



Development Tribunal – Decision Notice

Planning Act 2016, section 255

Appeal number:	24-043
Appellants:	Ryan and Helen Rose
Respondent/Assessment manager:	Brett McCullagh
Co-respondent (concurrence agency):	Noosa Shire Council
Site address:	35 Noosa River Drive, Noosa North Shore Qld 4565 and described as Lot 13 on RP53370 – the subject site

Appeal

Appeal under 229 and schedule 1, section 1, table 1, item 1(a) of the *Planning Act 2016* against the refusal of a Development Application for Building Work for a Class 10a structure, being a garage within the road boundary setback on a residential site. The decision followed a referral agency response by the Noosa Shire Council directing refusal of the application on the grounds that the proposed garage does not comply and cannot be conditioned to comply with the provisions of the Noosa Plan 2020, Low Density Residential Zone Code PO9(f) *be consistent with the predominant character of the streetscape*.

Date and time of hearing:	8 November 2024 at 1.30 pm
Place of hearing:	The subject site
Tribunal:	Anthony Roberts - Chair Catherine Brouwer - Member
Present:	Ryan Rose - Appellant Ben Thrower - Agent for Appellants Jason Devine - Council representative

Decision:

The Development Tribunal (Tribunal), in accordance with section 254(2)(a) of the *Planning Act 2016*, confirms the decision of the Assessment Manager, as directed by the Concurrence Agency to refuse the application.

Background

1. The subject site is:
 - a. a near flat residential allotment with 15m street frontage to Noosa River Drive and a rear boundary fronting Noosa River;
 - b. 1000m² in area containing a two-storey dwelling house, existing single garage, two large (20,000 litre) water tanks, substantial concrete driveway and some landscaping;
 - c. located on a strip of some 30 established dwelling houses and or sites with a mix of setbacks and a mix of landscaped qualities of native and exotic mature species;
 - d. zoned Low Density Residential under the Noosa Plan 2020.
2. The proposed garage is:
 - a. sited where the existing (to be removed) garage is situated 2.4m behind the front alignment of the site, adjacent to the new concrete driveway and in front of the water tanks located in front of the house;
 - b. 12.0m long and 7.4m wide with an area of 88.8m²;
 - c. 5.0m in height to the street alignment;
 - d. designed with a dual skillion roofline and of FC weatherboard construction (to match the existing house) with large roller doors.
3. As the proposed development triggers assessment against the relevant performance criteria of the Noosa Plan 2020 due to the proposed siting within the required 6.0m road boundary setback, the Assessment Manager lodged with the Noosa Shire Council (under Schedule 9, Part 3, Division 2, Table 3 of the *Planning Regulation 2017*) an (undated) Request for a Concurrence Agency Response for building works assessable against the planning scheme.
4. On 2 April 2024, Council issued an Information Request stating:

Issue It has been considered that the proposed shed provides an insufficient road boundary setback and is not consistent with the predominant character of the streetscape. Therefore, it is suggested that Council is unlikely to support the current proposal.

Information Required While Council may consider a reduction to the road boundary setback for a shed, it is suggested that alternative design options are explored to provide less of an impact on the streetscape. These options may include increasing the road boundary setback and reducing the width and height of the proposed shed.

If an alternative design in line with the information provided above is achievable, please submit revised plans for further consideration.

Additionally, please provide a dimension on the supplied plans that identifies the distance from the north-eastern corner of the shed to the road boundary.
5. On 15 April 2024, the Appellants' agent, Ben Thrower of BT Town Planning Consultancy, submitted an information response to Council providing justification for the proposed siting and design form of the proposed garage.
6. On 28 August 2024, Council issued a Referral Agency Response directing the Assessment Manager to refuse the application for the reasons stated as follows:

The application is refused as the proposed development does not comply with and cannot be conditioned to comply with the following performance criteria:

Noosa Plan 2020 – Low Density Residential Zone Code

PO9 Buildings and structures are designed and sited to:

f) be consistent with the predominant character of the streetscape;

It has been considered that the location of the proposed garage within the front boundary setback is not consistent with the predominant character of the streetscape.

It is Council's view that the predominant character of the streetscape with respect to building location consists of buildings and structures providing a greater road boundary setback than that of the current proposal. Additionally, the current proposal provides for an exceedingly dominant structure located within the road boundary setback.

7. The Assessment Manager subsequently issued a Decision Notice on 9 September 2024 refusing the proposed development based exclusively on the Referral Agency Response from Council directing refusal.
8. The hearing for the appeal was held at the subject site on 8 November 2024 at 1.30 pm. The Tribunal had the opportunity to view the positioning of the proposed structure from the subject site, neighbouring properties, and the streetscape more generally.

Jurisdiction

9. The Tribunal has jurisdiction to hear the appeal under the PA section 229(1)(a)(i) and schedule 1, sections 1(1)(b), 1(2)(g) and table 1, item 1(a) being an appeal by the Appellants against the refusal of the development application by the Assessment Manager at the direction of the Referral Agency.

Decision framework

10. 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— other evidence presented by a party to the appeal with leave of the tribunal; or any information provided under section 246.*
11. Section 254 of the PA deals with how an appeal such as this may be decided. The first three subsections of that section (omitting section 254(2)(e) and (f), as they are 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; or*
 - (e) *[not relevant].*
 - (f) *[not relevant]*
 - (3) *However, the tribunal must not make a change, other than a minor change, to a development application.*
12. Section 33 of the BA (Alternative provisions to QDC boundary clearance and site cover provisions for particular buildings) allows a planning scheme to include alternative provisions for single detached Class 1 buildings and Class 10 buildings or structures to the provisions of the QDC for boundary clearance and site cover.
 13. The Low-Density Residential Zone Code contains alternate provisions to the QDC. As the proposal does not meet the acceptable outcomes set out in Acceptable Outcome AO 9.1, which as applied to the subject site requires buildings and structures have a setback of 6.0m from the road frontage, assessment is made against the list of Performance Outcomes stated at PO9 of the Code.

Material considered

14. The Tribunal considered the following material:
 - a. 'Form 10 – Appeal Notice', grounds for appeal and correspondence/attachments accompanying the appeal lodged with the Tribunals Registrar on 9 September 2024;
 - b. The *Planning Act 2016* (PA);
 - c. The Planning Regulation 2017 (PR);
 - d. The Queensland Development Code 2020 (QDC);
 - e. The *Building Act 1975* (BA);
 - f. The *Building Regulation 2021*(BR);
 - g. The Noosa Plan 2020 (Noosa Plan);
 - h. Noosa Plan 2020 – Low Density Residential Zone Code (the Code);
 - i. The verbal submissions made by the parties at the hearing and site inspection;
 - j. The Information Request (dated 2 April 2024) and information relating to any approvals for the structure on the neighbouring lot to the North – submitted by Council post-hearing;
 - k. The Queensland Globe website for lot dimensions.

Findings of fact

The Tribunal makes the following findings of fact:

PO9(f) streetscape

15. In relation to the grounds for refusal pertinent to the PO9(f) streetscape considerations, the Appellants contend that the proposal “*demonstrates more than sufficient compliance with the corresponding Performance Outcomes*” as:
 - a. The street frontage is the secondary frontage as the water frontage is the primary frontage
 - b. There are no lots or dwellings on the opposite side of the road to the site;

- c. The 10m river setback required under the Noosa Plan - together with the tapering of the lot to a (unique) narrow 15m frontage - reduces the available development footprint on the balance of the lot;
 - d. The viewlines along the street are limited due to the curving road alignment and the presence of mature street vegetation;
 - e. Dwellings on the street are typically built to a 9.0m or 9.5m maximum height. Hence the proposed garage will fall well within the built form 'backdrop' height of the streetscape;
 - f. The street is a narrow, gravel, lightly-trafficked cul-de-sac and is located in a discrete locality mainly only used by local residents;
 - g. The garage's design and finish is of high architectural standard in keeping with the existing dwelling;
 - h. Both adjoining neighbours have provided letters of support.
16. In relation to the grounds for refusal pertinent to the PO9(f) streetscape considerations, Council contends that:
- a. The location of the proposed garage within the front boundary setback is not consistent with the predominant character of the streetscape. Council's view is that the predominant character of the streetscape with 'respect to building location' consists of buildings and structures 'providing greater road boundary setback than that of the current proposal';
 - b. Council considers the term 'streetscape', although undefined in the Noosa Plan, to be what can be seen standing in front of the property and looking up and down the street (and discounting the vegetation in the verge);
 - c. Through the Information Request, Council advised that it may accept a reduced boundary setback provided alternative design options were explored to provide less of an impact on the streetscape (including increasing the road boundary setback and reducing the width and height of the proposed shed). The Appellant did not subsequently change the proposal;
 - d. Approval for a second driveway would be required to service the garage. This would, if approved, further detract from the streetscape;
 - e. Any examples of other properties in the vicinity of the site where buildings and structures are within the required setback are not relevant to the proposal as they are variously: approved under the previous planning scheme, not Council approved structures or not within the streetscape considered by Council to be applicable to the subject site;
 - f. The proposed built form bulk and height represents an 'exceedingly dominant structure' located within the road boundary setback.

Location of the proposed garage

- 17. The first element of the Council's reasons for refusal relates to the location of the proposed garage within the front boundary setback not being consistent with the predominant character of the streetscape.
- 18. Based upon the site inspection conducted at the hearing, the Tribunal finds that Noosa River Drive (which comprises a curving gravel track with changing view lines), presents

as a varied streetscape comprising mixed architectural styles and featuring mature native and other landscape elements (including within the road reserve).

19. With respect to the pattern of built form in the streetscape, the Tribunal observed that the predominant setback for buildings and structures conformed with the 6m requirement. The Tribunal nevertheless noted a front boundary setback encroachment of an existing structure on the adjoining lot (number 37) - which the Council representative established was a combination of an historic (2002) approval for an existing structure and an unlawful addition to that structure.
20. Given this, the Tribunal concurs with the Council's view that the buildings and structures element of the streetscape which frame the subject site (and exist within the broader vicinity), exhibits a pattern of buildings and structures 'providing a greater road boundary setback than that of the current proposal'.
21. As to the Appellants' suggestion that the subject site is somewhat unique because its 'narrow' 15m frontage constrains the building envelope, the Tribunal notes that most of the allotments in the vicinity of the site have a similar frontage, and the adjacent allotment at number 33 has a narrower 10m frontage.
22. At the hearing, Council's representative suggested that Council may consider approving a 5m setback, however this was not considered acceptable by the Appellants mainly as it would entail re-locating the water tanks.

'Exceedingly dominant structure'

23. The second element of Council's reasons for refusal concerns the proposed structure's visual appearance being considered 'an exceedingly dominant structure located within the road boundary setback'. At the hearing, Council's representative indicated that these concerns related mainly to the width and height and overall visual bulk of the proposed structure at minimal setback from the road boundary.
24. The Tribunal noted the Appellants' requirements for such a large structure due to the need to accommodate their boats, caravan, cars and equipment. However, having regard to the length of the proposed structure (at 12.0m) and width (at 7.4m) in combination with the proposed height (at 5.0m) at the street façade, the Tribunal concurs with Council that the proposal presents a bulk that would be perceived as dominant in the streetscape. This impact is mainly because the structure, at minimal setback from the road boundary, is more likely to have the appearance of a large shed (with industrial scale roller doors) rather than a typical domestic garage. The streetscape would also likely be further impacted by the need to provide a second street access to service the proposed shed.
25. As to the Appellants' suggestion that the garage's design and finish is of high architectural standard, therefore mitigating any visual impacts, the Tribunal considers that this is not the case, and, irrespective of any 'architectural quality' the garage design is not one that would mitigate visual impact to the streetscape.
26. Although letters of support were provided by both adjoining neighbours (numbers 33 and 37), the Tribunal noted that PO9(a), which deals with amenity considerations and has a focus both on the amenity of the 'users' and 'adjoining premises' did not form a reason for refusal by Council and therefore was not in contention. Further, as noted above, number 37 exhibits an existing encroachment into the front boundary setback

Reasons for the decision

27. In this appeal, the Tribunal considers the Appellants have not satisfied the onus to demonstrate the appeal should be upheld. Therefore, the Tribunal has determined to confirm the decision of the Assessment Manager, as directed by the Concurrence Agency, to refuse the application for the reasons identified below
28. The Tribunal finds that the provisions of PO9(f) have been drafted in way that gives pre-eminence to the built form and pattern of buildings presented to the streetscape with little or no emphasis in landscape elements. In this regard, the Tribunal considers the prevailing pattern of buildings and structures in the streetscape framing the subject site (and existing in the broader vicinity), is consistent with the required 6 metre setback.
29. Having regard to the combined length, width and height of the proposed structure, the Tribunal concurs with Council that the proposal presents an overall bulk that would be perceived as dominant in the streetscape. Further, it is the Tribunal's view that that this effect would not be mitigated by the proposed design and finish of the structure.
30. The proposed shed, therefore, does not satisfy criterion (f) of Performance Outcome 9 of the Noosa Plan 2020 – Low Density Residential Zone Code requiring that buildings and structures are designed and sited to be consistent with the predominant character of the streetscape.

Anthony Roberts
Development Tribunal Chair

Date: 23 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 1800 804 833

Email: registrar@epw.qld.gov.au