



Development Tribunal – Decision Notice

Planning Act 2016, section 255

Appeal Number:	21-015
Appellant:	Prudence Ann Anderssen (Applicant)
Respondent: (Assessment Manager)	Trevor Gerhardt of Sunshine Coast Building Approvals
Co-Respondent: (Concurrence agency)	Noosa Shire Council
Site Address:	73 Foxtail Rise, Doonan and described as Lot 84 on SP 103439 – the site

Appeal

Appeal under section 229 against the refusal of a Development Application for Preliminary Approval for Building Works for a Class 10a building or structure, being a shed, on residential premises. The decision followed a concurrence agency response by the Noosa Council, directing refusal of the application on the grounds that the development did not comply and cannot be conditioned to comply with Performance Outcome 6 of the Rural Residential Zone Code of the Noosa Plan 2020.

Date and time of hearing:	Thursday 25 June 2021 at 2pm
Place of hearing:	The site
Tribunal:	Anne-Maree Ireland – Chair Elizabeth Anderson – Member Derek Kemp – Member
Present:	For the Appellant: Sam Anderssen (owner), Trevor Gerhardt (Respondent and agent representing the Appellant pursuant to section 248 of the Act) and Angus McKinnon For the Co-Respondent: Brad Geaney, Noosa Council

Decision:

The Development Tribunal (Tribunal), in accordance with section 254(2)(c) of the Act replaces the decision to refuse the application with a decision to approve the application subject to the following conditions:

1. The proposed shed is to:
 - a) be constructed generally in accordance with the plan submitted with the concurrence agency response reference no. RAB20/0233; and
 - b) be clad in dull, non-reflective materials and earthy colours - Zinalume cladding is not permitted; and

- c) have no openings or windows on its western frontage (facing the adjoining Environmental Management and Conservation Zoned land) nor on its southern frontage facing the existing residence and the adjoining Environmental Management and Conservation Zoned land).
2. Such other conditions as the assessment manager sees fit to impose provided they are consistent with the above.

Background

The Proposal

1. The site is irregular in shape and has an area of approximately 4,000 square metres within the Rural Residential zone. The primary dwelling is located roughly in the middle and towards the top of the Lot and faces East. Foxtail Rise runs along the bottom eastern boundary of the lot up to the top north-western corner with a long driveway south of that corner running from the street to the dwelling. The lot has been developed for residential purposes with a detached house, double garage, pool and associated improvements such as fencing, paving and landscaping.
2. The Appellant proposes a shed of 72 square meters in the top western corner connecting with the existing driveway. Relevantly, the rear boundary of the lot adjoins an Environmental Management and Conservation Zone (**EZ**) and the setback of the proposed shed from this boundary is 500mm. The setback in relation to the street frontage boundary and the proposed shed is 6.85m to wall and 6.38m to eaves.
3. As per drawings RAB20/0233, the proposed shed is to be approximately 8500mm wide (9423.58mm including eaves) and 8500mm deep (8961.79mm including eaves) and 5680mm high and comprised of part weatherboard and part zincalume cladding and zincalume roofing as per the existing residence.

Refusal of the Application

4. The Appellant applied to the Respondent Private Certifier for a Preliminary Approval for Building Works being a proposed shed. As the proposed shed did not comply with the prescribed rear boundary and street frontage setbacks per the Noosa Plan 2020, on 6 November 2020 the Respondent made a request for a referral agency response with the Co-Respondent.
5. Following an information request by the Co-Respondent and correspondence between the Respondent and Co-Respondent, the Co-Respondent in undated correspondence directed the refusal of the application. The directed refusal was on the basis that:

...the proposed development does not comply with and cannot be conditioned to comply with the following performance criteria:

Noosa Plan 2020 – Rural Residential Zone Code:

PO6 Buildings and other structures are designed and site to:

- (b) provide adequate distance from adjoining land uses and avoid conflict with existing or future rural uses and activities on adjoining properties; and*
- (e) protect the natural character and avoid adverse impacts on ecologically important areas such as national parks, waterways and wetlands.*

It has been considered that the side boundary setback of the proposed building work does not provide sufficient separation to the adjoining land and will not effectively protect the

natural character and has the potential to adversely impact the adjacent Environmental Management and Conservation zoned land.

6. On 31 March 2021, the Respondent issued a Decision Notice refusing the application.

Grounds of Appeal

7. In summary, the grounds of appeal are:

- (1) The proposed shed does not affect the EZ.
- (2) There is no alternative location on the site.
- (3) The location of the proposed shed provides access the dwelling and would provide covered parking for the property owners' vehicles.
- (4) There are lots on the street which have relaxations for in relation to boundaries.

Matters raised at the Hearing

8. The Co-Respondent was asked by the Appellant and the Tribunal to identify what impacts it was concerned about in respect of any potential impact of the proposed shed. The Co-Respondent maintained that a 15m setback has been identified to provide protection, and as such there must be reasons to support that distance between a boundary and a protected area. The Co-Respondent also submitted there is a large difference between the acceptable solution of 15m and the proposed setback of half a metre. The Co-Respondent also stated that light, noise or vibration might be issues if, for example, the shed is used as a hobby workshop.
9. The Respondent provided the following documents:
 - 'Surrounding properties with structures less than 15 metres from a property boundary adjoining land in the environmental management and conservation zone' (marked as Exhibit 1);
 - '70 Foxtail Rise – across the road' (marked as Exhibit 2).
10. The Respondent submitted that the above documents show that other lots in the street and the surrounding area have less than the accepted setback (15m) to the EZ.
11. The Co-Respondent referred to the following document:
 - 'Site Earthworks Building Set Out' (Exhibit 3).
12. Ultimately, it was acknowledged by all parties that there are no suitable alternative locations on the site for the proposed shed. This is despite Exhibit 3 (which was an old plan for the site prior to current ownership) noting future development of a shed in the south-western top corner of the lot.
13. It was also acknowledged by the Co-Respondent that the 6m setback from the street frontage boundary is acceptable.
14. As such, the only issue in dispute that remains is whether the setback in relation to the side boundary of the property (to the rear of the shed) is acceptable.

Jurisdiction

15. The Tribunal has jurisdiction for the appeal pursuant to:
 - section 229 of the Act;
 - Schedule 1, Table 1, Item 1(a) – refusal of a Development Application (Preliminary Approval);

- Schedule 1, Item 1(2)(g) – involving 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. Pursuant to section 54 of the Act and Schedule 9, Division 2, Table 3 of the *Planning Regulation 2017*, the Co-respondent was a referral agency for the building development application.

17. Schedule 9, Part 3, Division 2, Table 3 states where an alternative siting provision applies in respect of building work, and that the quantifiable standard is not satisfied, then the local government is a referral agency. In accordance with the Regulation, the referral agency must assess whether the proposed building works complies with the qualitative statement.

Decision framework

18. Pursuant to section 253(2) of the Act, the onus rests on the appellant to establish that the appeal should be upheld. Pursuant to section 253(4) and (5) of the Act, 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 but may consider other evidence presented by a party to the appeal with leave of the Tribunal. Leave was granted in respect of the above-mentioned exhibits.

19. The Tribunal must decide the appeal in one of the ways mentioned in section 254(2) of the Act.

Material Considered

The material considered in arriving at this decision comprises:

1. Notice of Appeal (Form 10) received by the Tribunal Registrar on 1 April 2021 including Document A.
2. Preliminary Approval – Decision Notice (Refusal) signed by Trevor Gerhardt, Building Certifier as the Assessment Manager dated 31 March 2021.
3. Development Application – Building work details received by the Assessment Manager on 31 March 2021.
4. Referral Agency Response signed by Brad Geaney of Noosa Council (undated) including Plans Reference No RAB20/0233 accompanying the concurrence agency response.
5. Correspondence between the Respondent and Co-Respondent from 15 December 2020 when the Co-Respondent sent the Information Request and responses to 12 February 2021.
6. Request for Referral Agency Response for Building Works from the Respondent to the Co-Respondent dated 6 November 2020.
7. Exhibits 1, 2 and 3 presented with leave of the Tribunal.
8. Noosa Plan 2020.

Findings of Fact

The Decision-Making Process

20. As above, the issue in dispute in this appeal is the rear boundary setback. The relevant criteria in relation to the rear boundary setback and the proposed shed is PO6(b) and (e) within the Rural Residential Zone Code of the Noosa Plan 2020, which states:

*PO6 Buildings and other structures are designed and sited to:
(b) provide adequate distance from adjoining land uses and avoid conflict with existing or future rural uses and activities on adjoining properties; and
(e) protect the natural character and avoid adverse impacts on ecologically important areas such as national parks, waterways and wetlands.*

Reasons for the Decision

21. The Tribunal considers that despite the minimal distance of half a metre to the adjoining EZ, with some further design requirements to the proposed shed, the natural character of the EZ could be protected and adverse impacts on the EZ could be avoided.
22. In coming to this decision, the Tribunal noted the lack of information as to any specific impacts on the EZ because of the proposed shed, the purpose of the shed and that no other suitable location exists on the site, and that it occupies a small portion of the side boundary of the property (to the rear of the shed).

Anne-Maree Ireland

Development Tribunal Chair
Date: 24 August 2021

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:

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