Development Tribunal – Decision Notice

***Planning Act 2016*, section 255**

Appeal number:	**25-022**
Appellant:	Rene Fontyne
Respondent (Assessment manager):	Cian Corcoran, Project BA
Co-respondent (Concurrence agency):	Noosa Shire Council ("Council")
Site address:	4 The Anchorage, Noosaville Qld 4566 – formally described as Lot 770 on RP910419 ("subject site").

Appeal

Appeal under section 229(2) and schedule 1, sections 1(1)(b) and 1(2)(g), and table 1, item 1(a), of the *Planning Act 2016* ("the PA") against the assessment manager's decision to refuse the appellant's application for a building works development permit for an extension and alteration to a dwelling house, primarily in the form of the extension to a garage into a street frontage setback area ("the application").

Date and time of hearing:	Wednesday, 27 August 2025, at 11.00am
Place of hearing:	The subject site
Tribunal:	Neil de Bruyn—Chairperson Elisa Knowlman—Member
Present	Cian Corcoran—Assessment Manager Luke Neller—Appellant's representative Chris Mogg—Council representative Jason Devine—Council representative

Decision

1. The Development Tribunal ('the Tribunal'), in accordance with section 254(2)(a) of the PA, **confirms** the decision of the assessment manager to refuse the application.

Background

2. The subject site consists of a residential lot with an area of 1,049m² and described as Lot 770 on RP910419. The subject site has direct frontage to The Anchorage, which forms its southern boundary. The subject site is located within the Noosa Shire Council local government area. The immediate vicinity of the subject site is characterised by low density residential land uses.

3. The subject site is included within the Low Density Residential Zone under the Noosa Plan 2020, being the current and applicable planning scheme for the subject site ("the planning scheme").

4. The subject site contains a substantial dwelling house and associated domestic facilities.

5. The appellant proposes to extend the garage of the dwelling house towards the street frontage in order to create a new storage room at the rear of the extended garage. The proposed storage room will occupy the full width of the garage (6.7m, including the width of the external walls) and is to be 2.968m in depth. Presumably to compensate for the lost garage space, the garage is to be extended by approximately 5 to 6m towards the street frontage. Based upon the submitted design plans, this will result in a minimum frontage setback to the outermost projection of the extended garage of 3.114m. This setback will apply to the western corner of the extended garage. The tribunal was informed, at the hearing, that the corresponding eastern corner will be to a setback of 4.1m. Based on the design plans, the proposed garage extension will incorporate blank side walls and a height of 3.7m.

6. The appellant engaged the assessment manager to assess the required building works development application. There is no information before the tribunal as to the specific date upon which this engagement occurred.

7. Pursuant to schedule 9, part 3, division 2, table 3 of the *Planning Regulation 2027* ("the PR"), assessable building works such as that the subject of this appeal that does not meet applicable assessment benchmarks for design and siting are to be referred to the applicable local government as a concurrence agency.

8. In this case, building works involving a dwelling house or a Class 10 building located on the same lot are subject to the design and siting assessment benchmarks of the Low Density Residential Zone Code ("the code"), identified for section 33 of the *Building Act 1975* and in section 1.6 of the planning scheme as being alternative design and siting provisions to those provided under the Queensland Development Code.

9. Acceptable outcome AO9.1 of the code provides that, in the case of the subject site, buildings and structures are to have a setback of 6m from the road frontage. Clearly, the proposed garage setbacks of 4.1m and 3.114m will not achieve this assessment benchmark. Accordingly, the applicable assessment benchmark for the concurrence agency's assessment is the associated performance outcome ("PO") for AO9.1, being PO9 of the code.

10. PO9 provides that 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.*

11. In its referral agency response dated 27 June 2025, Council directed refusal of the application, on the grounds that the proposed development does not comply with, and cannot be conditioned to comply with, PO9(f). The specific reasons for this direction were stated to be as follows:

> *It has been considered that the location of the proposed enclosed garage addition 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 located within the road boundary setback.*

12. In a decision notice dated 16 July 2025, the assessment manager gave notice of his decision to refuse the application. The reason for this refusal is stated to be the concurrence agency direction by Council. No other reasons for this refusal were given.

13. The appellant duly lodged this appeal with the tribunal registrar on 17 July 2025.

14. A site inspection was held on the subject site on Wednesday, 27 August 2025, at 11.00am.

Jurisdiction

15. Section 229(1) of the PA provides that schedule 1 ("the schedule") of the PA states the matters that may be appealed to a tribunal.

16. Section 1(1)(b) of the schedule provides that the matters stated in table 1 of the schedule ("table 1") are the matters that may be appealed to a tribunal. However, section 1(2) of the schedule provides that table 1 only applies to a tribunal if the matter involves one of the matters set out in section 1(2).

17. Section 1(2)(g) provides that table 1 applies to a tribunal if the matter involves a matter under the PA, to the extent the matter relates to the *Building Act 1975* ("BA"), other than a matter under that Act that may or must be decided by the Queensland Building and Construction Commission.

18. This appeal involves a matter under the PA, that relates to the BA, that is not one that may or must be decided by the Queensland Building and Construction Commission.

19. Table 1 thus applies to the tribunal in this appeal. Accordingly, the tribunal is satisfied that it has jurisdiction to hear and decide this appeal.

Decision framework

20. Generally, the onus rests on an appellant to establish that an appeal should be upheld (section 253(2) of the PA).

21. The tribunal is required to hear and decide an appeal by way of a reconsideration of the evidence that was before the person who made the decision appealed against (section 253(4) of PA).

22. 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 PA.

23. The tribunal is required to decide an appeal in one of the ways mentioned in section 254(2) of the PA, and the tribunal's decision takes the place of the decision appealed against (section 254(4)).

24. The tribunal must not make a change, other than a minor change, to a development application (section 254(3)).

Material considered

25. The material considered in arriving at this decision was:

    a) Form 10 Notice of Appeal lodged with the tribunal registrar on 17 July 2025.

    b) The assessment manager's decision notice dated 16 July 2025.

    c) Council's referral agency response dated 27 June 2025, directing refusal of the application, including the submitted design plans.

    d) The *Planning Act 2016* and the *Planning Regulation 2017*.

    e) The *Building Act 1975*.

    f) *Noosa Plan 2020*.

Findings

26. The development application required referral to Council under schedule 9, part 3, division 2, table 3, item 1(b) of the PR.

27. As stated in paragraph 20 above, the onus rests on the appellant to establish that this appeal should be upheld.

28. Council directed refusal of the application based upon its conclusion as stated in paragraph 11 above, to the effect that the non-compliant road frontage setbacks of the proposed garage extension would be inconsistent with the predominant character of the streetscape, which it considered to be predominantly characterised by buildings providing a greater road boundary setback than that of the proposed extension.

29. At the inspection and hearing of this appeal, the tribunal walked the full length of The Anchorage to get a detailed appreciation of the character of the local streetscape. The tribunal's observations and findings in this regard were consistent with the Council's characterisation of the streetscape in paragraphs 11 and 28 above.

30. That is, the tribunal finds that the local streetscape is predominantly characterised by *buildings* displaying compliant and generous frontage setbacks, albeit that a number of

dwelling houses in the street do include significant *structures* within the 6m setback area, in the form of boundary walls, fences and small gatehouses. The tribunal finds that, whilst the existence of these structures does go some way to defining the local streetscape character, their visual impact is significantly less than would be the case with the proposed 3.7m high garage building and its blank side walls protruding to only 3 to 4m from the applicable lot frontage.

31. The tribunal also notes that the proposed garage extension to as little as 3.114m from the road frontage would result in any vehicle parked on the driveway protruding significantly into the road reserve of The Anchorage, thereby potentially affecting the safe and efficient use of the relevant road verge by pedestrians. The tribunal finds that this impact would be inconsistent with PO9(a) of the code, which provides that "*buildings and structures are designed and sited to provide a high level of amenity to users of the subject site and adjoining premises …"*

32. In this case, the tribunal finds that appellant has not provided any evidence that would lead to an alternate conclusion regarding the proposed garage extension's impact on streetscape character and local amenity. At the hearing, the assessment manager made reference to numbers 32 and 40 The Anchorage, as providing examples in which buildings and/or structures are located within the applicable 6m frontage setback area, as well as to the various gatehouses located on the frontages of various premises within the street.

33. In relation to the above examples mentioned by the assessment manager, the tribunal finds that the two dwelling houses are located a significant distance to the west of the subject site along The Anchorage and, by virtue of this separation distance and the curvature of the street, that these premises do not influence the character of the local streetscape of the subject site. The tribunal also finds that the front setback incursions of these two examples are isolated and relatively minor in nature, and that these do not provide sufficient weight to override the tribunal's above-mentioned findings as to the predominant streetscape character.

34. Whilst the tribunal acknowledges the appellant's very reasonable desire to provide a dedicated storage room within the subject dwelling house, the tribunal nonetheless notes that the garage could be extended by no more than the 2.968m depth of the proposed storeroom, which, it would appear, would potentially avoid the need for any incursion, or significant incursion, into the 6m frontage setback.

35. In this regard, the tribunal finds that the character of the streetscape, and the overwhelmingly compliant nature of building setbacks to the street, are such that the proposed development could not be conditioned to comply with PO9(f), as any building setback less than the 6m benchmark would be inconsistent with PO9(f).

36. In this regard, the tribunal also finds that if it were to impose a condition requiring compliance with the 6m assessment benchmark, this would probably result in a substantially different development, and result in a change to the development that would therefore be inconsistent with section 254(3) of the PA, as stated in paragraph 24 above.

37. The tribunal also finds that it would not be able to condition the proposed development to comply with PO9(a) of the code.

38. Based on the above analysis, and in the absence of any evidence provided to the contrary by the appellant, the tribunal finds that the proposed development would not comply with, and could not be conditioned to comply with, PO9(a) and (f).

39. Accordingly, the tribunal finds that the appellant has not established that this appeal should be upheld.

Reasons for the decision

40. The tribunal, in accordance with section 254(2)(a) of the PA, has decided this appeal as set out in paragraph 1 above.

41. The tribunal's reasons for this decision are that it has found that the application does not comply with the matters a referral agency's assessment must be against, in the form of PO9(a) and (f) of the code, and that the appellant has not provided any evidence to demonstrate otherwise, or to otherwise establish that this appeal should be upheld.

Neil de Bruyn
Development Tribunal Chair
Date: 18 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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GPO Box 2457
Brisbane Qld 4001

Telephone 1800 804 833

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