



Development Tribunal – Decision Notice

Planning Act 2016, section 255

Appeal number:	25-014
Appellant:	Matthew Gordon
Respondent (Assessment manager)	Greg Smith
Co-respondent (Concurrence agency)	Noosa Shire Council
Site address:	5 Bursaria Street Peregian Beach Qld 4573 and described as Lot 547 on MCH 5424 – the subject site

Appeal

Appeal under section 229 and schedule 1, section 1, table 1, item 1(a) of the *Planning Act 2016* (PA) against the refusal of a Development Application for approval of Building Works being additions to a dwelling for a double width garage to be built within the road setback area. The decision followed a referral agency response by the Noosa Shire Council, directing refusal for the proposed siting of the garage, being the subject of the application.

Date and time of hearing:	10.00am, 11 July 2025
Place of hearing:	The subject site
Tribunal:	Debbie Johnson - Chair Lisa Lambie - Member
Present:	Matthew Gordon - Appellant Hollie Layton - Appellant's agent Jason Devine and Chris Mogg - Council representatives

Decision

The Development Tribunal (Tribunal), in accordance with section 254(2)(a) of the *Planning Act 2016*, confirms the decision of the assessment manager.

Background

1. The subject site is a large residential property that has an area of 814 sq/m with a northwest outlook. The property is a trapezium shape, with an approximate road frontage length of 25m, and a 20m rear boundary length. The frontage is a similar width, if not

wider, than surrounding properties. The land slopes noticeably down to the road, with the site having a 3m overall fall across the 30m depth of the site.

2. The site was cut and filled to facilitate the construction of the existing home. The dwelling is a slab on ground, single storey, brick veneer construction, with a hipped roof. The finished floor level of the home is approximately 1.5m higher than the existing ground along the frontage.
3. The original dwelling was constructed 30-35 years ago, as were the neighbouring homes. The individual residential sites are large by current standards. The gardens are established, extensive, and largely informal. Few if any of the homes appear to have been significantly updated, hence there is a distinct residential character that aligns with the 1990 period.
4. The appellant purchased the property 6 years ago as a 3 bedroom, double garage home. Since this time, a pool and covered area have been built in the rear yard and the existing double garage has been converted to provide additional living area. The external brickwork has been painted and the original tile roof has been replaced with a colorbond steel, sheet roof. The home and garden generally appear to be tidy and well maintained.
5. The appellant decided to build a standalone double garage with an adjacent hardstand area suitably sized to store a trailer and/or a boat. The area that best suited his needs was identified between the home and the front boundary.
6. The appellant's agent engaged a business trading as 'King Architectural Engineering' to document the proposed design for lodgement as a development application for building works. The drawings illustrate a cut pad, approximately 13m wide and 9.5m deep in the northern corner of the site. That is, adjacent to, and along the street frontage. To achieve this level pad, a concrete block retainment wall was proposed along the rear of the pad, reducing in height along the return sides, as it stepped down to meet the natural ground at the property frontage.
7. The proposed garage has been detailed as a concrete block structure, 6.4m wide and 7.5m deep. The building is shown set back from the frontage by 1.764m on the southern corner and 0.936m on the opposite northern corner. The build featured a parapet façade to the street frontage, concealing the skillion roof. The maximum overall height is noted as 3.2m, as measured from the finished floor level of the garage slab.
8. On 20 February 2025, the assessment manager submitted a Request for a Referral Agency Response under schedule 9, part 3, division 2, table 3 of the *Planning Regulation 2017*, to the Noosa Shire Council for proposed building work within the prescribed road boundary setback requirements.
9. On 28 May 2025, Council issued a Referral Agency Response directing the assessment manager to refuse the building application, for reasons stated in the response.
10. On 29 May 2025, the assessment manager issued a Decision Notice refusing the carrying out of building works assessable under the *Building Act 1975*. The decision stated the following reason—

Noosa Council referral agency advice RAD25/0019 dated 28 May 2025 directs the assessment manager to refuse the Development Permit for building works due to the following reason: 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 predominate character of the streetscape;

(...)

11. On 31 May 2025, the appellant stated the grounds for appeal and completed and submitted the Form 10 – Notice of Appeal to the Registrar.

Jurisdiction

12. This appeal has been made under section 229 of the PA as a matter that may be appealed to a tribunal.
13. Schedule 1 of PA, section 1(2) however states table 1 may apply to a tribunal only if the matter involves one of the circumstances set out in paragraphs (a) to (l) of that section. Paragraph (g) of section 1(2) states: ‘a matter under this Act, to the extent the matter relates to the Building Act, other than a matter under the Act that may or must be decided by the Queensland Building and Construction Commission’.
14. The tribunal is satisfied that the application lodged with the assessment manager and the referral of the development application to Council satisfies that requirement, being a development application for approval of building works under the section 33 of the *Building Act 1975*, which allows alternative provisions to QDC boundary clearance and site cover provisions for buildings.
15. That application was subsequently refused by the assessment manager as directed by Council, who are the referral agency. Table 1 item 1(a) in schedule 1 of the PA sets out that for a development application an appeal may be made to a tribunal against the refusal of all or part of the development application.
16. The refusal directed by Council and made by the assessment manager have enlivened the jurisdiction of the Tribunal.

Decision framework

17. Section 246 of the PA provides as follows (omitting the examples contained in the section):

The registrar may, at any time, ask a person to give the registrar any information that the registrar reasonably requires for the proceedings.

The person must give the information to the registrar within 10 business days after the registrar asks for the information.

18. 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.

19. Section 254 of the PA deals with how an appeal such as this may be decided and the first three subsections of that section (omitting section 254(2)(e), as it relates to a deemed refusal (not relevant here) and 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].*
 - (3) *However, the tribunal must not make a change, other than a minor change, to a development application.*

Material considered

20. The material considered in arriving at this decision was:
- (a) Form 10 Notice of appeal, grounds for appeal and correspondence accompanying the appeal lodged with the Tribunals registrar on 31 May 2025.
 - (b) Referral Agency Response for RAB25/0019 dated 28 May 2025, directing a refusal to the assessment manager.
 - (c) Noosa Council Information Request - Referral Agency to the assessment manager, dated 10 March 2025. The Information Request was emailed via the registrar, 25 July 2025, that is post hearing, in response to the tribunal's request at the hearing. This correspondence included the email exchanges between the council, assessment manager and the appellant's agent throughout the council referral advice assessment process.
 - (d) Decision Notice - Refusal issued by the assessment manager being Greg Smith of The Professional Certification Group. Reference number 00118314 dated 29 May 2025 for the Garage.
 - (e) Request from the assessment manager, through the registrar, and subsequent approval by the tribunal on 21 June 2025, to withdraw from the appeal, in accordance with Section 229(5) of the Planning Act 2016.
 - (f) Appeal written submission, prepared by the appellant's agent, dated 31 July 2025, emailed to the Tribunal and other party to the appeal, 1 August 2025, that is post hearing. The submission included marked up proposal plans and detail survey dated 2 March 2021 as requested at the hearing, by the tribunal, to demonstrate site levels.
 - (g) *The Planning Act 2016 (PA).*
 - (h) *The Planning Regulation 2017 (PR).*
 - (i) *The Development Application Rules.*
 - (j) *The Building Act 1975 (BA).*
 - (k) *The Building Regulation 2021 (BR).*

- (l) The Queensland Development Code (QDC) Part MP 1.2.
- (m) Noosa Plan 2020.
- (n) The Noosa Shire Council Interactive Mapping.
- (o) The National Construction Code 2022 (NCC).
- (p) The verbal submissions made by the parties at the hearing and during the site inspection.
- (q) Google Maps and Streetview.

Findings of fact

21. The tribunal makes the following findings of fact—

- (a) The hearing for the appeal was held at the appellant's home and subject site, on 11 July 2025. The existing residence no longer provides a garage, as the original garage that was under the main roof, has been incorporated into the habitable living areas.
- (b) The tribunal was informed that the appellant required two covered car parking spaces, and that the original double garage was not sufficiently sized, to provide cover for his work vehicle. Further we were advised that the appellant owned a boat and required a safe area off road, to safely secure the asset.
- (c) At the hearing the appellant reiterated justification for the allowance of a new double width enclosed garage to be built within the front setback area. Weather protection and security for the vehicles was a priority and the appellant argued that the proposal would have a negligible impact on the streetscape, which was varied and inconsistent in character.
- (d) The Council representatives advised that it uses the immediate vicinity (visible up and down the street from the property in question) as their definition of streetscape, and in that context, other properties did not have approved carports or garages in the setback zone.
- (e) The design documentation for the garage indicates a street setback of 1.764m on the southern corner and 0.936m setback on the northern corner. The garage design demonstrates a solid rendered masonry structure, with a high-level fixed glass panel on the side walls and a pitched roof skillion roof concealed behind a low-level parapet.
- (f) The works included cutting into the site and retaining, to facilitate a level pad approximately 13m wide and 9.5m deep. This would provide an area large enough for the garage and an additional vehicle, trailer or boat to be situated safely within the site.
- (g) The existing dwelling's road boundary setback varies between 8-10m. The proposed garage plans show an approximate distance of 1.260m between the rear of the structure and the roof line of the dwelling.
- (h) Council's referral agency response to the assessment manager, to refuse the building application was based on their assessment against the Noosa Plan 2020 – Low Density Residential Zone Code, specifically—

PO9 Buildings and structures are designed and sited to;

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

- (i) Council found and stated in part:

It has been considered that the design and location of the proposed garage within the 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 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 within the road boundary setback.

- (j) Bursaria Street is not a straight road, nor it is a level. The appellant's site is the fourth allotment on the eastern side, at the northern end where it intersects with Calliandra Grove. As you round the turn into Bursaria Street from Calliandra Grove, you cannot see the appellant's property. This is due to the larger allotment sizes, existing mature landscape and the rising but gentle grade of the road. This is despite the fact that these allotments are predominantly unfenced across their frontage. The road is practically at its highest point alongside the appellant's frontage and then it falls noticeably and curves round more to the east as you head south. Looking past the appellant's property towards that end of Bursaria Street it is similarly difficult to observe neighbouring homes.
- (k) Bursaria Street borders the vast nature reserve that aligns the western extremity of Peregrin Beach. This natural bushland reserve is reflected along Bursaria Street through the adoption of informal native gardens.

The Queensland Development Code (QDC)

22. QDC MP 1.2 applies to new building work for single detached dwellings, Class 1 and associated Class 10 buildings and structures on lots 450m² and over in area.
23. QDC Acceptable Solutions A1 and A2 outline the required building line setbacks from the road, side and rear boundary lines.
24. However, despite the provisions outlined in the QDC, a local government may adopt alternative boundary clearances and site cover provisions for Class 1 and 10 buildings in their local planning scheme. The provisions of the QDC apply to the extent that a local planning scheme does not opt to provide alternative provisions.

The Noosa Plan 2020

25. Part 1.6 of the Noosa Plan 2020 provides that 6.3.1 Low density residential zone code provides alternative provisions under section 33 of the *Building Act 1975* to the QDC for setback and site cover provisions for a dwelling house or a class 10 building or structure located on the same lot as a dwelling house.
26. Acceptable outcome AO9.1 of the Low density residential zone code states:

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

- (a) has frontage to more than one road;*
(b) is less than 600sq/m in area; or

(c) is less than 15m in width.

27. As the appellant's design does not meet the acceptable outcomes of AO9.1, assessment must be made by Council and not the assessment manager, against all of the performance outcomes stated at PO9, which states:

Buildings and structures are designed and sited to:

(a) provide a high level of amenity to users of the subject site and adjoining premises, including provision of visual and acoustic privacy and access to sunlight;

(b) not unreasonably obstruct views or cause overlooking of private open space or habitable areas of adjoining premises;

(c) provide adequate distance from adjoining land uses;

(d) preserve existing vegetation that will help buffer development;

(e) allow for space and landscaping to be provided between buildings including adequate area at ground level for landscaping with trees, shrubs and outdoor living;

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

(g) protect the natural character and avoid adverse impacts on ecologically important areas such as national parks, waterways and wetlands.

28. Council's Referral Agency Response states that the proposed works does not comply with and cannot be conditioned to comply with the performance criteria stated at PO9(f). Council has not stated any matters relating to any of the other performance criteria set out at PO9.
29. It has been submitted on behalf of the appellant that the Tribunal ought to take into consideration '6.3.1.2 Purpose and overall outcomes' of the Low Density Residential Zone Code.
30. As indicated at paragraphs 8 and 14, the application was referred to Council as a referral agency for a design and siting assessment as the proposed design did not achieve acceptable outcomes under the code, an alternative provision under section 33 of the *Building Act 1975* and section 1.6 of the planning scheme. The referral trigger in this case is the one in which a proposed development would not achieve a quantifiable standard for a relevant qualitative statement under the applicable alternative provision¹.
31. Whilst the Purpose and overall outcome cited constitute a qualitative statement, there is no quantifiable standard specified under the code for this statement.
32. The tribunal finds that the absence of a quantifiable standard for the 6.3.1.2 Purpose and overall outcome (as a qualitative statement) rules it out as a trigger for the referral in this case, and therefore the purpose and overall outcome do not form assessment benchmarks for the design and siting assessment of the proposed development.
33. Therefore, based on its finding that the Purpose and overall outcomes are not assessment benchmarks for the development, the tribunal must determine the appeal against the stated performance criteria at PO9, specifically—

(f) be consistent with the predominant character of the streetscape.

¹ See item (b) in column 2 of Table 3—Design and siting, division 2, part 3, schedule 9 of the *Planning Regulation 2017*

34. The building application and referral advice process involved communication through the assessment manager, between the appellant and council, causing revisions of the design to be made and considered, before the assessment manager's decision was determined. The Tribunal must consider the design that has been refused.
35. Section 254(3) of the PA states that the tribunal must not make a change, other than a minor change, to the development application.
36. The appellant has referred to the one enclosed garage and one single open carport within the setback in Bursaria Street. The appellant has also provided examples of garages and carports within the setback in other streets in the immediate locality. None of these examples can be viewed from the street, when standing in the street adjacent to the subject site, although one is only a few allotments away but down the road.

Reasons for the decision

37. The tribunal finds that the streetscape is relevant to those visual elements that can be observed when in the street, including the road, adjoining buildings and structures such as fences, nature strips, trees and other landscape elements.
38. Bursaria Street is a long, curving street that rises steadily from the south to the intersection with Callandria Grove at the north. The subject site is at the high point of the street.
39. More than half the allotments on one side of Bursaria Street, border Bursaria Park and the associated nature reserve. Numerous properties provide open frontages, adopting informal native gardens that reflect the reserve.
40. Building structures in the street are largely set back at least 6m.
41. The tribunal finds the combination of the street's curve and rise with generous building setbacks creates a predominant streetscape of discreet structures behind mature vegetation, particularly when viewed from the subject site.
42. The proposed double garage is a 6.4m wide x 3.2m high fully enclosed masonry structure in close proximity to a prominent point in the street. It presents as a large, unarticulated mass on the street frontage.
43. The approximately 13m width of proposed excavation, at nearly half the width of the frontage, will further expose the bulk of the structure.
44. The tribunal finds that the proposed garage would not be consistent with the predominate character of Bursaria Street due to the minimal setback, bulk and size of the build.

Debbie Johnson
Development Tribunal Chair

Date: 22 September 2025

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:

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Brisbane QLD 4001

Telephone 1800 804 833

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