



## Development Tribunal – Decision Notice

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<b>Appeal Number:</b>	63-17
<b>Appellant:</b>	Premier Patios on behalf of Suzanne Mary Hare
<b>Assessment Manager:</b>	All Approvals Pty Ltd
<b>Concurrence Agency:</b> (if applicable)	Noosa Shire Council
<b>Site Address:</b>	27 Honey Myrtle Rd., Noosa Heads Q 4567 and described as Lot 2 on SP 261524 – the subject site

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### Appeal

Appeal under Section 242 of The *Planning Act 2016*

The Appeal is against the Assessment Manager (as directed by the Noosa Shire Council as referral agency) to approve an application to build a patio as the visual and acoustic privacy to the adjoining landowners would not be preserved as the proposed patio is an extension of an existing outdoor area.

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<b>Date and time of hearing:</b>	11.00am on 22 February 2018.
<b>Place of hearing:</b>	Noosa Council Building and Plumbing Service, 183 Eumundi Noosa Rd., Noosaville
<b>Tribunal:</b>	Prof Victor Feros BA MUS LFPIA CMILT LGTP (Q) – Chair Mrs Catherine Baudet BDesSt BArch LFRAIA – Member
<b>Present:</b>	Suzanne Hare – Appellant Robert Hare – Appellant Ian Wayth – Building Surveyor, Environment & Sustainable Development, Noosa Shire Council Matt Adamson – Building Officer, Building and Planning Services, Noosa Shire Council

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### Decision:

The Development Tribunal (Tribunal), in accordance with Section 242 of the *Planning Act 2016* (PA) **sets aside** the decision of the Assessment Manager to refuse the Application and approves the relaxation of 0.6m to the side boundary clearance sought, from 1.5m to 0.9m, to allow the roofing of the patio to be 0.9m from the boundary, subject to the following conditions

- (i) that the roofing of the patio be generally in accordance with the submitted plans
- (ii) that the roofing is the Stratco “*Slique*” (also identified as “*Pavilion Slique*”) product, as submitted, or similar

## Background

The Application, the subject of the Appeal, was lodged by Premier Patios on behalf of Suzanne Mary Hare, to All Approvals Pty Ltd. Building Certification, as Assessment Manager.

The Application sought to provide a roof over an existing patio attached to an existing dwelling on land described as Lot 28 on SP261524, having an area of 640M<sup>2</sup>, situated at 27 Honey Myrtle Road, Noosa heads Qld 4567.

The patio is to the rear of the dwelling on its eastern side. It measures 2.5M x 8M and is 0.9M set-back from the side boundary. The dwelling is set back 2.06M. The relaxation sought for the proposed roofing of the patio is for a side boundary set back of 0.9M

The Noosa Plan 2006, as amended, includes the subject land in the Detached Housing Zone. With reference to the detached House Code, at Clause 14.53, the Probable Solution for minimum side boundary setback is stated to be 1.5, for a building up to 4.5 M in height.

The relaxation is sought for 0.6m.

The Application was referred to the Noosa Shire Council as Referral Agency.

Noosa Shire Council, on November 15 2017, issued an Information Request to the Assessment Manager, advising that

*“The proposed patio within the side boundary setbacks is unlikely to be supported by Council as we believe it will have adverse effects on the acoustic privacy of the adjoining land users and does not maintain existing building patterns in the street.”*

A written response to the Information Request was provided to Council on 3 December 2017, and again on 8 December 2017.

However, it is noted that by letter to the Assessment Manager (All Approvals Pty Ltd.) dated December 1, 2017, Council directed the Assessment Manager to refuse the Application for the following reasons:

*“The proposed development does not comply with and cannot be conditioned to comply with the following performance criteria:*

- (a) Provide amenity for users of the premises as well as preserve the visual and acoustical privacy of adjoining and nearby land users:*

*The visual and acoustical privacy of the adjoining land owners will not be preserved as the proposed patio is an extension of the existing outdoor alfresco area. By extending the existing outdoor al fresco area, it will allow more people to occupy the area recreationally and consequently is unlikely to preserve the acoustic privacy to the adjoining landowners”:*

An Appeal to the Development Tribunal, the subject Appeal, Appeal No 163-17 was duly lodged on 18 December 2017, although it is noted that the Decision Notice, notifying refusal, was not issued by the Assessment Manager to the Applicant until the following day on 19 December 2017.

The due lodgement of the appeal was notified to all parties by letters dated 2 January 2018.

The Development Tribunal was established on 15 February 2018.

## Material Considered

Form 10 – Appeal Notice, including grounds for appeal and correspondence accompanying the Appeal lodged with the Tribunals Registrar, including

1. Correspondence between Assessment Manager (All Approvals Pty Ltd) and Applicant (Premier Patios) – various
2. Correspondence between Appellant (Suzanne Mary Hare) and Applicant – various
3. Site and Building Plans – various
4. DA Form 2 – Building Work details
5. Referral Agency (Noosa Shire Council) Information Request, 15 November 2017
6. Letter of Consent of adjoining land owners Peter and Mika Wilson, 25 Honey Myrtle Road, Noosa Heads to the relaxation of side boundary clearance for proposed roofing of patio, 21 November 2017
7. Referral Agency Response to Information Request, 1 December 2017
8. Decision Notice, 19 December 2017
9. Appellant Exhibit “*Pavilion™ Slique...*” tabled at Hearing
10. Noosa Shire Planning Scheme 2006, as amended

## Findings of Fact

The Tribunal makes the following findings of fact:

- The relaxation request as originally made by the Applicant did not adequately demonstrate the detail and the context of the proposed roof of the patio. The drawings and images were minimal and did not adequately show that there was already a raised timber platform which served as an outdoor dining area, and did not show the extensive established landscaping that screens the area from the neighbouring property.
- The Application is supported by a letter from the adjoining land owner stating that there was no objection to the proposed roofing of the patio.
- Council’s refusal relied on its stated preference for not granting relaxations to side boundary clearances because a concern about reduced acoustic amenity and the loss of encroachment upon privacy of neighbouring property owners; and that Council regards this precinct as an area with high quality houses which Council wishes to maintain.
- The Report prepared for the Tribunal by the Appellant sought to demonstrate that the roof was visually in keeping with the surrounding architecture and that the roof covered an existing area, not extending it, and which could not be seen from the street; and that, further, the roof would have no impact on the number of people using the space.

## Reasons for the Decision

The Tribunal has reviewed the material provided and the submissions made and finds as follows:

**that the relaxation of 0.6m to the side boundary clearance sought, from 1.5m to 0.9m, to allow the roofing of the patio, the subject of this Appeal, is approved.**

The reasons for this decision are

- (a) The proposed roofing will not extend the outdoor area
- (b) The proposed roofing will not have adverse acoustic or visual impacts upon the neighbouring house at 25 Honey Myrtle Road, Noosa Heads
- (c) The further submissions of the Appellant demonstrating that the design quality of the proposed roofing and the existing dense screen landscaping are accepted
- (d) The proposed roofing is made of high-quality acoustic composite panelling and is in keeping with the surrounding architecture
- (e) The proposed roofing will not be visible from the street
- (f) The written support of the neighbours to the proposed roofing at 25 Honey Myrtle Road has been obtained
- (g) The Referral Agency concedes that this residential precinct is not a holiday rental area and that Council's stated concern of noisy holiday making is not warranted in the subject circumstances and that adverse amenity impacts are unlikely
- (h) Consequently, approval will not be likely to cause any undesirable precedent with reference to existing patterns of development in this precinct.

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**Victor G Feros**  
**Development Tribunal Chair**  
**Date:** 6 March 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.

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 (07) 1800 804 833 Facsimile (07) 3237 1248**