



Development Tribunal – Decision Notice

Planning Act 2016, section 255

Appeal Number:	21-051
Appellant:	Mathew Lawton
Respondent (Assessment Manager):	John Dunn, JDBA Certifiers
Co-Respondent (Concurrence Agency):	Noosa Shire Council
Site Address:	10 Tern St, Peregrin Beach Q 4573 – the 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 refusal of a Development Application for approval of Building Work being for class 10a structure – Patio, namely fly-over roofed extension to an existing roofed patio. The decision followed a referral agency response directing part-refusal of the Application. Council stated that the patio extension does not comply with and cannot be conditioned to comply with the provisions of the Noosa Plan 2020, Low Density Residential Zone Code, PO9 (a), (c) and (e) – requirements to provide a high level of amenity, adequate distance from adjoining land uses, and space for landscaping.

Date and time of Hearing:	11:00am, 02 March 2022
Place of Hearing:	The subject site
Tribunal:	Professor Victor Feros OAM – Chairman Catherine Baudet – Member
Present:	Mathew Lawnton – Appellant Bradley Geaney – Co-Respondent Matthew Adamson – Co-Respondent

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 dated 30 August 2021 with another decision, namely to approve the siting and the design of the proposed fly-over roofed extension to an existing patio on the subject site as shown generally on McLaren Design Pty Ltd Drawings (Project No. 22-078), Drawing Nos. 00-001 (Perspective), 02 (Site Plan), 03 (Proposed Ground Floor Plan), 05-06 (Elevations), dated 14 June 2022, submitted to the A/ Registrar 16 June 2022, subject to the following:

- (a) that the site boundary clearance of the patio extension be not less than 1.5m;
- (b) that the length of the patio extension be not more than 8.0m;
- (c) that the existing intervening landscaping to the site boundary be retained and enhanced, with planting schedule notated on the plans dated 14 June 2022, submitted to, and to the satisfaction of the Co-Respondent (Council); and
- (d) any additional conditions attached to any building approval by the building certifier to address the requirements of the Building Act 1975.

Background

1. An application was lodged by JDBSA Building Certifiers to Noosa Shire Council on 18 May 2021, for alterations to a residence which included a covered outdoor area referred to as a Flyover Patio.
2. This is a proposed extension to an existing roofed deck and includes a bathroom to service the pool area, with the skillion roof above the level of the house roof.
3. The proposed deck and bathroom is 6M in length and 4.055M in width and is set back 520mm from the side boundary and 4.1 M from the rear boundary. The proposal shows a full height privacy screen made of 'timber look' aluminium slats running horizontally the full length of the deck.
4. The purpose of the alterations is to provide for changed living arrangements for extended family members and the requirement for the parents to work from home.
5. The existing roofed deck was added in 2016 and was approved by Noosa Council on 24 November 2016, with a setback of 570mm from the side boundary for a length 3.17M
6. The current application was refused in part on 29 June 2021 due to non-compliance with Performance Outcomes of the Noosa Plan in the Low-density Residential Zone Code, namely PO9(a), PO(c) PO9(e).
7. The Applicant submitted with the Application, a letter from the adjacent neighbour, stating that she had no objection to the proposal with a reduced side boundary setback and confirmed that "he (the Applicant) will not object to a reciprocal variation being granted upon the redevelopment of 8 Tern Street in the future".
8. A letter from the rear neighbour was also submitted stating that he had no objection to the proposal.
9. The Assessment Manager attempted, without success, to negotiate with Council and as a consequence an Appeal Notice was lodged on 30 August 2021.

Material Considered

The material considered in arriving at this decision comprises:

1. Form 10 – Appeal Notice, including grounds for Appeal and correspondence accompanying the Appeal lodged with the Tribunals Registrar on 31 August 2021.
2. Proposed building works plans prepared by DD Design issued 25 February 2021.
3. Referral Agency Response dated 25 June 2021.
4. Assessment Manager (JDBA Certifiers) Decision Notice – Part Refusal (Flyover Patio) – BA102758, dated 30 August 2021.
5. Google street view images.
6. Noosa Council Planning and Development Online information for the subject site
7. The Planning Act 2016 (PA).
8. The Planning Regulation 2017 (PR).
9. The Development Application Rules.
10. The Building Act 1975 (BA).

11. The Building Regulation 2006 (BR).
12. Noosa Plan 2020.
13. Site Photographs taken 2 March 2022.
14. Revised Site Plan Drawings dated 14 June 2022, received 17 June 2022.

Findings of Fact

15. The Applicant explained his reasons for the Application for Building Approval. With teenage children requiring more space, an extended family member coming to live with them and the parents now working from home, more space was required including additional bathroom facilities.
16. The Applicant believed it would be a simple matter to extend the deck in line with the existing deck and spoke about moving his work station, currently located in the living room adjacent, to the deck, to enable him to work away from the noisy family living room. The added space would give him increased protection from the elements to which the deck was currently exposed.
17. The Applicant viewed the matter as a simple extension to the existing deck, utilizing the same setback as was approved in 2016.
18. The representatives of the Co-Respondent (Council), presented their view that the proposed extension did not provide a satisfactory level of amenity for the neighbour or the Appellant and that the space between the proposed structure and the boundary was only 520 mm and could not accommodate any worthwhile planting between the properties.
19. The Co-Respondent Council said that they did not place much emphasis on the opinion of the neighbours as they may not occupy the property in the long term. They could not see any justification for the reduction in setback.
20. When questioned by the Chairman about the existing deck set back, Council said that the size of the existing deck was a factor in the previous approval. It was small enough for it not to be considered an entertainment area. Council stated that it would normally allow reduced setbacks to garages, sheds and carports as these uses did not create places that impacted adversely upon the amenity of the neighbours. Council reiterated that the Planning Scheme called for a 1.5M setback and the proposed setback was only 520mm.
21. PO9 (a) refers to 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. PO9 (c) refers to the provision of adequate distance from adjoining land uses and PO9 (e) calls for the provision of space and landscaping between the buildings including an adequate area at ground level for landscaping with trees, shrubs and outdoor living.
22. The Co-Respondent confirmed compliance with stated site cover provisions.
23. The Appellant stated that there were species that would grow in the 520mm setback zone, although no landscaping plan was produced.
24. The Chairman called for an adjournment to the proceeding for consultation with the referee.
25. The subsequent consultation led to a request by the Chairman to the Appellant to review design options to that would minimize the impact of the structure on the side boundary and provide a satisfactory solution for both the Appellant and the neighbour and to consider more landscaping. It was suggested that an architect could come up with a suitable concept and a landscape architect could advise on the planting and integration of the structure into its surroundings. The need for proper analysis taking into

consideration the western sun, the landscaping and the functions of the structure that would add value to both the neighbour and the Appellant, was advised.

26. On 10 March 2022, a request was sent by the Tribunal Registry to the Appellant inviting him to consider amendments to the proposed plans as outlined at the Hearing, including, but not necessarily limited to increasing the side boundary clearance to 1.5 metres, extending from the existing barbecue area for the length of the proposed extension to the fly-over skillion roofing; indicating that the space between the side boundary and the proposed extensions to be landscaped, with planting schedule notated. The date given for the submission was 15 business days.
27. On 10 March 2022 the Appellant requested an extension of time due to planned holidays, which was granted, with a further extension granted to 17 June 2022.
28. On 16 June 2022 a revised plan was submitted to the Registry.

Reasons for the Decision

29. The Tribunal finds that the design of the proposed patio extension as amended is in keeping with the existing house, offering enclosed amenity to the residents at the subject site.
30. The Tribunal finds that the amenity of adjoining and nearby houses would not be adversely affected. The tribunal considers that the alteration from the originally proposed development represents only a 'minor change' and accordingly is within the Tribunal's power (having regard to section 254(3) of the *Planning Act 2016*).
31. The Tribunal is satisfied that the proposed development satisfies the relevant performance criteria stipulated in Noosa Plan 2020, Low Density Residential Code, at PO9.

Professor Victor Feros OAM

Development Tribunal Chairman

Date: 12 July 2022

Appeal Rights

Schedule 1, Table 2, table 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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Department of Energy and Public Works
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Brisbane QLD 4001

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