



## Development Tribunal – Decision Notice

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### *Planning Act 2016, section 255*

<b>Appeal number:</b>	<b>24-036</b>
<b>Appellant:</b>	Carlie Mitsikas
<b>Assessment manager:</b>	Noosa Shire Council (“Council”)
<b>Site address:</b>	12 Coral Tree Avenue, Noosa Heads, formally described as Lot 34 on RP90014 (“the subject site”).

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### **Appeal**

Appeal under section 229(2) and schedule 1, sections 1(1)(b) and table 1, item 1(a) of the *Planning Act 2016* (“the PA”) against the assessment manager’s decision to refuse the appellant’s application for a building works development permit for alterations and extensions to an existing dwelling house, including a new lower ground level intended for habitable use (“the application”).

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<b>Date and time of hearing:</b>	Wednesday, 9 October 2024, at 10:00am
<b>Place of hearing:</b>	The subject site
<b>Tribunal:</b>	Neil de Bruyn – Chairperson Elizabeth Anderson – Member Richard Stanfield – Member
<b>Present</b>	Carlie Mitsikas – appellant Paul Mitsikas – appellant’s representative Shane Adamson – appellant’s representative Andrew Gaffney – Council representative Cameron Smith – Council representative

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### **Decision:**

1. The Development Tribunal (“the tribunal”), in accordance with section 252(1)(a) of the PA, has decided that it has no jurisdiction for these proceedings and therefore to issue this decision notice in accordance with section 252(2) of the PA.

Please be advised that you may elect to lodge an appeal/declaration about this matter in the Planning and Environment Court (the Court). The Court appeal period starts again from the date you receive this decision notice, which should be attached to the Court appeal lodgement documentation.

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>

## Background

2. The subject site is a rectangular lot with an area of 567m<sup>2</sup> and orientated roughly east-west, with a frontage to Coral Tree Avenue forming its western boundary. The subject site is located within the Noosa Shire Council local government area.
3. The subject site contains a substantial dwelling house addressing Coral Tree Avenue. As a consequence of the slope of the subject site, the rear portion of the existing dwelling house is raised above ground level and supported by a series of posts.
4. The appellant proposes to construct a new, 77.1m<sup>2</sup> lower ground level beneath the aforementioned raised portion of the existing dwelling house (“the subject development”). The subject development is to be connected to the main floor level of the house via a new, internal stairway, and will consist of two *en-suite* bedrooms, a rumpus room incorporating a “kitchenette” and a roofed patio area to be accessed via the rumpus room. The subject development will increase the gross floor area of the existing dwelling house from 195.6m<sup>2</sup> (a plot ratio of 0.345) to 272.8m<sup>2</sup> (a plot ratio of 0.481).
5. The subject development is to be set back from the two side lot boundaries by 2.1m and from the rear lot boundary by 4.754m. Significantly, the footprint of the subject development is to be entirely contained within the roofed footprint of the main dwelling house above. As such, there would be no change to the existing site cover or the side and rear setbacks.
6. Under the Noosa Plan 2020, the applicable planning scheme (the planning scheme”), the subject site is included within the Medium Density Residential Zone and is mapped as being partly affected by the Landslide Hazard Overlay.
7. Under the planning scheme, building works not associated with a material change of use, within the Medium Density Residential Zone and involving a dwelling house, are categorised as accepted development subject to requirements. The applicable requirements or assessment benchmarks comprise of various acceptable outcomes under the Medium Density Residential Zone Code and the Low Density Housing Code.
8. The Landslide Hazard Overlay Code, cited in the assessment manager’s grounds for refusal of the application, is not applicable to this appeal, as it is not an assessment benchmark for the assessment of the application. In this regard, Table 5.9.8 of the planning scheme clearly states that building work not associated with a material change of use that involves an existing dwelling house is excluded from being subject to assessment against this overlay code.
9. As will become clear presently, the subject development does not achieve certain of the applicable assessment benchmarks, being those providing a maximum plot ratio of 0.4:1 and a minimum rear boundary setback of 6m. Accordingly, a code assessable building works development application to the assessment manager (the application) was required, for assessment against the abovementioned codes and the Works Codes (a set of 10 codes covering a range of technical matters, including driveways and parking, earthworks, services, fire services, landscaping, sustainable building design, etc.).
10. Accordingly, on 1 December 2023, the application was made to the assessment manager for a development permit for building works assessable against the planning scheme. On 4 July 2024, the assessment manager decided to refuse the application, and a decision notice of the same date was duly issued to the appellant.

11. The reasons for this decision were stated to be as follows:
1. *The proposal does not comply with AO11, PO11, AO12.1, PO12 of the Medium Density Residential Zone Code of the Noosa Plan 2020 as:*
    - a) *The proposal is not of a scale compatible with surrounding development and the particular circumstances of the site and will present an appearance of bulk to adjacent properties.*
    - b) *The proposal exceeds the maximum plot ratio of 0.4:1 for dwelling houses, dual occupancy and multiple dwellings for the area.*
  2. *There are no relevant reasons to approve the proposed increase to plot ratio and vary from the maximum plot ratio specified by the Noosa Plan 2020 for this area.*
  3. *The proposal does not comply with AO1.1, AO1.2, AO1.3, AO1.4 and PO1 of the Landslide Hazard Overlay Code as:*
    - a) *the land is identified as a landslide hazard area on a Landslide Hazard Overlay Map, the site has a slope of 15% or greater and no site-specific geotechnical assessment by a registered professional engineer has been submitted.*
    - b) *the applicant has failed to satisfactorily demonstrate that the proposal will maintain the safety of people and property from the risk of landslide.*
12. The appellant duly lodged this appeal with the tribunal registrar on 1 August 2024.
13. A site inspection and hearing were held on the subject site on Wednesday 9 October 2024 at 10:00am.

### **Jurisdiction**

14. 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.
15. Section 1(1)(b) of the schedule provides that the matters stated in Table 1 of the schedule (“Table 1”) are the matters that may be appealed to a tribunal. However, section 1(2) of the schedule provides that Table 1 only applies to a tribunal if the matter involves one of the matters set out in section 1(2).
16. Subsections (a) to (f), inclusive, and (h) to (l), inclusive, of section 1(2) are not applicable in relation to this appeal.
17. 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 (“the BA”), other than a matter under that Act that may or must be decided by the Queensland Building and Construction Commission.
18. For the reasons set out in more detail below, the tribunal finds that section 1(2)(g) is also not applicable to this appeal, as the application is not a matter that relates to the BA.
19. Accordingly, the tribunal is satisfied that it has no jurisdiction to hear and decide this appeal.

### **Material considered**

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

- a) Adamson Town Planning submission dated 4 October 2024, including attachments containing copies of the below-mentioned design plans and slope stability assessment, and a collection of site photographs;
- b) Form 10 – Notice of Appeal lodged with the tribunal’s registrar on 1 August 2024;
- c) the assessment manager’s decision notice dated 4 July 2024;
- d) the design plans referenced in paragraph 1(a) above;
- e) a Slope Stability Assessment referenced in paragraph 1(c) above;
- f) the *Planning Act 2016* and the *Planning Regulation 2017*;
- g) the *Building Act 1975* and the *Building Regulation 2021*;
- h) Noosa Shire Plan 2020; and
- i) decision notices for Appeals 22-003 and 23-067.

### **Findings of fact**

- 21. The application is an application under the PA for a development permit for building works assessable against the planning scheme. The tribunal finds that the application is not a building development application as defined under section 6 of the BA, and is not one involving building assessment work, as it is not one that involved or required assessment against the building assessment provisions, as defined in section 30 of the BA.
- 22. The tribunal notes that a local planning instrument (such as a planning scheme) made pursuant to section 32 of the BA may form a part of the building assessment provisions. However, the tribunal finds further that the planning scheme provisions that may, pursuant to section 32 of the BA, form part of the building assessment provisions do not cover the assessment benchmarks applicable in this appeal. To remove any doubt, whilst the tribunal acknowledges that one of the relevant assessment benchmarks for the application relates to the rear setback and is an alternative design and siting provision under section 33 of the BA, the tribunal finds that this appeal does not arise from a design and siting referral under Schedule 9 of the Planning Regulation 2017 (which only applies to assessable building work under the BA).
- 23. The tribunal further agrees with the finding by the tribunal in Appeal 22-003 which, at paragraph 33 of its decision notice, states as follows:

*The Tribunal is not satisfied that just because the work is ‘building work’, Schedule 1, section 2(g) of the Planning Act 2016 ought to be enlivened. The assessable work here is ‘building work’ (being a term defined under the Planning Act 2016, without recourse back to the Building Act 1975). The work is made assessable by virtue of the local planning instrument, and was received by the Respondent Council as assessment manager – again, with no recourse back to the Building Act 1975.*

- 24. For the reasons set out above, the tribunal finds that it does not have jurisdiction for these tribunal proceedings.

### **Reasons for the decision**

- 25. The tribunal, in accordance with section 252(1)(a) of the PA, has decided this appeal as set out in paragraph 1 above.

26. The tribunal's reasons for this decision are that it does not have jurisdiction for these tribunal proceedings, as outlined in paragraphs 21 to 23 above.

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**Neil de Bruyn**  
**Development Tribunal Chair**  
**Date: 7 November 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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