Shed) was required to comply with Acceptable Outcomes A05.1 - A05.5 of the Rural Residential Zone Code to remain as *accepted development*.
- Additional information was provided by the appellant after the appeal was held. This information contained the total area of Individual buildings and roofed structures on site. The total roofed areas (excluding shed) were estimated to be 577.20m².
- The Tribunal is of the view that the proposed building work (a Shed) was able to comply with Acceptable Outcome A05.1 – A05.3 Rural Residential Zone Code.
- The Tribunal is of the view that the proposal did not comply with the Noosa Plan 2020, Part 6 RRZC, 6.8.4, Acceptable Outcomes A05.4 and therefore should have been lodged with the Noosa Council as a Code Assessable application, in lieu of a *Concurrency Agency Referral*.
- The Tribunal has considered Section 253 of the *Planning Act 2016* - Conduct of appeals, Part 4 *'The tribunal must hear and decide the appeal by way of reconsideration of the evidence that was before the person who made the decision appealed against'*.
- The Tribunal has considered the amended size and siting provided to the Tribunal and parties to the Appeal on the 22 February 2022. The Tribunal has found the amended proposal, which involves a reduction in size and the siting relocation of the Shed to be minor in nature.
- With reference to the PA schedule 2 definition of Minor Change, the amended size and siting of the Shed is considered a minor change as it is not a substantially different development, the change does not involve the incursion of prohibited development in the application, referral to extra referral agencies, consideration by an existing referral agency of additional matters prescribed by a regulation, or public notification.
- The Tribunal is of the view that the proposed Shed design is able to demonstrate compliance with Performance Outcome P05 of the Rural Residential Zone Code (a) – (e) in that it is low rise, it is setback from the street frontage, and it maximises use of existing dense vegetation for screening from the side boundary.
- The Tribunal has reviewed the amended size and siting of the Shed against the relevant Performance Outcomes and found the amended proposal demonstrates compliance with the Noosa Plan 2020, Part 6 RRZC, 6.8.4, Performance Outcomes P05 and Performance Outcomes P06.

- With reference to section 254(3) of the PA, the decision approves the development illustrated on the Site Layout Plan (Aerial layout), Floor Plan (pg. 1 of 2) and Elevations (pg. 2 of 2) prepared by Lockyer Sheds (Project 591 / Quote 1) dated 21st Feb submitted by Appellant on the 22/02/22, being a minor change to the development application.

Reasons for the Decision

Pursuant to PA section 253(2) the onus rests on the appellant to establish that the appeal should be upheld. The tribunal has heard the appeal by way of reconsideration of the evidence.

The tribunal is required to hear and decide the appeal by way of a reconsideration of the evidence that was before the person who made the decision appealed against (s. 253(4) of the PA).

The tribunal is required to decide the appeal in one of the ways mentioned in s.254(2) of the PA. With reference to PA section 254(4), the decision approves the revised setbacks and size of the Shed provided by the appellant on the 22 February 2022. The revised plans show the shed being located the compliant 6.0 metres off the rear boundary and 4.0m off the side boundary, comprising of 12.0m x 11.0m enclosed and 8.0m x 11.0m open carport / awning, and totalling an area of 220m².

The Tribunal therefore replaces the decision (refusal) with another decision (approval) of the development in accordance the conditions outlined under the heading 'Decision' at the beginning of this notice.

Stephanie Raven

Development Tribunal Chair

Date: 23/02/2022

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:

The Registrar of Development Tribunals
Department of Energy and Public Works
GPO Box 2457
Brisbane QLD 4001

Telephone 1800 804 833