



## Development Tribunal – Decision Notice

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### *Planning Act 2016, section 255*

<b>Appeal number:</b>	23-014
<b>Appellant:</b>	Adrian Walker
<b>Respondent (Assessment Manager):</b>	Stewart Magill
<b>Co-respondent (Concurrence Agency):</b>	Noosa Shire Council
<b>Site address:</b>	13 Lorikeet Drive, Peregian Beach Qld 4573 described as Lot 740 on P93127

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### **Appeal**

Appeal under section 229(1)(a)(i) and schedule 1, section 1, table 1, item 1(a) of the *Planning Act 2016* ('the PA') against the refusal by the assessment manager, at the direction of the referral agency, of a development application for a development permit for building work for alterations and extensions to the dwelling, on the subject site (the application).

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<b>Date and time of hearing:</b>	Monday 19 June 2023 at 10.30am
<b>Place of hearing:</b>	13 Lorikeet Drive, Peregian Beach (the <b>Land</b> )
<b>Tribunal:</b>	Kim Calio – Chair Catherine Baudet – Member
<b>Present:</b>	Adrian Walker – Owner and Appellant Brad Geaney – Council representative Jarrad Postle – Council representative Stewart Magill – Pure Building Approvals – Certifier/Assessment Manager Jon Day – Pure Building Approvals.

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### **Decision:**

The Development Tribunal in accordance with section 254(2)(a) of the *Planning Act 2016*, confirms the decision of the assessment manager to refuse the development application for a development permit for building work for alterations and extensions to the dwelling on the land.

### **Background**

1. The appellant proposed the following alterations and extensions to the existing dwelling:

- (a) Replace an existing weather deck currently set back 4.5m from the front boundary to Lorikeet Drive.
- (b) Extend the existing dwelling roof line, currently setback 6m from the front boundary to Lorikeet Drive, over the new deck resulting in a 4.5m setback from the front boundary to Lorikeet Drive.
- (c) Extend the existing deck approximately 2.9m to the south with a roof flyover both having a 4.5m setback to the front boundary to Lorikeet Drive.
- (d) Enclose the entire proposed deck with weatherboard cladding 1.2m high and aluminium battens above.

2. The subject site is contained within the Low Density Residential zone of the Noosa Plan 2020. The Low Density Residential Zone code includes Acceptable Solution AO9.1 which states:

*Buildings and structures have a setback of 6 metres from the road frontage, provided that a setback to one frontage may be reduced to 4.5 metres where the lot:*

- (a) *has frontage to more than one road; and*
- (b) *is less than 600m<sup>2</sup> in area, or*
- (c) *is less than 15 metres in width.*

3. The Tribunal notes that Acceptable Outcome 9.1 is an alternative provision to the Queensland Development Code (QDC).

4. The Low Density Residential Zone Code Table 6.3.1.3 contains some alternative provisions to the QDC. The QDC Part MP1.2 is the standard for the Design and Siting requirements applicable to Class 1 Dwellings and Class 10 structures on residential sites over 450m<sup>2</sup> in area. The provisions of the QDC apply to the extent that a local planning scheme does not opt to provide alternative provisions. In this instance the Low Density Residential Zone code Table 6.3.1.3 AO9 provides some alternative siting provisions to the QDC A1(a), and therefore the 6m setback provisions (for buildings and structures) of the Low Density Residential Zone code apply to the proposed development.

5. As the proposed alterations and extensions did not meet AO9.1, an application was triggered for referral to Council as a concurrence agency pursuant to Schedule 9, Part 3, Division 2, Table 3 Item 1(a) of the *Planning Regulation 2017 (Regulation)*.

6. An application for a Referral Agency Response (RAR) was submitted to Noosa Council on 12 December 2022 by Pure Building Approvals.

7. On 6 March 2023, Council's delegate decided to issue a referral agency response (**RAR**) directing the assessment manager to refuse the Application due to non-compliance with Performance Outcome PO9(f), citing, amongst other things, the following reasons for refusal of the Application.

*PO9 Buildings and Structures are designed and sited to:*

*(f) be consistent with the predominant character of the streetscape:*

*It has been considered that the proposed alterations and additions within the front boundary setback are not consistent with the predominant character of the streetscape.*

*It is Council's view that the predominant character of the streetscape consists of buildings and structures providing a greater road setback than that of the current proposal.*

8. The assessment manager issued a decision notice dated 28 March 2023, refusing the Application as required by section 62 of the *Planning Act 2016* (Act).
9. The owner of the Land, Mr Adrian Walker, lodged this Appeal on 31 March 2023 in response to the refusal of the Application at the direction of the concurrence agency.
10. This appeal was dealt with by the Development Tribunal (Tribunal) at the hearing held on 19 June 2023, which was conducted at the Land.

### **Jurisdiction**

11. Section 229(1) of the Act identifies that schedule 1 states the matters that may be appealed to the Tribunal.
12. Table 1 of schedule 1 of the Act states the matters that may be appealed to the Planning and Environment Court or the Tribunal subject to (in the case of the Tribunal) the pre-conditions stated in section 1(2) of schedule 1.
13. The Tribunal has jurisdiction to determine this appeal under section 229, schedule 1, section 1(2)(g) and schedule 1, section 1, table 1, item 1 of the Act.

### **Decision framework**

14. The onus rests on the appellant to establish that the appeal should be upheld.<sup>1</sup>
15. 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.<sup>2</sup>
16. The Tribunal may nevertheless (but need not) consider other evidence presented by a party with leave of the Tribunal or any information provided under section 246 of the Act.
17. Leave was given by the Tribunal pursuant to section 253(5)(a) of the Act to the parties to present the other evidence specifically identified in the list of 'material considered' below.
18. The Tribunal is required to decide the appeal in one of the ways mentioned in section 254(2) of the Act.

### **Material considered**

19. The material considered by the Tribunal pursuant to section 253(4) and section 253(5) of the Act in arriving at this decision comprises:
  - (a) Pure Building Approval request to Noosa Shire Council for a Referral Agency Response (RAR) dated 12 December 2022.<sup>3</sup>
  - (b) Council's Information Request dated 22 December 2022, which noted that the proposed roof and roof extensions are not consistent with the predominant character of the streetscape and inviting the submission of an alternative, more

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<sup>1</sup> Section 253(2) of the Act.

<sup>2</sup> Section 253(4) of the Act

<sup>3</sup> It is noted the request for RAR submitted by Pure Building Approval incorrectly addressed the Queensland Development Code rather than the Noosa Plan 2020 Low Density Residential Housing Code

compliant plan.

- (c) Council's RAR (RAB22/0229) dated 6 March 2023, which directed the assessment manager to refuse the application. The RAR included plans A103 Proposed Site Plan (Rev A02), A202 Proposed Floor Plan (Rev A02), A301 Proposed North & East Elevation (Rev A02) prepared by Collins Building Designs and dated 6 June 2022.
- (d) The decision notice dated 28 March 2023 issued by the assessment manager refusing the Application for the proposed Alterations/Additions to a Detached Dwelling.
- (e) Form 10 – Appeal Notice against the assessment manager's decision to refuse the Application for Building Works for alterations and additions to a detached dwelling, grounds for appeal and correspondence accompanying the Appeal lodged with the Registrar on 31 March 2023. This correspondence noted the following communications between the Pure Building Approvals and the Council:
  - (i) 9 January 2023 - Pure Building Approvals requested Council to accept a 4.5m frontage setback in this instance given the block was less than 600m<sup>2</sup> and had frontages to both Lorikeet Drive and David Low Way as provided for under AO9.1.
  - (ii) 11 January 2023 - Pure Building Approvals provided evidence to Council of a double carport located on the front boundary of 36 Lorikeet Drive attached to a dwelling with a 4.5m setback approved by Council under RAB16/0039. It was noted that this property is approximately 375m away from 13 Lorikeet Drive.
  - (iii) 12 January 2023 - Pure Building Approvals provided Council with details of other properties with approved setbacks at 2 and 6 Lorikeet Drive and 2 and 4 Pitta Street, which they consider have created precedents.
  - (iv) 17 January 2023 - Council responded to Pure Building Approvals advising that Council would not support a 4.5m frontage setback regardless of other precedents identified.
  - (v) 21 February 2023 - Pure Building Approvals requested Council to issue their decision based on the information provided.
- (f) Noosa Plan 2020 – Low Density Residential Zone Code
- (g) *Planning Act 2016*
- (h) *Planning Regulation 2017*

### **Findings of fact**

The Tribunal makes the following findings of fact:

#### The Land and surrounding area

- 20. The Land is rectangular in shape and approximately 512m<sup>2</sup> in area. It has a frontage of approximately 18m to Lorikeet Drive to the east and a frontage of 18m to David Low Way to the west.
- 21. The Land generally slopes in a south westerly direction from the north-eastern corner adjacent to the Lorikeet Drive frontage to the southwestern corner adjacent to the David Low Way frontage.
- 22. Vehicle access to the Land is obtained via a concrete drive from Lorikeet Drive along the southern boundary of the site.

23. The Land contains a detached two-storey dwelling.
24. Lorikeet Drive is approximately 1.3km long from the intersection with David Low to the cul-de-sac end.
25. Lorikeet Drive in the vicinity of the Land is characterised by mostly two-storey dwellings of a range of architectural styles.

### The Hearing

26. The Appellant and the Appellant's representative advised:
  - (a) The Appellant has lived in the dwelling for approximately 12 years and the alterations and extensions relate to the weathered state of the deck and need for additional space for the occupants of the dwelling.
  - (b) There is side access for vehicle parking and the proposed building setback will not reduce opportunities for onsite car parking.
  - (c) There is existing landscaping and a 2m high wall along the front boundary which would screen the proposed building works.
  - (d) The deck will be open. This will be achieved by the proposed aluminium battens that will have 50% transparency located on top of a 1.2m high solid weatherboard base.
  - (e) The Appellant's representatives considered that there is no predominant character of the streetscape.
  - (f) The Appellant would be prepared to provide additional landscaping.
  - (g) Other structures in the area are located within the 6m front setback including the house opposite at 6 Lorikeet Drive.
27. During the hearing Council's representatives advised:
  - (a) Council considered that the term 'streetscape' used in PO9 refers to what can be seen standing in front of the property and looking up and down the street.
  - (b) Council considered building location to be the aspect of character to be assessed under PO9 which states 'Buildings and structures are designed and site to: ....(f) be consistent with the predominant character of the streetscape.'
  - (c) Council considered that buildings and structures with a 6m front boundary setback was the predominant streetscape character.
  - (d) Council is not supportive of conditions for additional landscaping being provided to justify non-complying structures due to a lack of certainty of permanency and compliance concerns.
  - (e) The dwelling at 6 Lorikeet Drive is compliant having been established under the previous planning scheme which didn't regulate the 600mm roof overhang within setback provisions. This policy has been changed under the current Noosa 2020 Planning Scheme. Similarly, the Noosa 2020 Planning Scheme no longer provides for Gate houses in the front boundary setback.

- (f) Regardless Council does not consider a small number of historically approved reduced setbacks to create a predominant streetscape character.
- (g) Council noted that the deck being replaced at the current setback of 4.5m would have potential for support but that the roof would need to be more consistent with a 6m setback.
- (h) Council's assessment was confined to Performance Outcome 9 as provided for by *Planning Regulation 2017*. Therefore, the Overall Outcomes and Purpose of the Low Density Residential Zone Code were not able to be considered in the assessment of the proposal.

28. The Tribunal accepts Council's assessment of the proposal being limited to the relevant Performance Outcome as required by the *Planning Act 2016* and *Planning Regulation 2017*, specifically schedule 9 part 3, division 2 table 3 item 1(b) and item 4.

### Reasons for the decision

29. The Tribunal notes that PO9(f) of the Low Density Residential Zone code refers the predominant character of the streetscape as opposed to the surrounding area as follows:

*PO9 Buildings and Structures are designed and sited to:*

- (a) ....
- (b) ....
- (c) .....
- (d) ....
- (e) ....
- (f) *be consistent with the predominant character of the streetscape*
- (g) ...

- 30. The Tribunal finds that the use of the term '*streetscape*' provides a more localised proximity against which to determine consistency than the term '*surrounding area*' which is used elsewhere in the Noosa Plan 2020<sup>4</sup>. Therefore, it is the immediate streetscape within which the Land sits which is considered relevant in determining whether the proposed building works would comply with PO9 and be consistent.
- 31. The Tribunal accepts Council's interpretation of the streetscape relevant to the Land. This being the case the predominant character is two storey dwellings demonstrating a 6m front boundary setback.
- 32. The Appeal material included reference to other examples of reduced boundary setbacks in the surrounding area including at 36 Lorikeet Drive some 375m from the land and 2 and 4 Pitta, which although closer at approximately 70m from the Land, are around the corner in a different street. The Tribunal does not accept that these examples are relevant to the consideration of the predominant character of the streetscape relative to the Land. Further Tribunal does not accept that these examples create a predominant streetscape character.
- 33. The Tribunal is of the opinion that the predominant character of the streetscape relating to the Land demonstrates a 6m setback for buildings and structures.
- 34. The Tribunal finds that the proposed alterations and extensions within the 6m front boundary set back to Lorikeet Drive would not be consistent with the predominant character of the streetscape relating to the Land.

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<sup>4</sup> Medium Density Residential Zone Code Table 6.3.2.3 Building Setback PO12(f)

35. For the reasons identified, the Tribunal has determined that the proposal does not comply with Performance Outcome PO9(f) of the Low Density Residential Zone Code of the Noosa Plan 2020.
36. The Appellants have not discharged their onus.
37. The Tribunal upholds the decision of the assessment manager to refuse the application.

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**Kim Calio**  
**Development Tribunal Chair**

**Date: 15 August 2023**

## **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:

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

**Telephone (07) 1800 804 833**

**Email: [registrar@epw.qld.gov.au](mailto:registrar@epw.qld.gov.au)**