



Development Tribunal – Decision Notice

Planning Act 2016, section 255

Appeal number:	26-026
Appellant:	Michelle Comen and James Morris
Respondent/ Assessment manager:	Tye Lincoln
Co-respondent/ Concurrence agency:	Noosa Shire Council
Site address:	96 Clearview Drive, Lake Macdonald Qld 4563 and described as Lot 13 on RP852017—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 decision of the assessment manager to refuse an application for a development approval for a 6m x 6m shed within the 10 metre side boundary setback.

Date and time of hearing:	31 July 2026, 1100.am
Place of hearing:	The subject site
Tribunal:	Dr Christopher Robertson—Chair Lisa Lambie—Member
Present:	Michelle Comen—Appellant James Morris—Appellant Sophie McLaren—Noosa Council Brad Geaney—Noosa Council

Decision:

The Development Tribunal (Tribunal), in accordance with section 254(2)(c) of the *Planning Act 2016* (PA) replaces the decision of the assessment manager to refuse the application, with an approval on the following conditions:

- (1) The 6 x 6 shed must be located with a 6.0m setback of the immediate boundary as per submitted Site Plan in drawing 101 revision F.
- (2) That a licensed surveyor must clearly plot with survey pegs the north-western boundary immediately adjacent the proposed site for the 6 x 6 shed.
- (3) Any other reasonable conditions, not inconsistent with the above conditions, that the assessment manager sees fit to impose.

Background

1. The subject site is located on the northern-side of Clearview Drive. Aside from a container, there are no other structures on site.
2. An application was made to the Noosa Shire Council as concurrence agency for a 6m x 6m shed located 2.5m from the northern side boundary. The Council refused the application on the following bases, under the Noosa Plan 2020, Rural Zone Code:

PO8 Notwithstanding that intensive rural activities may need greater separation distances, buildings and other structures are appropriately sited and designed to:

...

(c) Mitigate risks associated with the use of chemicals or air pollutants:

 - (a) The shed '*doesn't provide adequate distance to mitigate risks associated with the use of chemicals or air pollutants that could be stored in the shed.*' Further, Council stated '*We consider that the proposed shed at a 6-metre setback mitigates risks associated with the use of chemicals or air pollutants.*'
 - (d) *avoid conflict with rural uses and activities on adjoining properties.*

(b) Council states that a 6m setback avoids conflict with rural uses and activities on adjoining properties.
3. The appellant had proposed relocating the shed to 6m setback of the boundary once the boundary has clearly been identified.

Jurisdiction

4. Section 229(1) of the Act identifies that schedule 1 ('the schedule') of the PA states the matters that may be appealed to the Tribunal.
5. Table 1 of schedule 1 of the Act states the matters that may be appealed to the Planning and Environment Court or the Tribunal subject to (in the case of the Tribunal) the preconditions stated in section 1(2) of schedule 1.
6. The Tribunal has jurisdiction to determine this appeal under section 229(1)(a)(i), schedule 1, section 1, table 1, item 1(a), and schedule 1, section 1(2)(g) of the Act.

Decision framework

7. The Appellant as the recipient of the decision notice must establish that the appeal should be upheld (under section 253(2) of the PA).
8. 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 the subject of this appeal (under section 253(4) of the PA).
9. Section 249 of the PA provides the Tribunal with broad powers to inform itself in the way it considers appropriate when hearing a tribunal proceeding and the Tribunal may seek the views of any person.

10. The Tribunal is required to decide the appeal in one of the following relevant ways set out in section 254(2) of the PA:
- (a) confirming the decision; or
 - (b) changing the decision; or
 - (c) replacing the decision with another decision; or submission
 - (d) setting the decision aside and ordering the person who made the decision to remake the decision by a stated time.

Material considered

12. The material considered in arriving at this decision was:
- (e) Form 10 Notice of appeal, grounds for appeal and correspondence accompanying the appeal lodged with the Tribunals registrar on 28 May 2026
 - (f) *Noosa Plan 2020*
 - (g) *Queensland Planning Act 2016*
 - (h) The submissions of the parties at the hearing and subsequently.

Findings of fact

13. The tribunal makes the following findings of fact:
- (a) The initial proposed location of the 6m x 6m shed (set back 2.5m) in consideration of the adjacent shed and property, and lack of boundary clarity, would not clearly comply with the Rural Zone Code.

Reasons for the decision

14. Parties agreed the revised boundary setback for the shed (6m) will ensure Rural Zone Code compliance once the boundary is clearly identified.
15. Following a site inspection where the North-Western boundary survey markers were not evident the additional condition of surveying was added to ensure distances would be easily and accurately adhered to.

Dr Christopher Robertson
Development Tribunal Chair

Date: 6 August 2026

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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