



Development Tribunal – Decision Notice

Planning Act 2016, section 255

Appeal number:	24-034
Appellant:	Ross Palazzesi
Respondent:	Noosa Shire Council
Site address:	38 Mossman Court, Noosa Heads and described as Lot 145 on N 21859 – the subject site

Appeal

Appeal under schedule 1, section 1(2)(a) of the *Planning Act 2016* (**Planning Act**) against the refusal of a development application for material change of use for a dwelling house and operational works for earthworks and frontage works (**Development Application**).

Date and time of hearing:	1 November 2024
Place of hearing:	The subject site
Tribunal:	Stafford Hopewell—Chair Elizabeth Anderson—Member Sandra Sear—Member
Present:	Ross Palazzesi (Owner), Jack Lewis (Town Planner) and Ben Thornton (Building Designer) —Appellant Andrew Gaffney and Georgina Schramm—Respondent

Decision:

The Development Tribunal (**Tribunal**), in accordance with section 254(2)(c) of the Planning Act replaces the decision to refuse the Development Application with the decision to approve the Development Application subject to the conditions in Appendix 1.

Background

1. This is an appeal about the refusal of a development application for a material change of use for a dwelling house (Council reference MCU24/0032) and operational works for earthworks and frontage works (Council reference OPW24/0032) under the Noosa Plan 2020 (**Noosa Plan**).

2. The subject site is located within the Low Density Residential Zone of the Noosa Plan and has an area of approximately 606m² and is improved by an existing two storey dwelling house constructed circa 1970s / 1980s.
3. The subject site is located towards the end of a cul-de-sac and has a relatively narrow street frontage and wide rear frontage onto a waterway.
4. The local area is comprised of predominantly waterfront lots with detached houses of varying ages ranging from original circa 1970s / 1980s houses through to recent new builds. Due to the age of the original housing stock and current land values, there are many new houses and much of the older housing stock is either being extensively renovated or demolished to be replaced with new builds.
5. In this context, the existing dwelling house is relatively modest by current standards and the proposed development is for what can reasonably be described as a large new house of a contemporary design which seeks to maximise the use of the subject site and amenity associated with the waterfront location.
6. The proposed dwelling house comprises two storeys with a basement level. The basement is proposed to accommodate parking for three vehicles and non-habitable space. On the ground floor is proposed a bedroom, family room, kitchen and living spaces. The first floor is proposed to comprise the master bedroom and ensuite, 2 ensuite bedrooms, void, balcony, and leisure areas.
7. Council refused the Development Application by decision notice dated 2 July 2024 for the following reasons (**Grounds for Refusal**):
 1. *The proposal does not comply with Overall Outcome 6.3.1.2 (2)(c) of the Low Density Residential Zone Code given the development would not maintain the low scale character of the zone, given the cumulative impacts of non-compliant height, site cover and setback encroachments proposed.*
 2. *The proposal does not comply with Acceptable Outcome AO7.1 and corresponding Performance Outcome PO7 of the Low Density Residential Zone Code as the proposal:*
 - a. *at 8.3m, presents a building height inconsistent with structures on adjoining and surrounding premises, and with the predominant character of the area.*
 - b. *does not respond to the existing site conditions and will visually dominate the street and surrounding area.*
 3. *The proposal does not comply with Acceptable Outcome AO8.1 and corresponding Performance Outcome PO8 of the Low Density Residential Zone Code as:*
 - a. *The proposal will result in site cover of the development to 51% on the ground floor and 38% on the first floor, well in excess of the requirements of the planning scheme.*
 - b. *The proposed building work is incompatible with surrounding development and the particular circumstances of the site, noting that existing development in proximity predominantly complies with the current site cover requirements or achieves a site cover of an average 40% for each storey.*

- c. *The proposal does not achieve the 20% soft landscaping requirement, and the structures at the basement level impacts upon the opportunity for meaningful vegetation to screen or soften the appearance of the proposed building.*
 - d. *The proposed building bulk will be visible and prominent to Mossman Court, surrounding development and from the waterway.*
 - 4. *The proposal does not comply with Acceptable Outcome AO9.1 and AO9.2 and corresponding Performance Outcome PO9 of the Low Density Residential Zone Code as:*
 - a. *The proposed building is not designed and sited in a manner consistent with the predominant character of the streetscape and will impact upon the amenity of the streetscape and adjoining parcels to the east due to the proposed setback encroachments.*
 - b. *The laundry, being located within the side setback clearance, reduces solar access to the clothes drying areas of the adjoining parcel to the east and does not provide adequate distance from this area.*
 - c. *The proposed balcony and roof within the front setback will have a finished height of 7.3 metres and cause the building to dominate the street.*
 - 5. *The proposal does not comply with Overall Outcome 9.3.1.2 (2)(b) of the Low Density Housing Code as the proposed bulk and scale of the dwelling is not sited or designed to protect the amenity of adjoining premises.*
 - 6. *The proposal is unlikely to be able to comply with Acceptable Outcome AO6 and Performance Outcome PO6 of the Low Density Housing Code the ability to provide soft landscaping, including screening to surrounding land uses.*
- 8. In summary, the issues relate to compliance with the following assessment benchmarks:
 - (a) Low Density Residential Zone Code (Grounds 1, 2, 3 and 4);
 - (b) Low Density Housing Code (Grounds 5 and 6).
- 9. More specifically, the fundamental issue to be determined is whether the proposed development complies with site cover, and related to this finding, whether the proposed development is an 'over-development' of the subject site.
- 10. There are also a number of secondary issues to be determined, but parties submitted and the Tribunal concurs, the central issue to the resolution of the appeal is the consideration of site cover and the impacts of the proposed development that flow from the proposed site cover.

Jurisdiction

- 11. The Tribunal has jurisdiction to hear an appeal about the refusal of a development application for a material change of use for a classified building, or operational work associated with building work under schedule 1, section (2)(a) of the Planning Act.
- 12. As a dwelling house is a classified building and the proposed operational works are associated with the building work for the proposed dwelling house, the Tribunal is satisfied it has jurisdiction under the Planning Act to hear and decide the appeal.

Decision framework

13. This is an appeal against the refusal of a development application and the Appellant has the onus to show that the appeal should be upheld in accordance with section 253(2) of the Planning Act.
14. 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 (section 253(4) of the Planning Act).
15. 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 the Planning Act (pursuant to which the registrar may require information for tribunal proceedings).
16. The Tribunal is required to decide the appeal in one of the ways mentioned in section 254(2) of the Planning Act, being:
 - (a) confirming the decision; or
 - (b) changing the decision; or
 - (c) replacing the decision with another decision; or
 - (d) setting the decision aside, and ordering the person who made the decision to remake the decision by a stated time.

Material considered

17. The material considered in arriving at this decision was:
 - (a) Form 10 Notice of appeal, grounds for appeal and correspondence accompanying the appeal lodged with the Tribunals registrar on 23 July 2024;
 - (b) Email of 22 November 2024 from Council in response to the Tribunal's order of 13 November 2024;
 - (c) Email of 23 November 2024 from Pivotal Perspective on behalf of the Appellant in response to the Tribunal's order of 13 November 2024;
 - (d) Noosa Plan;
 - (e) *Planning Act 2016*;
 - (f) *Planning Regulation 2017*;
 - (g) *Building Act 1975*.
18. In response to orders and directions from the Tribunal, Council provided further information in relation to the calculation of site cover by email dated 22 November 2024.
19. Pursuant to section 253(5)(a) of the Planning Act, the Tribunal grants leave and accepts the further material provided to the Tribunal.

Findings of fact

20. The Tribunal makes the following findings of fact in relation to the Grounds of Appeal:
 - (a) **Building Height:** The proposed building height does not comply Acceptable Outcome AO7.1 of the Low Density Residential Zone Code. However, the Tribunal is satisfied that the proposed building height complies with Performance Outcome PO7 of the Low Density Residential Zone Code.

- (b) **Site Cover:** The proposed site cover does not comply with Acceptable Outcome AO8.1 of the Low Density Residential Zone Code. However, the Tribunal is satisfied that the proposed site cover complies with Performance Outcome PO8 of the Low Density Residential Zone Code.
- (c) **Setback:** The proposed development does not comply with Acceptable Outcome AO9.1 and, AO9.2 of the Low Density Residential Zone Code. However, the Tribunal is satisfied that the proposed setback complies with Performance Outcome PO9 of the Low Density Residential Zone Code.
- (d) **Landscaping:** The proposed development does not comply with Acceptable Outcome AO6 of the Low Density Housing Code. However, the Tribunal is satisfied that the proposed landscaping complies with Performance Outcome PO6 of the Low Density Residential Zone Code.
- (e) **Bulk and Scale:** The proposed development complies with Overall Outcome 9.3.1.2(2)(b) of the Low Density Housing Code.
- (f) **Low Scale Character:** The proposed development does not comply with Acceptable Outcome AO6 of the Low Density Housing Code. However, the Tribunal is satisfied that the proposed development complies with Performance Outcome PO6 of the Low Density Housing.

Reasons for the decision

- 21. The Development Application is subject to code assessment under the Noosa Plan.
- 22. Under section 45 of the Planning Act, a code assessment must be carried out only:
 - (a) against the assessment benchmarks in a categorising instrument for the development; and
 - (b) having regard to any matters prescribed by regulation.
- 23. In deciding a code assessable development application, under section 60 of the Planning Act, the assessment manager (and in this appeal, the Tribunal) after carrying out the assessment:
 - (a) must decide to approve the application to the extent the development complies with all of the assessment benchmarks for the development;
 - (b) may decide to approve the application even if the development does not comply with some of the assessment benchmarks;
 - (c) may decide to impose development conditions on an approval; and
 - (d) may, to the extent the development does not comply with some or all of the assessment benchmarks, decide to refuse the application only if compliance can not be achieved by imposing development conditions
- 24. In this appeal, the key assessment benchmarks for the Development Application are the Low Density Residential Zone Code and Low Density Housing Code of the Noosa Plan. There are no matters prescribed by regulation that have been raised by the parties.
- 25. At the Tribunal hearing and in subsequent written submissions to the Tribunal, Council maintained that the proposed development materially exceeds the prescribed site cover and together with other non-compliances in relation to building height and setbacks, the proposal is of excessive scale and bulk and should be refused.

26. The Appellant, in contrast, submitted that the site cover complies with the acceptable outcome and whilst there are non-compliances in relation to building height and setbacks, these are immaterial and do not warrant the refusal of the Development Application.
27. It is common ground between the parties that the proposal does not comply with building height and boundary setbacks, although Council did not press that these non-compliances in isolation warrant refusal.
28. Both parties submitted, and the Tribunal concurs, that the central issue in the determination of the appeal is whether the proposal complies with the prescribed site cover standards and, if not, does the non-compliance warrant refusal of the Development Application.
29. The Tribunal has considered each of the Grounds for Refusal having regard to the Appellant's grounds of appeal and further evidence accepted with the leave of the Tribunal to determine whether the Appellant has discharged its onus to show that the appeal should be upheld.
30. In considering the evidence and submissions of the parties, the Tribunal has also had the benefit of the view at the hearing to contextualise the evidence and submissions of the parties (noting that the view is not itself evidence).

Site Cover

31. AO8.1 of the Low Density Residential Zone Code is that site cover does not exceed 50% on the ground floor and 30% on the first floor.
32. The Appellant submits the proposal complies with AO8.1 with site cover of 49.87% on the ground floor and 29.95% on the first floor.
33. In contrast, Council submits the site cover is 51% on the ground floor and 38% on the first floor.
34. Both the Appellant and Council submitted drawings relied upon to support their respective analysis.
35. The fundamental difference in the calculations between the parties arises due to the Appellant excluding a void area on the first floor from the site cover whereas Council has included the void area in the calculation of site cover.
36. Given the fundamental difference in approach between the parties and significance of this issue, the Tribunal made orders following the hearing inviting the parties to provide further submissions in support of their contentions as to the calculation of site cover.
37. Council by email dated 22 November 2024 to the Registry set out its reasoning in relation to the calculation of site cover, focused on what Council considered to be the relevant definitional requirements. Council however did not provide any revised analysis of the plans to show how it had applied its approach to the proposal.
38. The Appellant by email dated 23 November 2024 to the Registry declined to provide any further submissions and re-iterated the adoption of its submissions contained in the Notice of Appeal.
39. Unfortunately, the approach of the parties has left the Tribunal with limited material to determine the dispute between the parties.
40. Neither party has cited any legal authority or principles relevant to the interpretation and calculation of site cover nor have the parties provided detailed analysis and reasoning as to how they have arrived at their respective calculations.

41. The Appellant has the onus to show that the appeal should be upheld, which includes that the proposed development complies with assessment benchmarks (to the extent relevant).
42. The approach advocated by the Appellant is that having regard to the definition of 'storey' in the Noosa Plan, 'site cover' is to be determined firstly by calculating what is the area of the storey, then applying that as the site cover for that storey.
43. Effectively, the Appellant submits that because the first storey comprises a void area which is stated to not form part of the area of the storey, this area is excluded from the site cover.
44. In contrast, Council submits that the definition of storey has no relevance to the definition of site cover as defined and, particularly, the void area is not excluded (in simple language, Council submits that site cover concerns the footprint of the building and how the internal space within the footprint is used is irrelevant to the calculation of site cover).
45. The Noosa Plan definition of site cover is:

Site cover of development, means the portion of the site, expressed as a percentage, that will be covered by a building or structure, measured to the outermost projection, after development is carried out, other than a building or structure, part of a building or structure, that is—

 1. *In a landscaped or open space area, including for example a gazebo or shade structure; or*
 2. *A basement that is completely below ground level and used for car parking; or*
 3. *The eaves of a building; or*
 4. *A sun shade.*
46. For AO8.1 of the Low Density Residential Zone Code, site cover of all buildings and structures does not exceed:

...

 2. *For a building of 2 storeys –*
 1. *50% for one of the storeys; and*
 2. *30% for the other storey; or*
 3. *40% for both storeys.*
47. The Appellant submits that to calculate site cover, the assessment is limited to the area that comprises a storey. In contrast, Council submits the calculation of site cover does not exclude internal areas and the definition of storey has no application to the calculation of site cover.
48. Having regard to the drafting of the Noosa Plan, the Tribunal considers the proper approach is to include the whole of the building measured to the outermost projection in accordance with the site cover definition and that the definition of storey has no relevance to the calculation of site cover.
49. The Tribunal accordingly prefers the approach taken by Council and considers that contrary to the submissions of the Appellant, the internal void area on the first storey is not to be excluded from the calculation of site cover.

50. On this basis, the Tribunal finds on the balance of probabilities that the site cover of the first storey exceeds 30% and the proposed development does not comply with AO8.1 of the Low Density Residential Zone Code.
51. The Tribunal however is concerned that Council's calculation of site cover does not comply with the definition and includes some areas that should be excluded. The Tribunal therefore does not necessarily fully accept the calculation submitted by Council.
52. However, putting aside the uncertainty as to the specific calculation of the site cover, the Tribunal finds on the balance of probabilities that the site cover of the first storey materially exceeds the 30% limit prescribed by AO8.1.
53. Non-compliance with the acceptable outcome however does not mean that the Development Application must be refused as compliance with an acceptable outcome is merely one way of demonstrating compliance with the relevant performance outcome and purpose of the code.
54. PO8 of the Low Density Residential Zone Code is the applicable performance outcome for site cover, which is:

Development

- (a) *is of a scale comparable with surrounding development and the particular circumstances of the site;*
 - (b) *has a low site impact to maximise the opportunity to retain site characteristics, such as native vegetation and natural landforms;*
 - (c) *allows the opportunity to provide 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.*
55. The Tribunal considers the non-compliance in relation to site cover primarily relates to the first storey (Council submits that the ground storey site cover is also non-compliant at 51% but having regard to the acceptable outcome being 50%, even on Council's submission, the exceedance in relation to the ground floor is not material).
56. Reflecting the wedge-shaped configuration of the subject site, the proposed building has a wedge-shaped footprint with a narrow street frontage, long side boundary frontages and wide rear water frontage. Given the narrow street frontage, the building is setback from the street and has a relatively low visibility. Taking advantage of its location, the building opens predominantly onto the rear water frontage with limited openings on the side boundaries, especially on the first storey.
57. The Tribunal considers that the proposal is fairly described as a large house which seeks to maximise its development footprint on the subject site. However, in context, the locality is characterised by predominantly large waterfront houses.
58. The proposed development is much larger than the older houses that it adjoins but not out of scale or character with newer houses in the locality. The subject site, being part of an artificial canal estate, is relatively flat and featureless and contains no significant native vegetation or natural landforms.
59. To the extent the ground level site cover exceeds 50% which is the relevant acceptable outcome, any exceedance is considered marginal and inconsequential. In particular, the extent of the non-compliance is not considered to adversely impact the provision of soft landscaping between buildings.

60. Overall, despite being a large-scale proposal in terms of site cover, the proposed design incorporates various elements and features to soften its appearance and mitigate its impact, particularly from the street frontage and side boundaries.
61. The Tribunal is satisfied that, on balance, despite the non-compliance with the acceptable outcome, the performance outcome for site cover is satisfied.
62. In reaching this conclusion, the Tribunal has had regard to and acknowledges Council's submissions to the contrary. Ultimately, this is a finding of fact to be made based on the evidence with the Tribunal acting objectively and dispassionately.
63. Having regard to PO8, the Tribunal concludes that the proposed development on the subject site is of an acceptable scale and bulk and will not cause excessive impacts.

Building Height

64. The parties acknowledge that the proposal has a maximum building height of 8.3m which exceeds the 8m building height specified by AO7.1 of the Low Density Residential Zone Code.
65. Council further submits that the proposal does not comply with PO7 whereas the Appellant submits that non-compliance with AO7.1 is not material, and the proposal is consistent with structures in the surrounding area and will not visually dominate the streetscape, thus complying with PO7.
66. Despite the non-compliance with AO7.1, the Tribunal is satisfied that the proposal complies with PO7 of the Low Density Residential Zone Code. This is on the basis that the proposal:
 - (a) maintains a low-rise (two storey) building height that is considered consistent with adjoining and surrounding premises and with the predominant character of the area.
 - (b) The proposal is considered to have substantial architectural merit with variable building form and setbacks which provides an interesting streetscape.
 - (c) The subject site has a minimal frontage to Mossman Court being a wedge-shaped lot and has only a relatively limited exposure to the street. As such, the proposal does not visually dominate the street or surroundings.
 - (d) The design is not contrary to the scale of surrounding vegetation and does not adversely affect a vegetated skyline.
 - (e) Only a relatively small part of the proposed building exceeds 8m in height which is an architectural feature of the roof design which is located towards the centre of the building and will not unreasonably obscure views or lead to overshadowing of neighbouring properties.
 - (f) The height exceedance does not constitute an additional storey and is part of the roof form with the building not exceeding two storeys.

Setback

67. The parties acknowledge that the proposal does not comply with the setbacks required by AO9.1 and AO9.2 of the Low Density Residential Zone Code.
68. This non-compliance is in relation to part of the building frontage to Mossman Court and involves approximately 300mm intrusion by part of the basement and front eave. The main wall of the house on the ground floor and first floor are compliant with the 6m front setback.

69. The non-compliance is partly attributable to the configuration of the frontage of the subject site which creates an indent point whereby the road 'juts' into the subject site.
70. Having regard to PO9 of the Low Density Residential Zone Code, the Tribunal considers that the non-compliance is inconsequential, maintaining a high amenity and does not give rise to any adverse impacts.
71. The Tribunal is therefore satisfied that the proposed development complies with PO9 of the Low Density Residential Zone Code

Landscaping

72. Council submits that the proposal does not comply with AO6 of the Low Density Housing Code, which requires a minimum of 20% of the site for soft landscaping.
73. The Appellant in written submissions submitted that compliance was achieved and did not address compliance with performance outcome PO6 in the event the acceptable outcome was not satisfied.
74. Neither party addressed this issue in any detail in the appeal, and it appears to largely arise as a secondary issue to the site cover (i.e. what area of the subject site is available for soft landscaping).
75. Generally, no issues were taken with the setbacks (other than the front setback specifically addressed in this decision) and the Tribunal was not taken to any adverse impacts said to arise from the non-compliance / extent of non-compliance in relation to landscaping.
76. Based on the limited state of the evidence in relationship to landscaping, the Tribunal is satisfied that any non-compliance with the acceptable outcome is immaterial and the proposal complies with the performance outcome.

Bulk and Scale

77. Based on Council's opinion as to the non-compliances with the specific acceptable outcomes and performance outcomes, Council submits that the proposed development does not comply with Overall Outcome 9.3.1.2(2)(b) of the Low Density Housing Code, which is:

Development is sited and designed to protect the amenity and privacy of neighbouring premises.

78. Despite the proposed development being for a relatively large house, and noting the findings of the Tribunal in relation to various exceedances, the Tribunal is satisfied that the proposed development is sited and designed to protect the amenity and privacy of neighbouring properties.
79. The proposed development is primarily orientated towards the rear water frontage of the subject site. To protect amenity and privacy of neighbouring premises, the proposed development minimises openings onto the side boundaries.
80. The setback encroachment relates to the streetscape frontage and does not affect the neighbouring premises. Similarly, the height exceedance relates to the central part of the roof form which does not affect the neighbouring premises.

Summary

81. Having considered the appeal, the Tribunal is satisfied that the Appellant has discharged its onus to show the appeal should be upheld.

82. The Tribunal therefore sets aside Council's decision to refuse the Development Application with the decision that the Development Application is approved subject to the conditions in Appendix 1.

Stafford Hopewell
Development Tribunal Chair

Date: 31 March 2025

Appeal rights

Schedule 1, table 2, item 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 1800 804 833

Email: registrar@epw.qld.gov.au

Appendix 1 - Conditions

DEVELOPMENT PERMIT FOR A MATERIAL CHANGE OF USE – DWELLING HOUSE

When Conditions must be Complied With

1. Unless otherwise stated, all conditions of this Decision Notice must be complied with prior to the use of the building commencing, and then compliance maintained at all times while the use continues.

Currency Period

2. This development approval lapses if the use has not happened by **31 March 2031**, unless an application to extend the currency period is approved by Council.

Approved Plans

3. Development authorised by this approval must be undertaken generally in accordance with the Approved Plans listed in the table below.

Plan No.	Rev.	Plan/Document Name	Date
DA05 - 02	-	Floor Plan – Basement prepared by Skale Building Design	19.06.2024
DA05 - 03	-	Floor Plan – Gound Floor prepared by Skale Building Design	19.06.2024
DA05 - 04	-	Floor Plan – First Floor prepared by Skale Building Design	19.06.2024
DA05 - 05	-	Floor Plan – Clerestory prepared by Skale Building Design	19.06.2024
DA05 - 06	-	North West Elevation prepared by Skale Building Design	19.06.2024
DA05 - 07	-	North Eastern Elevation / South Eastern Elevation prepared by Skale Building Design	19.06.2024
DA05 - 08	-	South Western Elevation prepared by Skale Building Design	19.06.2024
DA05 - 11	-	Section A prepared by Skale Building Design	19.06.2024
DA05 - 12	-	Section B prepared by Skale Building Design	19.06.2024
DA05 - 13	-	Section C prepared by Skale Building Design	19.06.2024
DA05 - 14	-	Section D prepared by Skale Building Design	19.06.2024
DA05 - 15	-	Section E prepared by Skale Building Design	19.06.2024
DA05 – 16	-	Section F prepared by Skale Building Design	19.06.2024

DA05 - 17	-	Section G prepared by Skale Building Design	19.06.2024
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Building Height

4. The maximum height of the development must not exceed 8.0 metres above the ground level except where shown on the Approved Plans, including where excavation is undertaken the exposed portion of the external façade of the building.
5. Certification must be submitted to Council from a Registered Cadastral Surveyor (Qld) which certifies that the building does not exceed the maximum height requirement of this Decision Notice.

Protection of Privacy

6. To ensure privacy is protected between adjoining properties, the windows located on the upper levels, as shown on the 'North Eastern' and 'South Western' Elevations must either:
 - a. have a minimum window sill height of 1.75 metres above floor level
 - b. be fitted with translucent glazing
 - c. be fitted with a fixed external screens

Car Parking

7. A minimum of two car parking spaces must be provided on site and made available and accessible at all times for residents.

Environment

8. Sediment or any other material including building materials or waste products must not be deposited or released into the road reserve, stormwater drain or adjacent properties.

Landscaping Works

9. A minimum of 20% of the site must be retained as soft landscaping.
10. Existing trees on the site must be retained, except where required to be removed to accommodate the approved dwelling.
11. Existing vegetation in the road reserve must be retained, unless written authorisation from Council is granted for the clearing.
12. Trees to be retained must be protected from clearing or construction activities by:
 - a. clearly marking vegetation to be retained with flagging tape
 - b. installing protective fencing around the drip line of the vegetation
 - c. restricting stockpiling, storage and vehicle parking to those areas which are already cleared
 - d. using low impact construction techniques around vegetation.
13. All landscape works must be established and maintained in accordance with the approved design for the life of the development, and in a manner that ensures healthy, sustained and vigorous plant growth. All plant material must be allowed to grow to full form and be refurbished when its life expectancy is reached.

Flood Immunity and Earthworks

14. All excavation/fill and associated batters must be contained entirely within the subject site unless written permission from the respective landowner(s) is provided to Council. All earthworks must be undertaken in accordance with the provisions of Australian Standard AS3798: Guidelines on Earthworks for Commercial and Residential Developments.
15. All retaining walls must be designed and constructed in accordance with the planning scheme and must be certified by an RPEQ where exceeding 1.0m in height.

16. All earthworks must include the installation and maintenance of appropriate erosion and sediment control measures. Prescribed Water Contaminants (as defined in Schedule 10 of Environmental Protection Regulation 2019) must not be released from the site or to waters within the site, or be likely to be released should rainfall occur, unless all reasonable and practicable measures are taken to prevent or minimise the release and concentration of contamination.

Acid Sulfate Soils

17. The disturbance and release of Acid Sulphate Soils must be avoided by:
- a. Undertaking an Acid Sulfate Soils investigation and soil analysis pursuant to the National Acid Sulfate Soils Guidance.
 - b. not excavating or otherwise removing soil or sediment containing ASS;
 - c. not permanently or temporarily extracting groundwater that results in the aeration of previously saturated ASS; and
 - d. not undertaking filling on land at or below 5 metres AHD that results in:-
 - i. actual ASS being moved below the water table; or previously saturated ASS being aerated.
 - ii. Where potential or actual Acid Sulfate Soil is identified, all works must be carried out in accordance with an Acid Sulfate Soils Management Plan prepared by a qualified person*.

Site Access and Driveways

18. A sealed access driveway must be provided from Mossman Court to all parking and manoeuvring areas of the development. These proposed works must be undertaken with written approval in accordance with Noosa Council driveway crossover approval conditions and adopted standard drawings for the crossover type as required by the planning scheme.
19. The driveway must be constructed to grades that ensure that vehicles will not bottom out or scrape on the driveway or the road formation when entering and exiting the site.

Stormwater Drainage

20. The site must be provided with a stormwater drainage system connecting to a lawful point of discharge. The works must be undertaken generally in accordance with SCG's drawing 313157-SW1.1 Revision B titled "Stormwater Management Plan", dated 20 May 2024. Stormwater discharged from the site must be directed to the kerb and channel in Mossman Court.
21. The site specific Stormwater Management Plan must be approved as part of the subsequent Building Permit.
22. The development works must not cause additional ponding of water on any adjoining property (including the road reserve) or concentrate or direct overland flow to any adjoining property.

Easements

23. Unless otherwise agreed in writing by the relevant service provider, any public or third party infrastructure located on the subject site must be placed within an easement registered against the title of the property.
24. All easements must be designed in accordance with the planning scheme and granted at no cost to the Grantee. Where the Grantee is Council or a service authority, the easement documentation must be in accordance with the Grantee's standard easement terms. Draft easement documentation must be submitted to Council for endorsement.
25. All works must be kept clear of any existing or proposed easements on the subject land, unless agreed otherwise in writing by the Grantee.

Earthworks and Retaining Walls

26. All earthworks and associated retaining structures/batters, both above and below ground level, both temporary and permanent, must be contained entirely within the subject site unless written permission from the respective landowner(s) is provided to Council. All earthworks must be undertaken in accordance with the provisions of Australian Standard AS3798: Guidelines on Earthworks for Commercial and Residential Developments.
27. All earthworks must be undertaken generally in accordance with:
 - 27.1. SCG's drawing 33157-OW3.1 Revision B titled "Earthworks & Piling Plan", dated 20 May 2024;
 - 27.2. The findings and recommendations of Douglas Partners' report 206126.00 "Preliminary Geotechnical Investigation", dated 1 August 2021; and
 - 27.3. The findings and recommendations of ADG Consulting's report ADG1304.21 "Dewatering Management Plan", Rev 0, dated October 2021
28. Earthworks carried out on site must not affect the structural integrity of any of the adjoining lands and/or buildings and/or structures and/or services.
29. All works must not adversely impact on the existing revetment wall located along the waterway boundary.
30. All retaining walls must be designed and constructed in accordance with the planning scheme and must be certified by an RPEQ where exceeding 1.0m in height. All retaining walls that are publicly accessible and exceed 1.0m in height must be fitted with a commercial grade safety fence.

Damage to Services and Assets

31. Any damage caused to existing services and assets as a result of the development works must be repaired at no cost to the asset owner at the following times:
 - a. Where the damage would cause a hazard to pedestrian or vehicle safety, immediately; or
 - b. Where otherwise, upon completion of the works associated with the development.

Any repair work which proposes to alter the alignment or level of existing services and assets must first be referred to the relevant service authority for approval.

DEVELOPMENT CONDITIONS FOR OPERATIONAL WORKS

APPROVED PLANS

1. Development undertaken in accordance with this approval must generally comply with the approved plans of development. The approved plans are listed in the following table unless otherwise amended by these conditions.

Plan No.	Rev.	Plan/Document Name	Date
33157-OW3.1	B	Earthworks & Piling Plan prepared by SCG Consulting	20.05.2024
33157-OW4.1	B	Driveway & Crossover Plan prepared by SCG Consulting	20.05.2024
33157-OW4.2	C	Driveway Section & Details prepared by SCG Consulting	20.05.2024
33157-SW1.1	B	Stormwater Management Plan prepared by SCG Consulting	20.05.2024
33157-SW1.2	-	Stormwater Details prepared by SCG Consulting	November 2023

CURRENCY PERIOD

2. The Currency Period for this development approval lapses if the development has not substantially started by **31 March 2027**, unless an application to extend the currency period is approved by Council.

PRIOR TO COMMENCEMENT OF WORKS

Engineering

3. Tree protection fencing must be installed under the supervision of the Project Arborist. (*Refer to Retention of Existing Trees Conditions*).
4. All necessary approvals from external service providers (eg Unitywater) and external parties on which the development works are proposed have been obtained and a copy supplied to Council.
5. Copies of the approved plans, duly signed by the consultant Registered Professional Engineer of Queensland (RPEQ) must be provided to Council's Engineering Officer Construction at the "pre start" meeting.
6. A condition report including photographs of the frontage of the site must be completed and submitted to council at the prestart meeting / prior to any works commencing.
7. Certificates demonstrating currency of public liability insurance and works insurance covering the works must be submitted to Council prior to the prestart meeting.
8. Council must be contacted at least 5 working days prior to any works commencing to organise a prestart. The contact number to arrange a pre-start meeting is 5329 6500. The pre-start meeting must include the relevant parties for the following aspects of the works:
 - a. Civil engineering works;
 - b. Landscape works;
 - c. Erosion and sediment control works;
 - d. Other relevant parties

9. A Construction Management Plan must be submitted to Council for approval at least 5 working days prior to the pre-start meeting. The plan must address the following:
 - a. Appropriate traffic signage in accordance with the Manual of Uniform Traffic Control Devices (MUTCD)
 - b. Provision for safe vehicle and pedestrian access across the frontage of the site both during daily construction and after daily construction has ceased.
10. Any changes to the details associated with the supervising RPEQ or Principal Contractor during construction, must be notified to council in writing within five business days of the change occurring.
11. Any conflict between the development and an existing or proposed service must be referred to the relevant service authority for determination prior to commencement of works.

DURING CONSTRUCTION

Engineering

12. The developer must meet any costs to repair damage to any Council asset during construction, where damage is a result of the development works. Damage to assets must be repaired immediately where it creates a hazard to the community. In circumstances where the damage does not create a hazard to the community, it must be repaired immediately on completion of the works associated with the development.
13. All works must be supervised by a Registered Professional Engineer of Queensland (RPEQ) who is independent of the Developer and Principal Contractor, and they must certify that all works conform to the Operational Works permit. Where municipal works are involved, such confirmation must be submitted for the respective hold points prior to any site inspection by Council Officers.
14. All works must be constructed and work procedure undertaken in accordance with:
 - a. The approved plans/documents and conditions detailed in this Decision Notice
 - b. All relevant Noosa Council Planning Scheme Policies, standard drawings, standard specifications and guidelines
 - c. The latest version of the Healthy Waterways document "Water Sensitive Urban Design Technical Design Guidelines for South East Queensland" for all water quality devices to be constructed on site

Works within Road Reserve/Reinstatement

15. Safe vehicle and pedestrian access on all streets in the vicinity of the development must be maintained at all times. Should footpath/road closures be necessary to carry out construction works, Council's Engineering Officer must be notified prior to the proposed closure and all requirements complied with.
16. All frontage works must match neatly with existing road and verge/footpath features. Additional works beyond the frontage may be required to provide an acceptable transition to existing road and verge/footpath profiles.
17. Electrical conduits or other services proposed to be installed within existing and proposed road reserves under existing sealed carriageways, concrete pathways, concrete/sealed driveways or significant vegetation must be installed by boring. Trenching is not permitted, unless specifically approved by Council.

Site Access and Driveways

18. Driveway crossovers must be constructed generally in accordance with Council's Standard Drawings RS-049, RS-050 and any associated addendum.

19. Any existing unnecessary or redundant property accesses must be removed, and the kerb, footpath and verge area reinstated to match the existing footpath and/or verge treatments. Grassed verge areas to be reinstated must be provided with 100 mm topsoil and grass seed or turf, and must be maintained by the developer until established.
20. The following must be complied with during the construction of the required crossover/driveway:
 - a. The driveway surfacing must consist of either an approved hot mixed asphaltic concrete or patterned/plain concrete.
 - b. The driveway must be constructed so as not to concentrate stormwater runoff onto neighbouring properties.
 - c. Underground service conduits for water supply, electricity and any other services must be provided as part of the access driveway
 - d. Where there is an existing pedestrian path, a matching crossfall must be provided for the driveway on the alignment of the path, for the full width of the path.
 - e. The property access must be located a minimum of 1m clear of existing power poles, streetlights or other signage. The developer is responsible for any necessary relocation of existing services to provide this clearance and must contact the relevant service authorities and comply with their requirements in relation to these works.

Earthworks and Retaining Walls

21. All earthworks shall be undertaken in accordance with the provisions of AS 3798 Guidelines on Earthworks for Commercial and Residential Development, with geotechnical testing undertaken in accordance with the Standard. Certification of the completed earthworks provided by a RPEQ must be submitted to Council prior to the commencement of the use.
22. Fall protection must be provided to retaining walls that are over 1m high.
23. Slope and batters are a maximum grade of:
 - a. 1 in 6 where in proximity to waterbodies
 - b. 1 in 4 for grassed areas.
 - c. 1 in 3 for planted areas.
 - d. 1 in 2 for combined structural engineering and planting solutions.

Stormwater Drainage

24. Appropriate scour protection must be provided at the outlet of all stormwater pipes including temporary outlets.
25. Works associated with this permit must not adversely impact on the existing drainage conditions on other properties (eg by blocking or interfering with natural overland flows).
26. Construction of all internal stormwater drainage works must comply with the relevant section/s of Australian Standard AS/NZS 3500.3.
27. Prior to the completion of the development, all site surfaces must be effectively stabilised using methods which have achieved effective short-term stabilisation and which will continue to achieve effective stabilisation in the medium- to long-term (refer to E&SC Advisory Notes).

For the purpose of this condition, an effectively stabilised surface is defined as one that does not, or is not likely to result in visible evidence of soil loss caused by sheet, rill or gully erosion or lead to sedimentation, or lead to water contamination.

Erosion and Sediment Control

28. Prescribed Water Contaminants (as defined in Schedule 10 of Environmental Protection Regulation 2019) must not be released from the site or to waters within the site, or be likely to be released should rainfall occur, unless all reasonable and practicable measures are taken to prevent or minimise the release and concentration of contamination.
29. Sediment and erosion control measures must be in place prior to works commencing. If such measures are not in place or are not satisfactory, "on the spot" fines may be issued. Such fines can be issued if sediments from the site are found to enter or have the potential to enter Council's stormwater system, natural waterways, any downstream stormwater filtration system or adversely impacting on other properties. The sediment and erosion control design and measures have NOT been approved, it is the site's Supervising Engineer who is responsible for ensuring that the sediment and erosion control measures have:
 - a. Been duly designed by an RPEQ or CPESC and constructed in accordance with "best practise" methods,
 - b. Been revised by an RPEQ or CPESC to address the issues raised by changes in the projected construction schedule and/or methods,
 - c. Been revised to address predicted rainfall events, and
 - d. Achieve the desired environmental outcomes.

Council may request further controls to be installed should the implemented measures be found inefficient.

30. The erosion and sediment control measures must be designed, installed and maintained in accordance with the supervising engineer instructions and the current best practice standards * (*Refer to Advisory Note*).
31. The developer must ensure non-essential exposure of soil is prevented by restricting the extent of disturbance and minimising the duration of soil exposure to adverse weather conditions and effectively turf, cover or stabilise any disturbed area without delay and prior to rainfall occurring.
32. The developer must ensure sediment does not leave the site or enter onto adjoining properties or Council's drainage system due to surface runoff or on tyres of vehicles and/or machinery. It is essential to implement appropriate approved erosion and sediment control measures throughout the site during all phases of construction including vehicle shakedown pad/grid (or similar) at the access to the construction site. Where sediments or other contaminants are deposited on a road, they must be removed so as not to enter Council's drainage system or waterways.

Damage to Services and Assets

33. Any damage caused to existing services and assets as a result of the development works must be repaired at no cost to the asset owner at the following times:
 - a. where the damage would cause a hazard to pedestrian or vehicle safety, immediately; or
 - b. where otherwise, upon completion of the works associated with the development.

Any repair work which proposes to alter the alignment or level of existing services and assets must first be referred to the relevant service authority for approval.

FOLLOWING CONSTRUCTION

Certification

34. Upon completion of the work a certificate must be issued by an RPEQ certifying that the works have been constructed in accordance with the Operational Works permit.

35. A final inspection and approval of the new driveway and completed reinstatement works by Council's Inspector is required. Please contact Council on 5329 6500 to arrange for the inspection.

ADVISORY NOTES

The following notes are included for guidance and information purposes only and do not form part of the assessment manager conditions:

Aboriginal Cultural Heritage Act 2003

1. There may be a requirement to establish a Cultural Heritage Management Plan and/or obtain approvals pursuant to the *Aboriginal Cultural Heritage Act 2003* (ACH Act).

The ACH Act establishes a cultural heritage duty of care which provides that: "A person who carries out an activity must take all reasonable and practicable measures to ensure the activity does not harm Aboriginal cultural heritage". It is an offence to fail to comply with the duty of care. Substantial monetary penalties may apply to individuals or corporations breaching this duty of care. Injunctions may also be issued by the Land and Resources Tribunal, and the Minister administering the ACH Act can also issue stop orders for an activity that is harming or is likely to harm Aboriginal cultural heritage or the cultural heritage value of Aboriginal cultural heritage.

You should contact the Cultural Heritage Unit to discuss any obligations under the ACH Act.

Equitable Access and Facilities

2. The plans for the proposed building work have NOT been assessed for compliance with the requirements of the National Construction Code - Building Code of Australia (Volume 1) as they relate to people with disabilities. Your attention is also directed to the fact that in addition to the requirements of the National Construction Code as they relate to people with disabilities, one or more of the following may impact on the proposed building work:
- a. the Disability Discrimination Act 1992 (Commonwealth);
 - b. the Anti-Discrimination Act 1991 (Queensland); and
 - c. the Disability (Access to Premises – Buildings) Standards.

Infrastructure Charges

3. All developments and/or changes to existing developments may require payment of "Infrastructure Charges" (as applicable) in accordance with Council's "Charges Resolution" made pursuant to the planning legislation and regulations current at the time of issue.

General Advisory Notes

4. Council has undertaken an audit check of the Operational Works drawings in relations to the proposed works. A detailed check of the calculations and drawings has not been undertaken, as they have been certified by a RPEQ. The RPEQ bears full responsibility for all aspects of the engineering design. Council reserves the right to require further amendments and/or additions at a later date should design errors become apparent.
5. Council reserves the right to call up any performance bond held or levy charges against the property, should emergency works be required to be undertaken by Council to make the site safe due to inactivity on the development site for extended periods of time.
6. Should any changes or modifications to the approved plans be required as a result of construction constraints, a "Request to change an existing approval" under the Planning Act 2016 must be made. Amended plans clearly indicating the changes must be lodged with this application along with the appropriate fees.

Environmental Advisory Notes

7. The Environmental Protection Act 1994 states that a person must not carry out any activity that causes, or is likely to cause, environmental harm unless the person takes all reasonable and practicable measures to prevent or minimise the harm. Environmental harm includes environmental nuisance. In this regard persons and entities, involved in the civil, earthworks, construction and landscaping phases of this development are to adhere to their 'general environmental duty' to minimise the risk of causing environmental harm.

Erosion and Sediment Control

8. Accepted best practice standards include International Erosion Control Association Australasia Best Practice Erosion and Sediment Control.
9. Qualified Person, for the purpose of erosion and sediment control is a Certified Professional in Erosion and Sediment Control (CPESC) or suitably experienced Registered Professional Engineer of Queensland (RPEQ).

Building and Construction Industry (Portable Long Service Leave) Levy

10. The QLeave levy must be paid prior to the issue of a development permit where it is required. Council will not be able to issue a Decision Notice without receipt of details that the Levy has been paid.

Co-ordination of Operational Works Assessment

11. Additional application fees apply to Operational Work applications where the different aspects of the works are lodged separately. Significant savings in application fees will result if all works are lodged in a single application.

REFERENCE DOCUMENTS

Not applicable.

FURTHER DEVELOPMENT PERMITS REQUIRED

Type of Development Permit Required	Subject of the required Development Permit
Development Permit for Building Works	All building work.