



Development Tribunal – Decision Notice

Planning Act 2016, section 255

Appeal number:	24-032
Appellant:	Simon Cartwright
Respondent: (Assessment manager)	Noosa Shire Council
Site address:	14 Driftwood Drive, Castaways Beach Qld 4567, described as Lot 158 on CP 852092 – the subject site

Appeal

Appeal under section 229(1)(a)(i) and schedule 1, table 1, item 1(a) of the *Planning Act 2016* against the assessment manager's refusal of a development permit for Operational Works – Vehicle Crossover for the construction of a driveway crossover to provide vehicle access to the driveway to the garage on the subject property (Reference (Noosa Council OPW 24/0006)).

Date and time of hearing:	Friday 22 November 2024 at 10.00 am
Place of hearing:	The subject site
Tribunal:	Derek Kemp—Chair Sarah Day—Member Thomas Bayley—Member
Present:	Simon Cartwright (Appellant and property owner) Amanda Thomas (Property owner) Andrew Gaffney (Noosa Shire Council, Respondent) Daniel Epps (Noosa Shire Council, Respondent)

Decision:

The Development Tribunal (Tribunal), in accordance with section 254(2)(c) of the Planning Act 2016 (PA) **replaces** the decision of the Assessment Manager (Noosa Shire Council) to refuse the Application (Noosa Council OPW 24/0006) with a decision to **approve** the application.

Background

The approval sought

1. Approval was sought for an existing concrete vehicle crossover in front of the subject property to provide vehicle access to the driveway to the garage on the subject site.

Reasons for the approval being sought

2. It is understood from the notice of appeal, and the evidence provided during the hearing, that the Appellant had been advised that no approval would be required for the subject driveway crossover because it was replacing an existing driveway crossover.
3. The Appellant was advised, after the driveway crossover was constructed, that Council approval for operational works for construction of the driveway crossover would be required because the width of the constructed crossover exceeded Council standard crossover requirements. (Reference Council 'Alleged Breach Letter' issued to the Appellant on 19 December 2023⁴).
4. It is understood from the Notice of Appeal, Council's Alleged Breach Letter, and the evidence provided during the hearing, that the as constructed driveway does not comply with Council's requirements for driveways in the Noosa Plan 2020 – Low Density Housing Code: Driveways and Parking (Reference Council Standard Drawings RS-049 , Rev B dated 06/14 and RS-050, Rev E dated 06/14, in Council's Information Request dated 8 February 2024 and Council's Decision Notice dated 11 June 2024).

Assessment of the application

5. On 16 January 2024, the Appellant submitted a properly made development application to Noosa Council for Development Approval for a Development Permit for Operational Works - Vehicle Crossover.
6. On 8 February 2024, Council issued an Information Request requiring various reports that *inter alia* requested a suitably qualified person prepare plans generally in accordance with Council standard drawings and showing on the revised plans the sections of driveway to be removed (Reference Council's Information Request dated 8 February 2024).
7. On 10 April 2024, SCG Consulting Engineers provided a report to the Appellant addressing each of the items in Council's Information Request; and providing detailed dimensions and cross sections of the as constructed driveway and plans of the driveway location with respect to the street features, roadway, verge and landscaping elements on the verge. (Reference SCG Consulting Engineers Report dated 10 April 2024, included in the Appellant's Notice of Appeal). It is understood that this engineer's report was provided by the Appellant to Council in response to Council's Information Request.
8. This engineer's report *inter alia* advised:

... we seek Council approval for the non-compliant driveway dimensions
... it is noted that low vehicles would likely scrape. However, as the road and existing garage levels are fixed there is no outcome to mitigate this issue.
9. On 11 June 2024, Council issued its decision notice refusing the approval of Operational Works – Vehicle Crossover. (Noosa Council Decision Notice OPW 24/0006)
10. Council's stated reasons for refusal were:

The proposal results in a development that does not comply with the following provisions of the Noosa Plan 2020 – Low Density Housing Code:

 1. *Overall Outcome 2(a) as the driveway does not make a positive contribution to the streetscape character of the area in which it is located.*
 2. *Overall Outcome 2(f) as the driveway does not provide a reasonable vehicle access from the carriageway to the property boundary considering the*

constructed dimensions are considered excessive compared to Council's Standard Drawings.

3. *Performance Outcome 8 and Acceptable Outcome 8.1 as the proposed driveway has not been designed to comply with Council's standard drawings RS-049 and RS050.*

Jurisdiction

2. 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.
3. 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, subsection 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).
4. Section 1(2)(a)(ii) provides that table 1 applies to a tribunal if the matter operational work associated with building work, a retaining wall, or a tennis court.
5. 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

6. Generally, the onus rests on an appellant to establish that an appeal should be upheld (section 253(2) of the PA).
7. 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.
8. 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)).
9. The tribunal must not make a change, other than a minor change, to a development application (section 254(3)).

Material considered

10. The material considered in arriving at this decision was:
 - a. Form 10 – Notice of Appeal (with the supporting documents and further information contained therein).
 - b. Decision Notice – Refusal issued by the Assessment Manager (Noosa Council), dated 11 June 2024.
 - c. Noosa Council Noosa Plan 2020 – Low Density Housing Code.
 - d. Further information provided by the Appellant (by email to the Registry on 4, 9, 10 and 25 November 2024).
 - e. Plan of the as constructed driveway with Council Standard Driveway Plan superimposed on it (provided by the Noosa Council to the Registry on 26 November 2024).

- f. Further information provided by Council (by email to the Registry on 26 November 2024).
- g. Response to Council's further information provided by the Appellant (by email to the Registry on 26 November 2024).

Findings of fact

11. The Tribunal makes the following findings of fact:

- a. The width of the as constructed crossover exceeds the width of the previous driveway and does not comply with Council's standard driveway verge crossover plans in the 'Noosa Plan 2020 – Low Density Housing Code: Driveways and Parking (Reference Council Standard Drawings RS-049 Rev B dated 06/14 and RS-050, Rev E dated 06/14).

The view of the subject driveway from the north

- b. From the north-east the as constructed driveway crossover to the subject property is visible from the verge from a point approximately 10 metres from the intersection of Driftwood Drive with Antipodes Drive (a point opposite the driveway located across the road at 41 Driftwood Drive).
- c. This street viewed towards the subject driveway to Antipodes Drive consists of a narrow grass verge, approximately 2 metres wide containing one relatively small, stunted tree, and extensive dense, high shrubs and trees located between this grass verge and the property boundary up to Antipodes Drive.
- d. Beyond Antipodes Drive, the grass verge is considerably wider, being approximately 5.75 metres wide, with one mature, large broadly branching, healthy tree located approximately 4.5 metres from the subject driveway. There is a standard driveway crossover and one large, mature palm tree located between that tree and the corner of Antipodes Drive.
- e. From the north-west the view of the as constructed driveway crossover is visible from the mid-point of the frontage of Flagship Park to Driftwood Drive.
- f. This street viewed towards the subject driveway crossover, looking towards 27 Driftwood Drive, consists of a grass verge approximately 2 metres wide from the street kerb, with three trees located within it. A concrete path approximately 1 metre in width has been constructed to the right of the grass verge. Adjacent to this concrete path there is a natural reserve that boasts a variety of vegetation, an extensive lawn and numerous mature trees.
- g. Viewing from 27 Driftwood Drive towards 17 Driftwood Drive, located directly across the street opposite the subject driveway, there is a similar grass verge about 2 metres wide from the street kerb with three trees located in it. A concrete path approximately 1 metre in width has been constructed to the right of the grass verge. To the right of this concrete path are six houses with well-established landscaping that includes lawns, trees, and hedges in their front yards.

The view of the subject driveway from the south

- h. From the south-west the view of the as constructed driveway crossover is visible from the property boundary on the verge at the corner of Wavecrest Drive and Driftwood Drive.

- i. This street viewed towards the subject driveway consists of an approximately 1 metre wide paved path with approximately 2 metres of grass verge between it and the road kerb and approximately 1.5 metres of landscaping and grassed verges between this paved path and the adjoining front property boundaries.
- j. There are two standard driveway crossovers visible on this side of street up to a point opposite the subject driveway and four standard driveways (two pairs of driveways located close to each other, giving the appearance of a large paved crossover area) visible from this side of the street from the point on the opposite side of the street beyond the subject property.
- k. The grassed areas between the verge paved path and the road accommodate three large, mature, broad branching trees up to Castaway Court and one large, broad branching, mature tree beyond.
- l. From the south-east the as constructed driveway crossover is visible from the road at the mid-point of the driveway to 6 Driftwood Drive. This view is of a lesser distance due to the curve in Driftwood Drive.
- m. This street viewed towards the subject driveway consists of a narrow grass verge, approximately 3 metres wide containing one large healthy tree located in the verge. Between the large healthy tree located in the verge fronting 6 Driftwood Drive and the subject site is a larger grassed verge approximately 4 metres wide up to the subject site.

Reasons for the decision

- 12. The key aspects of concern are:
 - a. The contribution the as constructed crossover makes to the streetscape character of the area.
 - b. Whether the driveway provides a reasonable vehicle access from the carriageway to the property boundary.
 - c. The driveway not complying with Council standard drawings and the potential for vehicles to scrape when crossing from the verge to the driveway on the property.
- 21. With regard to the contribution the as constructed crossover makes to the streetscape character of the area, the Tribunal noted that there is no Performance Outcome or Acceptable Outcome provisions dealing with this issue in the Noosa Plan 2020 – Low Density Housing Code.
- 22. The Tribunal noted that Council relied on Overall Outcomes 2(a) and 2(f) of the Low Density Housing Code in refusing the application, which state inter alia
 - a. *Development incorporates a high standard of design and makes a positive contribution to the streetscape character of the area in which it is located.*
 - f. *Driveways and crossovers provide safe and reasonable vehicle access from the carriageway to the property boundary, minimise adverse effects on Council's infrastructure and ensure safety for all users of the footpath.*
- 23. The Tribunal formed the view that the as constructed crossover will not adversely affect the streetscape character of the area. This opinion was formed on the basis of the Tribunal's view of the as constructed driveway visible in the streetscapes discussed in the findings of fact.

24. The Tribunal noted that the driveways visible within these streetscapes included those at 24 Driftwood Drive, 26 Driftwood Drive and 18 Antipodes Close, which well-exceed the maximum dimension at the kerb in Council's standard crossover plans, and six driveways in these streetscapes were straight sided, without the flares in the crossover design, shown in Council's standard crossover plans.
25. The Tribunal formed the view that the as constructed driveway has little, if any, greater impact on these streetscapes than the maximum sized driveway built to Council's standard driveway drawings.
26. The Tribunal noted that the verge between 12 Driftwood Drive and the subject crossover is grassed, without any tree planting; it contained significant services, and it is crossed by storm water drains from both properties, making it unlikely that this verge would be viable for future Council tree planting.
27. With regard to the driveway not complying with Council standard drawings the Tribunal noted that there is no Performance Outcome in the Noosa Plan 2020 Low Density Housing Code requiring driveway crossover to comply with Council's standard drawings.
28. The Tribunal noted that there is an Acceptable Outcome in the Noosa Plan 2020 Low Density Housing Code AO 8.1 referring to crossovers being designed to comply with Council standard drawings RS-049, RS-050, RS-056 and addendum as applicable.
29. With regard to the driveway providing reasonable vehicle access from the carriageway to the property boundary, the Tribunal formed the view that the as constructed driveway provides for reasonable and safe vehicle access from the carriageway to the property boundary, without compromising pedestrian safety.
30. With regard to the potential for vehicles to scrape when crossing from the crossover to the driveway on the property, the Tribunal noted that Noosa Plan 2020 Low Density Housing Code includes an Access Design Performance Outcome PO8 that states inter alia:

The design... of the access facilitates:...(b) vehicles negotiating without contacting the driveway or crossover surface
31. The Tribunal noted the Appellant's professional engineer's advice that, '... low vehicles would likely scrape. However as the road and existing garage levels are fixed there is no outcome to mitigate this issue.' (Reference SCG Consulting Engineers Report in Notice of Appeal).
32. The Tribunal noted Council's engineer's advice at the hearing that there could possibly be an engineering solution that involved raising the crossover on the verge and extending this raised crossover into the constructed road, but this is almost always refused by Council.
33. The Tribunal noted that such an engineering solution would result in the driveway crossover raised above the existing verge level making it less safe for pedestrians, and less safe for vehicles entering and leaving the driveway, and would make the crossover more visible in the streetscape than the existing as constructed driveway.
34. The Tribunal noted the type of vehicle that should not scrape is not defined in Performance Outcome PO8 of the Noosa Plan 2020 Low Density Housing Code.
35. The Tribunal noted that the driveway levels as constructed conform to the levels and approximate grades of the previous driveway it replaces.
36. The Tribunal noted the advice of the Appellant and the other owner at the hearing that their standard passenger vehicle and a low clearance motor bike they own do not scrape on the driveway crossover.

37. Based on these considerations, the Tribunal formed the opinion that the application for the crossover as constructed should be approved.

Derek Craven Kemp
Development Tribunal Chair
Date: 4 December 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 and Public Works
GPO Box 2457
Brisbane Qld 4001

Telephone (07) 1800 804 833

Email: registrar@epw.qld.gov.au