



Development Tribunal – Decision Notice

Planning Act 2016, section 255

Appeal number:	22-027
Appellant:	Rosa Raso
Respondent (Assessment manager):	Stuart Andrews, BSP Brisbane
Co-respondent (Concurrence agency):	Sunshine Coast Regional Council ('Council')
Site address:	33 and 35 Lang Street, Coolum Beach, formally described as lots 8 and 7 on RP202263, respectively ('the subject site').

Appeal

Appeal under section 229(2) and schedule 1, sections 1(1)(b) and 1(2)(g), and table 1, item 1, of the *Planning Act 2016* ('the PA') against the assessment manager's decision to refuse the appellant's application for a building works development permit for a new Class 1a dwelling house, including a Class 10a garage and a Class 10b pool, on the subject site ('the application').

Date and time of hearing and site inspection:	Wednesday 14 September 2022 at 10:30am
Tribunal:	Neil de Bruyn – Chairperson Kym Barry – Member
Present	Rosa Raso – appellant Saverio Raso – appellant's representative John O'Dor – appellant's representative John Gillespie, CadCon Surveying/Town Planning – appellant's rep. Stuart Osman, building designer – appellant's representative Stuart Andrews, BSP Brisbane – assessment manager Cameron Wilson-Yapp – Council representative Kelly Taylor – Council representative

Decision:

1. The Development Tribunal ('the tribunal'), in accordance with section 254(2)(d) of the PA, **sets aside** the decision of the assessment manager to refuse the application, and orders the assessment manager to:
 - a) remake the decision within 25 business days of the date of receiving this decision notice, as if the concurrence agency had no requirements; and
 - b) in the event that the assessment manager then decides to approve the application, to impose the following conditions upon such development permit:

- i. The approved development is a class 1a dwelling house with associated, ancillary Class 10a and 10b buildings/structures, in the form of a garage and a swimming pool.
- ii. The development is to be in accordance with the Revision I plans dated 20 September 2022 (Job No. 8326, Sheets 3 to 24, inclusive), as submitted to the tribunal on 26 September 2022 in response to its directions of 16 September 2022.
- iii. The area on the western, street-facing side of Level 4 of the proposed development (adjoining the scullery, void and internal stairway) is to be used for sun-control/shading purposes only, and is not to be used as a balcony, nor provided with any means of access from within the proposed house, including via any window or door;
- iv. The inclusion of the following Council Advisory Notes in the decision notice:

Infrastructure

In assessing this application, Council has not considered the proximity of the building work to water, sewer, stormwater and other infrastructure. This remains the responsibility of the building certifier.

Limit of Council's assessment and approval consent

Council's assessment and approval consent is limited to the assessment benchmarks of the Dwelling house code and/or Queensland Development Code that were specifically applied to be varied by the applicant. Prior to issuing a building development permit, the building certifier must ensure that the development complies with all other relevant acceptable outcomes of the Dwelling house code, the applicable overlay codes, and the Queensland Development Code except where varied by the conditions of this Council development approval / concurrence agency consent. The plans for the proposed development have NOT been assessed for compliance with any other Planning Act 2016 assessment benchmarks. It remains the responsibility of the building certifier to ensure the building work complies with the Planning Act 2016, Building Act 1975, Queensland Development Code, Building Code of Australia and other relevant legislation.

Building components, on or near the boundary

The Certifier is advised to ensure that building components, on or near the boundary, are to be completely within this property including, but not limited to, footings, slabs, gutters, downpipes, barges and the like.

For clarity, this referral does not in any way allow:

- any part of the building to go past the property boundary
- the use of the neighbouring property to for construction purposes

Property driveway and vehicle crossover

The planning scheme declares Operational Work for the construction of a driveway and vehicle crossover to the property to be accepted development, assessable against acceptable outcome AO9 of the Dwelling House code. If the proposed driveway and vehicle crossover do not comply with the acceptable outcome of the code, a development permit for the work is required to be obtained from council.

Fire separation

In assessing the proposed development, Council has not assessed the effect of fire spread between properties. It is the building certifier's responsibility to assess the requirements of fire separation and appropriate construction as part of the building development permit.

Use of premises for short term accommodation

Use of the premises for the purpose of short-term holiday letting and visitor accommodation may require a development permit to be obtained from council in accordance with the applicable planning scheme and Queensland planning legislation in effect at the time of conducting the activity. Under the current Sunshine Coast Planning Scheme 2014, visitor holiday letting is defined as Short-term accommodation and requires a development permit for material change of use prior to the use commencing. Information with respect to the development applications may be found on the Sunshine Coast Council website (www.sunshinecoast.qld.gov.au).

Earthworks and siteworks requirements

Where water and sewerage infrastructure is proposed to be constructed, visit www.unitywater.com/certifier for details on how to prepare your water and sewerage connection application.

It is the building certifier's responsibility to ensure the approved building work, associated siteworks and surface water drainage comply with sections 75 & 76 of the Building Act 1975 and associated Building Code of Australia (BCA) Performance Requirements. Some earthworks associated with proposed new dwellings are not incidental to building and structures on the site and therefore defined as Operational Work under the Planning Act 2016. Operational Work is assessable development under the Sunshine Coast Planning Scheme 2014 where cumulatively involving more than 50m³ of material.

Background:

2. The subject site is a residential site, comprising of two adjacent lots (Lots 7 and 8 on RP202263) ('Lot 7' and 'Lot 8'), with a combined area of 1,601m², located in Coolum Beach within the Sunshine Coast Council local government area. The subject site fronts onto Lang Street, a local access cul-de-sac, which terminates on the south-western side of the subject site. The site slopes steeply from its frontage towards its north-eastern corner.
3. The subject site is included within the Medium Density Residential Zone under the Sunshine Coast Planning Scheme 2014, being the current planning scheme for the subject site ('the planning scheme'). The site contains a substantial, detached dwelling house located towards the frontage of Lot 7 (35 Lang Street). Lot 8 (33 Lang Street) is substantially vacant.
4. The appellant proposes to construct a new Class 1a building (single, detached house), with an ancillary Class 10a garage and Class 10b pool. The application was made to the assessment manager for a building works development permit for the proposed development. There is no evidence before the tribunal as to the date upon which the application was made; however, this omission is not considered to be significant in the circumstances of this appeal.
5. As the subject site currently contains an existing house and ancillary buildings and structures, and as the tribunal has no evidence before it of any building development approval having been given for the demolition of these existing buildings and structures, it

is assumed that it was the intention to make a separate building development application for the necessary demolition works.

6. The tribunal is advised (as will be explained presently) that the application included the plans prepared by Stuart Osman and numbered 8326 Revision D (Sheets 1 to 28) ('Revision D plans'). These plans show a large house extending across both lots comprising the subject site, and consisting of four levels. Specifically, in relation to the issues raised in this appeal, these plans show a minimum frontage setback to Lang Street of 3.293 metres (measured, as required, to the outermost projection of the relevant part of the proposed building). This setback applies to the top level of the proposed house (level 4).
7. Pursuant to section 33 of the Building Act 1975 ('the BA') and section 1.6 of the planning scheme, the Dwelling House Code under the planning scheme specifies alternative siting provisions to those set out in the relevant part of the Queensland Development Code. The Dwelling House Code includes Acceptable Outcome 3 ('AO3'), which requires a dwelling house (i.e. a Class 1a building), other than a garage, carport or shed, to be set back to any road frontage by the following minimum distances:
 - a) 4.5 metres for the ground storey; and
 - b) 6 metres for any levels above the ground storey.
8. For section 54 of the PA, schedule 9, part 3, division 2, table 3 of the Planning Regulation 2017 specifies that a development application for building work that does not meet a quantifiable standard for an alternative provision under section 33 of the BA requires referral to the applicable local government. Accordingly, on 7 October 2021, the application was referred to Council as a concurrence agency for a design and siting assessment and response.
9. From material provided to the tribunal, Council issued an information request dated 12 October 2021. The information requested was as reproduced below:

The proposed plans show the proposed top floor of the dwelling being 3.293 metres from the front property boundary. Based on the current proposed design, the proposed dwelling would not comply with Acceptable Outcome AO3, nor Performance Outcome PO3 of the Dwelling House Code. Namely, the proposed dwelling may impact the privacy and sunlight access to the southern neighbour at 37 Lang Street.

Attaining the consent of the adjoining property owners may address compliance with Performance Outcome PO3.

***Amend the proposal plans/provide additional information to better meet compliance with Performance Outcome PO3 of the Dwelling House Code. This should include the following:
Increase the front boundary setback for the top floor of the dwelling.***

OR

Evidence that this building will not affect the privacy and amenity of the neighbouring residents is required. Your consultation with the affected neighbours at 37 Lang Street may assist in providing the necessary information*

****Council advice:***

If you wish, you may consider the following option.

- *A method of obtaining evidence is by providing a statement from the owners at 37 Lang Street, with detailed written confirmation that the proposed*

structure (as amended as part of (a) above) will not adversely impact on the amenity and privacy of the residents.

- In an adjacent owner's statement, there is to be real evidence that they have understood the height, length and setback of the structure. A statement needs to have a specific description of the plans the adjacent owners have looked at. Also, the statements need to explicitly address Council's concerns. A general statement is insufficient.*

Advisory Note

Submission of a neighbour's statement does not guarantee approval of your application. Council will consider the neighbour's statement in conjunction with the requirements of the planning scheme prior to making a final decision.

10. The tribunal has not been provided with a copy of the response made on behalf of the appellant to the above-mentioned information request. This omission is not considered to be significant in the circumstances of this appeal.

11. In a referral agency response dated 3 June 2022, Council directed the assessment manager to refuse the application, on the grounds reproduced below:

- 3.293 metre setback from the outermost projection of the dwelling house (top floor) to the road/property boundary (Lang Street frontage)*

1. *The proposal does not meet the Performance Outcome PO3 (b)(d) and (e) of the Dwelling House Code within the Sunshine Coast Planning Scheme 2014:*

PO3 (b) – Create a coherent and consistent streetscape, with no or only minor variations in frontage depth.

- The upper floor of the proposed dwelling would be located well within the required 6 metre front setback. A review of the street shows that the majority of other dwellings in the street meet the required 6 metre upper floor front setback. Therefore, the proposed 3.293 metre upper floor front setback is not considered to create a coherent and consistent streetscape, with no or only minor variations in frontage depth.*

2. *The proposal does not meet the Performance Outcome PO3 (d) of the Dwelling House Code within the Sunshine Coast Planning Scheme 2014:*

PO3 (d) – Provide reasonable privacy to residents and neighbours on adjoining lots.

- The proposed upper floor of the dwelling would accommodate a front balcony within the required 6 metre front setback. Due to the reduced front setback, this balcony would likely have sightlines into the habitable rooms/area of the adjoining lot at 37 Lang Street. As a result, the proposed dwelling house would not provide reasonable privacy to residents and neighbours on adjoining lots.*

3. *The proposal does not meet the Performance Outcome PO3 (e) of the Dwelling House Code within the Sunshine Coast Planning Scheme 2014:*

PO3 (e) – Maintain reasonable access to views and vistas, prevailing breezes and sunlight for each dwelling house.

- *The large scale and bulk of the proposed dwelling encroaching within the front setback is likely to restrict reasonable access to views and vistas of adjoining residential uses.*

12. The assessment manager duly issued a decision notice dated 9 June 2022, refusing the application. The notice states that ‘the refusal is solely because of the direction of the referral agency/agencies’.
13. The appellant duly lodged this appeal with the tribunal registrar on 28 June 2022.
14. By email dated 5 August 2022, a petition was submitted to the tribunal’s registrar. The email purports to have been submitted by the resident of 1/31 Lang Street, Coolum Beach, a residential development adjoining the subject site to the north-west. The petition appears to contain 27 signatures, mostly of residents of Lang Street. The lodgement of this petition was accepted by the tribunal, as background material only, pursuant to section 249(6)(c) of the PA.
15. A site inspection and hearing was held on the subject site on Wednesday, 14 September 2022. At the hearing, the appellant’s representatives made mention of an updated set of plans having been prepared (i.e. a later revision than the Revision D plans that had been the subject of the application and Council’s assessment and referral agency response). These updated plans did not form part of the material provided to the tribunal in support of this appeal.
16. As will be evident from the foregoing, the material provided to the tribunal for this appeal was inadequate; for example, a full copy of the application material was not included, and only two, somewhat illegible photocopies of site plans for Levels 3 and 4, as attached to the assessment manager’s decision notice, were included. Accordingly, the tribunal issued the following directions to the parties on 16 September 2022:

Following the site inspection and hearing held on the subject site from 10:30am on Wednesday, 14 September 2022, the tribunal appointed to hear and decide this appeal requests the appellant to provide the following information and material:

1. *A complete, electronic copy of the building works development application (including all application forms) the subject of this appeal, including a complete, electronic set of the building plans that were the subject of the Sunshine Coast Council’s (‘Council’) referral agency assessment and response dated 3 June 2022 (‘referral agency response plans’);*
2. *A complete, electronic copy of the material referred to the Council (where not forming part of the material referred to in 1. above);*
3. *A complete, electronic set of the subsequently updated and/or amended building plans referred to by the appellant’s representative at the inspection and hearing, together with a written statement detailing all updates and/or changes relative to the referral agency response plans;*
4. *Details of any further changes the appellant is prepared to make to the design of the proposed dwelling house, in response to the Council’s grounds for directing refusal of the subject development application (if any).*

The appellant is to provide her response to the Registrar by no later than 4pm on Friday, 30 September 2022, with a complete copy to the Council. Council, in turn, is to provide any further, written comments to the Registrar (with a complete copy to the appellant) by no later than 4pm on Friday, 14 October 2022.

17. The appellant's response to the above-mentioned directions was received by the Registrar and the council representatives by way of an email dated 26 September 2022. This response included the following attachments:

- a) A copy of the completed 'Request for Concurrence Agency Response (Building Work)' form;
- b) confirmation that the Revision D plans were the plans originally submitted for the 'siting relaxation;'
- c) a copy of Council's information request dated 12 October 2021;
- d) a series of emails between a staff member of the assessment manager and a council representative, all dated 12 May 2022;
- e) a copy of Council's referral agency response dated 3 June 2022;
- f) copies of the set of plans discussed by the appellant's representatives at the tribunal hearing ('Revision H plans'); and
- g) a set of further amended plans ('Revision I plans') showing 'a screen added to the southern kitchen window and the solid blade removed from the front façade corner as discussed in the tribunal meeting ...'

18. Council's response to the tribunal's directions, and to the appellant's above-mentioned response, was received by the Registrar and the appellant's representatives by way of an email dated 13 October 2022. This response re-stated Council's original grounds for directing refusal of the application, and made reference to the Revision I plans, as follows:

The appellant provided Revision I of the plans on 23 September 2022. This revision has removed the blade wall at the front providing some reduction in the appearance of the bulk and scale of the structure when viewed from the neighbouring lot and the street, assisting with it being a minor variation to the frontage depth in the street. The windows from the kitchen to the neighbouring lot within the front setback also appear to have been removed, thereby minimising privacy and overlooking impacts that may have occurred. The plans now identify 'operable louvre screen' in front of the area that appears as a balcony (see images below). The plans tend to indicate this still as a tiled area that has the appearance of a balcony. To ensure that this area is not used as a balcony, which would have privacy impacts on the adjoining lot, the plans should reflect that this area is not to be used as a balcony, if the application were to be approved by the Tribunal.

19. Council's response also addressed a query that had been raised at the hearing, in relation to the reduced front setback apparent on the nearby house at 29 Lang Street. The response confirmed that an approved plan of development forming part of a reconfiguration of a 2015 lot development permit for that site had permitted a minimum front setback of 4 metres to the house wall.

20. As certain of the information requested of the appellant in the tribunal's directions of 16 September 2022 was not forthcoming in her response of 26 September 2022, the tribunal issued the following, further directions dated 24 October 2022:

The tribunal appointed to hear and decide this appeal has reviewed the information and material provided by both parties in response to its directions of 16 September 2022 ('the directions'). The tribunal notes that the appellant's response is deficient, in that it did not provide the following information and material:

- a) *Item 1 of the directions – a complete, electronic copy of the building works development application (including all application forms) the subject of this appeal;*
- b) *Item 3 of the directions – a written statement detailing all updates and/or changes on the set of plans referred to by the appellant's representative at the inspection and hearing, relative to the plans that were the subject of the Sunshine Coast Council's referral agency assessment (the 'referral agency response plans').*

The appellant is to provide the above information and material to the Registrar, with a complete copy to the Council, by 4pm on Friday, 28 October 2022.

21. The appellant's further response was received by the Registrar in two separate emails, on 24 and 28 October 2022. The first email included a copy of the DA Form 2 and a further copy of the assessment manager's decision notice refusing the application, including more legible copies of the two plans that had been attached to the decision notice. The second email included an email dated 25 October 2022 from Stuart Osman (building designer) listing design updates shown on the Revision I plans, and not the updates shown on the Revision H plans relative to the Revision D plans, as requested in the tribunal's directions. The second email also included further copies of the Revision H plans and the Revision I plans.

Material considered:

22. The following material has been considered by the tribunal in this appeal:

- a) 'Form 10 – Notice of Appeal' lodged on behalf of the appellant with the tribunal's registrar on 28 June 2022, including:
 - i. a document entitled 'Grounds for Appeal 33 Lang Street, Coolum' (undated);
 - ii. a copy of the assessment manager's decision notice dated 9 June 2022, including attached plans ('Site Plan-Level Three-Street Level' and 'Site Plan-Level Four'); and
 - iii. a copy of Council's referral agency response dated 3 June 2022, directing refusal of the application.
- b) The material attached to, and included within, the appellant's responses to the directions issued by the tribunal on 16 September 2022 and 24 October 2022, including:
 - i. DA Form 2;
 - ii. completed Request for Concurrence Agency Response (Building Work) form;
 - iii. Revision D plans;
 - iv. a copy of Council's information request dated 12 October 2021;
 - v. email correspondence between a representative of the assessment manager and Council, all dated 12 May 2022;
 - vi. Revision H plans and Revision I plans.
- c) The email from Council dated 13 October 2022, in response to the tribunal's directions of 16 September 2022.
- d) The *Planning Act 2016* and the *Planning Regulation 2017*.
- e) The Sunshine Coast Planning Scheme.
- f) The petition submitted to the tribunal's registrar by email on 5 August 2022.

Jurisdiction:

23. Section 229(1) of the PA provides that Schedule 1 ('the schedule') of the PA states the matters that may be appealed to a tribunal.
24. Section 1(1)(b) of the schedule provides that the matters stated in Table 1 of the schedule ('Table 1') are the matters that may be appealed to a tribunal. However, section 1(2) of the schedule provides that Table 1 only applies to a tribunal if the matter involves one of the matters set out in section 1(2).
25. Section 1(2)(g) provides that Table 1 applies to a tribunal if the matter involves a matter under the PA, to the extent the matter relates to the Building Act 1975, other than a matter under that Act that may or must be decided by the Queensland Building and Construction Commission.
26. Table 1 thus applies to the tribunal in this appeal. Accordingly, the tribunal is satisfied that it has jurisdiction to hear and decide this appeal.

Decision framework:

27. Generally, the onus rests on an appellant to establish that an appeal should be upheld (section 253(2) of the PA).
28. The tribunal is required to hear and decide an appeal by way of a reconsideration of the evidence that was before the person who made the decision appealed against (section 253(4) of PA); however, 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 PA.
29. The tribunal is required to decide an appeal in one of the ways mentioned in section 254(2) of the PA, and the tribunal's decision takes the place of the decision appealed against (section 254(4)).
30. The tribunal must not make a change, other than a minor change, to a development application (section 254(3)).

Findings:

31. The tribunal's findings are confined to the matters raised in Council's grounds for directing refusal of the application. In this regard, the tribunal notes that the assessment manager's decision to refuse the application was stated to be based solely upon the direction of refusal by Council as a concurrence agency.
32. The Council's grounds for refusal (as more fully outlined in Paragraph 11 above) were essentially that the proposed Level 4 frontage setback of 3.293 metres would not be consistent with the achievement of PO3(b), (d) and (e) of the Dwelling House Code ('the code'), an alternative siting provision for section 33 of the BA.
33. The Revision D plans (the plans for the original application and referral to Council) show that the setback encroachment the subject of Council's direction of refusal is by the proposed kitchen and scullery at Level 4, and an adjacent area that appears to be a tiled space between the scullery, an adjacent void and the stairway/lift well and the street, with an operable louvre screen extending across its width. The Revision D plans also show a large window within the side wall of the proposed kitchen, facing towards the side boundary

of the subject site. It appears, from the Revision D plans, that part of this window may encroach into the 6 metre front setback.

34. The relevant acceptable outcome of the code, AO3, provides that the minimum setback to the road is 4.5 metres at the ground storey and 6 metres for any level above the ground storey. It is clear that Level 4, being a level above the ground storey, does not achieve the AO3 requirement of a 6m setback to the street, and therefore that PO3 is the assessment benchmark for this aspect of the proposed development.

35. PO3 provides as follows (emphasis added):

Where located in a residential zone, the dwelling house is set back from any road frontage so as to:

- a) achieve a close relationship with, and high level of passive surveillance of, the street;*
- b) create a coherent and consistent streetscape, with no or only minor variations in frontage depth;***
- c) make efficient use of the site, with opportunities for large back yards;*
- d) provide reasonable privacy to residents and neighbours on adjoining lots; and***
- e) maintain reasonable access to views and vistas, prevailing breezes and sunlight for each dwelling house.***

36. Council's grounds for refusal argue that the majority of houses in the street observe the 6 metre front setbacks required under AO3, and therefore that the proposed development fails to create a coherent and consistent streetscape. The grounds go on to note that Level 4 includes a balcony within the front setback, which would militate against the achievement of a reasonable level of privacy for neighbouring residents. Finally, the grounds argue that the bulk and scale of the proposed development encroaching into the front setback would fail to maintain reasonable access to views and vistas for neighbours.

37. At the site inspection and hearing, the appellant's representative stated that the 'balcony' referred to in Council's grounds for directing refusal is, in fact, not a balcony, as it will have no physical access, and that it is intended to be a sun-control device to shade the west-facing areas of the house. Accordingly, it was stated that this space would not constitute an overlooking opportunity that would impact upon neighbour's privacy. The tribunal accepts this explanation.

38. Following the site inspection and hearing, and in response to the tribunal's direction, the appellant has submitted the Revision I plans, proposing:

- a) the inclusion of a privacy screen across the south-facing kitchen/scullery window; and
- b) the removal of a 'blade wall' from the southern side of the aforementioned sun-control area, and the substitution of screening to this area.

39. Council's response to the Revision I plans, as outlined in its response to the tribunal's directions of 16 September 2022, acknowledges that the removal of the 'blade wall' provides some reduction in the appearance of bulk and scale when viewed from the street and the neighbouring lot, and that this change renders the setback encroachment a 'minor variation'. Council's response also acknowledges that the area previously considered to be a balcony should be clearly identified on the plans as not constituting a balcony, should the tribunal be of a mind to allow the appeal.

40. At the site inspection, the appellant's representatives pointed out that the frontage setback of the house at 29 Lang Street, a nearby premises, appeared to be somewhat less than the 6 metres required under AO3 of the Dwelling House Code, and therefore raised a question as to the validity of Council's ground for refusal regarding the coherence and consistency of the streetscape. In its response to the tribunal's directions, Council clarified that a prior development approval, issued in 2015, had permitted a frontage setback to the house wall of 4 metres. From its observations at the site inspection, it was apparent to the tribunal that the front setback to the outermost projection (roof fascia) of that house was somewhat less than 4 metres.
41. The tribunal therefore finds that the frontage setbacks of the proposed development cannot be said to be entirely inconsistent with the local streetscape, including given the fact there is no dispute that the ground level frontage setback achieves the applicable requirement of AO3 of the Dwelling House Code. The tribunal also notes that the topography of the site, which slopes at an increasing gradient away from the frontage, is somewhat restrictive and tends to dictate the siting of the development towards the frontage.
42. The tribunal finds further that:
- a) that the addition of a privacy screen to the Level 4 kitchen/scullery window would sufficiently restrict overlooking of the neighbouring premises, and also that a kitchen and scullery would not normally be considered to be a part of a dwelling house that would constitute a major overlooking risk (as would, for example, be the case with a balcony, entertainment or primary living area);
 - b) the restriction of the use of the external, street-facing area adjoining the scullery, void and internal stairway to sun-control purposes only, with no access permitted, would eliminate a major potential overlooking opportunity and therefore maintain the neighbours' privacy;
 - c) the substitution of the Revision I plans for the Revision D plans, the former featuring the inclusion of the privacy screen to the south-facing kitchen/scullery window, the removal of the blade wall on the southern side of the external sun-control area, and the inclusion of a screen in place of the blade wall, would constitute a minor change to the application, as defined under the PA;
 - d) the views from the neighbouring premises at 37 Lang Street are predominantly from balconies facing the street and therefore towards the west, with any outlooks towards the subject site (that is, to the north and north-west) being of substantially lower significance and, in any event, already restricted by other houses within the cul-de-sac;
 - e) the views from other neighbouring premises in Lang Street would only be marginally affected by the proposed development, if at all; and that
 - f) the imposition of appropriate conditions upon any building works development permit for the proposed development could ensure a satisfactory level of achievement of PO3 of the Dwelling House Code.
43. The changes referred to in paragraph 42 above constitute a minor change to the application as:
- a) The changes do not result in a substantially different development, insofar as the criteria set out in schedule 1 of the Development Assessment Rules (Version 1.3, commenced 11 September 2020) are concerned; and
 - b) the changed application would not cause the inclusion of prohibited development, require referral to any extra referral agencies, introduce any additional referral agency assessment matters or require public notification of the changed application.

Reasons for the decision:

44. The tribunal, in accordance with section 254(2)(d) of the PA, has decided this appeal as set out in paragraph 1 above.
45. The tribunal's reasons for this decision are that appropriate, minor changes to the proposed development, as detailed above, and the inclusion of appropriate conditions in any development approval given by the assessment manager in accordance with this tribunal decision, as outlined above, would satisfactorily achieve the development outcomes sought by PO3 of the Dwelling House Code under the planning scheme.

Neil de Bruyn
Development Tribunal Chair
Date: 16 November 2022

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 Energy and Public Works
GPO Box 2457
Brisbane QLD 4001

Telephone: 1800 804 833

Email: registrar@hpw.qld.gov.au