



Development Tribunal – Decision Notice

Planning Act 2016, section 255

Appeal number:	23-002
Appellant:	David Macarthur-King (owner)
Respondent: (Assessment manager)	Don Grehan
Co-respondent: (Concurrence agency)	Noosa Shire Council
Site address:	28 Griffith Avenue, Tewantin, Qld 4565. described as Lot 197 on R 175927 – the subject site

Appeal

Appeal under section 229(1)(a)(i) and schedule 1, table 1, item 1(a) of the Planning Act 2016 against the decision of the respondent to refuse the development application for building work (RAB22/0153) at the direction of the concurrence agency, Noosa Shire Council.

(For clarity, Council required that the development application for building work for a garage be refused because the proposed work did not meet the performance outcomes of the Noosa Shire Planning Scheme's Low Density Residential Code with respect to the proposed garage's setback from the front property boundary).

Date and time of hearing:	Wednesday 1 March 2023 at 2.00 pm
Place of hearing:	The subject site
Tribunal:	Derek Kemp – Chair Elizabeth Anderson – Member
Present:	David Macarthur-King (Owner and Appellant) Marcus Brennan (of Brennan Planning, Appellant's Agent) Brad Geaney (Noosa Shire Council, Respondent) Jarrad Postle (Noosa Shire Council, Respondent)

Decision

1. The Development Tribunal, in accordance with section 254(2)(c) of the *Planning Act 2016* **replaces** the decision of the Assessment Manager to refuse the development application for building work (RAB22/0153) with a decision to approve the development application for building work (RAB 22/0153) with the following conditions:

- a. The building work to conform to the plans and specifications bearing the Reference Number RAB22/0 Dated 14/10/2022 (Pacific BCQ Reference Number 20220260). (Further identified as 'Document Set ID:22102496, Version:1, Version Date:14/09/2022')
- b. Such other conditions, as the assessment manager reasonably requires to ensure compliance with the building assessment provisions.

Background

The Proposal

2. The subject site is a rectangular, level block with a site area of 1,040 square metres with a 34.783 metre frontage to Griffith Avenue, Tewantin. The subject site is located with its frontage located on the inside curvature at this part of Griffith Avenue.
3. There is a single storey dwelling built on the subject site that incorporates an enclosed garage that is set back a minimum of approximately 4.5 metres from the Griffith Avenue frontage. (Council has advised that this structure was approved as an open carport at the front with enclosed store and den at the rear with a minimum approved front boundary setback of 6.0 metres (email from Brad Geaney to the Tribunal Registrar on 17 March 2023)).
4. A second garage is proposed that would have a frontage of 6 metres and a minimum set back of 4.515 metres to Griffith Avenue (RAB22/0153 Pacific BCQ reference number 20220260 refers).
5. The proposed second garage would have a length of 9.3 metres, a width of 6.0 metres, a maximum height of 3.5 metres to the eave, and a maximum height to the roof ridge line of 3.9 metres (RAB22/0153 Pacific BCQ reference number 20220260 refers).

Refusal of the Application

6. On 14 October 2022, Council directed that the Development Permit for Building Work (RAB 22/0153) be refused based on non-compliance with the Noosa Shire Council 'Low Density Residential Code' Performance Criteria, Performance Outcome PO9 provision f). (Noosa Shire Council Referral Agency Response dated 14 October 2022).
7. With respect to the proposed second garage the relevant performance outcome of that Low Density Residential Code is:
'PO9 Buildings and structures are designed and sited to;...
f) be consistent with the predominant character of the streetscape'.

Nearby developments

8. The property immediately to the west (30 Griffith Avenue, Tewantin) is a single storey detached house set back approximately 6 metres from the Griffith Avenue front property boundary; with its integrated garage set back approximately 2.25 metres (with no windows) from the common side boundary with the subject property nearest the proposed garage.
9. The property immediately to the east (26 Griffith Avenue, Tewantin) is a single storey detached house set back approximately 6 metres from the Griffith Avenue frontage, with a low (approximately 1.5 metre high) vertically slatted picket fence along the front property boundary. (The Tribunal noted this fence has the appearance of a solid fence when viewed from the verge approaching this property and the subject property from the east because of

the curvature of Griffith Avenue.).

10. The next property further east (24 Griffith Avenue) is a single storey detached house set back approximately 6 metres from Griffith Avenue with a 1.8 metre high solid 'colourbond' fence along the Griffith Avenue front property boundary.
11. Other nearby properties are predominantly single storey properties with the exception of one double storey house set well back from Griffith Avenue located well away from the subject site on the opposite side of Griffith Avenue. (The Tribunal's site inspection found this house did not form part of the streetscape providing a view of the subject property).
12. The Tribunal noted a similar sized garage, to the one proposed on the subject site, set back 4.5 metres from Harlow Crescent which runs off Griffith Avenue opposite the subject site. This Harlow Crescent garage forms part of the property at 45 Griffith Avenue, developed with a single storey house fronting Griffith Ave.
13. At the site inspection the Tribunal's found this Harlow Crescent garage formed part of the streetscape providing a view of the subject property from Harlow Street.

Material considered

14. The material considered in arriving at this decision comprises:
 - a. 'Form 10 – Notice of Appeal/ Application for Declaration', being the grounds for appeal and correspondence accompanying the appeal lodged with the Tribunals Registrar on 17 January 2023, including the written advice from the appellant's town planner about the front boundary setbacks of various structures and buildings in Griffith Avenue, Palmer Avenue and Cedarleigh Avenue.
 - b. Planning Regulation 2017 (PR)
 - c. Planning Act 2016 (PA)
 - d. Noosa Shire Planning Scheme 'Noosa Plan 2020' - 'Low Density Residential Code'
 - e. Queensland Development Code 'MP 1.2' Published 11 March 2010
 - f. Verbal representations at the tribunal hearing on 1 March 2023.
 - g. Further advice about the setbacks of the proposed garage and the setbacks of other nearby west-backs of other structures (conveyed by email from Marcus Brennan to the Tribunal Registrar on the 15 March 2023).
 - h. Advice from Noosa Shire concerning the setback of the approved carport on the subject site (now enclosed and extended at the time of the Tribunal's site inspection), and comments about the lack of approval, and Council's intention to take action in relation to some of the structures within the 6 metre front boundary setbacks on some of the properties being used to justify the proposed garage on the subject property (conveyed by email from Brad Geaney to the Tribunal Registrar on the 17 March 2023).

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, other than a matter under that Act that may or must be decided by the Queensland Building and Construction

Commission.

18. 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

19. Generally, the onus rests on an appellant to establish that an appeal should be upheld (section 253(2) of the PA).
20. 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); however, 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.
21. 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)).
22. The tribunal must not make a change, other than a minor change, to a development application (section 254(3)).

Findings of fact

23. The Tribunal finds that there is no one type of predominant streetscape in Griffith Avenue given the following site conditions:
- a. nearby properties having different building setbacks, some dwellings being set back as little as 3.5 metres from the front property boundary
 - b. some car ports and sheds being built nearly up to the front property boundary
 - c. some garages attached to dwellings built within the 6 metre setback from their front property boundary
 - d. high, solid 'colourbond' and timber fences, up to 1.8 metres high, being built along the front property boundaries, and
 - e. high, solid fences up to 1.8 metres high being built along the side property boundaries up to the front property boundary of some properties.
24. The Tribunal finds the existing landscape verge between the formed road and the front property boundaries in Griffith Avenue to be particularly wide at 4.4 metres in width.
25. The streetscape featured a number of clusters of large mature and thick street trees.
26. The streetscape view of the subject property and the proposed garage is significantly diminished in both directions by the curvature of Griffith Avenue and the nearby boundary fencing, landscaping and mature trees.

Reasons for the decision

27. The Tribunal formed the opinion that the 4.4 metre wide verge with its mature trees was the only consistent, prominent feature of the existing Coreen Avenue streetscape.
28. The Tribunal formed the opinion that this wide verge and mature trees, and the curvature of Griffith Avenue afforded the ability of structures to be built close to front property boundaries.

29. The Tribunal considered the proposed garage to be consistent with the Performance Outcomes MP 1.2 and Performance Criteria P2 of the Queensland Development Code.
30. The Tribunal concurs with the view of the representatives of the Council and the appellant expressed at the hearing that the minor 200mm excess length and the minor increase in average height of the proposed garage above the Acceptable Solution for Performance Outcomes MP 1.2 in the Queensland Development Code is 'not a serious concern'.
31. The Tribunal concurs with the view of the representatives of the Council and the appellant expressed at the hearing that the only grounds for refusal to be considered is the location of the proposed garage with respect to the front boundary setback.
32. The Tribunal was advised by the appellant that a smaller garage complying with a 6 metre setback was not possible because a garage of the proposed dimensions was required to house a caravan described as 9.1 metres long, 2.5 metres wide and 3.2 metres high.
33. The Tribunal formed the opinion that the proposed garage with its 4.5 metre minimum front boundary setback would have very little, if any, discernible visual impact on the streetscape other than that which would result from a garage of the same height and width located 6 metres back from the front property boundary, which would then be compliant with Acceptable Outcome 9.1 of the Noosa Shire Council '*Low Density Residential Code*'.

Derek Craven Kemp
Development Tribunal Chair
Date: 29 March 2023

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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