



Development Tribunal – Decision Notice

Planning Act 2016, section 255

Appeal number: 25-019
Appellant: Jason Spears
Respondent: Stewart Magill
(Assessment manager)
Co-respondent: Noosa Shire Council
(Concurrence agency)
Site address: 4 Bowman Terrace, Sunshine Beach Qld 4567, described as Lot 734 on RP 48111—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 of a development application for a development permit for building work for 'a dwelling house' (Reference Pure Building Approvals 'Refusal' Decision Notice dated 26/05/2025, Noosa Shire Council RAP24/0011).

Date and time of hearing: Wednesday 30 July 2025 at 1.00 pm
Place of hearing: The subject site
Tribunal: Derek Kemp—Chair
Henk Mulder—Member
Present: Jason Spears (Appellant and property owner)
Jack Lewis (Town planner, agent for the appellant)
Oskar Booth (Architect, for the appellant)
Stewart Magill (Respondent, Pure Building Approvals)
Georgina Schram (Noosa Shire Council, Co-respondent)
Andrew Gaffney (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 requirement *'that the maximum height of the development must not exceed 8 metres above the ground'*, and the Concurrence Agency had satisfied themselves that the requirements for PO7 had been met, and if the Assessment Manager approves the application, include Council's other conditions and any other conditions the Assessment Manager decides are reasonable and appropriate.

Background

The subject site

1. The subject site is a 572 square metre, regular, trapezoidal shaped site, with 26 metre frontage to Bowman Terrace. The subject site is located on the low side of Bowman Terrace. It is a steeply sloping block, sharply changing levels away from Bowman Terrace. Its current site use is for a two-storey residence, with the appearance of a single-storey residence when viewed from Bowman Terrace.

The proposal

2. The proposal is for replacing the existing two-storey, high pitched roofed dwelling with a two-storey dwelling with a flat, horizontal profile that follows the contours of the slope; mirrors the site cover of the existing dwelling and is lower in height than the existing dwelling's pitched roofs.

Assessment of the application

3. On 16 January 2025, the referral agency, Noosa Shire Council, directed the Assessment Manager to approve the application subject to the plans being amended, including a condition that *'the maximum height of the development must not exceed 8 metres above the ground'* (Reference Noosa Shire Council RAP24/0011).
4. No grounds were provided for Council requiring this condition in Council's concurrence agency response. However, Council's representatives at the hearing advised that in Council's opinion, the proposed development does not comply with the following performance criteria :

Noosa Plan 2020 – Low Density Residential Zone Code

Built Form, Building Height

PO7

Buildings and Structures

- a) *are low rise and present a building height consistent with structures on adjoining and surrounding premises and with the predominant character of the area;*

(...)

- e) *do not unreasonably obscure views or lead to overshadowing of neighbouring properties;*

5. On the 25 May 2025, the Assessment Manager refused the application on the grounds:

a condition requiring that the design plans are revised to "show the maximum height of the building not exceeding 8 metres in height from ground level"... is an onerous development condition.

(Reference Assessment Manager's 'Notice of Refusal' dated 26/05/2025).

6. No justification for this opinion was provided as part of the Assessment Manager's decision notice other than that it was 'onerous'. The appellant's representatives at the hearing advised that such a requirement had not been raised by Council at previous meetings, and was not included in Information Requests provided by Council during the three years of assessment with varied Council assessment representatives. (Reference: Noosa Shire Council 'Further Information Request' RAP24/0011 dated 18/07/2024). Accordingly, such an unanticipated requirement would necessitate a significant revision of the design brief, design, and documentation for the proposal.

Jurisdiction

7. 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.
8. 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).
9. 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.
10. 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

11. Generally, the onus rests on an appellant to establish that an appeal should be upheld (section 253(2) of the PA).
12. 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.
13. 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)).
14. The tribunal must not make a change, other than a minor change, to a development application (section 254(3)).

Material considered

15. 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 25 May 2025.

- c. 'Referral Agency Response' requesting further information issued by Noosa Shire Council, dated 18 July 2024.
- d. 'Referral Agency Response' requiring conditions for Approval issued by Noosa Shire Council, dated 16 January 2025.
- e. Noosa Plan 2020, 'Low Density Residential Zone Code: PO7'.
- f. The verbal submissions made by the parties at the hearing and during the site inspection as referred to in the body of the decision.

Findings of fact

16. The tribunal makes the following findings of fact:

Findings concerning the proposed development

- a. The proposed development is of a lower height than the existing dwelling that is to be demolished, when viewed from adjoining properties and from the properties opposite.
- b. The part of the proposed development over 8 metres above ground level will have a maximum extent of 650mm in height, 5 metres in length and 3.5 metres in depth.
- c. The part of the proposed development that exceeds 8 metres above ground level is at the front, southern end of the property, furthest away from the adjacent properties to the north that are located at much higher elevations up Bowman Terrace than the subject property.

Relevant findings concerning the streetscape

- d. The dwellings on the same side of Bowman Terrace as the subject site are of a low scale and horizontal appearance, with garages, walls and dense vegetation dominating the streetscape. Garages are built 'at grade' to gain access to Bowman Terrace. These dwellings progressively drop down Bowman Terrace, with the bulk of each dwelling located below street level because the slope of each property drops steeply away from Bowman Terrace.
- e. The dwellings opposite the subject property (west) side of Bowman Terrace have greater impact on the streetscape. Each of these dwellings is at least two storeys high and set above the steep, rising driveways from Bowman Terrace. They are designed with balconies to provide views to the east over the landscape to the ocean, looking well over the much lower properties on the eastern side of Bowman Terrace, including that of the subject site.

Relevant findings concerning views, overshadowing, privacy and overlooking

- f. The Tribunal finds that the only likely impact of the proposed development on the views from nearby properties will be on the views from the second floor balcony from the property opposite (9 Bowman Terrace).
- g. The Tribunal formed the view that the impact of the part of the proposed development located more than 8 metres above ground level will have a negligible impact on the views from the property opposite (9 Bowman Terrace).
- h. The Tribunal formed the view that the impact of the part of the proposed development located more than 8 metres above ground level will be negligible on the views from the properties on the same side as the subject property on Bowman Terrace.
- i. The Tribunal formed the view that there would be no overlooking or overshadowing, nor impact on the privacy of neighbouring, adjoining or nearby properties, created

from the part of the proposed development located more than 8 metres above ground level.

Reasons for the decision

17. The Tribunal noted that the proposed development will be of a similar scale and site cover as the existing dwelling it will replace.
18. The Tribunal noted that the height and impact on views from neighbouring and nearby properties of the proposed development will be less than the existing dwelling, with its high-pitched roofs, and which is to be demolished. The Tribunal gave no weight to these considerations as the proposal is for an entirely new development, which was assessed on its own merits.
19. The Tribunal noted the evidence at the hearing that Council had recently approved a newly constructed nearby dwelling at 8 Bowman Terrace with an approved relaxation of the 8 metres above ground level condition (RAP 23-0025). The Tribunal gave no weight to this evidence and the proposed development was assessed on its own merits.
20. With regard to the Noosa Plan 2020, Low Density Residential Zone Code: PO7(a), the Tribunal formed the opinion that the proposed development would be 'low rise and present a building height consistent with structures on adjoining and surrounding premises and with the predominant character of the area'.
21. The Tribunal formed the view that the form and bulk of the proposed development is consistent with the prevailing streetscape and the replacement of the existing dwelling with the proposed development would not be detrimental to the streetscape.
22. The Tribunal formed the opinion that the part of the proposed development greater than 8 metres above ground level, would have no adverse impact on the streetscape and would assist the proposed development to have a uniform, level and consistent form when viewed from the street.
23. The Tribunal formed the opinion that the proposed development would have a positive impact on the streetscape.
24. With regard to the Noosa Plan 2020, 'Low Density Residential Zone Code: PO7(e), the Tribunal formed the opinion that the proposed extensions do not 'unreasonably obscure views or lead to overshadowing of neighbouring properties'.

Derek Craven Kemp
Development Tribunal Chair
Date: 12 August 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:

The Registrar of Development Tribunals
Department of Housing and Public Works
GPO Box 2457
Brisbane Qld 4001

Telephone (07) 1800 804 833

Email: registrar@epw.qld.gov.au