



Development Tribunal – Decision Notice

Planning Act 2016, section 255

Appeal number:	23-069
Appellant:	Bronwyn Jansen Van Rensburg
Assessment manager:	Dan Oliver
Co-respondent (concurrence agency):	Noosa Shire Council
Site address:	38 Hilton Terrace, Tewantin Qld 4558 and described as Lot 49 on RP41223 – 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. The application sought a retrospective approval for building works relating to extensions of a class 1 dwelling. The decision followed a referral agency response by the Noosa Council, directing refusal of the application. Council stated that the application did not comply and could not be conditioned to comply with the provisions of the Noosa Plan 2020, Low Density Residential Zone Code 9.3.1, specifically clauses (a), (c) and (f) of PO9.

Date and time of hearing:	11.00am Thursday 18 April 2024
Place of hearing:	The subject site
Tribunal:	Debra Johnson—Chair Ian Buchanan—Member Fraser Hardman—Member
Present:	Bronwyn and Maya Jansen Van Rensburg – Appellant Elise Wilton, CadCon Surveying and Town planning - Appellant's agent Dan Oliver, Building Certification Consultants Pty Ltd – Assessment Manager Jarrad Postle - Council representative

Decision:

The Development Tribunal ('the tribunal'), in accordance with section 254(2)(d) of the PA, sets aside the decision of the assessment manager to refuse the application, and orders the assessment manager to:

- a) remake the decision within 25 business days of the date of receiving this decision notice, as if the concurrence agency had no requirements.

Background

1. The subject site is rectangular, being 12m wide and 42.2m deep, with a site area of 509sq/m. The residential allotments along Hilton Terrace to the west of the subject site are all the same size. However, the adjoining site to the east is a corner site, 48m wide and 42.2m deep. The corner site has been developed for two-storey units. That site addresses the alternate street frontage, which is Sydney Street.
2. Hilton Terrace runs parallel to Hilton Esplanade which borders Noosa River. The subject site and those neighbouring back on to the river front properties along Hilton Esplanade. This area generally is low lying, and the topography appears relatively flat. Noosa Flood Mapping shows that the site and most surrounding properties are likely to be flood prone.
3. Many of the surrounding homes on Hilton Terrace are 1930-1950 originals and will likely make way for more contemporary development given the desirable location and current demand. As it stands, the road boundary setbacks vary along Hilton Terrace due to the age of the homes and the nature of development over time.
4. The appellant's dwelling was built to the nominated finished floor levels in 2017 due to the site's potential to flood. An inground pool was then added in 2018. It was and is a very tidy, contemporary lowset home, comprising three bedrooms and a double garage. The appellants purchased this property a little over two years ago and decided to extend the home to include a self-contained guest room for their son.
5. In 2022 the appellants sought the assistance of a licensed builder, who agreed to manage the process for them. Building design, structural engineering, energy efficiency and site classification reports were commissioned on their behalf. However, the extensions to the existing dwelling house were not carried out pursuant to a development approval for building or plumbing work.
6. The new development comprised a small self-contained living area over the top of their existing double garage. In 2023, they sought to regularise the unlawful works by making application for the required approvals and engaged CadCon to make application to Noosa Council on their behalf. Council's records show the application was lodged on 23 May 2023.
7. Despite the application originally being made to Council, Dan Oliver was subsequently engaged as the assessment manager. The development application for building works required referral to Council as a concurrence agency due to reduced building line setbacks. Both the western side boundary and the front road boundary setbacks required consideration and approval by Council.
8. On 6 June 2023, Council issued their referral agency response directing the assessment manager to refuse the application. Council stated the application did not comply and could not be conditioned to comply with the provisions of the Noosa Plan 2020, Low Density Residential Zone Code 9.3.1, specifically clauses (a), (c) and (f) of PO9.
9. On 8 September 2023, P&E Law made representations on behalf of the applicant to Noosa Council. The representations stated in accordance with section 32 of the Development Assessment Rules 2017 (the DA Rules), notice had been given to the assessment manager to stop the decision period in order for representations to be made to Council about the Referral Response under section 30 of the Development Assessment Rules 2017 (DA Rules).

10. On 12 October 2023, Council contacted P&E Law by email and advised Council had reviewed and considered the information provided and had decided not to change the referral agency response already issued. Council stated the documentation did not provide or contain any additional information to demonstrate the building work met the performance outcomes of the alternative siting provisions.
11. Council's email of 12 October 2023 made comment that it was not in receipt of any documentation to suggest that a properly made building application had been lodged with a private building certifier.
12. On 28 November 2023, Dan Oliver, Building Certification Consultants (BCC) Pty Ltd, issued a Form 6 Development Application Decision Notice of Refusal. The decision notice stated the development application for building work has been assessed and refused for the following reason:

Noosa Council has refused a referral for siting and design.

13. On 13 December 2023, the appellant stated her grounds for appeal and completed and submitted the Form 10 – Notice of Appeal to the Registrar.

Jurisdiction

14. This appeal has been made under section 229 of the PA, as a matter that may be appealed to a tribunal.
15. Pursuant to schedule 1, section 1(2) of the PA, an applicant may apply to a tribunal only if the matter involves one of the circumstances set out in paragraphs (a) to (l) of that section. Schedule 1, section 1(2)(g) of the PA states:

a matter under this Act, to the extent the matter relates to the Building Act, other than a matter under that Act that may or must be decided by the Queensland Building and Construction Commission.

16. The tribunal is satisfied the application lodged with the Assessment Manager and the referral of the development application to Council satisfies the requirement, being, a development application for approval of building works under section 33 of the *Building Act 1975* (BA), which allows alternative provisions to QDC boundary clearance and site cover provisions for particular buildings.
17. The development application was subsequently refused by the assessment manager as directed by Council as the referral agency. Schedule 1, Table 1, item 1(a) of the PA provides in respect of a development application, other than an excluded application, an appeal may be made to a tribunal against the refusal or all or part of the development application.
18. The refusal directed by Council as the referral agency, and made by the Assessment Manager, have enlivened the jurisdiction of the tribunal.

Decision framework

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

20. 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—*
 - (a) *other evidence presented by a party to the appeal with leave of the tribunal; or*
 - (b) *any information provided under section 246.*

21. Section 254 of the PA deals with how an appeal such as this may be decided and the first three subsections of that section (omitting section 254(2)(e), which is 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...*
- (...)
- (3) *However, the tribunal must not make a change, other than a minor change, to a development application.*

Material considered

22. The material considered in arriving at this decision was:

- (a) Form 10 Notice of appeal, grounds for appeal and correspondence (listed below) accompanying the appeal lodged with the tribunals registrar on 13 December 2023.
- (b) Grounds for appeal document prepared by Elise Wilton from CadCon Surveying and Town Planning, dated 13 December 2023.
- (c) Development application with written submission addressed to Noosa Council and prepared by Elise Wilton from CadCon Surveying and Town Planning, dated 19 May 2023.
- (d) As submitted to Council, building design drawings prepared by Daryl Wood Drafting Concepts. The drawings are identified as Job No 1692 Sheets 1-3/3, dated 23 May 2023.
- (e) Noosa Council document- Notice to Development Consultants and Building Certifiers – Noosa Plan 2020, Flood Overlay and associated extracts from the Noosa Plan.
- (f) Noosa Council's Referral Agency Response dated 6 June 2023.

- (g) Building design drawings prepared by Daryl Wood Drafting Concepts. The drawings are identified as Job No 1692 Sheets 1-3/3, dated 23 May 2023, and stamped by Council 6 June 2023, reference number RAB23/0070 as being Recommended for refusal under the PA.
- (h) Representations made on behalf of the applicant to Noosa Council, as prepared by Mellisa Diqer of P&E Law, dated 8 September 2023. The representations stated, in accordance with section 32 of the DA Rules, notice has been given to the assessment manager to stop the decision period for representations to be made to Council about the Referral Response under section 30 of the DA Rules.
- (i) Responding email from Brad Geaney, Noosa Council dated 12 October 2023, to Melissa Diqer, P&E Law.
- (j) Building Certification Consultants Pty Ltd's (BCC) Form 6 Development Application, Decision Notice of Refusal, signed by the assessment manager and dated 28 November 2023 (BCC Ref No 00030753). The decision notice stated that the development application for building work has been assessed and refused for the following reasons: Noosa Council has refused a referral for siting and design.
- (k) Deemed to satisfy Energy Efficiency report prepared by Seedhaus and associated Form 15 Compliance Certificate for Building Design or Specification dated 11 April 2022. SeedHaus Job No 221385 referencing plans attached from Fluid Building approvals.
- (l) Building design drawings referred to in Seedhaus assessment and certification, prepared by Drafting Design Sunshine Coast, dated 18 February 2022. Drawings are identified as being WD01-WD15/15 prepared by MS.
- (m) Engineering design prepared by Peer Consulting Engineers. Plans are identified as Dwg No PCE2175 S00, Sheets1-11/11, dated March 2022.
- (n) Associated Form 15, Compliance Certificate for Building Design or Specification, authorised and signed by Mengting Zhao of Peer Consulting Engineers, dated 20 May 2022.
- (o) The building design drawings that were the basis of the Peer Consulting engineers structural design, were those prepared by Drafting Design Sunshine Coast, dated 18 February 2022. Those drawings are identified as being WD01-WD15/15, prepared by MS.
- (p) Global Testing's Site Classification Report dated 21 March 2022.
- (q) Building design drawings prepared by Daryl Wood Drafting Concepts. The drawings are identified as Job No 1692 Sheets 1-3/3, dated 12 December 2023. Note, these drawings were provided again by the assessment manager, via email to the registrar on 7 June 2024, that is post hearing. The drawings were circulated to all parties, advising that they were final plans.
- (r) Twenty-nine images included with the appeal documentation. These images clearly show the development on the subject site both from within the site and from the street. There are also several images showing surrounding residential development.
- (s) Email from the appellant's agent to the registrar, Council's representative, Council, the appellant and the assessment manager on 24 April 2024, requesting that the hearing be suspended while further investigations about the fire separation compliance were undertaken.

- (t) Email from the assessment manager to the registrar, appellant and the appellant's agent on 22 May 2024, to provide an update on fire separation matters.
- (u) Email on 24 May 2024 from the registrar to all parties in response to the fire separation matters raised.
- (v) Email on 7 June 2024, from Council to the registrar, circulated to all parties. The advice provided historical records of approvals for siting relaxations, in the vicinity of the subject site.
- (w) Email from the assessment manager to the registrar, the appellant and the appellant's agent on 7 June 2024, to provide a further update on the fire separation matters.
- (x) Google maps and street view images.
- (y) Nearmap satellite images.
- (z) Planning and Development Online information for the subject site.
- (aa) Core Logic RP Data Online.
- (bb) The *Planning Act 2016*.
- (cc) The *Planning Regulation 2017* (PR).
- (dd) The Development Assessment Rules.
- (ee) The *Building Act 1975*.
- (ff) The *Building Regulation 2021* (BR).
- (gg) The Queensland Development Code (QDC) Part MP 1.2.
- (hh) The Noosa Plan 2020.
- (ii) The National Construction Code 2019 (NCC).
- (jj) The verbal submissions made by the parties at the hearing.

Findings of fact

23. The tribunal makes the following findings of fact:

- (a) The hearing for the appeal was held at the appellant's home being the subject site. Given the appeal relates to a retrospective approval for building works, this afforded the members of the tribunal an opportunity to view the development as built.
- (b) The new self-contained living area is a similar size to the original double garage and is predominately built directly over it. The extensions include a wrap-around covered walkway on the eastern side and a veranda on the southern side which faces Hilton Terrace.
- (c) The new building work incorporates the same colours and lightweight cladding as has been used on the original home. The resulting impression is that the design works well with the existing home, disguising the fact the building is comprised of two stages.
- (d) However, the compliance issue arises in that the siting provisions that apply to a single storey garage (class 10) are different to those applicable to a two-storey dwelling (class 1). The street facing garage wall is situated 6.561m back from the road boundary frontage, while the western side wall of the garage is 103mm to the

side boundary. These setbacks were approved and are compliant for the existing garage.

- (e) In accordance with the final plans provided, the upper-level extensions as built, have an 809mm setback from the wall to the side boundary, while the fascia is set back 184mm. The fascia is determined to be the outermost projection, that setbacks are measured to. However, for a two-storey dwelling between 4.5m and 7.5m in height, a setback of 1.4m (QDC MP1.2 for narrow lots 12-12.5m wide) is compliant for accepted development. This provision differs to the Noosa Plan provisions where 2.0m would be compliant for accepted development.
- (f) Given the upper-level veranda facing the street is 3m wide and sits proud of the garage, the new building line setback from the road boundary to the veranda fascia is 3.536m, while 4.5m is compliant for accepted development in this instance (Noosa Plan AO9.1).
- (g) Setbacks for class 1 and 10 buildings are determined by the provisions of the Queensland Development Code (QDC) and/or the local planning scheme which, in this case, is the Noosa Plan 2000.

Queensland Development Code

- 24. QDC MP 1.2 applies to new building work for single detached dwellings, Class 1 and associated Class 10 buildings and associated structures on lots 450m² and over in area.
- 25. QDC Acceptable Solutions A1 and A2 outline the required building line setbacks from the road, side and rear boundary lines.
- 26. QDC Acceptable Solution A1(a) states:
For a detached dwelling, garage or a carport the minimum road setback is 6m;..
- 27. QDC Acceptable Solution A2(a) states:
The side and rear boundary clearance for a part of the building or structure is
 - (i) *where the height of that part is 4.5m or less - 1.5m;*
 - (ii) *where the height of that part is greater than 4.5m but not more than 7.5m - 2m; and*
 - (iii) *where the height is greater than 7.5m - 2m plus 0.5m for every 3m exceeding 7.5m.*
- 28. QDC Acceptable Solution A2 goes further to qualify exemptions and conditions pertaining to this requirement, including at A2(c):
Structures may be exempted from A2(a) where:
 - i) *the structure is not a deck, patio, pergola, veranda, gazebo or the like other than one permitted under A2(c) being primarily a horticultural structure;*
 - ii) *the structure is not used for entertainment, recreational purposes or the like;*
 - iii) *a screen, fence or retaining wall or a combination of screens, fences or retaining walls is not more than 2m in height ...*
- 29. A2(d) provides:
... subject to A2(c), class 10a buildings or parts may be within the boundary clearances nominated in A2(a) and (b) where –

- (i) *the height of a part within the boundary clearance is not more than 4.5m and has a mean height of not more than 3.5m; and*
- (ii) *the total length of all buildings or parts, of any class, within the boundary clearance is not more than 9m along any one boundary (...)*

30. However, local government may adopt alternative boundary clearances and site cover provisions for class 1 and 10 buildings in their local planning scheme. The provisions of the QDC apply to the extent that a local planning scheme does not opt to provide alternative provisions.

31. In accordance with section 6 of the *Building Regulation 2021* and section 33 of the *Building Act 1975*, there are nominated provisions in the Noosa Plan 2020. The Low-density residential zone code at table 6.3.1.3 contains relevant alternative provisions to the QDC. PO9 of this code sets out alternative siting provisions to the QDC A1 and A2 stated above. Therefore, the siting and setback provisions set out in PO9 apply over those stated in the QDC.

The Noosa Plan 2020

32. Acceptable outcome AO9.1 of the Low density residential zone code states:

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

- a) *has frontage to more than one road;*
- b) *is less than 600sq/m in area; or*
- c) *is less than 15m in width.*

33. Acceptable outcome AO9.3 of the Low density residential zone code states:

Buildings and structures meet the following minimum setbacks to boundaries other than road frontages and rear boundaries:

- a) *1.5 metre setback up to 4.5 metres height;*
- b) *2 metre setback between 4.5 metres and 7.5 metres height; and*
- c) *2.5 metre setback if above 7.5 metres height.*

34. As the appellant's design does not meet the acceptable outcomes of AO9.1, and AO9.3, assessment must be made by Council against the performance outcomes stated at PO9, which provides:

Buildings 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;*
- b) *not unreasonably obstruct views or cause overlooking of private open space or habitable areas of adjoining premises;*
- c) *provide adequate distance from adjoining land uses;*
- d) *preserve existing vegetation that will help buffer development;*
- e) *allow for space and landscaping to be provided between buildings including adequate area at ground level for landscaping with trees, shrubs and outdoor living;*

- f) *be consistent with the predominant character of the streetscape; and*
 - g) *protect the natural character and avoid adverse impacts on ecologically important areas such as national parks, waterways and wetlands.*
- 35. Council's referral agency response directed the assessment manager to refuse the building application stating the proposal did not comply with Noosa Plan 2020 – Low density residential zone code, PO9 clauses (a), (c) and (f).
- 36. Council determined in response to each of the above clauses:
 - Clause (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 has been considered that the upper-level additions located within the western side boundary setback will impact the amenity of the users of the adjoining premises.
It is Council's view that the proposed building work does not protect the visual or acoustic privacy of the adjoining premises.
 - Clause (c) - provide adequate distance from adjoining land uses;
It has been considered that the building work within the prescribed side boundary setback does not provide an adequate distance from the adjoining land uses.
 - Clause (f) - be consistent with the predominant character of the streetscape;
It has been considered that the building work provides insufficient road boundary setback and is not consistent with the predominant character of the streetscape.
While there are limited examples of buildings and structures with reduced road boundary setbacks in 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. Furthermore, it is suggested that the proposal provides exceedingly dominant building work within the road boundary setback.
- 37. The Tribunal considered the dwelling on the neighbouring property at 36 Hilton Terrace, to the west (adjacent to the extensions) of the appellant's home. The site features a two-storey, modern dwelling with an attached double garage that projects forward of the dwelling. The garage is built to their western boundary but set back 6m from Hilton Terrace. The home was built in 2004 following demolition of the previous home on this site. Apart from a narrow strip of landscape along each of the side boundaries, their frontage (6m x 11m) is all concrete to facilitate the driveway and car parking area.
- 38. The double garage door faces the road and the driveway ramps up steeply from the footpath as the site has been built up to address flood constraints. The site is enclosed by a 2.0m high, solid rendered concrete block front wall with an automatic gate across the driveway. The rendered wall continues around and along the side boundary shared with the appellant, stepping up to a height of 2.4m. This is the height as viewed from the appellant's side. Given the extent of fill on the neighbouring property, the apparent height of the building work on the subject site is likely to be less when viewed from that adjoining property.

39. While the garage is setback 6m, the two-storey habitable component of the neighbouring home is set back 10m from Hilton Terrace. The property features an extensive shade structure, a pergola grid that is 6m wide in part and 14m long. The pergola aligns with the front wall of the garage and completely covers the area between the eastern wall of their garage to the side boundary concrete block wall. The painted timber pergola grid appears to be 2.7m high when viewed from the neighbour's but appears higher when referenced to the finished site levels on the appellant's site. This timber grid shade structure extends along the shared boundary for a length of approximately 14m.
40. The appellant's development is less than 7.5m high. It is built 809mm from the side boundary. The upper-level length of wall along this boundary is 7.29m. In line with the wall there is a further 3.0m, being the covered veranda that extends forward into the 6m road setback. There is a 450mm roof overhang along the full extent of the upper-level structure, the fascia on this eave is setback 184mm. There are no openings in the upper-level wall that would permit overlooking or loss of privacy.
41. It is possible to look from the veranda into the neighbouring property. However, as the entire veranda sits forward of their dwelling the extent of overlooking is limited to the neighbouring concrete driveway and carparking area between the building and the street. Views back toward the dwelling are screened by the pergola grid and associated landscaping.
42. The neighbouring dwelling is two storeys and their windows have an eastern outlook. Their pool and outdoor area is in the centre of their allotment but built along the common side boundary shared with the appellant. Given the appellant's home is single storey, the privacy considerations are potentially more damaging for the appellant. This is particularly relevant in respect of their private outdoor space in the rear garden where their pool is situated.
43. Building design plans show that the upper-level exterior wall of the extension is 90mm thick and clad with weatherboards. The interior finish is plasterboard and referencing the Seedhaus Energy Efficiency report, the external walls are insulated achieving an R1.5 value. On this basis the lightweight wall system should achieve a weighted sound reduction index adjusted for control (RwCtr) 30. The higher the Rw index, the better the level of acoustic insulation offered by that composition. By way of comparison, the NCC prescribes a minimum acoustic value of Rw+Ctr 50 be achieved when separating adjoining Class 1 dwellings that share a separating wall, such as a dual occupancy or a town house.
44. The open veranda offers no such protection and is typically an area where conversation or entertainment might take place. The only reasonable factor that might be taken into consideration is the physical separation between the veranda and the habitable portions of the adjoining dwelling. This distance is approximately 7m but a further 2-3m to any window opening in the neighbouring home.
45. The Tribunal also considered the interruption of sunlight to the adjoining premises given the two-storey extension now built is within 1.0m rather than 2.0m of the shared side boundary as would be considered accepted development. The shared boundary has a 183-degree bearing, that is, virtually a north/south orientation. The observation is that the neighbouring home has most of the living and bedroom areas well clear of the two-storey structure on the subject site. That portion of the neighbouring property that would be shaded is already covered by their own timber framed pergola grid.

46. The Tribunal considered the existing streetscape along both sides of Hilton Terrace, specifically between Sydney Street to the east and in the general vicinity of 28 Hilton Terrace to the west. That is around four property widths, either side of the subject site.
47. On the southern side of Hilton Terrace at numbers 37, 39 and 41, there are original homes. They are therefore smaller in scale and quite characteristic of the older style in Tewantin. While their setbacks vary, it is likely they will make way for contemporary development. It is similar for the homes at numbers 33 and 31. The development at number 35 is a contemporary structure being a large and somewhat heavier style of building, which comprises a two-storey dual occupancy.
48. On the northern side of Hilton Terrace, the multi-unit development on the corner of Sydney Street, has a reduced setback. Council's records indicate that the setback is 4.496m, however it is noted there is a further structure, a covered patio, built between the compliant setback and the road boundary with Hilton Terrace.
49. Also on the northern side of Hilton Terrace is the neighbour at number 36, already described in detail. Numbers 28 and 32 are original homes, number 30 is under construction, and number 34 is a single storey brick dwelling with a gable roof and not a single opening on the street facing wall. Effectively the streetscape comprises quite a variety of built forms and residential uses.
50. Hilton Terrace is a busy local connector road linking Tewantin to Noosa. This stretch of Hilton Terrace offers street parking indented within the nature strip along both sides of the road. There is a pedestrian crossing within 20m of the subject site providing access between those properties on the north and the south of Hilton Terrace.
51. Having regard to the provisions of Performance Outcome PO9 in the Low Density Residential Zone Code the observations of the Tribunal are as follows:
- Clause (a)—The building works undertaken on the subject site will provide a high level of amenity to users of the subject site, and will not adversely impact the visual or acoustic privacy of the dwelling to the west, or unreasonably restrict access to sunlight on that property for the reasons described above;
 - Clause (c)—The building works provide adequate separation distance from the adjoining land use on the property to the west, based on the established built form on that property and the subject site; and
 - Clause (f)—The building works are considered to be consistent with the predominant character of the streetscape, which displays variation in built form and setbacks, and noting that the built form on the subject site that extends forward of the Acceptable Outcome for the road setback is an open deck structure that does not dominate the streetscape.
52. At the conclusion of the hearing the Council's representative stated that Council hadn't been provided with the specific set of building design plans that were provided for discussion at the hearing. The Tribunal finds that while there were several reiterations of drawings prepared throughout the application process, they were fundamentally displaying the same design. As this is a retrospective application for building works, assessment by Council and the Tribunal is primarily based on the extension as built, rather than the proposal plans.

Reasons for the decision

53. The Tribunal finds that the extensions do not compromise the amenity, including provision of visual and acoustic privacy and access to sunlight, of the adjoining property owner. The relatively new neighbouring dwelling predominately utilises the rear of their property for private open space and recreation purposes. The portion of the neighbouring property that is adjacent to the new development on the appellant's site is either an open concrete hard stand area used for car parking and manoeuvring only or is substantially screened by an existing timber pergola grid and associated landscaping.
54. The Tribunal also finds that the extensions as they have been built, sit well within the streetscape. There are a variety of dwelling types and respective setbacks. In this instance the Noosa Plan requires a setback of 4.5m and 3.536m is provided to the open deck that projects forward of the building. It is not considered this setback relaxation compromises the character of the streetscape.

Debra Johnson
Development Tribunal Chair
Date: 27 November 2024

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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