



Development Tribunal – Decision Notice

Planning Act 2016, section 255

Appeal number:	24-056
Appellant:	Martin Dines
Respondent/ Assessment manager:	Noosa Shire Council
Site address:	4 Esplanade, Noosa North Shore Qld 4565 and described as Lot 11 on T9241 — the subject site

Appeal

Appeal under section 229 and schedule 1, table 1, item 1(a) of the *Planning Act 2016* against a refusal by council as assessment manager of an application for a Development Permit for Building Work Assessable Against the Planning Scheme for extensions to a dwelling house on the basis it conflicts with the Low Density Residential Zone Code of the Noosa Plan 2020, specifically, compliance with PO16 (roof terrace), PO8 (site cover) and PO9 (setbacks).

Date and time of hearing:	11am, 24 February 2025
Place of hearing:	The subject site
Tribunal:	John Panaretos—Chair Elisa Knowlman—Member
Present:	Marcus Brennan—Appellant representative Levi McLaren—Appellant representative Andrew Gaffney—Council representative Cameron Smith—Council representative

Decision:

The Development Tribunal (Tribunal), in accordance with section 254(2)(c) of the Planning Act 2016 (PA) replaces Council's refusal of the Development Application for extensions to a Dwelling House on land located at the subject site with a decision to approve the development application for extensions to an existing house subject to the set of plans lodged with the Registrar on 9 October 2025 and described as Rev. N.

Background

1. On 28 February 2024, the appellant lodged an application for a development permit for building works and request for concurrence agency response for additions and alterations to the existing dwelling house.
2. The proposed alterations to the dwelling involve, amongst other things, a ground floor extension to the rear, a roofed carport and a significant increase in the size of an existing third level, described as 'roof terrace' in the application. This level is to be extended to skirt much of the frontage and the northern side of the house.
3. After administrative actions taken by Council, the application was accepted as properly made on 18 March 2024, with Council issuing a confirmation notice on 3 April 2024.
4. On 18 April 2024, Council issued a request for further information in relation to various matters including the scale of the roof terrace, to which the appellant responded on 19 July 2024 with revised plans and a letter of support from the northern neighbour.
5. On 30 July 2024, Council requested further detail and alterations to the proposal with respect to the roof terrace and other matters.
6. The appellant subsequently responded with further detail, particularly regarding the roof terrace, explaining that it is largely existing and is to be retained, and on 10 September 2024, submitted further revised plans (Rev K) detailing and explaining aspects of the roof terrace, including a reduction in its extent along the northern boundary, altered stair design to ensure a compliant setback, lowering of the height to maintain consistency with the existing roof terrace and insertion of a 1.7m high opaque glass balustrade to preserve acoustic privacy to neighbouring properties, as well as use of new materials and finishes to improve its presentation.
7. On 27 September 2024, Council refused the application, citing the following reasons:
 1. *The proposal does not comply with AO16.3, PO16, of the Low Density Residential Zone of the Noosa Plan 2020 as:*
 - a) *The large roof top terrace does not contribute positively to the character of the streetscape or neighbouring development;*
 - b) *Does not incorporate eaves and roof overhangs;*
 - c) *Results in a boxy elevation along the entire front facade of the dwelling;*
 - d) *creates multiple opportunities for residents or users of the dwelling to overlook the private open space or view into habitable windows or doors of neighbouring properties.*
 2. *There are no relevant reasons to approve the scale of the rooftop terrace by the Noosa Plan 2020 for this area.*
 3. *The proposal does not comply with AO8.1, AO9.1, PO8 and PO9 of the Low Density Residential Zone 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 existing dwelling exceeds the maximum site cover of the site area and the additions contribute additional building bulk.*
 - c) *Side boundary building setback encroachments are unnecessary and present an appearance of bulk to adjacent properties.*
 4. *There are no relevant reasons to approve the proposed increase to site cover and vary from the maximum site cover specified by the Noosa Plan 2020 for this area.*
8. The applicant received the decision notice on 4 October 2024 and lodged the appeal on 1 November 2024.

9. Subsequent to the hearing, on 29 April 2025, the tribunal issued directions inviting amended plans reducing the site cover and size of the roof terrace, for the tribunal's use in determining whether compliance with the assessment benchmarks could be achieved by the imposition of conditions. The tribunal issued a clarification of its directions on 16 May 2025 in response to the appellant's request. The appellant lodged amended plans, accompanied by a justification for the suggested amendments on 20 June 2025. In response, Council maintained its objection to the amended plans by correspondence dated 4 July 2025, stating that insufficient amendment had been submitted to justify approval. With the tribunal's consent, further submissions from the appellant's agents and the appellant, were forwarded to the tribunal on 7 July and 16 July 2025. Council elected not to make further comment on these submissions.
10. On 22 September 2025, the tribunal issued a further direction inviting the appellant to provide for its consideration, further amended plans to reduce the proposed roof terrace by 30% in floor area and the perceived bulk of the building, particularly along the front elevation.
11. The appellant submitted revised plans (Rev. N) on 9 October 2025, which Council did not respond to.

Calculation of site cover

12. The parties conflicted in their site cover calculations due to differing interpretations of building elements to be excluded from the site cover calculations. The difference in interpretation of the 'site cover' definition hinges on whether external open and covered areas should be defined as 'eaves' or 'sun shades' for the purposes of the calculation. Since the planning scheme definition of 'site cover' excludes eaves and sun shades, these areas would be excluded from the site cover calculation. Council rejects the appellant's assertion that those areas should be defined as 'eaves' or 'sunshades'.
13. The appellant's calculation of site cover of the final set of amended plans submitted, Rev. N, is 38.2% for the ground floor and 40.8% for the upper floor. Council opted not to comment on the appellant's final calculations.

Jurisdiction

14. Section 229(1) and schedule 1 clause 1(2)(g) of the PA jointly establish that the subject appeal is within the scope of the tribunal's jurisdiction subject to the qualifications stated in section 1(2) of schedule 1.
15. With respect to the qualifications mentioned above, since the appeal is in relation to an application under the *Building Act 1975*, not subject to impact assessment nor to which a properly made submission was made, the tribunal is satisfied that the appeal is within the scope of the tribunal's jurisdiction.

Decision framework

16. The onus rests on the appellant to establish that the appeal should be upheld (section 253(2) of the PA).
17. 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 PA).
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).
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 1 November 2024.
 - (b) The assessment manager's decision notice dated 27 September 2024.
 - (c) DA Form 2 and accompanying planning report drafted by Brennan Planning and dated February 2024.
 - (d) Council's further advice and information request letters dated 18 April and 30 July 2024 respectively and the appellant's responses dated 19 July and 10 September 2024 respectively, including the set of plans numbered 22-085: 00 – 10 Rev K.
 - (e) Noosa Shire Council's decision notice dated 27 September 2024.
 - (f) Verbal submissions made by both parties at the hearing.
 - (g) Written submissions tabled at the meeting and subsequently lodged with the registrar pertaining to site cover calculation and decision of the tribunal in appeal number 23-015 (25 Witta Circle Noosa Heads).
 - (h) Written submissions and amended plans received by the tribunal subsequent to the hearing as detailed in paragraphs 9 to 11 above.
 - (i) The Planning Act 2016 and the Planning Regulation 2017.
 - (j) The Building Act 1975.
 - (k) Noosa Shire Plan 2020, particularly the Low Density Residential Zone Code.

Findings of fact

21. The tribunal makes the following findings of fact:
- (a) The subject site is a rectangular, 606.3m² allotment with 15m frontage and 40.4m depth. The existing ground surface is almost flat, with only a slight undulation. An existing two storey dwelling house occupies the subject site.
 - (b) The appellant has submitted amended plans increasing front and side boundary setbacks from the proposed plans. While minor setback variations from the acceptable outcomes to the front and side remain in the amended plans submitted, council does not oppose these.
 - (c) It was argued by the appellants' representatives that aspects of the upper level deck and terrace serve the purpose of eaves and sun shading, thus excluding them from site cover calculations. The tribunal finds that these building elements also serve other functions, which are not exempt from the calculation of site cover.
 - (d) The site lies within an isolated settlement accessible by four-wheel drive vehicles via unpaved sand tracks, with a predominantly uniform character, shaped by low density detached dwellings surrounded by beachside vegetation.
 - (e) Dwellings are generally modest, single or two storey with gable and skillion roofs.
 - (f) The proposal incorporates much of the existing upper level veranda into internal floor space while the existing 'roof terrace' was proposed to be significantly enlarged to 66m² and to skirt the front and north side of the house. Modified in accordance with the conditions imposed by the Tribunal, it is reduced to 29.3 m² and has largely been deleted from the northern side elevation.
 - (g) At approximately 15m to the front wall of the house, the front setback significantly exceeds the minimum acceptable outcome (AO9.1). In addition, the Esplanade track

in the vicinity of the house skirts around existing foreshore vegetation in the road reserve which provides a partial screen to the house.

- (h) A letter of support for the proposal has been provided by the neighbours at 2 Esplanade.
- (i) Conditions in accordance with the revised drawings (Rev N), are a minor change, with reference to the plans identified in the notice of appeal, in accordance with the definition of 'minor change' in the PA.

Reasons for the decision

- 22. The Tribunal accepts Council's interpretation of the calculation of site cover. However, finds that the house satisfies Performance Outcome PO8 of the Low Density Residential Zone Code in that the proposed site cover alternative solutions, modified in accordance with the conditions imposed by the Tribunal, are marginal. Hence, it is of a scale compatible with surrounding development. Additionally, modified in accordance with the conditions imposed by the Tribunal, it does not present an appearance of undue bulk to adjacent properties, roads or other areas resulting from a combination of:
 - (a) A front setback substantially exceeding the acceptable outcome, which allows for soft landscaping;
 - (b) Partial screen by vegetation within the road reserve; and
 - (c) A reduction in the footprint of the originally proposed rear extensions to the ground floor, allowing for soft landscaping.
- 23. With respect to Performance Outcome PO16, the existing house, which forms part of the streetscape and character of the area, incorporates a small rooftop terrace. The rooftop terrace, modified in accordance with the conditions imposed by the tribunal, although larger, retains a similar character. A look of 'boxiness' is avoided with an articulated pitched roof design and the perception of a front gable. The rooftop terrace also contributes to an articulated façade.
- 24. Additionally, modified in accordance with the conditions imposed by the tribunal, the proposed plans minimise opportunities to overlook the private open space or view into habitable windows or doors of neighbouring properties.
- 25. With respect to Performance Outcome PO9, the tribunal considers the alternative setbacks are consistent with the streetscape character and do not impact landscaping opportunities on site or the amenity of neighbours.
- 26. The tribunal considered all supporting documents submitted by the appellant, but those relating to 25 Witta Circle Noosa Heads have no bearing on the tribunal's decision.

John Panaretos
Development Tribunal Chair

Date: 27 October 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:

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