



Development Tribunal – Decision Notice

Planning Act 2016, section 255

Appeal number:	25-017
Appellant:	Gary Allen
Respondent (Assessment manager)	Brett McCullagh
Co-respondent (Concurrence agency):	Noosa Shire Council
Site address:	64 Moorindil Street, Tewantin Qld 4565 and described as Lot 17 on RP 28176—the subject site

Appeal

Appeal under section 229 and schedule 1, section 1, table 1, item 1(a) of the *Planning Act 2016* against the decision of the Assessment Manager, as directed by the Concurrence Agency, for refusal of a Development Permit for Building Works for a Class 1 structure, being a residence, on a residential site. The decision was made after Noosa Shire Council directed refusal of the application, citing non-compliance with the Noosa Plan 2020 Low Density Residential Code PO9, specifically subparagraphs (a), (c), (d), (e), and (f).

Date and time of hearing:	1 pm 9th July 2025
Place of hearing:	The subject site
Tribunal:	Anthony Roberts—Chair Catherine Baudet—Member
Present:	Gary Allen—Appellant Marcus Brennan—Town Planner, Appellant's agent Jason Devine and Chris Mogg—Noosa Shire Council

Decision

The Development Tribunal (Tribunal), in accordance with section 254(2)(d) of the *Planning Act 2016* sets aside the decision of the Assessment Manager and orders the Assessment Manager to remake the decision within 30 days of the date of this decision taking into account the findings of this Tribunal.

Background

1. The subject site is:
 - a. gently sloping north to south across the site;
 - b. 507.15m² in area containing a two-storey house and newly landscaped grounds (including new timber fencing on the north and west boundaries and a concrete block fence on the southern boundary).
 - c. zoned Low Density under the Noosa Plan 2020.
2. The existing 'Queenslander' house on site has recently been raised 0.6m in situ to create ground-floor useable space (including a rumpus room, laundry, bathroom, storage and parking). The upper floor has been refurbished (including a kitchen, dining and living area, two bedrooms and a bathroom). A new front stair has been constructed perpendicular to the front of the house.
3. Retrospective approval is being sought for the development. As constructed, the house sits:
 - a. 3.8m from the front stair's outermost projection to the road boundary;
 - b. 5.3m from the eave's outermost projection to the road boundary with the front wall 5.61m from the road boundary;
 - c. 0.11m from the northern side boundary to the eave and 0.45m to the wall, and;
 - d. 0.53m from the southern side boundary to the eave and 0.83m to the wall.
4. The structure triggers assessment against the relevant performance criteria of the Noosa Planning Scheme 2020, Low Density Residential Zone Code (Tewantin Local Plan Area) due to noncompliance with Acceptable Outcome AO9.1 of the Low Density Residential Code. Consequently, the Assessment Manager lodged with Noosa Shire Council a request for a Referral Agency Response for the building work on 27 March 2025.

On 30 April 2025, Council issued a Referral Agency Response directing the Assessment Manager to refuse the application for the following stated reasons:

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:

- 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;**

It is Council's view that the proposed dwelling height increase, reduced northern and southern boundary side setbacks and extensive northern side boundary masonry wall construction in no way contributes to the amenity of the adjoining premises.

- b) **provide adequate distance from adjoining land uses;**

The design and location of the building works, together with the building works to the northern and side boundary, does not provide an adequate distance from the adjoining land uses.

d) preserve existing vegetation that will help buffer development;

The location of the building work required removal of existing vegetation from the road boundary streetscape

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;

The siting of the dwelling does not allow space and landscaping to be provided between the buildings.

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

It has been considered that the location of the proposed covered stair structure 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 building and structures providing a greater road boundary setback than the current proposal. Additionally, the current proposal provides an exceedingly dominant structure located within the road boundary setback.

5. Notably, the Council's response stated that it has undertaken compliance investigations and commenced enforcement action in relation to the alleged non-permitted building work already undertaken.
6. The Assessment Manager issued a decision notice on 12 May 2025 refusing the development based exclusively on the referral agency response from Council.
7. The Appellant subsequently appealed this decision by lodging with the Registrar a Form 10 – Notice of Appeal on 9 June 2025.
8. The hearing for the appeal was held at the subject site on 9 July 2025 at 1pm. The Tribunal had the opportunity to view the positioning of the structure from the subject site, neighbouring properties, and the streetscape more generally.
9. At the hearing, the Council representatives highlighted that compliance and enforcement action was on foot related to alleged non-compliance with the *Planning Act 2016* and the *Building Act 1975* - particularly the fire safety requirements of the latter.

Material considered

10. 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 9 June 2025
 - b. The Planning Act 2016 (PA)
 - c. The Planning Regulation 2017 (PR)
 - d. The Building Act 1975 (BA)
 - e. The Building Regulation 2006 (BR)
 - f. The Queensland Development Code MP1.2 2020 (QDC)
 - g. The Noosa Plan 2020 (Noosa Plan)
 - h. The Noosa Plan 2020 Low Density Residential Code (the Code)

- i. The verbal submissions made by the parties at the hearing and during the site inspection.

Jurisdiction

11. 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 Appellant against the refusal of the development application by the Assessment Manager at the direction of the Concurrence Agency.

Decision framework

12. Pursuant to section 253(4) of the PA, the Tribunal is required to hear and decide the appeal by way of a reconsideration of the evidence that was before the Assessment Manager. 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 the PA (pursuant to which the registrar may require information for tribunal proceedings).
13. The Tribunal is required to decide the appeal in one of the ways mentioned in section 254(2) of the PA.
14. 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.
15. 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), as it relates to a deemed refusal and is 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].
 - (3) However, the tribunal must not make a change, other than a minor change, to a development application.
16. 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.

17. The Noosa Plan and the Code contain alternative provisions to the QDC. Acceptable Outcome AO 9.1 of the Code as applied to the subject site requires buildings and structures to have a setback of 6m from the road frontage boundary. As the proposal does not meet Acceptable Outcome AO 9.1, it must be demonstrated to meet relevant Performance Outcomes of the Code namely, PO9.
18. Additionally, as the dwelling incorporates a solid block wall exceeding 9m in length adjoining the northern side boundary, it does not conform with QDC MP 1.2 clause A2(d)(ii) and therefore is to be assessed against provisions AO9.3 and PO9 of the Code of the Noosa Plan.

Findings of fact

19. The Tribunal makes the following findings of fact:
20. In relation to the grounds for refusal identified by Council, the Appellant contends that:
 - a. the dwelling house was simply raised 0.6m to allow a habitable downstairs area to be established and that - except for the new front stairs – all existing setbacks have been maintained;
 - b. the gatehouse structure shown on the building plans considered by Council was not built and so the potential visual impact of the development is substantially diminished;
 - c. the development provides a high level of amenity and usability to occupants and does not negatively impact the amenity of neighbouring properties - but rather enhances visual and acoustic privacy;
 - d. the streetscape in Moorindil Street is visually diverse due to the varied land uses and inconsistency of setbacks of buildings and structures and the development is both compatible and harmonious with the existing streetscape;
 - e. the existing vegetation at the front of the house was lawfully removed and was low quality;
 - f. the development has made a positive contribution to the streetscape by retaining and re-presenting a traditional 'Queenslander' – which could have been lawfully removed and replaced with a modern dwelling with less architectural merit and no heritage significance;
 - g. there are examples in the vicinity of the site where structures are situated within the required 6m front setback;
 - h. the development, as built, satisfies Performance Outcome PO9 of the Code.
21. In relation to the grounds for refusal, Council contends that:
 - a. the design and location of the development is not consistent with the predominant character of the streetscape which 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';
 - c. examples of other properties in the vicinity of the site where buildings and structures are within the required front setback are not a valid precedent as they are either approved under the previous planning scheme or unlawful structures which are likely to be subjected to enforcement action by Council;
 - d. the northern and southern side boundary setbacks are insufficient to protect the amenity of neighbouring dwellings and the solid block wall introduced adjoining

- the northern boundary has significantly reduced visual amenity for the northern neighbour;
- e. the side setbacks resulting from development do not allow space for landscaping to be provided between the dwelling and neighbouring dwellings;
 - f. the development as (unlawfully) constructed cannot meet the Performance Outcome requirements of PO9 of the Code (nor the requirements of the BA).

PO9(a) amenity/PO9(c) adequate distance from adjoining land uses

- 22. The Tribunal considers that the development, which retains, but raises, the existing dwelling house in situ, has maintained pre-existing side boundary setbacks and consequent separation distances from neighbouring dwellings.
- 23. In respect of amenity considerations, the Tribunal considers that while the development will provide a high level of amenity for occupants and improve acoustic and visual privacy for adjoining dwellings to the North and South (due to placement of windows in the upper level above eye height and the incorporation of a solid block wall downstairs), it results in diminished visual amenity for the northern neighbour due to the introduction of the downstairs solid block wall. This situation is due in the main to the absence of boundary fencing along the length of the dwelling which could be remedied with the addition of a screen fence in this location.

PO9(d) preserve existing vegetation/PO9(e) space/landscaping between buildings

- 24. In respect of open space and landscaping considerations, the Tribunal agrees with Council that there is insufficient space on the side alignments of the dwelling to introduce landscaping. However, while it is regrettable that existing buffering vegetation was removed at the front of the property as part of the development, potential exists for new buffering landscape elements to be introduced to further soften the development from a streetscape perspective.

PO9(f) consistent with the predominant character of the streetscape

- 25. At the hearing, the parties agreed that the spatial extent of the streetscape relevant to the development ran from the Poinciana Avenue to Crank Steet intersections. However, there remains disagreement (in the absence of a definition in the Noosa Plan) as to what elements constitute the applicable 'streetscape' for the purposes of the appeal. Council put forward that only buildings and structures should be in consideration while the appellant proffered that such things as landscaping and the width of verges are relevant considerations.
- 26. Based upon the site inspection conducted at the hearing, the Tribunal finds Moorindil Street to be a 'busy road' with wide verges which presents both a mixed streetscape, due principally to the presence of non-residential uses (in the Poinciana Avenue vicinity), and a variable streetscape in terms of the variety of architectural styles, setbacks and landscape elements.
- 27. It is predominantly the case, utilising Council's preferred definition of streetscape, that the streetscape framing the subject site exhibits a pattern of buildings and structures 'providing greater road boundary setback than that of the current proposal'. However, this is solely attributable to the introduction of the front stairs which protrude beyond the existing front building line for the dwelling.

28. The Tribunal notes that the focus of Council's concerns relating to streetscape impact and associated reference to 'exceedingly dominant structure' in the Referral Agency Response was on the gatehouse structure - which was not actually constructed, and is no longer proposed. In this light, the front stairs, as constructed, are inconspicuous from a streetscape perspective and are not inconsistent with the predominant character of the streetscape. This is particularly the case given the sightlines along the approaches to the subject site.
29. The Tribunal notes there are several examples in the streetscape where structures intrude into the required 6m front setback. Some of these are historical (pre-dating the Noosa Plan) with the more recent 'unlawful' examples potentially subject to compliance and enforcement action by Council.
30. With respect to these examples, Council contends that any unapproved structures or approved structures that pre-date the requirements of the current Noosa Plan should be disregarded for the purposes of consideration of the subject site.
31. The Tribunal is nevertheless inclined to the view that the presence of these structures (approved or otherwise) does form an integral component of the established streetscape from a layperson's perspective.

Reasons for the decision

32. In this appeal, the Tribunal - having reconsidered the evidence before the decision maker together with the written and oral submissions in the appeal process – determines that the Appellant has satisfied the onus of demonstrating the appeal should be upheld as the provisions of Performance Outcome PO9 of the Noosa Plan have been satisfied.
33. The Tribunal found that Moorindil Street exhibits both a mixed streetscape, due principally to the presence of non-residential uses and a variable streetscape in terms of the variety of architectural styles, setbacks and landscape elements.
34. The Tribunal's view is that the development, which involved the retention and re-presentation of a 'Queenslander', while preserving existing building setbacks, constitutes a positive contribution to the streetscape with potentially enhanced amenity to neighbouring dwellings.
35. Further, noting Council's concerns regarding streetscape impact of an 'exceedingly dominant structure' related to a gatehouse structure which was not constructed and the inconspicuousness of the substituted front stairs from a streetscape perspective, the Tribunal has determined that the development is consistent with the predominant character of the streetscape.
36. To remedy the potentially diminished visual amenity for the northern neighbour due to the introduction of the downstairs solid block wall, a screen boundary fence is required along the common boundary aligned with the subject dwelling.
37. As the Tribunal understands that compliance and enforcement action in relation to alleged non-compliance with the PA and BA (particularly the fire safety) requirements is underway and consequently the ability of the development to meet BA requirements is in question, it is considered appropriate (pursuant to section 254(2)(d) of the Planning Act 2016) to set aside the Assessment Manager's

decision and order the Assessment Manager to remake the decision taking into account the findings of this Tribunal within 30 days of the date of this decision.

Anthony Roberts

Development Tribunal Chair

Date: 21 August 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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