



Development Tribunal – Decision Notice

Planning Act 2016, section 255

Appeal number:	26-009
Appellant:	Nicholas Christian & Katherine Jorss
Respondent:	Noosa Shire Council
Co-respondent (concurrence agency)	N/A
Site Address:	34 Plover Street, Peregrin, Qld 4573, and described as Lot 10 P 9313 – the subject site

Appeal

Appeal under section 229 of the *Planning Act 2016* (PA) against the decision of Noosa Shire Council (Council), to refuse a minor change application for a Class 10b swimming pool, spa pool and deck, on the grounds it did not comply with and could not be conditioned to comply with Performance Outcome P04, P05, and Overall Outcome 2(c) of 8.2.4 (Coastal Protection and Scenic Amenity Overlay Code), and Acceptable Outcome A08.1 and the corresponding Performance Outcome P08 of 6.3.1 (Low Density Residential Zone Code) of the Noosa Plan 2020.

Date and time of hearing:	10:00 am on 13 May 2026
Place of hearing:	Noosa Council Chambers, 9 Pelican Street, Tewantin, Qld 4565
Tribunal:	Richard Prout — Chair Suzanne Bosanquet — Member
Present:	Nicholas Christian — Appellant Katherine Jorss — Appellant Jack Lewis – Appellant agent Frank Hollingsworth — Blok Modular Andrew Gaffney — Council representative Ben Micallef — Council representative

Decision:

The Development Tribunal (Tribunal), in accordance with section 254(2)(b) of the PA, changes the decision by approving the Class 10b swimming pool, Class 10b spa pool, and Class 10b deck, subject to the following conditions:

1. The structures shall be built in accordance with block Architects drawings: Site Plan, Drawing Number 0100, issue K, Project Number 2401, Dated 22 May 2026, Pool 3D, Drawing Number 0101, issue K, Project Number 2401, Dated 22 May 2026;

2. The subject site shall be landscaped in accordance with Prandium Studio landscape plans: Pool Garden Indicative Planting, dated 6 September 2025, Site: Indicative Planting Massing, LP04, dated 6 September 2025, Pool Garden Indicative Species, LP05, Dated 6 September 2026;
3. The landscaping at the subject property shall be maintained and retained in accordance with the above landscape plans.

Background

1. The subject site is a 505.49 m² allotment located at 34 Plover Street, Peregrine and is zoned Low Density Residential under the Noosa Plan 2020. The allotment is regular in shape but with the front and rear boundaries at a slight angle giving a street frontage and rear boundary width of 15.083m.
2. On the 6 February 2026, Noosa Council refused a Minor Change to a Development Permit for Material Change of Use (MCU) application, for a swimming pool, spa pool and deck, for the following reasons:
 1. *The proposed development does not comply with Performance Outcome PO4 of the Coastal Protection and Scenic Amenity Overlay Code as it:*
 - (a) *encroaches into the required 6 metre coastal setback area, resulting in built form extending seaward of the position intended to protect dune systems and natural coastal functioning.*
 2. *The proposed development does not comply with Acceptable Outcome AO5 and Performance Outcome PO5 of the Coastal Protection and Scenic Amenity Overlay Code as it:*
 - (a) *does not provide the required 5-metre-wide landscaping buffer to protect the coastal dune system.*
 - (b) *does not protect the visual character and scenic amenity of the coastline, integrate with natural landscape patterns and skyline vegetation, or avoid visual intrusion when viewed from the beach and public coastal vantage points.*
 - (c) *introduces built form (by scale, bulk and/or siting) that is visually intrusive in a mapped coastal scenic environment and fails to provide design and landscaping measures that maintain the natural skyline and coastal landscape integrity.*
 3. *The proposed development does not comply with Overall Outcome 2(c) of the Coastal Protection and Scenic Amenity Overlay Code as the failure to comply with the required 6 metre setback and provision of a 5-metre-wide landscaping buffer results in a development:*
 - (a) *that does not protect the visual character and scenic amenity of the Coastal Protection and Scenic Amenity Area.*
 - (b) *that does not integrate with the surrounding natural landscape and skyline vegetation.*
 4. *The proposal does not comply with Acceptable outcome AO8.1 and corresponding Performance Outcome PO8 of the Low Density Residential Zone Code as:*
 - (a) *The proposal will result in a site cover of 44% for the Ground Floor plan level which exceeds the site cover requirements of the planning scheme.*
 - (b) *The scale of the proposed dwelling is excessive and not of a scale intended under the Low Density Residential Zone.*
 - (c) *The building and structures encroaches into areas of the site which are intended to accommodate vegetation and contributes to an appearance of excessive building bulk to adjacent properties.*

3. On 3 March 2026, the appellants lodged a form 10 notice of appeal with the Tribunals Registrar.

Jurisdiction

4. The appellants lodged the appeal with the Tribunal under section 229 (Appeals to tribunal) of the PA, against the decision of the Council to refuse a Class 10b swimming pool, Class 10b spa and Class 10b deck.
5. Section 229(1) (Appeals to tribunal) of the PA identifies that schedule 1 (Appeals), states the matters that may be appealed to the Tribunal.
6. Section 1(1) (Appeal rights and parties to appeals) of schedule 1 (Appeals), provides that Table 1 (Appeals to the P&E Court and, for certain matters, to a tribunal), of schedule 1 of the PA states the matters that may be appealed to the court or the Tribunal, subject to (in the case of the Tribunal) the pre-conditions stated in section 1(2) of schedule 1.
7. Section 1(a) of Table 1 applies to this appeal, which is against the refusal of a development application.
8. In assessing the issue of jurisdiction, the Tribunal considered whether any of the preconditions (in schedule 1, section 1(2) of the PA) for the application of Table 1 for a Tribunal are satisfied.
9. The subject site is located within the Coastal Protection and Scenic Amenity Overlay of the Noosa Plan 2020. Section 8.2.4.1 (Application) of the Coastal Protection and Scenic Amenity Overlay Code (8.2.4), states the following:

8.2.2.1 Application

1. This code applies to assessable development:

- a. *subject to the Coastal Protection and Scenic Amenity Overlay shown on the overlay maps contained within Schedule 2 (Mapping); and*
- b. *identified as requiring assessment against the Coastal Protection and Scenic Amenity overlay code by the tables of assessment in Part 5 (Tables of assessment).*

2. All provisions in this code are assessment benchmarks for applicable assessable development.

Therefore, the subject dwelling, swimming pool, spa pool, and deck triggered a code assessment against the provisions of the Coastal Protection and Scenic Amenity Overlay Code.

10. Section 33 (Alternative provisions to QDC boundary clearance and site cover provisions for particular buildings) of the *Building Act 1975* allows a planning scheme to include alternative provisions for single detached Class 1 buildings and Class 10 buildings or structures to the provisions of the QDC for boundary clearance and site cover.
11. The Noosa Plan 2020, states that for the purpose of section 33 of the *Building Act 1975*, the nominated provisions in table 6.3.1.3 of the Low Density Residential Zone Code of the Noosa Plan 2020, are alternative provisions to the QDC. Therefore, Acceptable Provision AO8.1 (Site cover and gross floor area) is an alternative provision to the Queensland Development Code MP1.2.
12. In these circumstances, the precondition in section 1(2)(a) of schedule 1 of the PA for the application of table 1 for the Tribunal is satisfied.

Conclusion regarding jurisdiction

13. The Tribunal finds that the Appeal meets the required tests of Schedule 1 (Appeals) of the PA for a matter that may be appealed to a tribunal and as such the Tribunal has the jurisdiction to hear the Appeal.

Decision framework

14. The Tribunal notes:

- (a) The onus rests on the appellant to establish that the appeal should be upheld (section 253(2) of the PA).
- (b) 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)
- (c) 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),
- (d) The tribunal is required to decide the appeal in one of the ways mentioned in section 254(2) of the PA.

Material considered

15. The material considered in arriving at this decision was:

- (a) Form 10 (Notice of Appeal/Application for Declaration), lodged with the Tribunal Registrar on 3 March 2026;
- (b) An unsigned report titled 'Grounds for Appeal/Declaration' lodged with the Tribunal on 3 March 2026, detailing the grounds for the appeal;
- (c) Council officer report titled 'Application for a minor Change to a Development Approval', version 10, dated 6/02/2026, Document Set ID 24485951;
- (d) Decision Notice – Minor Change, issued by the Council, dated 6 February 2026, refusing the Class 10b swimming pool, Class 10b spa pool and Class 10b deck;
- (e) Minor change request dated 7 June 2025 from Pivotal Perspective to Noosa Council. Requesting change to condition 2 of development approval MCU21/0171.01;
- (f) Further Advice - Development Application letter from Council to the Applicant dated 24 July 2025;
- (g) Report dated 12 September 2025, from Pivotal Perspective, responding to the Council information requested of 24 July 2025;
- (h) Landscape plans, pool garden indicative planting, dated 6 September 2025, by Prandium Studio;
- (i) Pool Excavation 3D drawing, Drawing Number 0101, Issue H, Dated 9/9/2025, by Block;
- (j) Decision Notice – Minor Change, issued by Council on 5 March 2025, for development approval MCU21/0171.01;
- (k) Decision Notice - Endorsement of Amended Plans, issued by Council on 23 June 2025, endorsing Block Architect plans, drawing numbers: 0100, revision G, Site plan (Annotated by Council), dated 6/6/2025, 1000, revision F, Ground Floor Plan, dated 27/3/2025, 1001, revision G, Street Level Floor Plan, (Annotated by Council), dated 6/6/2025, 1002, revision G, First Floor Plan, dated 31/3/2025, 1003, revision F, Roof Plan, dated 27/3/2025, 3000, revision F, Street and Western Elevation, dated 27/3/2025, 3001, revision F, North Elevation, (Annotated by Council), dated 27/3/2025, 3002, revision F, South Elevation, (Annotated by Council), dated 27/3/2025, 4000, revision F, East West Section, dated 27/3/2025;

- (l) Negotiated Decision Notice, issued by Council on 14 June 2022, for a material change of use of a premises (dwelling house);
- (m) State Assessment and Referral Agency (SARA) response, dated 5 November 2021, to Council providing a condition related to possible unexploded ordnance (UXO) on the site;
- (n) Approved stamped Council plans for MCU21/0171, dated 9 June 2022. Drawing provide by Sparks Architects, reference number 178, version 1, dated 25/6/2022, drawing numbers: DD1.1 Site Plan, DD1.2 Basement Floor Plan, DD1.3 Ground Floor Plan, DD1.4 First Floor Plan, DD1.5 Roofed Plan, DD2.1 North Elevation, DD2.2 East Elevation, DD2.3 South Elevation, DD2.4 West Elevation, DD3.1 Section A, DD3.2 Section B, DD3.3 Section C, DD3.4 Section D.
- (o) Detail and Level Survey Plan, dated 3 February 2021, by Electro Scan;
- (p) Geotechnical investigation report, for the subject site, dated 10 September 2021, by Tectonic Geotechnical Engineering & Environmental;
- (q) Verbal submissions at the hearing from all parties to the appeal (Given leave for their presentation by the Tribunal);
- (r) Site Plan, Date 14/5/2026, Drawing Number 0100, Project Number 2401, Issue J, By Blok Architects (Given leave by the Tribunal);
- (s) Pool 3D, Date 14/5/2026, Drawing Number 0101, Project Number 2401, Issue J, By Blok Architects (Given leave by the Tribunal);
- (t) Pool Fencing Detail, Date 14/5/2026, Drawing Number 0103, Project Number 2401, Issue J, By Blok Architects (Given leave by the Tribunal);
- (u) Courtyard 3D, Date 14/5/2026, Drawing Number 0104, Project Number 2401, Issue J, By Blok Architects (Given leave by the Tribunal);
- (v) Email from Pivotal Perspective Pty Ltd, responding to the Tribunals email dated 15 May 2026, regarding the definition of site cover under the Noosa Plan 2020 (Given leave by the Tribunal);
- (w) Site Plan, Date 22/5/2026, Drawing Number 0100, Project Number 2401, Issue K, By Blok Architects (Given leave by the Tribunal);
- (x) Pool 3D, Date 22/5/2026, Drawing Number 0101, Project Number 2401, Issue K, By Blok Architects (Given leave by the Tribunal);
- (y) Email from Council, responding to the Tribunals email dated 15 May 2026, regarding the definition of site cover under the Noosa Plan 2020 (Given leave by the Tribunal);
- (z) The Noosa Plan 2020;
- (aa) The *Planning Act 2016*;
- (bb) The *Building Act 1975*;
- (cc) The Building Regulation 2021.

Findings of fact

16. The Tribunal makes the following findings of fact:

- (a) The subject site is a 505.49 m² allotment located at 34 Plover Street, Peregrine and is zoned Low Density Residential under the Noosa Plan 2020.
- (b) The allotment is regular in shape but with the front and rear boundaries at a slight angle giving a street frontage and rear boundary width of 15.083m.

- (c) The site slopes approximately 5 m from its highest point at Plover Street on the western side of the allotment to the rear boundary with the coastal reserve on the eastern side which forms part of the Peregrine Beach dunes;
- (d) The subject site is located within the Coastal Protection and Scenic Amenity Overlay of the Noosa Plan 2020;
- (e) Due to the coastal reserve on the eastern side of the subject site the rear boundary of the allotment is setback more than 180m from the Peregrine Beach shoreline;
- (f) As per the Council mapping the subject site is not affected by coastal erosion and as such is not affected by natural fluctuations of the coastal ecosystem. Dune heights are not affected given the substantial setback from the toe of the frontal dune, with no risk to waves overtopping the site, as it is not in an erosion prone area to year 2100 and beyond.
- (g) At present there is no significant vegetation on the subject site within 6 m of the eastern rear boundary.
- (h) The allotment is 33.561 m in length, therefore due to the required 6 m front road boundary setback and the required 6 m rear boundary setback the build area for the site is reduced to a length of 21.561 m;
- (i) On the northern side of the subject site there is a 3.5 m wide strip of land that forms part of the road reserve and provides pedestrian access from Plover Street to the coastal reserve on the eastern side of the allotment. This strip of land also contains a Unitywater sewer main, and a Council stormwater drain which discharges into the coastal reserve on the eastern side of the allotment.
- (j) The allotment is constrained by a Unitywater sewer main which runs parallel with the rear eastern boundary approximately 1 m inside the allotment boundary.
- (k) The allotments on the eastern side of Plover Street consists of residential dwellings, and subordinate swimming pools, retaining walls and deck with a mixture of setbacks from the rear allotment boundary.
- (l) The subject allotment does not have any significant vegetation within the 6 m setback from the rear eastern boundary;
- (m) Due to the topography and the existing vegetation within the coastal reserve on the eastern side of the subject site. The proposed structures that are the subject of the appeal are not visible from Peregrine Beach.
- (n) The site cover for the subject site is complying with Acceptable Provision AO8.1 (Site cover and gross floor area) of Table 6.3.1.3 of the Low Density Residential Zone Code of the Noosa Plan 2020, as the proposed swimming pool, spa pool, and deck are less than 1 m in height above natural ground level.

Application process

- 17. In June 2022, the Council issued a negotiated decision notice for a dwelling house at the subject site. Council reference MCU21/0171;
- 18. In March 2025, the Council issued an approval for a minor change to the dwelling house (subject to amended plans) involving a side setback variation, modified architectural design and inclusion of a rooftop terrace. Council reference MCU21/0171.01;
- 19. In June 2025, Council endorsed the amended plans as Approved Plans (Condition 2) forming part of MC21/0171.01.
- 20. In July 2025, the applicant submitted a Minor Change Request, seeking to add a swimming pool, spa pool, and deck within the rear setback, requesting amendment to Condition 2 with updated approved plans.

21. In July 2025, the Council issued a further advice letter, requiring amendments to the pool location, landscaping, and evidence of no impact on the coastal vegetation.
22. On 6 Sept 2025, the applicant submitted an updated landscape plans prepared by Prandium Studio for the subject site.
23. On 12 Sept 2025, the applicant submitted a response to the further advice letter, providing amended plans, landscape details, and justification that no significant vegetation would be impacted, and the proposal complied with PO4 & PO5 of the Coastal Protection and Scenic Amenity Overlay. The location of the swimming pool, spa pool, and deck was not amended.
24. On the 6 February 2026, Noosa Council refused a Minor Change to a Development Permit for Material Change of Use (MCU) application, for a swimming pool, spa pool and deck:
25. On 3 March 2026, the Appellants lodged a form 10 notice of appeal with the Tribunals Registrar.

Reasons for the decision

26. The Tribunal makes its decision for the following reasons:
 - a. The appellant provided amended drawings with leave from the Tribunal which demonstrated the subject swimming pool, spa pool, and deck were below 1 m in height above natural ground level.

Based on this information it was an agreed fact between the parties that the site cover for the subject site was complying with Acceptable Provision AO8.1 (Site cover and gross floor area) of Table 6.3.1.3 of the Low Density Residential Zone Code of the Noosa Plan 2020.
 - b. The Tribunal is of the opinion that the proposed development is complying with Acceptable Outcome AO5 and Performance Outcome PO5 of the Coastal Protection and Scenic Amenity Overlay Code, as:
 - i) The subject structures are not visible from the beach or coastal vantage points; and
 - ii) The appellants have proposed landscaping measures that substantially revegetate the areas between the dwelling, the subject structures and the rear boundary that enhances the landscape adjoining the coastal reserve, protects the coastal dune and maintains the natural skyline and coastal landscape integrity.
 - c. The Tribunal is of the opinion that the development is complying with Performance Outcome PO4 of the Coastal Protection and Scenic Amenity Overlay Code, as:
 - i) The design of the subject structures and landscape measures protect the dune systems and natural coastal functioning.
 - d. The Tribunal is of the opinion that the development is complying with Overall Outcome 2(c) of the Coastal Protection and Scenic Amenity Overlay Code, as:
 - i) The design of the subject structures and landscaping measures protect the visual character and amenity of the Coastal Protection and Scenic Amenity Area: and
 - ii) Does integrate with the surrounding natural landscape and skyline vegetation.
 - e. The Tribunal is of the opinion that the overall site planning, landscaping and building arrangement further support compliance with the intent and outcomes of the Coastal Protection and Scenic Amenity Overlay Code, as:
 - i) The proposal incorporates a substantial landscaped courtyard within the allowable building footprint, creating a meaningful landscape setting as an integral component of the development rather than a residual space;

- ii) The proposal provides a substantial planted setback along the northern boundary, contributing to the site's vegetated character and reinforcing the landscape framework of the locality;
- iii) The combined effect of the landscaped courtyard and boundary planting establishes a more considered and integrated relationship between the development and the adjoining natural environment; and
- iv) The landscaping extends the character, presence and continuity of the coastal landscape further into the site itself, rather than treating vegetation as a peripheral edge treatment only, thereby enhancing the site's contribution to the visual character and scenic amenity of the area.

Richard Prout
Development Tribunal Chair

Date: 12 June 2026

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
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Brisbane QLD 4001

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