



Development Tribunal – Decision Notice

Planning Act 2016, section 255

Appeal number:	24-029
Appellant:	Christine Morley and Phillip Ablett
Respondent: (Assessment manager)	Stewart Magill
Co-respondent: (Concurrence agency)	Noosa Shire Council
Site address:	39 Parakeet Crescent, Peregrin Beach Qld 4573, described as Lot 107 on RP93136 – the subject site

Appeal

Appeal under section 229(1)(a)(i) and schedule 1, table 1, item 1(a) of the *Planning Act 2016* against the assessment manager's refusal, at the direction of the concurrence agency, of a development application for a development permit for building work for 'additions to a dwelling house' (Reference Pure Building Approvals Decision Notice 20240449, Noosa Shire Council RAB 23/0150).

Date and time of hearing:	Wednesday 27 November 2024 at 1.00 pm.
Place of hearing:	The subject site
Tribunal:	Derek Kemp – Chair Suzanne Bosanquet – Member
Present:	Christine Morley (Appellant and property owner) Phillip Ablett (Appellant and property owner) Will Johnson (Town Planner, agent for the appellants) Stewart Magill (Respondent, Pure Building Approvals) Jason Devine (Noosa Shire Council, Co-respondent)

Decision:

The Development Tribunal, in accordance with section 254(2)(d) of the *Planning Act 2016* sets aside the decision of the Assessment Manager to refuse the Building Development Application and orders the Assessment Manager to re-make the decision within 25 business days of the date of this decision notice, as if the Concurrence Agency had no requirements and, if the Assessment Manager approves the application, including the following condition along with any other conditions the Assessment Manager decides are reasonable and appropriate

- A 1.8m high privacy screen to be provided along the southern side of the proposed first floor deck, running parallel with the shared property boundary with the southern neighbour (41 Parakeet Crescent).

Background

The subject site

1. The subject site is an irregular, hatchet shaped, triangular block of 809 square metres developed with a high set, two-storey residence. The subject site is located with a 24 metre frontage on the high side of the inner curve of David Low Way road reserve (with no pedestrian or vehicle access to this road reserve). Its street address, driveway and pedestrian access is from the block's frontage of 4.323 metres to Parakeet Crescent.

The proposal

2. The proposal is for:
 - a. The construction of a proposed first floor with a bedroom, bathroom, living room, external stairs, west facing balcony, east facing deck and north facing patio. (Somerville Design Services Job 244, Drawing 105, Revision F, dated 27/09/2023).
 - b. The construction of a new patio extending north from the existing family room and a widened deck extending east from the existing deck to the north between the living room and bedroom 1 on the existing upper ground floor. (Somerville Design Services Job 244, Drawing 104, Revision E, dated 27/09/2023).

Assessment of the application

3. On 13 May 2024, the Referral Agency, Noosa Shire Council, directed the Assessment Manager that the application be refused.
4. Council's stated reasons for refusal were:

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

Noosa Plan 2020 – Low Density Residential Zone Code

PO9 Buildings and structures are designed and sited to:

- a) *Not unreasonably obstruct views or cause overlooking of private open space or habitable areas of adjoining premises;*

Given the extent of the building work, it has been considered that the proposed additions within the prescribed road boundary setback has the potential to unreasonably obstruct views and have adverse impacts on the adjoining premises.

- f) *be consistent with the predominant character of the streetscape;*

It has been considered that the location of the proposed building work within the road boundary setback is not consistent with the predominant character of the streetscape. It is Council's view that the predominant character of the streetscape, with respect to building location, consists of buildings and structures providing a greater road boundary setback than that of the current proposal.

It is suggested that there is very little justification against the performance criteria for Council to allow for a 1.5 metre road boundary setback in this instance.

Jurisdiction

5. 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.
6. 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, subsection 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).
7. 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.
8. 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

9. Generally, the onus rests on an appellant to establish that an appeal should be upheld (section 253(2) of the PA).
10. 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.
11. 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)).
12. The tribunal must not make a change, other than a minor change, to a development application (section 254(3)).

Material considered

13. The material considered in arriving at this decision was:
 - a. 'Form 10 – Notice of Appeal' (with the supporting documents and further information contained therein).
 - b. 'Development Application – Refusal' issued by the Assessment Manager (Stewart Magill Pure Building Approvals) dated 13 July 2024.
 - c. 'Referral Agency Response Directing Refusal' issued by Noosa Shire Council, dated 13 May 2024.
 - d. The 'Further information' the Appellant's agents provided by email to the Registry on 6 December 2024.
 - e. Noosa Plan 2020, 'Low Density Residential Zone Code: PO6'.

Findings of fact

14. The tribunal makes the following findings of fact:

Findings concerning the proposed development

- a. The property has frontage to the David Low Way road reserve but no access to this road reserve.
- b. The existing building has a Council approved setback of 1.5 metres to the David Low Way road reserve.

Relevant findings concerning the streetscape

- c. The subject property is set high on the hill side, well above the David Low Way road reserve. The road reserve has extensive deep landscaping, with numerous, mature tall trees and no footpath on the subject property's side of David Low Way.
- d. The Tribunal finds that the proposed development will not be visible to traffic travelling north on the David Low Way.
- e. The Tribunal finds the proposed development will not be visible from enclosed vehicles travelling south on David Low Way.
- f. The Tribunal finds the proposed development could be partially visible from open vehicles, cyclists and scooter riders travelling south on David Low Way and pedestrians on that side of Davis Low Way when travelling between the path leading to the front entrance to 350 David Low Way and the mid-point of the driveway leading into 346 David Low Way.
- g. The Tribunal finds the streetscape of concern extends from the opposite side of David Low Way (opposite the subject site) between the path leading to the front entrance to 350 David Low Way and the mid-point of the driveway leading into 346 David Low Way.
- h. The tribunal finds only a minor part of the proposed development will be visible from this streetscape because of the elevation of the subject property on the hill side and the extensive deep landscaping, with numerous, mature tall trees on the subject property's side of David Low Way.
- i. The tribunal finds only a minor part of the proposed development will be visible above the existing tree line on the hill side of the subject property and neighbouring properties along Parakeet Crescent.

Relevant findings concerning obstruction of views from adjoining premises

- j. The subject property is set on the hill side well above the property to the north at 37 Parakeet Crescent.
- k. The Tribunal finds that views from this property at 37 Parakeet Crescent will not be interrupted by the proposed development.
- l. The subject property is set on the hill side well below the property to the south at 41 Parakeet Crescent.
- m. The Tribunal finds that primary views from this property at 41 Parakeet Crescent to the coast to the east, and to the north-east, will not be interrupted by the proposed development.
- n. The Tribunal finds that minor views to the north and north-west from the balcony of this property at 41 Parakeet Crescent will be partly interrupted below the existing

balcony balustrade rail at 41 Parakeet Crescent by the proposed development. However, most of this view is interrupted by the existing dwelling on the subject site and these views would be substantially interrupted to the same degree by any proposed development meeting Council's 'Acceptable Outcome' setback requirements.

Relevant findings concerning overlooking of private open space or habitable areas

- o. The Tribunal finds that existing building on the subject property already overlooks the private open space of the adjoining property to the north at 37 Parakeet Crescent because the subject property is set on the hill side well above the property at 37 Parakeet Crescent.
- p. The Tribunal finds that proposed extensions to the existing building will not increase concerns about this overlooking from the subject property as the proposed extensions are further above of this adjoining property, resulting in a lesser, foreshortened view into this adjoining property.
- q. The Tribunal finds that proposed extensions to the existing building will not increase concerns about the overlooking of private open space or habitable areas of the adjoining property to the south (41 Parakeet Crescent) because the subject property is located well below 41 Parakeet Crescent and the eye level height of those using the proposed extensions will be well below the decks and windows of the habitable rooms at 41 Parakeet Crescent.
- r. The Tribunal finds that any concerns about the proposed extensions resulting in those using the proposed deck overlooking the grounds or looking up to the deck of the adjoining property to the south (41 Parakeet Crescent) can be mitigated if a 1.8m high privacy screen is installed along the southern side of the proposed first floor deck (running parallel with the shared property boundary with 41 Parakeet Crescent).

Reasons for the decision

- 15. The Tribunal noted that proposed extensions would be located substantially in front of the existing building and in front of any extension conforming to Council's setbacks set out in the Acceptable Outcomes to PO6 when viewed from David Low Way and when viewed from the adjoining property to the north (37 Parakeet Crescent), and when viewed from the adjoining property from the south (41 Parakeet Crescent).
- 16. With regard to the Noosa Plan 2020, Low Density Residential Zone Code: PO6(a), the Tribunal formed the opinion that the proposed extensions would *Not unreasonably obstruct views or cause overlooking of private open space or habitable areas of adjoining premises*.
- 17. The Tribunal formed the opinion that the views from the adjoining property to the north (37 Parakeet Crescent) would not be interrupted to any significant extent greater than the interruption to those views created by the existing approved building.
- 18. The Tribunal formed the opinion that the views from the adjoining property to the south (41 Parakeet Crescent) would not be interrupted to any significant extent.
- 19. The Tribunal formed the opinion that views into adjoining properties from the proposed extensions would be no greater than those from the existing approved building.
- 20. With regard to the Noosa Plan 2020, Low Density Residential Zone Code: PO6(f), the Tribunal formed the opinion that the proposed extensions would *be consistent with the predominant character of the streetscape*.

21. The Tribunal formed the opinion that the proposed extensions would have negligible, if any, adverse impact on the streetscape along David Low Way because of the location of the development high upon the hillside (masked substantially by the landscaping and tall mature trees in the road reserve), and the short extent of the streetscape from which the proposed extensions would be visible (only from the opposite side of David Low Way).

Derek Craven Kemp
Development Tribunal Chair
Date: 17 December 2024

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:

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