



## Development Tribunal – Decision Notice

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### *Planning Act 2016, section 255*

<b>Appeal number:</b>	<b>24-025</b>
<b>Appellant:</b>	Simone Meehan
<b>Assessment manager:</b>	Don Grehan
<b>Co-respondent (Concurrence agency):</b>	Noosa Shire Council ("Council")
<b>Site address:</b>	155 Cootharaba Downs Road, Cootharaba Qld 4565 formally described as Lot 4 on RP867841 ("the subject site").

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### **Appeal**

Appeal under section 229(2) and schedule 1, sections 1(1)(b) and 1(2)(g), and table 1, item 1, of the *Planning Act 2016* ("the PA") against the assessment manager's decision to refuse the appellant's application for a building works development permit for alterations to an existing dwelling house, including a new building incorporating a garage, laundry and storage areas ("the application").

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<b>Date and time of hearing:</b>	Tuesday, 10 September 2024, at 10:00am
<b>Place of hearing:</b>	The subject site
<b>Tribunal:</b>	Neil de Bruyn – Chairperson Marie-Anne Ammons – Member Louise Benjamin – Member
<b>Present</b>	Simone Meehan – appellant Anthony Meehan – appellant's representative Jarrad Postle – Council representative

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### **Decision:**

1. 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; and
  - b) in the event that the assessment manager then decides to approve the application, to include the following conditions in the resultant building works development permit:
    - i. *The existing, screening vegetation located along the frontage of the subject site to Cootharaba Downs Road is to be maintained at all times, to ensure that the proposed garage/laundry/storage building remains fully screened from general view from the road.*

- ii. *The approved development is to be in accordance with the SK Drafting plans dated 17/02/24 (Dwg Nos SK011 and SK012, Issue H, and SK013 and SK014, Issue J). In particular, the dimensions of the approved development, as shown on these plans, are not to be exceeded.*

**Background:**

2. The subject site is a large rural property with an area of 36.01ha and with direct frontage to Cootharaba Downs Road, forming its eastern boundary. The subject site is located within the Noosa Shire Council local government area. The immediate vicinity of the subject site is characterised by rural and rural residential-type land uses.
3. Based on the material before the tribunal, the subject site is included within the Rural Zone under the Noosa Plan 2020, being the current and applicable planning scheme for the subject site ("the planning scheme") and is mapped as being wholly or partly subject to planning scheme overlays relating to agricultural land conservation, biodiversity, bushfire hazard and flood hazard.
4. The subject site contains a substantial dwelling house addressing Cootharaba Downs Road, including a partially constructed building intended to accommodate the proposed garage, laundry, bin store and equipment storage areas ("subject building").
5. At the hearing, the tribunal was advised, by both the appellant and the Council representative, that the building works for the subject building were commenced without the required building works development permit, and that the application was made as a consequence of compliance action subsequently undertaken by Council.
6. The tribunal was also advised that the subject building is to replace a pre-existing shed in substantially the same location within the subject site, which was also demolished without the required development approval. Based on the material before the tribunal, the pre-existing shed had dimensions of approximately 13m x 10.6m and a floor area of 136.9m<sup>2</sup>.
7. The subject building is to be as shown on the SK Design plans referenced in paragraph 1(b)(ii) above. Of primary significance to this appeal is that the subject building will be set back from Cootharaba Downs Road by a minimum of 2.78m and a maximum of 4.523m and will have a maximum building height of 4m and one storey, which was verbally confirmed on behalf of the appellant to be somewhat higher (as measured in metres) than the pre-existing shed. The dimensions of the subject building are to be 13.43m x 11.065m, suggesting a floor area of 148.6m<sup>2</sup>.
8. Building works on the subject site are subject to the design and siting provisions of the Rural Zone Code ("zone code"), identified for section 33 of the *Building Act 1975* and in section 1.6 of the planning scheme as being alternative design and siting provisions to those provided under the Queensland Development Code. Acceptable Outcome ("AO") 8.4(c) of the zone code provides that buildings are set back 10m from a road frontage. Clearly, the proposed setbacks to Cootharaba Downs Road of between 2.78m and 4.523m do not achieve this AO.
9. For section 54 of the PA, schedule 9, part 3, division 2, table 3 of the Planning Regulation 2017 ("the PR") specifies that a development application for building work that is subject to alternative design and siting provisions under the *Building Act 1975*, section 33, and that does not comply with a quantifiable standard under such provisions (such as AO8.4(c) of the zone code), requires referral to the applicable local government as a concurrence agency.
10. Accordingly, on 22 December 2023, a referral was made to Council pursuant to section 57 of the PA for a design and siting assessment and referral agency response. This referral involved a two-storey and 8m high design for the proposed building, incorporating a

garage/laundry/bin store and general storage areas at ground level, and a habitable dwelling at first floor level.

11. Council issued an information request dated 6 February 2024, stating as follows:

*“Issue*

*It has been considered that the proposed building works provides an insufficient road boundary setback and has the potential to cause adverse impacts on amenity values, over and above what could reasonably be expected in the rural zone.*

*Information Required*

1. *While it is suggested that Council may consider a minor reduction to the prescribed road boundary setback for the proposed building works, it is noted that the building work has already commenced and locating the structure elsewhere on the property may not be an option.*

*Please provide further correspondence if there is an option for the building to be located in alternative position on the property, and Council may provide further advice on a more compliant design option. Alternatively, please advise if you wish for Council to issue a decision based off the information provided.”*

12. On 8 April 2024, the appellant’s town planning consultant, Brennan Planning, submitted a response to the information request. The response included amended plans (being the plans referenced in paragraphs 1(b)(ii) and 7 above). The response went on to outline the following grounds for the approval of the referral request:

- a) *“The proposed building would not cause environmental harm or nuisance to sensitive land uses including adverse impacts on amenity values, over and above what would be expected within the zone for the following reasons:*
  - i. *the building will replace an existing dilapidated structure of comparable bulk and scale and is located on clear and level ground within the curtilage of the existing dwelling, consequently avoiding environmental harm;*
  - ii. *the building is located 82m from the closest dwelling at 166 Cootharaba Downs Road, is separated by a road and a dense vegetation screen, and would not be visible to this dwelling;*
  - iii. *vegetation will be maintained between the building and the road boundary and it will not be visually perceivable from the road; and*
  - iv. *the proposed building is compatible with the rural amenity of the area, being low in height and associated with an existing dwelling on the premises;*
- b) *The building is well separated from any ecologically important areas and mapped waterways transecting the site;*
- c) *The building will not cause potential risks associated with the use of chemicals or air pollutants; and*
- d) *The building will not cause conflicts with rural uses and activities on adjoining properties.”*

13. Council issued a referral agency response dated 19 April 2024, directing refusal of the application. The ground for this decision was stated to be essentially that the proposed

development failed to achieve performance outcome ("PO") 8(a) of the zone code, which provides as follows:

*"Notwithstanding that intensive rural activities may need greater separation distances, buildings and other structures are appropriately sited and designed to:*

- a) avoid environmental harm or nuisance to sensitive land uses, including adverse impacts on amenity values, over and above what could reasonably be expected in the rural zone;*
- b) ....;*
- c) ....: and*
- d) ...."*

14. This conclusion on Council's part was stated to have been based upon the following reasoning:

*"It has been considered that the proposed building works provides an insufficient road boundary setback and has the potential to cause adverse impacts on amenity values, over and above what could reasonably be expected in the rural zone.*

*It is Council's view that the proposed building works provides for an exceedingly dominant structure located within the road boundary setback. Additionally, it is anticipated that buildings and structures located on large scale rural properties achieve greater separation distances from property boundaries.*

*Other considerations regarding the proposal are that the building work that has been carried out without the relevant building approvals has substantially increased from what was originally built on the property, resulting in a reduced road boundary setback and additional impact on the streetscape.*

*It is to be noted that Council has provided advice and alternative design options regarding the proposal, which would provide for a greater road boundary setback that may have been considered against the rural zone code performance outcomes."*

15. On 1 May 2024, the assessment manager duly issued a decision notice refusing the application. The decision notice indicates that this decision was made solely because of Council's referral agency direction.

16. The appellant duly lodged this appeal with the tribunal registrar on 16 May 2024.

17. A site inspection and hearing were held on the subject site on Tuesday 10 September 2024 at 10:00am.

#### **Jurisdiction:**

18. Section 229(1) of the PA provides that Schedule 1 ("the schedule") of the PA states the matters that may be appealed to a tribunal.

19. Section 1(1)(b) of the schedule provides that the matters stated in Table 1 of the schedule ("Table 1") are the matters that may be appealed to a tribunal. However, section 1(2) of the schedule provides that Table 1 only applies to a tribunal if the matter involves one of the matters set out in section 1(2).

20. Section 1(2)(g) provides that Table 1 applies to a tribunal if the matter involves a matter under the PA, to the extent the matter relates to the BA, other than a matter under that Act that may or must be decided by the Queensland Building and Construction Commission.
21. Table 1 thus applies to the tribunal in this appeal. Accordingly, the tribunal is satisfied that it has jurisdiction to hear and decide this appeal.

**Decision framework:**

22. Generally, the onus rests on an appellant to establish that an appeal should be upheld (section 253(2) of the PA).
23. The tribunal is required to hear and decide an appeal by way of a reconsideration of the evidence that was before the person who made the decision appealed against (section 253(4) of PA); however, 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 PA.
24. The tribunal is required to decide an appeal in one of the ways mentioned in section 254(2) of the PA, and the tribunal's decision takes the place of the decision appealed against (section 254(4)).
25. The tribunal must not make a change, other than a minor change, to a development application (section 254(3)).

**Material considered:**

26. The following material has been considered by the tribunal in this appeal:
- a) Form 10 – Notice of Appeal lodged with the tribunal's registrar on 16 May 2024, including Appendix A – Grounds for Appeal;
  - b) The assessment manager's decision notice dated 1 May 2024;
  - c) DA Form 2 (partly completed but presumably accepted by the assessment manager pursuant to section 51(4)(c) of the PA);
  - d) Noosa Shire Council's referral agency response dated 19 April 2024;
  - e) Brennan Planning's response to the Council's information request, dated 8 April 2024, including the plans referenced in paragraphs 1(b)(ii), 7 and 12 above;
  - f) Council's information request dated 6 February 2024;
  - g) Brennan Planning's Concurrence Agency Referral dated 22 December 2023, including the initial design plans and the applicable Council form, Request for Referral Agency Response for Building Works;
  - h) The *Planning Act 2016* and the *Planning Regulation 2017*;
  - i) The *Building Act 1975*;
  - j) Noosa Shire Plan 2020, including the Rural Zone Code.

**Findings of fact:**

27. The frontage setbacks of the subject building do not comply with the relevant acceptable outcome specified under the zone code, in that these dimensions are demonstrably less than 10m.
28. The Council's grounds for directing refusal of the application were solely that the proposed development neither achieves the above-mentioned acceptable outcome, nor sub-section

- (a) of the associated performance outcome (PO8), for the reasons stated in paragraphs 13 and 14 above. At the hearing, Council's representative verbally confirmed that no conflict was seen with any of sub-sections (b) to (d) of that PO.
29. The assessment manager duly refused the application, based solely on Council's referral agency's direction. No other grounds for this decision were stated in the assessment manager's decision notice.
30. The subject building, for the most part, is to replace a pre-existing (albeit apparently unapproved) building of substantially similar purposes and dimensions (except that the height is to be somewhat increased to a maximum of 4m).
31. Based upon the tribunal's observations on the subject site and the associated section of Cootharaba Downs Road, the subject building will be:
- a) Of a substantially similar height to the existing dwelling house;
  - b) very effectively screened from view from the road by extensive and dense screening vegetation extending along the subject site's frontage and for considerable distances to the north and south of the subject building's (and the dwelling house's) location; and
  - c) located a very considerable distance to the closest neighbouring dwelling houses to the east (in this regard, the tribunal accepts the appellant's evidence to the effect that the closest neighbouring dwelling house is some 80m from the subject building's location).
32. As a consequence of the above-mentioned observations, the tribunal was able to conclude that the subject building, once completed, will be all but invisible to neighbours and passersby on Cootharaba Downs Road and, given both its separation distances and the nature of its proposed utilisation for normal domestic purposes, will be unlikely to impact significantly upon the residential amenity of any of the neighbours.
33. The relevant part of the subject site within which the dwelling house and the subject building are located is substantially developed and improved with buildings and structures, and does not present any notable environmental or ecological values. It is relevant, too, that these parts of the subject site are not affected by the Biodiversity, Waterways and Wetlands Overlay under the planning scheme.
34. Based upon the above, and in relation to the Council's stated grounds for directing refusal of the application, the tribunal finds that the subject building is appropriately sited to avoid any environmental harm or nuisance to any sensitive land uses, or adverse amenity impacts over and above what could reasonably be expected within the Rural Zone.
35. In particular, the tribunal finds as follows in relation to Council's stated reasons for its conclusion regarding the achievement of PO8(a):
- a) The subject building's frontage setbacks will not cause adverse impacts on local amenity values, over and above what could reasonably be expected in the Rural Zone, as the subject building will be well separated from any neighbouring, sensitive land uses and will be all but invisible from outside of the subject site, provided that the existing, dense screening frontage vegetation is maintained at all times (which it can lawfully be conditioned to be);
  - b) the subject building will not be a dominant structure in the streetscape, for the reasons stated in (a) above;
  - c) the siting (setbacks), horizontal dimensions and area of the subject building will be substantially similar to those of the (unapproved but nonetheless longstanding) pre-existing building in the same location, and the height will be consistent with that of the existing dwelling house; and

- d) in the circumstances, it would be excessively onerous to have the appellant demolish the building works that have been completed to date and to make a new application for a similar building in another location within the site.

36. Accordingly, the tribunal finds that the subject building will achieve PO8(a) of the zone code, and therefore that the Council's grounds for directing refusal of the application are unfounded.

37. For the above reasons, the tribunal finds that the appellant has established that this appeal should be upheld, as required under section 253(2) of the PA.

**Reasons for the decision:**

38. The tribunal, in accordance with section 254(2)(d) of the PA, has decided this appeal as set out in paragraph 1 above.

39. The tribunal's reasons for this decision are that the design and siting of the proposed development, as shown on the plans listed under paragraph 1, will comply with P08 of the zone code, for the reasons stated in paragraphs 30 to 35 above, inclusive.

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**Neil de Bruyn**  
**Development Tribunal Chair**  
**Date: 20 September 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:

The Registrar of Development Tribunals  
Department of Housing, Local Government, Planning and Public Works  
GPO Box 2457  
Brisbane QLD 4001

Telephone 1800 804 833

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