



Development Tribunal – Decision Notice

Planning Act 2016, section 255

Appeal number:	22-063
Appellant:	Ryan Garbacz - Appellant Breena Garbacz - Appellant
Respondent (Assessment manager):	Noosa Shire Council
Site address:	15 Driftwood Drive, Castaways Beach, Queensland 4567 and described as Lot 5 on CP 907131 – the subject site

Appeal

This is an appeal under section 229, schedule 1 section 1(1)(b) table 1 item 1(c) and schedule 1 section 1(2)(b)(ii) of the Planning Act 2016 (**PA**) against a condition imposed by Noosa Shire Council (**Respondent**) on its decision to approve operational works for a vehicle crossover, given by a Decision Notice dated 30 November 2022.

Date and time of hearing:	Friday 17 February 2023 at 10.00 am
Place of hearing:	On site, 15 Driftwood Drive, Castaways Beach.
Present:	
Tribunal:	Henk Mulder - Tribunal Chair Michael Pickering - Tribunal Member
Appellant:	Ryan Garbacz - Owner Breena Garbacz - Owner John Thompson - Builder, for the Appellant
Respondent:	Mark Lewis - Noosa Shire Council Daniel Epps - Noosa Shire Council

Decision:

The Development Tribunal, in accordance with section 254(2)(b) of the Planning Act 2016 **changes** that part of the decision of the Noosa Shire Council that imposes condition number 15, by replacing condition number 15 with the following condition:

Condition 15

The width of vehicle crossover at the kerb is to be 5.0m, centred on the property's driveway at the boundary. The width of the vehicle crossover will increase until it meets the property boundary line, where the width of the vehicle crossover is to be 6.0m, centred on the property's driveway at the boundary. All other detail and criteria as set out in the relevant standard drawings RS-049 and RS-050 (residential) are to be maintained.

Background

1. The subject site is rectangular, generally flat, with an East/West length, or axis. It is unusual in that, as a corner site between two streets, it has three boundaries facing a street.
2. The rear boundary of the property is the location of the vehicle crossover for access and egress by the applicant. This rear boundary forms a part of a cul-de-sac, with consequent minimal traffic and an emphasis on spaces for parking between driveways, and vehicle turning circles.
3. The vehicle crossover location is affected by a number of issues separate from the cul-de-sac location, a narrow 3.0 metre verge which, with the existing landscaping, will not support a pedestrian path; an insufficient length for parking vehicles adjacent to the crossover, at the kerb; and as a cul-de-sac, the lack of through-traffic changes the criteria for access and egress via the crossover.
4. Subsequent to the building development application approval for associated building work, the applicant was advised by the building certifier to apply separately with Council for approval of the vehicle crossover.
5. Council approval is required for works undertaken to roads based on section 75 of the *Local Government Act 2009*. The Respondent requires all driveway crossovers to be assessed against a checklist as standard or non-standard, and where the latter applies, application for approval is to be made. The Appellants determined their vehicle crossover as non-standard by virtue of the location at the rear of site, and not the address frontage.
6. Consequently a development application with accompanying Form 1 Application for Compliance Assessment was sought by the Respondent, including the building approval drawings, for an Operational Works approval of a non-standard vehicle crossing.
7. The building approval drawings set out a non-standard driveway, despite including written reference to the standard drawing used by Council for compliance.
8. The Decision Notice for the Operational Works conveyed an approval for the vehicle crossover, but with a modified setout which sought to account for the mitigating circumstances of the verge and location, based on the standard drawing template.
9. The Appellant appealed the decision with regard to the width of the driveway, seeking to increase the width of the approved driveway at the vehicle crossover.

Jurisdiction

10. Schedule 1 of the PA states the matters that may be appealed to the Tribunal.
11. In circumstances where the Decision Notice was dated 30 November 2022 and received on 1 December 2022, the notice of appeal was to be filed on or before 15 December 2022. The Appellants duly lodged their notice of appeal in the approved form with the Development Tribunals Registrar on 13 December 2022.

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 preconditions stated in section 1(2) of schedule 1.
13. The decision under appeal is for operational works associated with building work, the subject of development application number 20210566 (NSC Ref PC22/0002).
14. Therefore, the Tribunal is satisfied that it has jurisdiction to determine this appeal under section 229(1)(a)(i), schedule 1 section 1(b) table 1 item 1(c), and schedule 1 section 1(2)(b)(ii) of the Act.

Decision framework

15. The Appellant as the recipient of the Decision Notice must establish that the appeal should be upheld, under section 253(2) of the PA.
16. The Tribunal is required to hear and decide the appeal by way of a reconsideration of the evidence that was before the Respondent which decided to give the Decision Notice the subject of this appeal, under section 253(4) of the PA.
17. Section 249 of the PA provides the Tribunal with broad powers to inform itself in the way it considers appropriate when conducting a tribunal proceeding and the Tribunal may seek the views of any person.
18. The Tribunal is required to decide the appeal in one of the following relevant ways set out in section 254(2) of the PA:
 - (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;*

Material considered

19. The material considered in arriving at this decision comprises:
 - (a) 'Form 10 – Appeal Notice', grounds for appeal and correspondence accompanying the appeal lodged with the Development Tribunals Registrar on 13 December 2022.
 - (b) *Planning Act 2016 (PA)*.
 - (c) *Planning Regulation 2017 (PR)*.
 - (d) *Building Act 1975 (BA)*.
 - (e) *Local Government Act 2009 (LGA)*
 - (f) *Building Code of Australia (BCA)*.
 - (g) *Noosa Shire Planning Scheme 2014 (SCPS)*
 - (h) Fact Sheet - 'General information on construction and maintenance of a compliant Vehicle Crossover on Council Controlled Land' (**FS**)
 - (i) The Development Assessment Delegated Report by Council, 24 November 2022. (**DADR**)

- (j) The verbal submissions made by the parties at the hearing and during the site inspection as referred to in the body of the decision.

Findings of fact

20. The Tribunal makes the following findings of fact:

- (a) The site has three street frontages, for which the nominated driveway crossover location is well located as proposed, to the rear of the site, at the cul-de-sac of Castaway Court.
- (b) The site has a short verge in the cul-de-sac street at 3.0 metres wide, with existing established trees to the sides of the driveway crossing. These conditions effectively preclude the prospect for any future concreted pedestrian footpath in the verge.
- (c) The existing on-street parking is unchanged beyond the proposed driveway crossover, irrespective of the crossover width.
- (d) The application is correctly made in regard to seeking approval for a non-standard driveway crossover from Noosa Council Operational Works.
- (e) The application seeks divergence from the standard template drawings described as the Public Works Standard Drawings RS-049 and RS-050 in setting out a 7.075 metre wide driveway from the boundary and crossover at the kerb as indicated on the building approval drawings forming the operational works application.
- (f) Drawing RS-049, reproduced in part below, establishes Type 2 as the allowable driveway crossing dimensions, being for a single residence with a double garage:
- a vehicle crossover width of 4.0 metres at the kerb,
 - a pinched width (W2 in the drawings) after 1500mm from the kerb of 3.0 metres, and
 - a final width at the property boundary of 5.0 metres is required.

ALLOWABLE NUMBER AND WIDTH OF RESIDENTIAL DRIVEWAYS							
	TYPE	DESCRIPTION	ALLOWABLE No. OF CROSSINGS	max WIDTH AT KERB INVERT (W1)	(W2)	max WIDTH AT PROPERTY BOUNDARY (W3)	SPECIAL CONDITIONS APPLICABLE (All driveways subject to relevant Council approval.)
SINGLE HOUSE	1	Single garage	1	4.0m	3.0m	3.0m	
	2	Double garage	1	4.0m	3.0m	5.0m	
	3	Double garage or more	2	4.0m	3.0m	5.0m	1. min 40.0m frontage; 2. min 12.0m between two crossings.
	4	Double garage or more	1	5.0m	4.0m	6.0m	Subject to carport/garage approval.

- (g) As described in the DADR, the Respondent made allowance for the existing circumstances of a cul-de-sac street, foreshortened verge width, and existing trees in considering the application merited a Type 4 vehicle crossover, being an increase in the widths of the vehicle crossover as follows

- a vehicle crossover width of 5.0 metres at the kerb,
 - a pinched width (W2 in the drawings) after 1000mm from the kerb of 4.0 metres, and
 - a final width at the property boundary of 6.0 metres.
- (h) The Respondent provided a Decision notice dated 30 November 2022 for an approval of the driveway crossover which included the following condition:
15. *Driveway crossovers must be constructed generally in accordance Council's Standard Drawings RS-049, RS-050 and any associated addendum.*
- (i) The addendum as described in the Respondent's condition number 15 included for a drawn record of the Type 4 allowable width of driveway, marked-up on a copy of the driveway plan, and supplied with the approval documentation.
- (j) An appeal was lodged with the Development Tribunals Registrar on 13 December 2022.

The hearing

21. The hearing confirmed the building work as approved in the associated building development application was well under way, with the slab at the driveway of the property complete up to the boundary, and the steel mesh in place at the driveway crossover.
22. The hearing confirmed the existing driveways in the cul-de-sac have different driveway crossovers generally, and are less of a precedent for the circumstances of the proposal.
23. The Appellant described a variety of driveway crossovers in the local area that were non-compliant with the Respondent's criteria for vehicle crossover at the verge.
24. It was acknowledged by the Respondent that not every driveway crossover is notified for approval, which can result in a crossover not being constructed from the relevant template drawings of RS-049 and RS-050.
25. The extent of landscaping and issues for alternative locations of the driveway were outlined by the Appellant, and the proposed driveway crossover was described as preferable on the following bases:
- (a) the reduced verge,
 - (b) lack of sufficient verge and trees for a concrete footpath to tie in to the crossover at the dimension of W2, the 'pinched' alignment at the side of the driveway;
 - (c) no cables, pipes, utilities or services in the ground beneath the verge creating any constraint to a driveway crossover, allowing for the location and area of the crossover as proposed;
 - (d) no diminishment in the parking available in the street;
 - (e) with the curve of the cul-de-sac and adjacent parking, the turning circle and width of entry to the driveway requires a wider access, and
 - (f) the crossover is undistinguished from the variety nearby and throughout the neighbourhood.
25. The Respondent confirmed support for the driveway in the location proposed and an increase in size from the template drawing RS-049 as a result of the existing site

conditions. This included the Type 4 driveway as set out in the approval, the subject of the appeal.

26. The location of different options marked on the driveway work surface demonstrated the difference between the dimensions sought by the Appellant, and those required by the Respondent.

Reasons for the decision

27. The proposal as shown in the building development approval drawings submitted with the operational works application for the driveway crossover is significantly wider than conventionally required, at 7.075 metres.
28. The calibre of landscaping in the cul-de-sac will benefit from a reduction in the width of the driveway crossover without detriment to the level of functionality, safety or amenity.
29. In the Form 10 notice of appeal the Appellant stated a width of 6.0 metres was sought, and the Tribunal deemed this to mean at the property boundary.
30. The narrowing of the driveway from the boundary to the kerb is conventional, where the necessity for the pinch or reduced mid length dimension 'W2' in RS-049, is removed as a result of the site circumstances of a reduced verge and turning from the cul-de-sac.
31. Vehicle tracking for entry and exit from the site is better matched, avoiding wheel tracking at the verge.
32. The increase in concrete driveway of this decision amounts to 1.0m² in verge on each side of driveway, in comparison to the driveway crossover sought by the Respondent. This is considered acceptable in relation to the area of the total frontage verge to the property.

Henk Mulder
Development Tribunal Chair
Date: 21 March 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: 1800 804 833 Facsimile: (07) 3237 1248

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