



Development Tribunal – Decision Notice

Planning Act 2016, section 255

Appeal number:	24-042
Appellant:	James David Faulkner and Lyn Maree Faulkner
Respondent/ Assessment manager:	Gladstone Regional Council
Site address:	608 Captain Cook Drive, Town of Seventeen Seventy Qld 4677 and described as Lot 2 on RP612363 – the subject site

Appeal

Appeal under the *Planning Act 2016* (PA) schedule 1, table 1 item 1(c) and section 1(2)(c)(i) against a decision to give a preliminary approval when a development permit was applied for.

Date and time and place of hearing:	21 October 2024, inspection at subject site at 10.00am followed by hearing at Council office in Town of Seventeen Seventy.
Tribunal:	John O'Dwyer —Chair Lisa Lambie —Member
Present:	James David Faulkner and Lyn Maree Faulkner—Appellants Jason Hague, Locality Planning and Consulting—Appellants' agent Brenton Holley Builder, Holley Homes—assisting Appellants Tegan McDonald—Council representative Nicholas Cooper—Council representative

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 subject to the following conditions:

- (1) The development is to be generally in accordance with the development application and the following plans:

Sami Somerville Building Designer Drawing 211-102 Rev E dated 20/1/2025 – Site Plan

Sami Somerville Building Designer Drawing 211-103 Rev D dated 20/1/2025 – Ground Floor Plan

Sami Somerville Building Designer Drawing 211-104 Rev C dated 20/1/2025 –

First Floor Plan

Sami Somerville Building Designer Drawing 211-105 Rev E dated 20/1/2025 – Elevations

Sami Somerville Building Designer Drawing 211-106 Rev E dated 20/1/2025 – Elevations

Sami Somerville Building Designer Drawing 211-107 Rev E dated 20/1/2025 – Section 1

Sami Somerville Building Designer Drawing 211-108 Rev F dated 20/1/2025 – Section 2

Sami Somerville Building Designer Drawing 211-109 Rev C dated 20/1/2025 – Section 3

Sami Somerville Building Designer Drawing 211-110 Original dated 20/1/2025 – Section 4

Sami Somerville Building Designer Drawing 211-111 Rev C dated 20/1/2025 – Roof Plan

- (2) At all times, the Applicant is required to avoid or minimise soil erosion during construction with replanting during and after building works.
- (3) At all times, the Applicant is required to avoid or minimise impacts on vegetation outside the building area.

Steep land

- (4) Development must be carried out in accordance with the Landslide Risk Assessment Slope Stability Analysis and AS2870 Site Classification report prepared by Core Consultants Pty Ltd Report Number: J001882-001-R-Rev0.

Lighting

- (5) Prior to the commencement of the use, all lighting at ground level and associated with illuminating ground level areas must be focused downwards and be provided with hoods, shades or other permanent devices to direct illumination downwards and not allow upward lighting to adversely affect the residential uses on this site and the adjoining the sites.

Water infrastructure

- (6) Prior to the commencement of the use, a water service connection is to be provided from Council's water supply infrastructure to the front property boundary. The location and size of the water service (and any associated fire service) is to be determined in consultation with Council.
- (7) Prior to the commencement of the use, connections to Council's live water reticulation network must be carried out by Council. The cost of these works is to be borne by the Applicant.

Advisory Note: Council's Application for Water Service is found at <http://www.gladstone.qld.gov.au/forms>.

Sewerage infrastructure

- (8) Prior to the commencement of the use, connections to Council's live sewerage network must be carried out by Council. The cost of these works is to be borne by the Applicant.

Advisory Note: Council's Application for Sewer is found at <http://www.gladstone.qld.gov.au/forms>.

Stormwater Infrastructure

- (9) All stormwater runoff must be piped from roofed areas and discharged to a kerb and channel drainage system in a Council controlled road, or an approved inter allotment stormwater drainage system, in accordance with Queensland Urban Drainage Manual 2017.
- (10) Prior to the commencement of this use, the Applicant is to request a Compliance Inspection be undertaken by Council to confirm that all conditions of this Development Permit are considered compliant.
- (11) Upon receipt of confirmation from Council that all conditions of this Development Permit are considered compliant, the Applicant is to notify Council within 20 business days that this approved use has lawfully commenced.

Advisory notes

- (A) The Applicant is required to obtain a Development Permit and Building Final for Building Works in accordance with the Planning Act 2016. Construction is to comply with the Building Act 1975, the National Construction Code and the requirements of other relevant authorities.
- (B) The Applicant is required to obtain a Development Permit for Plumbing and Drainage Works and Plumbing and Drainage Final in accordance with the Planning Act 2016. Construction is to comply with the Plumbing and Drainage Act 2018 and the requirements of other relevant authorities.
- (C) As part of Building Works, all outdoor lighting is to comply with Australian Standard AS4282 – Control of the Obtrusive Effects of Outdoor Lighting.
- (D) As part of Building Works, a mailbox is to be located a maximum of 6m from the front property boundary. The mailbox is to be easily identifiable for emergency services from the frontage of the site.
- (E) Prior to the construction of any works within Council's road reserve, the Applicant shall obtain a Works on a Council Road Approval in conformity with Council's Subordinate Local Law No. 1.15

Advisory Note: Council's Local Law No. 1.15 - Application to Construct (and maintain) a Driveway (vehicle crossover) is found at <http://www.gladstone.qld.gov.au/forms>.

END OF CONDITIONS

Advice to applicant:

In these conditions a reference to Council is to be taken to refer to Gladstone Regional Council.

Council provides a certification service for any Building Certification requirements.

An Adopted Infrastructure Charge Notice in relation to the infrastructure charges applicable to this development will be provided separately.

Background

1. The planning application was for a dwelling requiring code assessment under “Our Place Our Plan Gladstone Regional Council Planning Scheme V 2” (GRC Planning Scheme), as it was in the Character Residential Zone and subject to the Steep Land, Flood Hazard, Coastal Hazard, Bushfire Hazard and Acid Sulphate Soils Overlays and codes and the Character residential zone code.
2. The subject site is on an almost regular shaped lot on steep land that drops down into an area subject to the Flood Hazard overlay along Captain Cook Drive in the Town of Seventeen Seventy.
3. The subject site had previously been occupied by a dwelling that was lawfully demolished and the site was partially levelled after the demolition at a lower level than existed with the previous dwelling due to the need to excavate concrete slabs, retaining walls and footings.
4. Under the GRC planning scheme, the site as levelled after the demolition became the “ground level” for the purposes of the planning scheme, against which building heights had to be established. Unfortunately, the original plans for the new dwelling were drawn against the levels existing with the previous dwelling in place.
5. After acquiring the site, the appellants arranged for a detailed survey of the subject site, and the contour plan from that survey was used to design the proposed dwelling on the subject site and was included in the application as the base for the site plan. Subsequently the appellants obtained approval for the demolition of the previous building.
6. In 2023, the appellants had new house plans prepared for the site by Sami Somerville Building Designer and engaged Locality Planning and Consulting (LP&C) to assist with their development application. LP&C prepared the application and a town planning report that included a Soil Test Stability Report, an Energy Efficiency Assessment, a BAL – Bushfire Assessment Level Assessment, a Bushfire Dwelling Assessment and a Vegetation Management Report to address the zone and overlay codes assessment benchmarks.
7. On 12 January 2024, a development application was submitted using Form 1 V1.3. On 29 January 2024, Council issued an Action Notice advising a response to the Character Residential Zone Code and the Flood Hazard Overlay code were required, that Form 1 V 1.4 was to be used and that the application should confirm a State heritage referral 10.8.2.3.1 was required. On 12 February 2024, LP&C issued a response to the Action Notice and on 29 February 2024, Council issued a Confirmation Notice for DA/2/2024 that identified that the application needed to be referred to the State Assessment and Referral Agency (SARA), as the area across Captain Cook Drive was a heritage area and that the application needed to have regard to State Planning Policy 2017 as an assessment benchmark..
8. On 8 March 2024, the application was lodged with SARA and a Confirmation Notice was issued the same day. On 18 March 2024, SARA by email issued an advice to the appellants and Council that a referral was not required as Captain Cook Drive separated the subject site from the heritage area. As a result, State Planning Policy 2017 was no longer a relevant benchmark.

Information Request

9. On 15 March 2024, Council issued an Information Request identifying the following five items:

1. *Please provide a series of section plans that demonstrate the extent of cut in relation natural ground level across the development. The section plans should include a section that runs generally north-south along the front of the dwelling.*
 2. *Include measurements on the elevation/ section plans that demonstrate compliance with AO2.1, AO2.2 & AO2.3 of the Character Residential Zone Code.*
 3. *Provide additional information or amended plans that demonstrate compliance with PO5/AO5.1 & A05.2 of the Character Residential Zone Code. Concern is raised that the proposal has not demonstrated design features which comply with the coastal character of the zone.*
 4. *Provide details and/ or plans that demonstrate the extent of earthworks and the use of retaining walls is minimised, as required by PO8 (c) of the Character Residential Zone Code.*
 5. *Provide details of which natural features of the site will be maintained/ integrated within the development as required by PO8 (b) of the Character Residential Zone Code.*
- On 26 April 2024, on behalf of the applicants, LP&C provided a response to the Information Request to Council that addressed each of the points and provided replacement drawings.
11. On 20 May 2024, as a result of discussions with Council, additional information is provided by LP&C to Council.

Council's decision

12. On 6 August 2024, Council issued a Decision Notice granting a Preliminary Approval. The Decision Reasons noted the application is compliant with the Steep Land Overlay Code and the Flood Hazard Overlay and that insufficient information had been provided as part of the development application material in order to determine ground level and therefore determine compliance with several outcomes within the Character Zone Code. Under Reasons for Approval despite any Non-compliance with certain Benchmarks, in respect of the Character Zone Code the Decision states:

The approval is limited to a preliminary approval subject to conditions to ensure future development complies with the Character Zone Code. The preliminary approval provides the applicant opportunity to consider design modifications to comply with the code if they choose to submit compliant plans to Council for further consideration. The extent of insufficient information to determine compliance does not warrant a development permit to be issued.

Jurisdiction

13. This appeal has been made under section 229 of the PA, as a matter that may be appealed to a tribunal.
14. The PA Schedule 1, section 1(1) provides for an appeal to a tribunal. However, section 1(2) states that table 1 may apply to a tribunal only if the matter involves one of the circumstances set out in paragraphs (a) to (l) of that section.
15. The Tribunal has jurisdiction under the PA Schedule 1 section 1(2)(c)(i) as this is an appeal against a decision by Council to issue a preliminary approval when a development permit was applied for.
16. For these reasons the Tribunal determined that it had the jurisdiction to hear the appeal.

Decision framework

17. In this appeal, the Tribunal stated at the hearing that the onus was on the Appellants under section 253(2) of the PA to establish that the Appeal should be upheld and that the Tribunal would hear and decide the Appeal by reconsidering the evidence before the Assessment Manager and the material presented at the Appeal hearing and the site inspection.
18. 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 PA (pursuant to which the registrar may require information for tribunal proceedings). The Tribunal made directions as a result of the hearing and has given consideration to the material provided by the parties as a result of those directions.
19. The TRIBUNAL is required to decide the appeal in one of the ways mentioned in section 254(2) of the PA. Section 254(3) provides that the tribunal must not make a change, other than a minor change, to a development application.

Material considered

20. 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 2 September 2024.
 - (b) *Planning Act 2016*.
 - (c) “Our Place Our Plan Gladstone Regional Council Planning Scheme V 2” (GRC planning scheme)
 - (d) Planning and Environment Court decision Gladstone Regional Council v Motolake Pty Ltd [2024] QPC 41.
 - (e) Email dated 26 July 2024 that provided the set of plans that were approved by the Council decision
 - (f) Email dated 16 October 2024 from Council attaching the delegated assessment report.
 - (g) Email dated 18 October 2024 from LP&C providing 7 attachments including the survey plan and a set out plan showing ground level at the corners of the proposed dwelling.
 - (h) Email dated 23 October 2024 – Direction from the Registrar providing a copy of the QPEC decision and a direction to the Appellant to provide the long sections annotated with RLs of lawful ground surface, with RLs of the floor levels and the roof level and the extent of cut and fill with the RL of the top and bottom of any cut and fill
 - (i) Email dated 29 October from LP&C responding to the direction providing alternate plans and information
 - (j) Email dated 4 November from Registrar to Council seeking their comments on email from appellant’s agent.
 - (k) Email dated 15 November from Council responding to the direction with serious concerns over the proposed revised plans.
 - (l) Email dated 30 November 2024 from LP&C withdrawing email of 29 October and providing revised plans.

- (m) Email dated 9 December 2024 directing Council to respond to the revised plans.
- (n) Email dated 10 January 2025 from Council responding to revised plans as submitted on 30 November 2024 again with significant concerns.
- (o) Email dated 21 January 2025 from LP&C withdrawing emails of 29 October and 30 November 2024 and providing amended plans showing reduced levels on the plans approved in Council's decision of 6 August 2024
- (p) Submissions made by the parties at the hearing and in response to Directions.

Findings of fact

21. The tribunal makes the following findings of fact:

- (a) The Council Delegated Assessment Report dated 30 July 2024 included a view of the previous dwelling labelled "Photo 5 – Photo of dwelling prior to demolition – demonstrating lawful ground level." This is the ground level as shown on the survey plan used by the appellants as the basis for design of the proposed dwelling. Therefore, there is sufficient information available to determine that the proposed dwelling will not be more than 8.5m above ground level.
- (b) The development as set out in the revised set of drawings dated 20 January 2025 provides the data needed to enable an assessment manager to assess the compliance of the application with the Character residential code.
- (c) The development set out on the revised set of drawings dated 20 January 2025 and the development set out on the drawings approved by Council on 6 August 2024 are the same development.
- (d) The Tribunal has considered both the set of drawings approved by Council on 6 August 2024 and the set of drawings dated 20 January 2025 in assessing the development and determining the appeal.

Reasons for the decision

Character residential code

22. The GRC Planning Scheme provides in the Character residential code:

4.2.4.2 Purpose

- (1) *The purpose of the character residential zone code is to ensure that development recognises and respects the important scenic and heritage character of the Town of Seventeen Seventy ..., by supporting a built form that:*
 - (a) *Exemplifies the existing natural landscape and coastal character of these areas; and*
 - (b) *Minimises visual impacts and prevents buildings from dominating the natural landscape; and.*
 - (c) *Is interspersed and sympathetically sited amongst the coastal landscape and bushland elements.*
- (2) *The purpose of the zone will be achieved through the following overall outcomes:*

- (a) *Development recognises and protects the important scenic and heritage character by promoting the use of light-weight building materials, generous roof forms, building articulation and overhangs.*
- (b) *Development is in the form of individual detached buildings, small-scale in size and low-rise in height.*
- (c) *Development maximises the retention of existing native vegetation where possible.*
- (d) *Development respects the topography of the locality by ensuring buildings follow the contours of the land and minimise disturbance of the natural ground form.*
- ...
- (h) *Development responds to land constraints including topography, limited access, bushfire and flooding constraints.*

23. Notwithstanding that the proposed development does not meet acceptable solutions for height of retaining walls and the need to minimise cut, the Tribunal considers that the proposed development does meet the proposed purpose and overall outcome of the Character residential code. The site is steep with a slope of around 1 in 3. As a result, any driveway will be steep and a garage needs to be close to existing ground level at its front to minimise the grade of the driveway. Accordingly, it is difficult on such a steep site to meet the acceptable solution of a maximum cut of 1.2 m given that a 6.7 metre deep garage will have a minimum cut of around 2 metres at its rear wall.
24. The proposed dwelling design for the subject site was based on an existing site plan that had original natural ground level along its side boundaries and a dwelling that had retaining walls and a mix of cut and fill within the subject site. A contour plan was prepared for the site that took into account these pre-existing conditions and forms the basis of the site plan for the proposed dwelling.
25. The previous dwelling was demolished and as indicated above resulted in a different site surface that in places lowered the surface significantly to create a new ground level for the purpose of the GRC planning scheme.
26. Council wanted detailed information to demonstrate that the proposed dwelling was not above 8.5m above ground level. The Tribunal considers that, as the Council's delegated assessment report stated, as the levels prior to demolition were the ground level, it was reasonable for the appellants to use their survey plan to assess levels.
27. There is sufficient information in the drawings submitted to the Tribunal on 21 January 2025 and the survey plans and set out plan submitted on 18 October to demonstrate the proposed building will not exceed 8.5m above ground level or two storeys and thus to show compliance with Table 6.2.4.3.1 AO2.1(a) of the GRC planning scheme. The lowest ground level on site is 13.53 metres at the front of the pool on the set out plan, 14.59 m at ground level and 6.70 m higher at rooftop level, giving an approximate maximum height of 7.76 m.
28. Given the steepness of the site, the proposed development complies with Table 6.2.4.3.1 AO2.2 but not Table 6.2.4.3.1 AO2.3, as the ground drops away under the balcony on the first floor. The Tribunal considers the design complies with PO2 in that the building is low rise, it is a low density development, a development that does not dominate natural landscape values and located so that it will not adversely impact on the coastal and visual

character, being a development framed by the vegetation being retained on the site and future landscaping with native vegetation.

29. Council sought compliance with PO5 AO5.1 and AO5.2 and PO8. The Tribunal considers the responses to the Information request, the details of materials shown on the drawings of the proposal and additional material submitted by the appellants following the hearing provide sufficient information to address PO5. In addition, the extent of cut on site is not considered unreasonable given the slope of the site. The Tribunal considers the design solution with the development cut back into the slope is reasonable given the slope and combined with proposed landscaping will minimise the impact of the dwelling on the view into the site. While Council prefers a design based on Diagram 6.2.4.3.1, that approach is not considered by the Tribunal to be realistic on this steep site where a suspended slab would require tall supporting columns that would detract from the appearance of the site.

Gladstone Regional Council v Motolake Pty Ltd [2024] QPC 41

30. Council referred to this decision as supportive of their position. Kefford DCJ in that appeal determined that the Tribunal had determined the appeal on the basis of plans submitted after the hearing, without considering the original application.
31. That appeal is not relevant to this Tribunal decision in that the application plans lodged with the application as amended as a result of the Information Request and approved by Council on 6 August 2025 are not changed by the plans dated 20 January 2025 submitted on behalf of the Appellants as a result of Council concerns expressed in the Decision Notice and the hearing as the reason for the Preliminary Approval. The 20 January 2025 plans have additional data needed to address the provisions of the Character residential code, but there is little if any change to the detail of the proposed dwelling.
32. If there is any change to the approved plans by the 20 January 2025 plans, the Tribunal considers it is a minor change that does not result in a substantially different development, does not involve a prohibited development and does not require referral or public notice.

Development conditions

33. The Appellant sought to have Condition 1 amended and Conditions 2, 3, 6 and 7 deleted and other changes as the Tribunal considered appropriate. The Tribunal has assessed the development conditions attached to the Decision and has come to the following conclusions for the reasons stated.
34. Conditions 8, 9, 11, 15, 19-22 and 26-27 are reasonable and relevant to the development.
35. Conditions 1-5 are replaced with the Tribunal's condition (1) requiring development to be generally in accordance with the application and the plans dated 20 January 2025 as the latter plans better explain the development, address the requirements of the approved conditions and there are no car parking areas on site.
36. Condition 6 is an unreasonable imposition on the property owners in that the application has proposed to retain existing vegetation where possible and to landscape using native species and the Tribunal's condition (1) meets this.
37. Condition 7 is an unreasonable imposition on the development that could add to the cost of the development as the application already proposes landscaping in front of the retaining walls at the front of the development and those at the rear of the subject site are unlikely to be visible from other locations.
38. Condition 10, is unreasonable given the setback of the building from the frontage and there are no residential dwellings below the site.

39. Conditions 12-14, 18 and 24 should be advisory notes to the approval of the application. The Tribunal considers an approval should not require other approvals as a condition of approval otherwise the approval is not an entire approval.
40. Conditions 16 and 17 are an unreasonable imposition on the development and should be deleted, as the plans clearly show the development is less than 8.5m above ground level and Council has to inspect the development under Condition 26 (Tribunal condition (10)) and any deviation from the plan resulting in development higher than that proposed would be obvious at that time.
41. Condition 23 is unreasonable and irrelevant as there is a two-car garage provided as part of the development, and the steepness of the site makes the provision of car parking difficult given the slope of the driveway.
42. Condition 25 is irrelevant.

John O'Dwyer
Development Tribunal Chair
Date: 19 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