



Development Tribunal – Decision Notice

Planning Act 2016, section 255

Appeal number:	26-037
Appellant:	Jochen Kassan
Respondent/ Assessment manager:	Jared Tarlinton, Certified BA
Co-respondent/ Concurrence agency:	Noosa Shire Council
Site address:	29 Livistona Drive, Doonan Qld 4562 and described as Lot 45 on RP 836922—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 refusal of a Development Permit for approval of Building Works (Dwelling House), being a dwelling extension within the rear boundary setback, on a rural-residential site. The decision followed a Referral Agency Response by the Noosa Shire Council directing refusal of the application on the grounds that the proposed extension does not comply, and cannot be conditioned to comply with, the provisions of the Noosa Plan 2020, Rural Residential Zone Code PO6 relating to the design and siting of buildings and other structures.

Date and time of hearing:	12 August 2026 at 1.00 p.m.
Place of hearing:	The subject site
Tribunal:	Anthony Roberts—Chair Suzanne Bosanquet—Member
Present:	Jochen Kassan—Appellant and co-owner Juliana Saidon—Co-owner Brad Geaney and Sophie McLaren—Council representatives

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 of 22 June 2026 and orders the Assessment Manager to re-make the decision (within 25 business days of the date of this decision notice) as if the Concurrence Agency had no requirements and, if the Assessment Manager approves the application, include the following condition along with any other conditions the Assessment Manager decides are reasonable and appropriate:

- (1) The existing landscape buffer along the common boundary of the subject site be maintained and enhanced by mature plantings to the full length of the proposed extension.

Background

1. The subject site:
 - (a) is located in a rural-residential 'lifestyle' estate along a wide, winding tree-lined road
 - (b) is gently sloping to the road, irregular (5 sided) in shape and comprises an area of 10,163m²
 - (c) contains a two storey 'tin and timber' dwelling with wide verandas (sited a minimum of 8m from and at an acute angle to the rear boundary of the allotment) and set in well-landscaped grounds containing a dam;
 - (d) is surrounded by similar-sized lifestyle blocks;
 - (e) is zoned Rural Residential under the Noosa Plan 2020.
2. The proposed dwelling extension:
 - (a) is a straight-line extension to the existing dwelling comprising a proposed office with a PWD bathroom set on a veranda interconnected with the verandas of the existing house together with a downstairs workshop with a PWD bathroom
 - (b) has a minimum roofline setback of 3.5m from the rear property boundary to its outermost projection (with 4.1m to the wall)
 - (c) has a Gross Floor Area of 55m²
 - (d) presents a height of 6.0m to the street frontage.
3. As the proposed extension triggers assessment against the relevant performance criteria of the Noosa Plan 2020 due to the proposed siting within the required 10m side/rear boundary setback, Certified BA lodged a Request for a Referral Agency Response for building work for a dwelling extension within the rear setback with the Noosa Shire Council.
4. On 25 May 2026, Council issued a Referral Agency Response directing the Assessment Manager to refuse the application for reasons stated as follows:

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 – Rural Residential Zone Code

PO6 Buildings and other 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, access to breezes and protection from noise, odour and artificial lighting

The proposed setback of 3.519 metres & location of the proposed dwelling extension in relation to adjoining premises doesn't provide a high level of amenity to the subject site including provision of visual and acoustic privacy, protection from noise and odour.

Council suggested a 6.0 metre setback within the information request provided, which would have provided a higher level of amenity for the subject site.

(b) Provide adequate distance from adjoining land uses and avoid conflict with existing or future rural uses and activities on adjoining properties

The existing dwelling is located 8.0 metres from the side boundary with the approved shed on the adjoining premises setback 7.0 metres from the side boundary.

It is Council's view that the proposed dwelling extension with a 3.519 metre side boundary setback in lieu of the required 10 metre setback for lots over 1ha doesn't provide adequate distance from the adjoining land uses and avoid conflict with existing or future rural uses and activities on adjoining premises.

5. The hearing was held at the subject site on 12 August 2026 at 1.00pm. The Tribunal had the opportunity to view the positioning of the proposed structure on the subject site and in relation to neighbouring properties and the streetscape more generally.

Material considered

6. The material considered in arriving at this decision comprises:
 - (a) 'Form 10 – Appeal Notice', grounds for appeal and correspondence/attachments as lodged with the Tribunals Registrar on 6 July 2026;
 - (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 Noosa Plan 2020 (Noosa Plan);
 - (g) Noosa Plan 2020 – Rural Residential Zone Code (the Code);
 - (h) The verbal submissions made by the parties at the hearing and during the site inspection.

Jurisdiction

7. The Tribunal has jurisdiction to hear the appeal under the PA section 229(1)(a)(i) and schedule 1, sections 1(1)(b) and 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 Referral Agency.
8. 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).
9. The Tribunal is required to decide the appeal in one of the ways mentioned in section 254(2) of the PA.

Decision framework

10. 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.
11. The Rural Residential Zone Code contains alternate provisions to the QDC. As the proposal does not meet the Acceptable Outcomes (AOs) set out in Acceptable Outcome AO6.4(d), which (for allotments exceeding 1ha in area) requires buildings and structures to have a setback of 10m from side/rear boundaries, assessment is made against the Performance Outcomes stated at PO6 of the Code.

Matters in dispute

12. At the hearing and throughout the site inspection there was agreement by the parties in relation to matters that are material to this appeal. These were:
 - (a) The proposed extension would have no potential impact on adjoining properties, other than the property adjoining to the rear, or from a streetscape perspective, due to the separation distances and the extension site being obscured by mature trees that will be retained.
 - (b) The predominant land use of the subject and surrounding properties was 'lifestyle residential' and there was no evidence of 'rural' usage (for example involving crop cultivation or commercial livestock activities). Further, the small predominant lot size in the area would effectively preclude such uses in future.
13. The first point goes to the first amenity prong of Council's refusal and establishes that there would be no impact of the design and siting of the development to adjoining premises beyond the potential impact on the adjoining property to the rear.
14. The latter point goes to the heart of the second prong of Council's refusal concerned with avoiding conflict with existing or future rural uses and activities on adjoining premises and establishes that it is not a relevant consideration in this instance. Therefore, the only matter remaining in contention related to amenity considerations pertaining to the users of the subject site and users of the adjoining premises to the rear.

Amenity to users of the subject site and adjoining premises

15. In relation to Council's first ground for refusal related to amenity cited above, the Appellant contends that the proposal complies with Performance Outcome PO6 of the Code for the following reasons:
 - (a) The design of the development adds a high level of amenity to the subject dwelling through good separation of habitable and non-habitable areas, an extended veranda array and favourable orientation for views and light.
 - (b) The proposal presents a complementary design to the existing dwelling and simply projects the setback trajectory of the dwelling along the existing rear boundary alignment and so results in a setback varying from over 9.0m to over 3.5m (with 4.1m to the wall).
 - (c) The average setback of the structure is over 6.0m - which is the minimum setback suggested by Council through its Information Request.
 - (d) The closest adjoining dwelling is over 50m distant (which significantly exceeds the compliant distance of a minimum of 20m established by Acceptable Outcome AO6.4) with privacy and other amenity relationships maintained.
 - (e) The development intends to retain existing vegetation along the common boundary, which provides a substantial visual buffer, and this can be supplemented by conditions of approval.
 - (f) There is no reasonable and practical alternative to the intended siting of the proposed extension.
16. Council's position is that:
 - (a) The proposed minimum setback of 3.5 metres together with the location of the proposed dwelling extension results in potential diminished amenity (mainly visual and acoustic privacy) for the adjoining premises – which means that it fails to comply with Performance Outcome PO6 of the Code.
 - (b) Council had suggested through the Information Request process that the development be amended to result in a 6 metre (minimum) setback, but this was not taken up by the proponent.

- (c) Council's objective through the Noosa Plan is to maintain good levels of separation between dwellings and between dwellings and rural activities in the Rural Residential zone and the separation proposed in the subject development did not satisfy that objective.

Findings of fact

17. The Tribunal makes the following findings of fact:

- (a) Based upon examination of the plans and material lodged with the Development Application and the site inspection conducted at the hearing, the Tribunal finds that the proposed design and siting of the development would likely result in enhanced amenity for the users of the subject premises due to good separation of habitable and non-habitable areas, an extended veranda array and favourable orientation for views and light.
- (b) In respect of potential amenity impacts of the development on the premises adjoining to the rear, the Tribunal finds these to be negligible due to the following:
 - (i) The development (with a minimum of 3.5m and a maximum of over 9.0m setback) provides an effective average setback of over 6.0m.
 - (ii) The 6.0m minimum setback suggested by Council is practically unachievable without radical changes to the design (that will likely necessitate the removal of the substantial eucalypt at the front alignment of the development).
 - (iii) The distance from the adjoining dwelling exceeds 50m and inter-visibility is significantly limited.
 - (iv) The shed recently erected on the adjoining premises adjacent to the dwelling on the subject site together with substantial vegetation along common boundary provide an effective buffer to the proposed development.
- (c) The siting and design of the extension is reasonable and practical in the circumstances, results in both enhanced amenity to the subject premises and no detrimental impact on the amenity of the premises adjoining to the rear and therefore satisfies the requirements of PO6 of the Code. However, the Tribunal considers that a condition relating to both protecting and bolstering the integrity of the landscaped buffer along the common boundary is appropriate.
- (d) The Tribunal notes that the size of the subject property at 10,163m² only marginally exceeds the 1ha threshold set by AO6.4(d) that requires a 10m as opposed to a 6.0m side/rear setback and further notes that the setback of the existing dwelling is 8.0m minimum (2m within the 10m requirement).

Reasons for the decision

- 18. The Tribunal considers the Appellant has satisfied the onus to demonstrate the appeal should be upheld. Therefore, the Tribunal has determined to order the Assessment Manager to re-make the decision (with 25 business days of the date of this decision notice) as if the Concurrence Agency had no requirements and, if the Assessment Manager approves the application, to include the landscape buffer condition specified by the Tribunal (along with any other conditions the Assessment Manager decides are reasonable and appropriate), for the reasons identified below.
- 19. The Tribunal found that due to the predominantly lifestyle residential uses of the premises in the vicinity of the subject site there was no likelihood that the proposed extension would be in conflict or come into conflict with rural uses and activities – and it therefore meets the requirements of PO6(b) of the Code.
- 20. In respect of amenity considerations, the Tribunal found that the design and siting of the proposed development would result in enhanced amenity for the users of the subject site

and no diminished amenity for adjoining premises (particularly the premises adjoining to the rear) – and therefore meets the requirements of PO6(b) of the Code.

Anthony Roberts
Development Tribunal Chair
Date: 25 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:

The Registrar of Development Tribunals
Department of Housing and Public Works
GPO Box 2457
Brisbane Qld 4001

Telephone 1800 804 833

Email: registrar@hpw.qld.gov.au