



## Development Tribunal – Decision Notice

---

### *Planning Act 2016, section 255*

<b>Appeal number:</b>	<b>23-008</b>
<b>Appellant:</b>	Nicholas Broadhurst and Melissa Mary Ambrosini.
<b>Respondent/Assessment manager:</b>	John Dunn
<b>Co-respondent/ Concurrence agency:</b>	Noosa Shire Council ( <b>Council</b> )
<b>Site address:</b>	6 Mitti Street, Noosa Heads Qld 4563 and described as Lot 4 on RP67833 – the subject site

---

### **Appeal**

Appeal under section 229 of the *Planning Act 2016* (PA) the decision of the assessment manager at the direction of the concurrence agency to refuse a development application for building work for a Class 10a Gate House and Storeroom on the basis the proposal was not consistent with the predominant character of the streetscape.

---

<b>Date and time of hearing:</b>	20 April 2023 at 10:30 am.
<b>Place of hearing:</b>	The subject site and the Noosa Shire Council office at 9 Pelican Street, Tewantin
<b>Tribunal:</b>	Richard Prout – Chair Catherine Baudet – Member
<b>Present:</b>	Nicholas Broadhurst – Appellant John Dunn – JDBA Certifiers (Via video call) Pat Ferris – JDBA Certifiers (Via video call) Jarrad Postle – Council representative Brad Geaney – Council representative

---

### **Decision:**

For the reasons set out below, the Development Tribunal (Tribunal), in accordance with section 254(2)(b) of the PA, **changes** the decision of the assessment manager to refuse the development application for the gatehouse and storeroom to a decision to:

- (1) refuse the development application with respect to construction of the Class 10a gatehouse;

- (2) approve the development application with respect to construction of the Class 10a storeroom subject to the following conditions:
  - (a) The storeroom not to exceed a maximum height of 1.8m above natural ground surface;
  - (b) The storeroom not to exceed the dimensions maximum length of 3.2m and maximum width of 600 mm; and
  - (c) The storeroom to be attached to and fully screened by the proposed Class 10b front boundary wall.
- (3) approve the Class 10b front boundary wall with a maximum height of 2m above natural ground surface.

## Background

1. The subject site is a 602.06 m<sup>2</sup> allotment located at 6 Mitti Street, Noosa Heads and is zoned Low Density Residential under the Noosa Plan 2020. The allotment is regular in shape but with a front boundary which is on an angle giving a street frontage of 15.505m which reduces to a 13.679m wide rear boundary.
2. The existing two (2) storey dwelling and swimming pool on the site were demolished to accommodate a new two (2) storey dwelling, swimming pool, gate house and storeroom.
3. The proposed dwelling, gate house and storeroom did not comply with the Acceptable Outcomes of the Low Density Residential Zone Code of the Noosa Plan 2020 specifically:

- a. Acceptable Outcome A09.1 which states:

*Buildings and structures have a setback 6 metres from the road frontage, provided that setback to one frontage may be reduced to 4.5 metres where the lot:*

- a) has frontage to more than one road; and*
- b) is less than 600m<sup>2</sup> in area; or*
- c) is less than 15 metres in width.*

A small portion of the proposed garage encroached into the front boundary setback, with the corner of the garage setback 5.035m from Mitti Street. The proposed gate house, storeroom and boundary wall were all located within the prescribed 6m front road boundary setback.

- b. Acceptable Outcome A09.3(b) which states:

*Buildings and structures meet the following minimum setbacks to boundaries other than road frontages and rear boundaries:*

- a) 1.5 metre setback up to 4.5 metres height;*
- b) 2 metres setback between 4.5 metres and 7.5 metres height; and*
- c) 2.5 metres if above 7.5 metres height.*

A portion of the proposed dwelling incorporated a 1.7m setback from the southern boundary in lieu of the required 2 m.

- c. Acceptable Outcome A016.1(a) which states:

*With the exception of the reuse or renovation of an existing building which does not comply, in areas other than the Coastal Communities and Noosa Heads local plan areas:*

- a) *the main roof of buildings has a pitch no less than 5 degrees; and*
- b) *eaves apply to at least 75% of the perimeter of the roof.*

The proposed dwelling incorporated a 2-degree roof pitch.

4. As such in 2022 the property owners engaged a planning consultant who subsequently lodged a 'request for a referral agency response for building work' with Council in July 2022 against the performance outcomes P09 (Setbacks) and P016 (Roof Design) of Low Density Residential Zone Code of Noosa Plan 2020.
5. Council issued an Amended Referral Agency Response on 25 January 2023 directing refusal of the proposed gate house and storeroom and approval of the reduced side boundary setback for the dwelling, the reduced front road boundary setback for the dwelling and the reduced roof pitch.
6. Council provided the following reasons for the direction to refuse the gate house and storeroom:

*The design and location of the proposed gate house and associated storage area provides an insufficient road 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 design and location of existing buildings and structures, consists of significantly greater road boundary setbacks than that of the proposed gatehouse and associated storage area.*
7. On 30 January 2023, the Appellants lodged a development application for building work with a private certifier (John Dunn of JDBA Certifiers) for the proposed building work.
8. On 30 January 2023, the Respondent, John Dunn, issued a decision notice under section 63 of the *Planning Act 2016* refusing the development application for building work for the proposed gate house and storeroom as directed by Council.
9. On 22 February 2023, the Appellants lodged a form 10 notice of appeal with the Tribunals Registrar.

## **Jurisdiction**

10. The Appellants lodged the appeal with the Tribunal under section 229 of the PA, against the decision of the Respondent/Assessment Manager to refuse a Class 10a gate house and a Class 10a storeroom.
11. Section 229(1) of the PA identifies that schedule 1 states the matters that may be appealed to the Tribunal.
12. Section 1(1) of schedule 1 provides that table 1 of schedule 1 of the PA states the matters that may be appealed to the court or the Tribunal subject to (in the case of the Tribunal) the pre-conditions stated in section 1(2) of schedule 1.
13. Section 1(a) of table 1 applies to this appeal, which is against the refusal of a development application.
14. In assessing the issue of jurisdiction, the Tribunal considered whether any of the preconditions (in schedule 1, section 1(2) of the PA) for the application of table 1 for a Tribunal are satisfied.

15. Section 33 (Alternative provisions to QDC boundary clearance and site cover provisions for particular buildings) of the Building Act 1975 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.
16. The Noosa Plan 2020 states that for the purpose of section 33 of the Building Act 1975, the nominated provisions in table 6.3.1.3 of the Low Density Residential Zone Code of the Noosa Plan 2020 are alternative provisions to the QDC.
17. The building work proposed by the development application was required to be assessed under table 6.3.1.3 of the Low Density Residential Zone Code.
18. In these circumstances, the precondition in section 1(2)(g) of schedule 1 of the PA for the application of table 1 for the Tribunal is satisfied.

#### Conclusion regarding jurisdiction

19. The Tribunal finds that the Appeal meets the required tests of Schedule 1 (Appeals) of the PA for a matter that may be appealed to a tribunal and as such the Tribunal has the jurisdiction to hear the Appeal.

#### **Decision framework**

20. The Tribunal notes:
  - a. The onus rests on the appellant to establish that the appeal should be upheld (section 253(2) of the PA).
  - b. 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 (section 253(4) of the PA) however the Tribunal may, but need not, consider other evidence presented by a party to the appeal with leave of the Tribunal (section 253(5) of the PA).
  - c. The Tribunal is required to decide the appeal in one of the ways mentioned in section 254(2) of the PA.

#### **Material considered**

21. The material considered in arriving at this decision comprises:
  - a. Form 10 Notice of appeal/application for declaration) lodged with the Tribunals Registrar on 22 February 2023;
  - b. DA Form 2 – Building Work Details, Applicant Nicholas Oliver Broadhurst and Melissa Mary Ambrosini;
  - c. Form 20 – Lodgement of building work documentation’ Private certifier John Dunn of JDBA Certifiers;
  - d. Form 56 (Notice to the local government that a private certifier has been engaged) date 30 January 2023, signed by John Dunn, of JDBA Certifiers;
  - e. Decision Notice (Private certifier reference BA220769) issued by the Assessment Manager John Dunn of JDBA Certifiers, dated 30 January 2023, refusing the gate

- house and storeroom as directed by the referral agency (Noosa Shire Council);
- f. Amended Referral Agency Response from Council (Council reference RAB22/0142) dated 25 January 2023 approving the proposed dwelling and refusing the proposed gate house and storeroom;
  - g. Letter dated 24 November 2022 from Danya Cook Town Planning to Council (DC Town Planning reference (2022-59), advising that the gate house and storeroom did form part of the referral agency request and that Council was obliged to issue a part approval and part refusal decision;
  - h. Email dated 17 November 2022 from Council to Danya Cook Town Planning, advising that Council may consider further encroachment within the road boundary setback, but given the streetscape it is unlikely to support the proposed gate house;
  - i. Referral Agency Response from Council (Council reference RAB22/0142) dated 21 October 2022 approving the proposed dwelling and stating on the approved drawings that the proposed gate house and storeroom did not form part of the referral agency response;
  - j. Email dated 20 September 2022 from Danya Cook Town Planning to Council with additional sketch plans, stating that the applicant required the setbacks to the dwelling to be maintained as proposed;
  - k. Email dated 20 September 2022 from Council to Danya Cook Town Planning, requesting an increased front road boundary setback to the proposed dwelling;
  - l. Email dated 15 September 2022 from Danya Cook Town Planning to Council with additional architectural drawings;
  - m. Email dated 15 September 2022 from Council to Danya Cook Town Planning, requesting additional information to be provided on the architectural drawings;
  - n. Response to the Council information request dated 3 September 2022 from Danya Cook Town Planning (DC Town Planning reference (2022-59));
  - o. Council request for further information (Council reference RAB22/0142) dated 30 August 2022;
  - p. Application Form – Noosa Council, Request for Referral Agency Response Form, undated;
  - q. Report dated 1 July 2022 (Request for referral agency response for building work) from Danya Cook Town Planning (DC Town Planning reference (2022-59) to Council, in support of the request for referral agency response;
  - r. Design plan prepared by Suncoast Building Design;
  - s. Artist impression of the proposed gate house from the street, undated and no author's details
  - t. Verbal submissions at the hearing from all parties to the appeal (Given leave for their presentation by Tribunal);

- u. Additional plans provided on 21 April 2023 to the Tribunal prepared by Suncoast Building Design namely: front elevation and sectional view detailing the height of the gate house, front boundary wall and storeroom above natural ground surface, a plan view detailing the dimensions of the storeroom (Given leave by Tribunal to provide additional drawings);
- v. Written submission dated 27 April 2023 from JDBA Certifiers (Given leave by Tribunal to provide final submission);
- w. Email dated 27 April 2023 from Council representatives responding to JDBA Certifiers submission dated 27 April 2023;
- x. The Noosa Plan 2020;
- y. The Queensland Development Code MP 1.2;
- z. The Planning Act 2016;
- aa. The Building Act 1975;
- bb. The Building Regulation 2021.

### **Findings of fact**

- 22. The subject site is a 602.06 m<sup>2</sup> allotment located at 6 Mitti Street, Noosa Heads and is zoned Low Density Residential under the Noosa Plan 2020.
- 23. The northern side of Mitti Street (opposite side of the street to the subject property) is zoned Medium Density Residential under the Noosa Plan 2020.
- 24. The allotment is rectangular in shape but with a front boundary which is on an angle giving a street frontage of 15.505m which reduces to a 13.679m wide rear boundary.
- 25. The site is vacant at present as the existing dwelling and swimming pool were recently demolished.
- 26. The allotment is not constrained by any easements or Council infrastructure.
- 27. The allotment is constrained by a Unitywater sewer main which runs at angle through the back third of the allotment. The sewer main is not on a preferred line, however the previous dwelling was built over the sewer main.
- 28. The streetscape in Mitti Street and the general surrounding area consists of residential dwellings, town houses and unit developments with a mixture of open fronted allotments or 1.8m high front boundary fences/walls with soft landscaping and buildings setback 6m or more from the front road boundary.

### Application process

- 29. On 1 July 2022, Danya Cook Town Planning lodged a Request for Referral Agency Response for a new dwelling, gate house and storeroom with Council on behalf of the Appellants. The referral was required as the proposed building work did not comply with the Acceptable Outcomes of the Low Density Residential Zone Code of the Noosa Plan 2020, specifically:
  - a. Acceptable Outcome A09.1 which states:

*Buildings and structures have a setback 6 metres from the road frontage, provided that setback to one frontage may be reduced to 4.5 metres where the lot:*

- d) has frontage to more than one road; and*
- e) is less than 600m<sup>2</sup> in area; or*
- f) is less than 15 metres in width.*

A small portion of the proposed garage encroached into the front boundary setback, with the corner of the garage setback 5.035m from Mitti Street. The proposed gate house, storeroom and boundary wall were all located within the prescribed 6m front road boundary setback.

- b. Acceptable Outcome A09.3(b) which states:

*Buildings and structures meet the following minimum setbacks to boundaries other than road frontages and rear boundaries:*

- a) 1.5 metre setback up to 4.5 metres height;*
- b) 2 metres setback between 4.5 metres and 7.5 metres height; and*
- c) 2.5 metres if above 7.5 metres height.*

A portion of the proposed dwelling incorporated a 1.7m setback from the southern boundary in lieu of the required 2 m.

- c. Acceptable Outcome A016.1(a) which states:

*With the exception of the reuse or renovation of an existing building which does not comply, in areas other than the Coastal Communities and Noosa Heads local plan areas:*

- c) the main roof of buildings has a pitch no less than 5 degrees; and*
- d) eaves apply to at least 75% of the perimeter of the roof.*

The proposed dwelling incorporated a 2-degree roof pitch.

- 30. Section 33 (Alternative provisions to QDC boundary clearance and site cover provisions for particular buildings) of the Building Act 1975 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.
- 31. Table 6.3.1.3 of the Low Density Residential Zone Code states that Acceptable Outcomes A09.1 and A09.3 are alternative provisions to the QDC. As such Acceptable Solution A1(d) (ii) (screens, fences, retaining walls or a combination of screen, fences or retaining walls), and A1(d)(iii) (roofed gate houses and arches) of QDC MP 1.2, are not applicable in this instance.
- 32. On 30 August 2022 Council issued a request for further information stating the following:

*Issue*

*The design and location of the proposed gatehouse is not consistent with the predominant character of the streetscape and is unlikely to be supported by Council.*

Information Required

1. *It has been considered that there is very limited existing building work within the streetscape that shares a similar road boundary setback to the proposed gatehouse.*

Issue

*It has been considered that additional information is required in order for Council to further assess the application.*

Information Required

2. *Please submit revised plans that clearly identify the heights of the proposed building work on elevation 3 and elevation 4. Additionally, please provide amended plans that identify the setback from the Mitti Street road boundary to the north-western corner of the dwelling.*

33. On 3 September 2022, Danya Cook Town Planning provided a response to the Council request for further information namely:

**Gate house and storeroom**

*In response to Item 1 of Council's Information Request, the front fence and gatehouse is designed to create a secure and private amenity for the homeowners.*

*Mitti Street and Little Cove is one of the most popular tourist destinations in Australia. This in turn attracts a large amount of people to this small quiet neighbourhood during peak periods.*

*Surrounding short term accommodation and a public car park all within the vicinity of this family home.*

*The land and homeowners are a young couple with kids raising a family, they have a right to feel secure in their property. They also have the right to reduce street noise where possible.*

*The front fence and gatehouse provide this.*

*Accordingly, based on the above justification, the gate house is maintained.*

**Revised plans**

*In response to Item 2 of Council's Information Request, please refer to the revised Site Plan prepared by Suncoast Building Design included at **Appendix A**.*

34. On 21 October 2022, Council issued a referral agency response directing conditional approval of the proposed dwelling. The referral agency response made no reference to the proposed gate house and storeroom other than in the approved drawings where there was a notation that the proposed gate house and storeroom did not form part of the referral agency response.
35. On 24 November 2022, Danya Cook Town Planning emailed a letter to Council stating the following:



*Irrespective of the justification provided in response to Item 1, it is understood that Council have not approved the gatehouse considering the following approved plan notation, "Gatehouse and Storage Structure do not form part of this Referral Response" included as part of Council's Referral Agency Response.*

*We believe Council should have issued a part approval (relevant to the siting variations) and a part refusal (relevant to the gatehouse).*

*Accordingly, it is requested that Council issue written confirmation that the gatehouse was not approved as part of Council's assessment of the application.*

36. On 25 January 2023, Council issued an Amended Referral Agency Response directing approval of the proposed dwelling and refusal of the proposed gate house, stating as follows:

*Further to the advices provided in Council's Information Request dated 26/08/2022, it is noted that the gatehouse and associated storage area was not included in this assessment for the following reasons:*

*The design and location of the proposed gatehouse and associated storage area provides an insufficient road 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 design and location of existing buildings and structures, consists of significantly greater road boundary setbacks than that of the proposed gatehouse and associated storage area*

37. In January 2023, the Appellants engaged a private certifier John Dunn of JDBA Certifiers to assess a development application for building work for the proposed dwelling, swimming pool, gate house and storeroom.
38. On 30 January 2023, John Dunn issued a decision notice under section 63 of the PA refusing the proposed gate house and storeroom as directed by Council.

### **Reasons for the decision**

39. The Tribunal makes its decision for the following reasons:
- a. The Tribunal is of the opinion that the development does not comply and cannot be conditioned to comply with the Performance Outcome P09 (Setbacks) (f) of the Noosa Plan 2020, Low Density Residential Zone Code, Table 6.3.1.3 which provides as follows:
    - *P09 (f) be consistent with the predominant character of the streetscape.*
  - b. The streetscape in Mitti Street and the general surrounding area consists of residential dwellings, town houses, and unit developments with a mixture of open fronted allotments or 1.8m high front boundary fences/walls with soft landscaping and buildings setback 6m or more from the front road boundary.
  - c. Consequently, the Tribunal is of the view that the proposed gate house and front boundary wall exceeding 2m in height above natural ground surface would be inconsistent with the predominant character of the streetscape.

- d. At the hearing the Council representatives confirmed that Council had no objections to the front boundary wall with a maximum height of 2m above natural ground surface. They also confirmed Council had no objection to the storeroom given it would be screened from the street by the front boundary wall. The Tribunal agreed with this reasoning in relation to both the front boundary wall and the storeroom.

---

**Richard Prout**

**Development Tribunal Chair**

**Date: 5 May 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**

**Email: [registrar@epw.qld.gov.au](mailto:registrar@epw.qld.gov.au)**