



Development Tribunal – Amended Decision Notice

Planning Act 2016, section 255

Appeal number: 26-003

Appellant: Kylie and Justin Collum

**Respondent/
Assessment manager:** Noosa Shire Council

Site address: 22/512 David Low Way, Castaways Beach Qld 4567 and described as lot 22 on SP111721—the subject site

Appeal

Appeal under 229 and schedule 1, table 1, item 1(d) of the *Planning Act 2016* (PA) against a council's decision to issue a preliminary approval contrary to the applicant's application for a development permit. Specifically, Council required a reduction in site cover and gross floor area to ensure compliance with the terms of Appendix 4 of the Noosa Plan, 'Plan of Development No. 65, Marcus Dunes'.

Date and time of hearing: 10am, 13 March 2026

Place of hearing: The subject site

Tribunal: John Panaretos—Chair
Elizabeth Anderson—Member

Present: Jack Lewis—Appellant's agent
Shaun Lockyer—Shaun Lockyer Architects
Antonio Cappiello—Shaun Lockyer Architects
Noosa Shire Council—Respondent
Nadine Gorton—Council representative
Georgina Schramm —Council representative

Decision:

The Development Tribunal (tribunal), in accordance with section 254(2)(d) of the *Planning Act 2016* (PA) **sets the decision aside and orders the assessment manager to remake the decision within 25 business days, taking into account the tribunal's findings, in particular in paragraphs 27 to 31 of this decision notice.**

Background

1. Application for code assessment for a development permit for a dwelling house was lodged on 22 May 2025.
2. Council issued an information request on 30 June 2025, to which the applicant responded satisfying many of Council's concerns, leaving only issues of compliance with site cover and gross floor area parameters fixed by a plan of development referred to in Table SC1.2.3 (Plan of Development No. 65, Marcus Dunes).
3. In lieu of a development permit, Council issued a preliminary approval on 12 December 2025 conditional upon the submission of amended plans and reports:
 - (a) reducing the 'development's total gross floor area' to ... 390m² (inclusive of the garage); and
 - (b) reducing the 'development's total site coverage to not exceed 40% (259.2m²)'.

POD numbering

4. Prior to explaining further background to the appeal, the tribunal notes that the Marcus Dunes Plan of Development is consistently referred to by both parties, including in Council's decision notice, as POD 65. In contrast, successive versions of the Noosa Plan 2020 refer to the Marcus Dunes POD with a 'Council file reference' number of 67.
5. To avoid confusion, the POD is referred to in this decision as POD 65.

Rationale

6. Council's reason for applying the above parameters was the need for compliance with the provisions of POD 65. The POD was initially applied to the land by Planning and Environment Appeal No. 2501 of 1997, the determination issued by consent order on 7 November 1997. The POD was referred to and had regulatory effect in planning schemes adopted subsequently, including the 25 September 2020 Version of the Noosa Plan 2020, which was in operation when the subject application was lodged.
7. Schedule 1 of that planning scheme defined 'Plan of Development' as follows:

Plan of development means a plan that forms part of a development approval that regulates the type or forms of development on a site and is included in Table SC1.2.3 Plans of development.
8. The subject POD is listed in Table SC1.2.3. Under the heading 'Development Parameters', the POD specifies:
 - Maximum site coverage 40%
 - Maximum dwelling unit floor area 350m² (including garage space) and one Manager's office 40m².
9. Although the planning reports and verbal evidence given at the hearing from both parties discussed site cover and gross floor area, the disagreement between the parties centred on whether the POD parameters are to be strictly applied or may be relaxed.

Jurisdiction

10. Since the appeal concerns an application for a dwelling house, section 229(1)(a)(i) and schedule 1 section 1(2)(c)(i) and table 1 item 1(d) of the PA establish that the subject appeal is within the scope of the tribunal's jurisdiction.

Decision framework

11. The onus rests on the appellant to establish that the appeal should be upheld (section 253(2) of the PA).
12. 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).
13. 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).
14. 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, grounds for appeal, reports and correspondence accompanying the appeal lodged with the tribunal's registrar on 12 January 2026
 - (b) The assessment manager's decision notice dated 12 December 2025.
 - (c) Verbal submission made by both parties at the hearing.
 - (d) The Planning Act 2016 and the Planning Regulation 2017.
 - (e) Planning and Environment Court Appeal decision no. 2501 of 1997 and the accompanying POD (plan of development).
 - (f) Noosa Shire Plan 2020.

Findings of fact

16. The tribunal makes the following findings of fact:
 - (a) The 648 m2 subject site is vacant. Its South East Queensland Regional Plan designation is Urban Footprint and it is zoned Low Density Residential.
 - (b) The planning scheme categorizes dwelling house as *accepted development subject to requirements* in that zone.
 - (c) The listed 'requirements' are a range of acceptable outcomes of both the *Low Density Residential Zone Code* and the *Low Density Housing Code*.
 - (d) The site is also subject to overlays, the most pertinent being the *Coastal Protection and Scenic Amenity overlay*, which elevates the assessment category to *Code Assessment*.
 - (e) The parties disagree on the methods of calculation of 'site cover', and 'gross floor area'. It is sufficient here to acknowledge that Council demonstrates the proposal's non-compliance with the planning scheme by assessing it against both the POD parameters and the code acceptable solutions AO8.1 and AO8.2, respectively applying the relevant definitions from the 1990 planning scheme, including definitions of storey and floor area, under which the POD was approved, and the 2020 planning scheme definitions in effect when the application was lodged.
 - (f) The more restrictive parameters are those of the POD, which Council asserts may not be relaxed. The following table compares Council's calculations of site cover and

gross floor area with the POD parameters and the Noosa Plan 2020 acceptable solutions:

Parameter	POD	Noosa Plan 2020 1 st /2 nd floors (%)	Proposal
Site cover	40%	Low Density Residential Zone Code AO8.1 40/40 or 50/30	46% (By comparison, the appellant's overall calculation at 38.5%)
Gross floor area	350 m2 (incl. garage) + 40 m2 (manager's residence)	Low Density Residential Zone Code AO8.2 500 m2	603.2 m2 under 1990 plan definitions 492 m2 under 2020 plan definitions

- (g) It is clear that, by Council's calculations, the proposal exceeds both POD parameters. With respect to the Noosa Plan 2020, it exceeds the acceptable solution AO8.1 for site cover, but satisfies acceptable solution AO8.2 for gross floor area.

Categories of assessment

17. If Council's calculation of site cover for the proposed development is to be accepted, two triggers within the 2020 Noosa Plan elevate the proposed material change of use from accepted development to assessable development, specifically code assessment. The triggers are as follows:
- (a) By Council's calculation, the proposal fails to satisfy the maximum site cover specified by AO8 of the Low Density Residential Zone Code, as required by table 5.5.1, for the proposal to remain accepted development. Consequently, pursuant to sub-section 5.3.3(2) of the scheme, 'accepted development ... becomes code assessable development...'.
(i) be assessed against the assessment benchmarks for the development application, limited to the subject matter of the required acceptable outcomes that were not complied with
- (b) Further, clause 5.3.3(4)(b)(i) requires that code assessable development that 'occurs as a result of development becoming code assessable pursuant to sub-section 5.3.3(2), must:
- (c) The second trigger is the *Coastal Protection and Scenic Amenity overlay* which also elevates the assessment category to *Code Assessment*.
18. At the hearing, Council representatives confirmed that the reason for refusing to issue a development permit is the proposal's failure to comply with the site cover and gross floor area parameters set down in POD 65.

Reasons for the decision

Interpretation of planning scheme

19. The zoning of the subject site has been changed from that approved by the 1998 Planning and Environment Court decision. Under the Noosa Plan 2020 the site is zoned Low Density Residential and is subject to a number of overlays and relevant codes. Together, in this instance, these require a code assessment for a development permit for a dwelling house on the vacant site. They also include relevant benchmarks for assessment, which are not limited to Acceptable Solutions but extend to include Performance Outcomes.
20. Separately, the 2020 Noosa Plan defines the term Plan of Development (POD) as ‘... a plan that forms part of a development approval that regulates the type or forms of development on a site...’. Table SC1.2.3 lists plans of development including POD 65, which references the 1998 court decision. With respect to POD 65, Table SC1.2.3 also declares that dwelling houses are ‘Approved Uses’.
21. Thus, the effect of Table SC1.2.3 is to render dwelling houses approved within the POD area (with the same effect as accepted development). In other words, this part of the planning scheme also has the effect of categorising certain development.
22. Consequently, the 2020 Noosa Plan offers two alternative paths for developing a house on a lot within the POD area:
 - (a) Bypass the development application process by relying on the previously approved POD requirements, with no provision for relaxation of the POD parameters; or
 - (b) Lodge a development application pursuant to the current zone and code provisions.
23. These two mechanisms within the planning scheme provide two independent avenues to secure the development of a dwelling house over the subject site.
24. It should be noted that there is no mandate within the PA, the Planning Regulations or the planning scheme to prioritise one option over the other, nor is there a mandate to apply both mechanisms simultaneously.
25. The planning scheme is a categorizing instrument under s44(5) of the PA. In this case, it has provided two categories of assessment. Under the POD, dwelling house is ‘approved’ subject to assessment benchmarks. Under the zone and code provisions, dwelling house is code assessable, subject to a different set of benchmarks.
26. In the alternative, were it considered that, consistent with Council’s interpretation of the scheme, both the POD provisions and the zone and code provisions apply to the development proposal simultaneously, the POD is not a categorising part of the scheme and the POD parameters conflict with the code provisions. In such an interpretation, section 1.5(e) of the planning scheme makes it clear that, *‘zone codes prevail over use codes and other development codes to the extent of the inconsistency.’* In this instance, the POD parameters must be read as a ‘use code’ or ‘other development code’, thus the zone code prevails over the POD provisions.

Compliance with zone code

27. In the former understanding of the 2020 Noosa Plan, an applicant has the choice of engaging the standard planning scheme mechanisms, to which relevant codes apply, or the 1998 court approved use, not requiring a development approval under the planning scheme, as specified by Table SC1.2.3, but constrained by the POD parameters.

28. An alternative reading of the scheme requires that the zone, overlay and code provisions prevail over the POD provisions.
29. Since the appellant has lodged a development application, regardless of the rationale engaged that led to its lodgement, the tribunal is required to make its assessment against the relevant code provisions.
30. With respect to assessment against Performance Solution PO8 and Acceptable Solutions AO8.1 and AO8.2 of the Low Density Residential Zone Code, the tribunal notes that:
 - (a) notwithstanding that the site cover calculation is disputed, with the appellant's overall calculation at 38.5% and Council's at 46%, Council has indicated that it was not opposed to the size and scale of the dwelling on any grounds other than its interpretation of the application of the planning scheme's POD parameters.
 - (b) The proposed gross floor area of 492 m², as calculated by Council – notwithstanding that this figure is disputed by the appellant – satisfies the acceptable solution of 500 m².
31. The tribunal is of the view that, with a design sympathetic to the sloping landform and with much of the floor space below ground level, the proposed dwelling satisfies the Performance Outcomes PO8 of the Low Density Residential Zone Code with respect to bulk and scale.

John Panaretos
Development Tribunal Chair

Date: 13 April 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:

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