



Development Tribunal – Decision Notice

Planning Act 2016, section 255

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| Appeal number: | 23-072 |
| Appellant: | Mr P M Kinder and Ms M L Irvine |
| Respondent (Assessment manager): | Gladstone Regional Council |
| Site address: | 10 Endeavour St, Seventeen Seventy Qld 4677, and described as Lot 32 on S 85613 – the subject site |

Appeal

Appeal under section 229(1)(a)(i) and schedule 1, section 1, table 1, item 1(d), against the assessment manager's decision to issue a preliminary approval. The preliminary approval was issued upon Council assessment against the Gladstone Regional Planning Scheme 2015, Version 2. In the opinion of Gladstone Regional Council the development did not comply with the Character Residential Zone Code.

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| Date and time of hearing: | 18 April 2024 from 10:04am to 10:54am. |
| Place of hearing: | Online Microsoft Team conference. Chair and Member conducted desktop inspections throughout appeal process. |
| Tribunal: | Markus Pye – Chair Andrew Veres – Member |
| Attendees: | Michelle Irvine – Property Owner Peter Kinder – Property Owner Stephen Enders – Director, Zone Planning Group Shaunte Farrington – Zone Planning Group Tegan McDonald – Principal Planning Lead, Gladstone Regional Council Nick Cooper – Planning Officer, Gladstone Regional Council Helen Robertson - Gladstone Regional Council |
| Submissions provided by: | Tegan McDonald, Gladstone Regional Council, 10 April 2024 Shaunte Farrington, Zone Planning Group, 26 April 2024 |

Decision:

The Development Tribunal (Tribunal), in accordance with section 254(2)(a) of the *Planning Act 2016* (PA) confirms the decision of the assessment manager to issue a preliminary approval with conditions.

Background

1. The subject site is located in Endeavour Street, Seventeen Seventy. Endeavour Street is an access street - on the Seventeen Seventy peninsular - coming off Captain Cook Drive. 10 Endeavour is one of the most northern lots on the peninsula and one of a limited number of remaining vacant lots in the vicinity. The neighbourhood is characterised by single family

residential dwellings, with recent builds approved under the planning scheme's Character Residential Zone Code, Steep Land Overlay Code, Bushfire Hazard Code and Flood Hazard Overlay Code.

2. Adjoining the subject site to the south and east are properties containing two storey dwellings. The subject site is a 607m² sloped allotment that is rectangular in shape. To the western side of the street is Conservation Zoned land, a zone which predominantly covers the peninsula.
3. The subject site is zoned Character Residential within the Gladstone Regional Planning Scheme Plan 2014 Version 2 2017, and located within the Bushfire Hazard Overlay code, Flood Hazard Overlay code and Steep Land Overlay Code. The site is also benchmarked against the Central Queensland Regional Plan October 2013.
4. Gladstone Regional Council was the assessment manager for the application as the proposal for a dwelling house triggered a Material Change of Use Application (Code assessable) in the Character Residential zone.
5. In particular, Gladstone Regional Council determined that the proposal was non-compliant with the Character Residential Zone Code.
6. The application/submission timelines were:
 - 8 February 2023:- Maiden Homes Pty Ltd lodged a Development Application for a Development Permit for a Material Change of Use for a Dwelling House.
 - 17 April 2023: The Applicant responded to Council's Information Request (issued 24 February 2023)
 - 27 April 2023: Zone Planning Group was appointed to review the Application and Council's response to the Information Request Response, with which Council was not satisfied.
 - 13 November 2023: The applicant lodged a minor change application, including revised plans.
 - 23 November 2023: Council issued a Decision Notice for a Preliminary Approval, predominantly requesting the application address the Character Residential Zone Code.
 - 19 December 2023: Zone Planning Group lodged the appeal with the Development Tribunal registrar.
 - 10 April 2024: Gladstone Regional Council made its submission to the Tribunal, incorporating the full Planning Assessment Report.
 - 18 April 2024:- The Tribunal held an online hearing with the appellants, Council and the Tribunal.
 - 26 April 2024 –Zone Planning Group made its submission.

Jurisdiction

7. The tribunal has jurisdiction for this appeal under the PA section 229(1)(a)(i) and schedule 1, sections 1(2)(c) and table 1, item 1(d), which is an appeal by the appellant against—if a development permit was applied for—the decision to give a preliminary approval.

Decision framework

8. The onus rests on the appellant to establish that the appeal should be upheld (section 253(2) of the PA.

9. 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); 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 the PA (pursuant to which the registrar may require information for tribunal proceedings).
10. The tribunal is required to decide the 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) of the PA).

Material considered

11. The material considered in arriving at this decision comprises:
 - a. 'Form 10 – Appeal Notice', grounds for appeal and correspondence accompanying the appeal lodged with the Tribunals Registrar on 19 December 2023.
 - b. Submission by Tegan McDonald of Council provided on 10 April 2024.
 - c. Submission made by the Appellant on 26 April 2024, consisting of six photos.
 - d. Gladstone Regional Council Planning Scheme: Character Residential Zone Code.

Findings of fact

The Tribunal makes the following findings of fact:

12. The Gladstone Regional Council Planning Scheme V2 2017, as confirmed by Tegan McDonald and Nick Cooper, requires compliance with the Character Residential Zone Code, which the Gladstone Regional Council officers considered the proposal did not achieve. This resulted in a Preliminary Approval with conditions.
13. Specifically, the Gladstone Regional Council considered the application did not satisfactorily address:-
 - e. Performance Outcome PO2, which came into consideration because the proposal exceeds the Acceptable Outcome AO2.1 of 8.5m in height and the maximum number of two storeys.
 - f. Performance Outcome PO3, which came into consideration because the proposal exceeds the Acceptable Outcome AO3.1 of a 6m front and rear setback.
 - g. Performance Outcome PO3, which came into consideration because the proposal exceeds the Acceptable Outcome AO3.2 of a 6m front and rear setback for structures and building.
 - h. Performance Outcome PO5, whereby the proposal is cut into the ground and articulation is not of coastal character; which came into consideration because the proposal does not comply with Acceptable Outcome AO5.1, or AO5.2 (the requirement for minimum .6m wide eaves).
 - i. Performance Outcome PO7, which came into consideration because the proposal exceeds the maximum driveway and crossover width of 3.5m and therefore did not comply with AO7.2.
 - j. Performance Outcome PO8, which came into consideration because the proposal does not comply with Acceptable Outcome AO8.3, whereby the proposal exceeds the maximum excavation: cut of 1m below ground level and maximum fill of 1m above ground level. (The Tribunal notes that non-compliance with native landscaping can be conditioned.)
 - k. Performance Outcome PO8, which came into consideration because the proposal does not comply with Acceptable Outcome AO8.4, whereby retaining walls and terraces are proposed to be constructed to create a level lot; and whereby the proposal exceeds the maximum height of 0.6m to the street frontage, and the maximum height of 1.2m elsewhere on the lot.

14. Furthermore, the Gladstone Regional Council also found that the application did not respond to PO10, whereby the proposed development did not respond sensitively to on-site and surrounding topography.
15. Lastly, Council also stated that the application did not adequately address the following overall outcomes and the zone purpose statement:

Overall Outcomes:-

2b:- Development is in the form of individual detached dwellings, small scale in size and low rise in height.

2d:- Development respects the topography of the locality by ensuring buildings follow the contours of the land and minimise disturbance of the natural ground form.

2h:- Development responds to land constraints including topography, limited access, bushfire and flooding constraints.

Zone purpose statement:-

a:- Exemplifies the existing natural landscape and coastal character of these areas; and

b:- Minimises visual impacts and prevents buildings from dominating the natural landscape; and

c:- Is interspersed and sympathetically sited amongst the coastal landscape and bushland elements.

Reasons for the decision

16. The Tribunal is of the opinion that the proposal does not adequately address the Performance Outcomes, the Overall Outcomes or diagram 6.4.2.3.1, nor does it address the purpose of the Character Residential Zone Code. The code's purpose is to ensure works recognise the existing values both broad and specific, reinforcing the distinctive character of Seventeen Seventy; in other words, the *genius loci*, the spirit of place. The following further illustrates the Tribunal's conclusion.
17. The Tribunal considers that any real direction of any code lies in its Overall Outcomes. Performance outcomes and acceptable outcomes can be a narrow direction, 'a formula' to follow, used to achieve an expected or a foreseen outcome. The Tribunal considers 14 Endeavour Street is evidence of that. With that, the OOs, POs and AOs are at times an attempt to be specific, but open to 'misinterpretation'. An example of such a misinterpretation, in the Tribunal's view, is the use of random stone biscuits (aka tiles) over lightweight framing.
18. Furthermore, OO 2b states that development shall be in the form of individual detached buildings, small-scale in size and low-rise in height. To settle the question of defining 'small scale', the Cambridge Dictionary's meaning of 'small-scale' is *Small, especially when compared to other things like it: The house is like a small-scale castle*. The Tribunal considers that the proposal is more akin to a castle than a campsite. The site's extensive perimeter excavation could have been modelled on an empty moat. In this analogy, 'campsite' corresponds to small-scale and low-rise.
19. This paragraph and the following paragraph contain the Tribunal's main concern, which is the proposal's conflict with Overall Outcome 2d: *Development respects the topography of the locality by ensuring buildings follow the contours of the land and minimise disturbance of the natural ground form*. This is not so open to misinterpretation when viewed against the expectation of a single Class 1a building not dictating the terms of the site. It should be a 'site looking for a building', not the opposite. The following statement in the Grounds for appeal is accepted by the Tribunal to the extent of its opening sentence only:

The construction of the dwelling will necessitate earthworks, limited to the subject site and in relation to the built form. The earthworks are mostly associated with the external walls of the Dwelling House and contained within the building footprint, with

a small stepped-retaining wall located at the rear of the site along with steps along the southern side boundary. The earthworks do not propose significant cut and retaining walls to create a level site, rather the proposed cut areas will encompass the building envelope.

(...)

20. When there is visible excavation (cut) of more than a floor to floor level to 3 of the 4 boundaries, that height is compounded by any existing retaining wall, all requiring genuine fall protection, adding even more height; an unacceptable outcome results by not only disregarding the topography, OO 2d, but the proposal has also disregarded the residential amenity of neighbours and residents alike, required for compliance with PO3.
21. The Tribunal is also of the opinion that the Council's request for a holistic redesign is too narrow visioned in its wording, particularly when viewing its special conditions. A holistic redesign must acknowledge the purpose of the code: The genius loci of the locale.
22. That said, parties may feel they are back to the drawing board, but no wiser for it. The Tribunal notes that Seventeen Seventy has an exemplar that illustrates the purpose of the Character code, that being Cantilever House. Put simply, its genesis sprang from the site's slope as it saw an opportunity, not a constraint in the topography. It is more 'campsite' than 'castle', and gains a greater sense of place for it. Whether all Character Code OOs, POS, AOs and diagrams are achieved, the purpose of the Character Residential Zone Code was well achieved. It is a 'site that found its building'.
23. Cantilever House is only one answer, and Red Rock House is another. The Tribunal agrees with the architect's statement about Red Rock from their website: 'Celebrating its natural, coastal setting, the house explores ideas of lightness, layers of transparency and integrating indoor / outdoor living as is a simple series of stepped timber platforms that enable a contemporary coastal lifestyle to unfold within a very special landscape'.

In summary, it is the opinion of the Tribunal, in support of the Council's position, that the proposed design does not reflect the intent of the Character Residential Zone Code. A *very special landscape* deserves a very special building. To recommend a Development Permit for this particular design on this particular site would erode that intent.

Markus Pye

Development Tribunal Chair

Date: 17 May 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
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