



## Development Tribunal – Decision Notice

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### *Planning Act 2016, section 255*

<b>Appeal Number:</b>	21 - 027
<b>Appellant:</b>	Ian Martin
<b>Respondent (Assessment Manager):</b>	Jack Lewis of Pivotal Perspective Pty Ltd
<b>Co-Respondent (Concurrence Agency):</b>	Noosa Shire Council
<b>Site Address:</b>	36 Ross Crescent, Sunshine Beach and described as Lot 565 on RP 48112 – the subject site

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### Appeal

Appeal made under section 229(1)(a)(i) and schedule 1, section 1, table 1, item 1(a) of the *Planning Act 2016* against the refusal of a Development Application by the Noosa Shire Council (Noosa Council) for the proposed extensive modifications to an existing dwelling house. The Application under the Noosa Plan 2020 of the proposed building works were considered non-compliant with the accepted development provisions of the Low Density Residential Zone Code (site cover, setbacks and roof form).

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<b>Date and time of hearing:</b>	Thursday 30 <sup>th</sup> September 2021 at 10.30 am.
<b>Place of hearing:</b>	36 Ross Crescent Sunshine Beach.
<b>Tribunal:</b>	Markus Pye – Chair (Architect & Town Planner) Catherine Baudet – Member (Architect)
<b>Present:</b>	Megan Martin – Owner- wife of appellant Jack Lewis – Agent for the Appellant (Pivotal Perspective Pty Ltd) Shaun Lockyer - Architect Kerri Coyle - Co-respondent (Noosa Shire Council as the Referral Agency)

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### 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 with another decision, namely, that the development application be approved 'as proposed' with the inclusion of the screen's material (timber), its size (32mm x 32mm) and spacing apart (32mm) as noted in the reasons for the decision, and other such reasonable and relevant conditions imposed by the assessment manager.

## **Background**

1. Ross Crescent is used for parking by beach goers and the top of the escarpment is densely landscaped. There is a beach access stair opposite the house which is used by local residents. The street has mostly double storey houses.
2. The subject site is a wedge-shaped block with a curved frontage to Ross Crescent. Across the road is an escarpment which drops down to Sunshine Beach. The frontage (east) has a width of 16.866 m, 6.649 m and 11.724 m following the shape of the road with a western boundary depth of 33.686 m and northern boundary depth of 26.152 m. The area of the lot is 506 m<sup>2</sup>. The block slopes from west to east and north to south.
3. The existing house is double storey and both neighbouring properties are double storey, with the western neighbouring house being set at a lower RL due to the topography. The existing house has extensive views to the east and south. The architectural style of the adjacent houses varies, but there is a pattern of timber screening, veranda's, landscaped gardens and light-weight materials. The original house was approved in 2010 with a relaxation to the front setback to 4.5M with landscaping in the front setbacks.
4. The proposed renovation seeks to update the house by altering the existing internal/external plans by integrating unused balconies, creating more privacy for the residents by building planter boxes on the first-floor level which will add greenery, provide privacy and weather protection. It also proposes a timber batten screen to unify the design and mask the varying roof structures behind as well as provide protection as deep eaves. The renovations are generally within the existing footprint of the house except for the added BBQ deck/stairs.

## **Jurisdiction**

The Tribunal has jurisdiction for this appeal under Planning Act 2016 (PA), Section 229(1)(a)(i) and of Schedule 1, sections 1(1) and 1 (2)(g) and Table 1, Item 1(a).

## **Decision framework**

It is noted that:

- the onus rests on the appellant to establish that the appeal should be upheld (s. 253(2) 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 person who made the decision appealed against (s. 253(4) of the PA),
- the tribunal may nevertheless (but need not) consider other evidence presented by a party with leave of the tribunal or any information provided under s.246 of the PA (pursuant to which the registrar may require information for tribunal proceedings), and
- the tribunal is required to decide the appeal in one of the ways mentioned in s.254(2) of the PA.

## **Material Considered**

The material considered in arriving at this decision comprises:

1. 'Form 10 – Notice of Appeal' attaching Grounds for Appeal lodged with the Tribunals Registrar on 02 June 2021.
2. Noosa Plan 2020
3. The Planning Act 2016 (PA)
4. Letter from Appellant Dr Ian Martin dated 3<sup>rd</sup> June giving Mr Jack Lewis full authority.

5. Decision Notice from Noosa Council dated 30<sup>th</sup> April 2021
6. Email from Noosa Council to Mr Jack Lewis dated 6 May 2021
7. Letter from Noosa Council dated 4 March 2021 – Confirmation Notice
8. Decision Notice from Caloundra Building Approvals Dated 30<sup>th</sup> July 2010 with approved Plans by Onplan Pty Ltd, Site Plan, Proposed Lower Floor Plan, Proposed Upper Floor Plan, Proposed Elevations.
9. Shaun Lockyer Architects Pty Ltd design proposal drawings as submitted in appeal documents. Site Plan No 100.01 Revision C,
10. Development Assessment Delegated Report, Kerri Coyle
11. Post Hearing Submissions as tabled below

**Friday 1st October 2021**

Kerri Coyle Tribunal Notes

Reference Imagery Shawn Lockyer Drawing No 010.02 Revision D

Reference Imagery Shawn Lockyer Drawing No 010.03 Revision D

Exemplar Projects Before and After Shawn Lockyer Drawing No 030

Exemplar Projects Before and After Shawn Lockyer Drawing No 030.01

Exemplar Projects Before and After Shawn Lockyer Drawing No 030.02

Development Application Planning Report by Jack Lewis Pivotal Perspectives

Shaun Lockyer Architect Site Cover Drawing No 100.02 Revision D

Shaun Lockyer Architect Site Cover Drawing No 100.03 Revision D

Shaun Lockyer Architect Site Cover Drawing No 100.04 Revision D

**Tuesday 5<sup>th</sup> October 2021**

Email from Kerri Coyle Manager Development Assessment with:

- Report attachments
- Application for Appeal Documents 34 pages with Shawn Lockyer Architects drawings

**Friday 8 October 2021**

Emails from Jack Lewis to Kerri Coyle and from Kerri Coyle to Jack Lewis:

- Survey Plans with RLs from Hinterland Surveys.
- Drawings 23132 – SUR-GEN-DET 0001
- Drawing 23132-SUR-GEN-DET 0002
- Shaun Lockyer Site Analysis Plan No 100.05 Rev D
- Shaun Lockyer Building Elevations Drawing No 300.04 Revision D

**Tuesday 12 October 2021**

Email from Jack Lewis to Kerri Coyle

- NGL Spot Heights

**Wednesday 20 October 2021**

Email from Jack Lewis to Tribunal

- NGL Spot Heights
- Side boundary setbacks
- Prelim. Dec Notice

**Thursday 21 October 2021**

Email confirmation that *Council are satisfied that the amended plans meet Condition 2b of the Preliminary Approval.*

## **Matters raised at the Hearing as understood:**

*By Shaun Lockyer (Architect)*

The architect explained in broad terms that the aim of the proposed design was to:

- Make the appearance of the house more contextually responsive and give it a more cohesive appearance;
- Add more natural materials sympathetic to the location;
- Integrate more landscaping into the house by introducing planter boxes which would also provide privacy for the residents and act as an eave to protect the lower floor;
- Reorganize the spaces to open up to the view;
- That unused balconies be integrated into the floor plan to create a better use of space.

*By Jack Lewis Town Planner on behalf of Appellant*

- The application was submitted with compliant design for site cover (40% /40%) to both levels;
- There is no specification about how wide an eave can be and that he considered the planter boxes are an eave;
- Did not consider the batten screen to be a parapet.

*By Kerri Coyle (Co- respondent, Noosa Council)*

- The Application for Development Approval is required by the Noosa Plan 2020 as the proposed building works do not comply with the accepted development provisions of the Low-density residential Zone Code in 3 areas. 1. Site cover; 2. Setbacks; 3. Roof form;
- Council was unable to check building heights as there were limited RLs on the drawings
- No approvals for increased site cover in the street as precedent;
- Council believes the batten screen as presented contributes to the bulk of the building and increases its box like shape which council want to avoid. Council wants to open up the battens to reduce this effect. Council considers the batten screen a parapet and under AO16.2, parapets should be no more than 50% of the front façade in width;
- Council considers that the planter boxes also count as 'site cover' which also contributed to being over 40%.

## **Findings of Fact**

1. When the assessment for the Development Application was undertaken by Noosa Council as referral agency, it was found that the works were considered contrary to the overall and specific Acceptable Outcomes of the Low-Density Residential Zone Code in regard to site cover, side setbacks and roof form as the Council's assessment was limited to the applicable Performance and Acceptable Outcomes of that code. Council did agree the design conforms to the other applicable codes being Low Density House Code and the Coastal Protection and Scenic Amenity Overlay.
2. On 30<sup>th</sup> April 2021, Noosa Council approved an application for the alterations and additions to 36 Ross Crescent, Sunshine Beach and issued a Preliminary Approval only, subject to conditions.
3. The Conditions required:

The applicant to submit a further code assessable application for a Development Permit for Building Works- Additions to a Dwelling House complying with the Conditions of the Preliminary Approval.

Further Information be submitted to Council prior to the issue of a Development Permit:

- a. Amended design plans that meet the site cover requirements in AO8.1 of the Low Density Residential Zone Code, noting that the upper level planter boxes, (and subsequent 'existing' lower roof balcony and BBQ deck) are to be included in the site cover calculation.
- b. Amended plans detailing that the maximum building height of any section of building or structure that is less than 2.5 metres to a side boundary does not exceed 7.5 metres above the finished ground level as per AO9.3.
- c. A space between each batten of the batten screen provided at a ratio of 1.5: 1 (space to batten width) AO 16.1;16.2

Other relevant conditions included a maximum height of the development must not exceed 8 metres above the finished ground level; 20% of the site is to be soft landscaping; External colours to be soft muted environmental tones that blend with the landscape.

The applicant subsequently lodged an appeal with the Development Tribunal and provided the following grounds for appeal, which included lodgement of amended plans.

### Decision Details

The council issued a Preliminary Approval for Building Works

- The applicant seeks for the issuing of a Development Approval

Assessment Manager Conditions

Condition 1 requires submission of a further code assessable application

- The applicant seeks to delete Decision 1 and approve the plans as submitted with this appeal.

Condition 2a requires amended designs complying with the site cover requirements

- The applicant does not consider the upper-level planter boxes to be included in the site cover calculations and the design is compliant with The Noosa Plan 2020 requirements (A08.1 of the Low- Density Residential Zone Code)

Condition 2b requires amended designs complying with the set-back requirements.

- The applicant provides amended plans complying with the 2.5m setback requirement for part of the building greater 7.5 metres above the finished ground line.

Condition 2c requires amended plans with a space between each batten at a ratio of 1.5:1 (space to batten width)

- The applicant provides amended plans with no space between the battens and considers the proposal to comply with The Noosa Plan (AO16 of the Low- Density Zone Code)

Condition 3 lists the Preliminary Approval Plans

- The applicant provides amended plans to be marked as Approved Plans (Revision D, dated 01.06.21)

### Reasons for the Decision

1. As identified by the Noosa Council, the following codes from the Noosa Plan 2020 are applicable in the assessment to the proposed building works to achieve the Overall Outcomes:

- Low Density Residential Zone Code (with *Site Cover* being an alternative provision to the QDC);
- Low Density House Code (which the proposed Council considered complied);
- Coastal Protection and Scenic Amenity Overlay Code

2. In its last assessment (21 Oct 2021), Council found that the proposed works *remained contrary to the overall and specific outcomes* of the Low-Density Residential Zone Code in regard to:
  - a. Acceptable Outcome (AO) 8.1 site cover.
  - b. Acceptable Outcome (AO) 16.1, 16.2, & Performance Outcome (PO) 16 roof form, and also remained contrary to the Coastal Protection and Scenic Amenity Overlay Code regarding what was considered unnecessary bulk due to the batten/gap ratio of the timber screen.
3. It is noted that the Council are now satisfied that the amended plans meet condition 2b of the Preliminary Approval in an email dated 21<sup>st</sup> October 2021 from Kerri Coyle Noosa Council.
4. However, the Tribunal finds that the proposed design was not contrary to the Noosa Plan 2020, but was a better representation of the intent of the Plan than the existing building.
5. Assessment has varying layers of consideration from the purpose of the code through to specific Acceptable Outcomes. In practice this means that a proposal which complies with the acceptable outcomes of the applicable code is automatically taken to comply with the corresponding performance outcomes and all higher order outcomes of the code (eg; overall outcomes and purpose of the code). Similarly, a proposal which complies with the performance outcomes of the applicable code (but not the acceptable outcomes) is automatically taken to comply with the higher order outcomes of the code. Where a proposal does not comply with the acceptable outcomes or performance outcomes of an applicable code, development complies with the code where it complies with the purpose and overall outcomes of the code. In this case where accepted development does not meet the prescribed acceptable outcomes, the development becomes assessable development and can be assessed against the corresponding performance outcomes.
6. After 'reconsideration of the evidence that was before the person who made the decision appealed against' and subsequent submissions, the Tribunal has assessed the development application as proposed in the following **Performance** (*qualitative statement*), **and Acceptable Outcomes-** (*quantifiable standard*) :

a. Site cover (and gross floor area)

One of the primary roles of the planter boxes, in addition to the softening introduced by planting, is to act as a sunshade, give weather protection and provide privacy for the residents. It is an element that serves a number of purposes including making the front elevation design more cohesive, unifying the various parts of the building and creating a sub-tropical affect in keeping with the intent of the Noosa Plan 2020.

Do the eaves constitute as site cover as proposed by Council? The Tribunal agrees what constitutes site cover is *the portion of the site that will be covered by a building*. The reasons why eaves and sunhoods as examples are excluded as they are considered ancillary to the primary purpose. The planter box acts as an eave and is therefore excluded from site cover calculations. However, the proposed building may or may not have achieved the *quantifiable standard* but has it achieved the *qualitative statement*?

b. PO8 Development

- (a) is of a scale compatible with surrounding development and the particular circumstances of the site;
  - *Outcome is that proposed development does not demonstrably alter the existing development and remains compatible in scale.*
- (b) has a low site impact to maximise the opportunity to retain site characteristics, such as native vegetation and natural landforms;
  - *Outcome is that proposed development retains site characteristics.*

- (c) allows the opportunity to provide soft landscaping between buildings;
  - *Outcome is that the proposed development retains the existing provision of soft landscaping between buildings;*
- (d) does not present an appearance of bulk to adjacent properties, roads or other areas in the vicinity of the site
  - *Outcome of the proposed development is that it seeks to minimise an appearance of bulk by introducing new elements that horizontally delineate the building into several segments and uses first level planting to soften visual impact.*

When considering bulk, one question is, does the planter box present an appearance of bulk- PO8 (d), or is it a strategy to reduce bulk by separating the building into horizontal layers, while positively contributing to PO8 (a), (b) & (c). Apart from its functional roles, is it also a device to compel the viewer into questioning what is building and what is landscape?

### c. Roof Design

#### **AO16.1**

With the exception of the reuse or renovation of an existing building which does not comply, in areas other than the Coastal Communities and Noosa Heads local plan areas:

1. The main roof of buildings has a pitch no less than 5 degrees; and
2. Eaves apply to at least 75% of the perimeter of the roof.
  - *The proposed development complies with AO16.1*

#### **AO16.2**

The total width of any parapet wall does not exceed 50% of the width of the front facade of a building.

- *The proposed development does not contain a parapet wall. The proposed timber screen is not a roof, or a parapet, or a 'parapet style roof'. It is a screen.*

What is a parapet on a building? From Wikipedia,  
*A **parapet** is a barrier that is an extension of the wall at the edge of a roof,<sup>[1]</sup> terrace, balcony, walkway or other structure.*

The timber screen shields the existing random roofs and gathers them into a cohesive form, and as a leitmotif echo's the finer coastal vegetation as a play of light and shadow-*Chiaroscuro*. In support of the screen:

The Council officer report previously noted *"the batten screens add the natural wooden appeal that the Coastal Protection and Scenic Amenity Overlay is wanting to achieve, however the extent of batten screens needs to be conditioned to ensure that it is not presenting as unnecessary bulk. The screens should be conditioned to be a 1.5:1 ratio of space between battens and the width of each batten."* Page 8 of 8 date received 5/10/21.

In response to Council's concerns regarding unnecessary bulk and batten spacing, the Tribunal considered that the screen's material (timber), its size (32mm x 32mm) and spacing apart (32mm) is critical to its success. The Tribunal considers there are 'fundamentals' regarding scale, proportion and their harmony which are difficult to articulate, but that the proposal offered the most visually pleasing solution. The Tribunal did not consider the screen presented unnecessary bulk and supported the spacing be equal to the batten depth with evidence on at least two sites at the locality to prove this assertion, being 25 Hill Street and 10 Ross Crescent. To quote Dorothy Draper: *'if it looks right, it is right'*.

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**Markus Pye**

**Development Tribunal Chair**  
**Date: 16 November 2021**



## 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**

**Email: [registrar@hpw.qld.gov.au](mailto:registrar@hpw.qld.gov.au)**