



Development Tribunal – Decision Notice

Planning Act 2016

Appeal Number:	04-18
Appellant:	Sovereign Fiduciaries Pty Ltd
Assessment Manager:	Scenic Rim Regional Council
Concurrence Agency: (if applicable)	Not Applicable
Site Address:	1 – 11 Eagles Retreat Place, Tamborine Mountain and described as Lot 4 on RP82621 – the subject site

Appeal

Appeal under Section 229 of the *Planning Act 2016* (PA) against the assessment manager's refusal of the appellant's development application ('the application') under Section 51 of the PA, for a material change of use development permit to use the subject site for a new house as defined under the relevant planning scheme, the Beaudesert Shire Planning Scheme 2007.

Date and time of hearing:	10.00am, 20 April 2018
Place of hearing:	Inspection of the subject site, followed by a hearing at the offices of the Scenic Rim Regional Council, 82 Brisbane Street, Beaudesert
Tribunal:	<ul style="list-style-type: none">• Neil de Bruyn – Chair• Amanda Bertoldi-Ward – Member• Stuart Smith – Member
Present:	<ul style="list-style-type: none">• Lee Rushton – representing the appellant,• Stephen Enders, Zone Planning Group, representing the appellant,• Daniel Krause, Zone Planning Group, representing the appellant,• Bryn Lummus, BXL Architects, representing the appellant,• Scott Turner, Manager Planning, Scenic Rim Regional Council, representing the assessment manager,• Mica Cook, Reel Planning, representing the assessment manager.

The site inspection was attended by geotechnical engineers, James Tayler of Earth Solve, representing the appellant, and Patrick Kidd of SMEC, representing the assessment manager

Decision:

The Development Tribunal (Tribunal), in accordance with Section 254(2)(c) of the PA, has decided this appeal by **replacing** the decision of the assessment manager to refuse the

application with a **decision to approve the application** subject to the conditions which are set out below under the heading 'Approved Development' and comprising paragraphs (a) to (r), inclusive.

Please be advised that you may elect to lodge an appeal/declaration about this matter in the Planning and Environment Court (the Court). The Court appeal period starts again from the date you receive this Decision Notice which should be attached to the Court appeal lodgement documentation.

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>

Background

1. Lapsed Development Approval

In September 2012, the Scenic Rim Regional Council issued a material change of use development permit over the subject site to permit its use for a house. The approved house development was to be in a similar location within the subject site to the subject of this appeal.

The approved architectural plans for that development identified that the total gross floor area ('GFA') of the house would be 449m², with a total site coverage of 247m² or 12.6%. Relevantly, the plans also show that the maximum height of that proposed development was approximately 10 metres.

This development permit was never implemented and accordingly lapsed in or around 2016.

2. The Application

The subject site is located within the local government area of the Scenic Rim Regional Council and within the planning scheme area of the Beaudesert Shire Planning Scheme 2007 ('the planning scheme'). Under the planning scheme, the subject site is included within the Tamborine Mountain Zone and the Escarpment Protection Precinct under that zone.

The subject site is also affected by certain overlays under the planning scheme, notably the Nature Conservation Overlay and the Development Constraints Overlay. The subject site is identified under the Development Constraints Overlay as being subject to a low bushfire hazard and a high landslide hazard. In relation to the bushfire hazard status of the subject site, the state development assessment mapping identifies the subject site as a bushfire prone area, predominantly with a very high potential bushfire intensity, and associated potential impact buffer area.

Under the applicable zone and zone precinct, the use of a premises for a house is accepted development subject to compliance with applicable requirements, or code assessable development where there is any non-compliance with an applicable requirement.

In this case, the design of the proposed house does not achieve an acceptable solution under the House Code of the planning scheme. To achieve this, the development would not exceed two storeys and have a maximum height of 8.5 metres above natural ground level at any point. The proposed house is three storeys and a maximum of 16.3 metres in height.

As such, a code assessable material change of use application was required for the proposed development. The proposed development is also code assessable development under the Nature Conservation Overlay and the Development Constraints Overlay.

The assessment manager for the required material change of use development application was the Scenic Rim Regional Council, pursuant to Section 48(2) of the PA and Schedule 8, Table 2 of the *Planning Regulation 2017*, as the proposed development is a material change of use on a site completely within that council's local government area and categorised as assessable development under its planning scheme.

Accordingly, Zone Planning Group, acting for the appellant, lodged the application with the assessment manager on 13 October 2017, to seek the required material change of use development permit. The application was a properly made application under the PA.

The assessment manager issued an information request on 31 October 2017. The information requested was for a bushfire assessment report, amended plans reflecting the removal of that part of the proposed driveway extending beyond the entry to the proposed house and a vegetation management and landscaping plan.

A response to the information request was submitted on 16 November 2017. The response did not provide the requested documentation, instead arguing that:

- the requirement for a bushfire assessment could be dealt with by an approval condition,
- the relevant section of driveway was necessary and was not proposed to be removed, and
- a vegetation management and landscaping plan was not considered necessary.

The assessment manager resolved to refuse the application at its meeting on 18 December 2017, having assessed that the subject proposal does not achieve various overall and specific outcomes of the Tamborine Mountain Zone Code and the Nature Conservation Overlay Code, and specific outcomes of the Development Constraints Overlay Code and of the House Code.

On 25 January 2018, the appellant lodged this appeal to the Tribunal against the assessment manager's decision to refuse the application.

Material Considered

The material considered in arriving at this decision comprises:

1. 'Form 10 – Appeal Notice', grounds for appeal, correspondence, plans and reports accompanying the appeal lodged with the Tribunal's Registrar on 25 January 2018.
2. Planning Act 2016.
3. Planning Regulation 2017.
4. Beaudesert Shire Planning Scheme 2007.
5. An arborist's report dated 19 April 2018 by TPZ Project Arborists and submitted by the appellant.
6. A bushfire management plan dated 18 April 2018 by Land and Environment Consultants and submitted by the appellant.
7. A town planning report dated 19 April 2018 by Reel Planning and submitted by the assessment manager.

8. Additional material provided by the appellant on 4 May 2018, including further geotechnical engineering material, town planning response, visual impact assessment, ecological impact assessment and statement of landscape intent.
9. Additional material provided by the assessment manager on 4 May 2018, in response to the arborist's report and bushfire management report provided by the appellant.
10. Additional geotechnical engineering material provided by SMEC on behalf of the assessment manager on 4 May 2018.
11. A letter dated 11 May 2018 from Zone Planning Group, on behalf of the appellant, in response to the Tribunal's request for a response to the additional geotechnical engineering material provided by SMEC on the assessment manager's behalf on 4 May 2018.

Findings of Fact

The Tribunal makes the following findings of fact:

1. Previous Development Approval

The material change of use development permit given for a house on the subject site in 2012 was given almost six years ago and has lapsed. That development approval envisaged a substantially different development, which would have resulted in a significantly smaller-scale building than the subject of this appeal, with a substantially lower maximum height, GFA and site coverage.

2. Landslide Hazard

The site is identified under the planning scheme as being within a High Landslide Hazard Area.

The suitability of the subject site in terms of its landslide hazard status and stability has been assessed by a professional firm of geotechnical engineers and has been found to be capable of development as proposed, subject to conditions, by a Registered Professional Engineer Queensland ('RPEQ').

3. Level of Assessment

The proposed house would be three storeys and 16.3 metres in maximum height, exceeding the acceptable outcome under the House Code for maximum building height. Additionally, the proposed development is identified under planning scheme overlays as assessable development. Accordingly, the material change of use involved is assessable development and requires a development permit.

4. Building Height

The proposed house would present as a two storey structure when viewed directly from Eagles Retreat Place and as either a three storey structure or a partial two storey and partial three storey structure, with a maximum height exceeding 16 metres, when viewed from the south or from either side.

The subject site is associated with existing houses and similar residential buildings, some of which have similarly extensive footprints and, as a consequence of the natural topography, clearly exceed 8.5 metres in maximum height.

One such house, a direct neighbour, presents as a two storey house to the street frontage but, due to the steep fall away from the street, similar to that of the subject site, features a deep under-croft below the elevated, two storey main structure. Therefore, the house has a maximum height above ground level that is visibly greater than 8.5 metres.

Another very extensive two storey house at 14 Eagles Retreat Place responds in a similar way to the natural topography of its site. It includes a section that would be visibly higher than 8.5 metres and also presents as a three-storey structure.

5. Visual Impact

The proposal is to retain significant areas of the natural vegetation on the subject site, notably to the west and south-west, as well as to the south of the proposed house location. In addition, significant new landscaping around the proposed house, including on the southern and eastern sides of the proposed house footprint, is to be introduced.

The total building footprint would occupy an area of 771.2m² (3.86%) within a total site area of just under 2 hectares (20,000m²). Therefore, the majority of the site area would remain under landscaping. This landscaping, including areas of dense natural vegetation, would be effective in screening and softening the visual impact of the proposed development.

The proposed landscaping and the orientation of nearby houses, the majority of which face away from the subject site, would result in the most visible elevations of the proposed house as the northern and eastern elevations, both of which would be visible from Eagles Retreat Place.

The northern and eastern elevations will be the most visible elevations. The land to the south is within the Regional Landscape and Rural Production Area under the SEQ Regional Plan 2017 and/or part of the Tamborine National Park. It will therefore remain largely free of urban development that could have views of the subject site from this direction.

An architectural report submitted by the appellant included a 'photo montage' with a view of the significant eastern elevation of the proposed house; in particular, from the nearby intersection of Eagles Retreat Place and Eagles Close. The report shows that, from this location, the visible bulk and scale of the proposed house would not be greater than that of existing houses immediately associated with the site.

The visual impact associated with the proposed development must be considered in the context of the total extent of the subject site. The subject site is 1.959 hectares in extent and is located within the Regional Landscape and Rural Production Area under the SEQ Regional Plan 2017. The further subdivision of the subject site to establish an additional and smaller lot or lots, and associated buildings, would currently be prohibited development under PA. Accordingly, the visual impact of the proposed building itself would be relatively minor in the context of the large remaining areas of the site that would be retained in a natural state.

6. Ecological Impact

The site is ecologically significant, in that it contains regulated vegetation comprising an of-concern regional ecosystem and essential habitat, and the proposed building footprint would necessitate the clearing of approximately 1,000m² of this vegetation (approximately 5% of the total area of the site). Operational works for the clearing of native vegetation for a single dwelling on a lot is accepted development under both PA and the planning scheme.

An ecologist's report submitted by the appellant verified the presence of regulated vegetation on the site, including a conservation-significant species (albeit not present within the proposed building footprint or, apparently, the area to be cleared for bushfire management purposes). The report did not identify the presence of threatened fauna species. The report confirmed that significant vegetation cleared would be offset at a minimum ratio of 1:1 within degraded areas of the site, and that the near-threatened specimens would be preserved *in-situ*.

7. Bushfire Hazard

The site and the proposed building location within the site are subject to significant bushfire hazard. The proposed development would require the clearing of a significant area of existing vegetation (including regulated vegetation) for the building to achieve an acceptable bushfire attack level ('BAL').

A bushfire management report submitted by the appellant recommended the implementation of mitigation measures, including the establishment of a substantially cleared building protection zone of sufficient area and configuration to support the achievement of an acceptable bushfire attack level rating (of either 12.5, 19 or 29).

8. Local Character

The predominant land use in the vicinity of the site is detached residential houses in a variety of architectural styles and vintages, and of varying bulk and scale factors. No consistent or predominant architectural style or vintage was noted in the vicinity of the subject site.

Similarly, lot sizes vary markedly in the immediate vicinity of the site, ranging from a minimum area of less than 1,000m² to around 20,000m².

Reasons for the Decision

The jurisdiction of the Tribunal to decide this appeal arises under Section 229(1) and Schedule 1, Section 1(2)(a)(i) and Table 1, Item 1(a), of the PA, as this matter involves the refusal, by the assessment manager, of a development application (that is not an excluded application) for a material change of use for a classified building, being a Class 1 building under the Building Code (as defined in Schedule 2 of the PA).

The Tribunal has decided this appeal by changing the decision of the assessment manager to refuse the application to a conditional approval of the application.

The reasons for this decision are:

1. The subject site has been investigated in terms of its landslide hazard status, by a suitably qualified, professional geotechnical engineer (RPEQ) and found to be capable of development as proposed, subject to the implementation of appropriate measures in the detailed design and construction of the proposed house. These measures can be mandated though the imposition of suitable conditions of approval.
2. The maximum height of the house will exceed the applicable assessment benchmarks under the planning scheme; however, the approval of the subject development is warranted on the following grounds:

- the excess height is dictated by natural topography of the subject site and warranted by a need to minimise the building footprint to a reasonable degree (proportionate to the total extent of the subject site) and thus the area of disturbance within the site of the natural vegetation habitat and landform;
 - the maximum height of the proposed development is consistent with that of other houses within the immediate neighbourhood;
 - the part of the proposed development involving the excess height will not be widely visible from most neighbouring development or public vantage points and will be screened and softened by existing vegetation and proposed new landscaping; and
 - visual impacts can be mitigated through the imposition of suitable conditions of approval.
3. The proposed development will result in ecological impacts, primarily arising from the clearing of remnant vegetation within the site to make way for the proposed house and associated curtilage, as well as to establish a bushfire protection zone. These impacts can be mitigated through the imposition of suitable conditions of approval.
 4. The bushfire hazard affecting the subject site can be mitigated through the imposition of suitable conditions of approval.
 5. The proposed development will not be inconsistent in terms of the proposed land use, its modern architectural style or its bulk and scale with the amenity and character of the neighbourhood. The proposed preservation of significant areas of natural vegetation and habitat, as well as the introduction of new landscaping, will contribute positively to these values.

The following conditions of approval form part of this decision and are to be complied with as stated:

Approved Development

- a) The approved use is a house, as defined in Schedule 1 of the Beaudesert Shire Planning Scheme 2007.
- b) The proposed development is to be undertaken generally in accordance with the approved plans and documents, except where modified by any condition of approval listed in this decision. The approved plans and documents are listed below:

Author	Title	Plan/Document No. and Revision	Revision Date
BXL Design	Overall Site Plan	DA 01-01 C	26/4/18
	House Site Plan	DA 01-02 B	26/4/18
	Residence Basement Plan	DA 02-01 A	27/2/17
	Residence Ground Floor Plan	DA 02-02 B	24/4/18
	Residence First Floor Plan	DA 02-03 C	26/4/18
	Residence Second Floor Plan	DA 02-04 C	26/4/18
	Roof Plan	DA 02-05 B	26/4/18
	Residence Section A	DA 03-01 D	6/9/17
	Residence Section B	DA 03-02 D	6/9/17

Author	Title	Plan/Document No. and Revision	Revision Date
	Residence Section C	DA 03-03 D	6/9/17
	Residence Section D	DA 03-04 D	6/9/17
	Residence Section E	DA 03-05 D	6/9/17
	Residence Section F	DA 05-01 B	25/4/18
	Residence Section G	DA 05-02 B	25/4/18
	Residence Section H	DA 05-03 B	25/4/18
	Residence Section I	DA 05-04 B	25/4/18
	Residence Section J	DA 05-05 B	25/4/18
	Residence Elevation 1	DA 04-01 D	25/4/18
	Residence Elevation 2	DA 04-02 D	25/4/18
	Residence Elevation 3	DA 04-03 D	25/4/18
	Residence Elevation 4	DA 04-04 D	25/4/18
Earth Solve	Slope Stability Risk Assessment Report	Rushton170313SLJ-D	2/5/18
Biome	Ecological Assessment	BC-18041	May 2018
TPZ Project Arborists	Arborists Report	TPZ 8.13	19/4/18
LEC	Bushfire Management Plan	Report 18018	18 April 2018
Green Synthesis Design	Landscape Intent Plan – Site Plan	L-MTR-LIP-00B	3/3/18
	Landscape Intent Plan – Ground Floor	L-MTR-LIP-01C	4/3/18
	Landscape Intent Plan – First Floor	L-MTR-LIP-01.1A	30/4/18
	Landscape Intent Plan – Second Floor	L-MTR-LIP-01.2A	30/4/18
	Shrub Planting Palette	L-MTR-LIP-02A	27/4/18
	Tree Palette	L-MTR-LIP-03A	27/4/18
Country-Wide Water	On-Site and Soil Evaluation for Effluent Disposal	CWW:1044.17	12/10/17

Maximum Building Height

- c) The approved use shall not exceed a maximum height at any point above natural ground level of 16.3 metres and three storeys.

Engineering

- d) All drainage paths must be designed to avoid ponding. Ditch drains must be constructed to cut off upper slope sheet water flow.
- e) All earthworks and stormwater drainage, including an erosion and sediment control plan, must be designed and supervised by a Registered Professional Engineer Queensland (RPEQ). Earthworks must be certified by a qualified, RPEQ geotechnical engineer.

Earthworks must be drained as per all applicable requirements set out in the approved Slope Stability Risk Assessment Report.

- f) Stormwater arising from the approved development must be drained to a lawful point of discharge, in accordance with the applicable requirements of the Queensland Urban Drainage Manual (QUDM).
- g) The erosion and sediment control plan must comply with the applicable requirements of the approved Ecological Assessment Report.
- h) The earthworks design must comply with the cut and fill design parameters set out in the approved Slope Stability Risk Assessment Report.
- i) All retaining walls should be designed by an RPEQ and in accordance with AS 4678-2002 - Earth Retaining Structures (as amended). Any retaining walls are required to have a minimum factor of safety of 1.5.
- j) The on-site effluent disposal is to be by way of surface irrigation to below and/or to the side of the proposed house, and generally in accordance with the approved On-Site and Soil Evaluation for Effluent Disposal Report. The system must be designed and constructed in accordance with the *Queensland Plumbing and Wastewater Code 2003* and AS 1547 2001 and a plumbing and drainage approval by the Scenic Rim Regional Council. The works must be completed prior to the commencement of the approved use.
- k) The driveway access to and within the subject site shall be designed and constructed in accordance with applicable standards and specifications of the Scenic Rim Regional Council. Any required works approval shall be obtained from Scenic Rim Regional Council prior to any works commencing. The internal driveway within the site must be sealed to ensure safe and efficient, all-weather access.

Ecological Impacts

- l) The clearing of natural vegetation within the site must be minimised to that necessary for the construction and use of the approved development, and for the establishment of the minimum building protection zone to achieve a bushfire attack level of BAL-29.
- m) Vegetation forming part of the Of-Concern Regional Ecosystem 12.8.8 that are to be cleared must be first identified and offset within the site at a minimum ratio of 1:1. Trees nominated in the approved arborist report for retention are to be retained or offset as above. Tree protection zones are to be established for all trees nominated for protection/retention under this condition, in accordance with the requirements of the approved arborist report.
- n) No *Cupaniopsis newmanii* (Long-leaved Tuckeroo) specimens are to be cleared. These specimens are to be identified and clearly tagged to ensure that they are protected in accordance with (m).
- o) Prior to any vegetation clearing occurring on the site, a registered fauna spotter-catcher is to be engaged and is to be present on site at all times during clearing activities.

Bushfire Management

- p) The approved house shall be designed and constructed in accordance with applicable requirements of AS 3959-2009 to achieve a bushfire attack level rating of BAL-29. Bushfire hazard mitigation measures are to be implemented in accordance with the

approved Bushfire Management Plan. In particular, the building protection zone is also to be established in accordance with (l) above.

Landscaping

- q) Landscaping is to be provided generally in accordance with the approved Landscape Intent Plan.

Other Approvals

- r) All other necessary development and other approvals (including operational works, building works, plumbing and drainage works, as applicable) are to be obtained prior to any works commencing on the site.

Neil de Bruyn
Development Tribunal Chair
Date: 6 June 2018

Appeal Rights

Schedule 1, Table 2 (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.

Enquiries

All correspondence should be addressed to:

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

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