



## Development Tribunal – Decision Notice

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### **Planning Act 2016, section 255**

<b>Appeal Number:</b>	<b>22-025</b>
<b>Appellant:</b>	Michael Drysdale
<b>Respondent (Enforcement Authority):</b>	Noosa Shire Council ( <b>Council</b> )
<b>Site Address:</b>	22 Kingfisher Drive, Peregrin Beach, in the State of Queensland being Lots 0, 1 and 2 on GTP406 ( <b>Premises</b> )

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### **Appeal**

An appeal under section 229 and Item 2(a) of Table 1 of Schedule 1 of the *Planning Act 2016* against the decision of Council to refuse a change application for a minor change to a development approval for Multiple Dwelling (2 Units) (**Change Application**).

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<b>Date and time of hearing:</b>	13 October 2022 at 11.00am
<b>Place of hearing:</b>	22 Kingfisher Drive, Peregrin Beach
<b>Tribunal:</b>	Stafford Hopewell – Chair Warren Rowe – Member
<b>Submissions provided by:</b>	Appellant – Michael Drysdale (Owner), Marcus Brennan (Brennan Planning) and Georgina Price (Georgina Design) Noosa Shire Council – Kerry Coyle and Lisa Pienaar

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### **Decision:**

The Development Tribunal (**Tribunal**), in accordance with section 254(2)(c) of the *Planning Act 2016* (**PA**), decides to replace the decision of Council to refuse the Change Application with a decision to approve the Change Application and impose development conditions set out in Appendix A pursuant to section 81(2)(a) of the PA.

### **Background**

1. The Premises is a rectilinear shaped corner lot that has a 22.6m frontage to Kingfisher Drive to the east and 19.7m frontage to Brolga Place to the north and comprises an area of 497m<sup>2</sup>.
2. A two-storey building comprising two residential units is constructed on the Premises which has been developed pursuant to a development approval given by Council for Multiple Dwelling (2 Units) with Council reference TPC 849 (**Development Approval**).

3. The building was constructed circa 1979 and is of brick construction and both units are orientated towards Kingfisher Drive to the east. Each unit contains two levels.
4. Primary access is via a crossover to Kingfisher Drive with a secondary access from Brolga Place.
5. The Appellant, with the consent of the other owner of the Premises, has made a change application for a minor change to the Development Approval to change the approved plans.
6. The Change Application was made on 20 October 2021 to make additions and alterations to both Units 1 and 2:
  - (a) extending the width of the second level deck by 1.4m, across the Kingfisher Drive frontage of both units;
  - (b) providing a new entry and stairway on the southern side of Unit 1;
  - (c) altering the internal layout of Unit 1 including extending the garage, providing a ground level bathroom and bedroom, and removing the existing internal stairs;
  - (d) providing improvements to ground level private open space of Unit 1, including a plunge pool and deck areas.
7. Council decided to refuse the Change Application on 21 April 2022 and gave a decision notice dated 26 April 2022 containing the following reasons for refusal:
  1. *The proposal does not comply with Overall Outcome 2(c), Performance outcomes PO9, PO10, PO11, PO12 and PO14 of the Medium Density Residential Zone code in Noosa Plan 2020 as the proposed changes will:*
    - a. *Exceed the maximum site cover and gross floor area sought for the area;*
    - b. *Contribute to the building's bulk and scale, are not compatible with the site's small area and will dominate the streetscape; and*
    - c. *Reduce the extent of landscape area provided for the site.*
  2. *The proposal does not comply with Acceptable outcome AO12.1 and corresponding Performance outcome PO12(a) and (f) of the Medium Density Residential Zone code in Noosa Plan, as the proposed setback to the front boundary will:*
    - a. *Bring the existing deck further forward of the adjoining premises (20 Kingfisher Dr) affecting their amenity; and*
    - b. *Not be consistent with the predominant character of the streetscape.*
  3. *The proposal is contrary to the Overall outcome 2(b) and (c) and Performance outcome PO4 and PO10(b) and (e) of the Dual Occupancy and Multiple Dwelling Code in Noosa Plan 2020 as:*
    - a. *The existing building is of bulk and scale that is not consistent with the existing character sought for the area and the proposed changes will contribute additional bulk and scale;*
    - b. *The development does not contribute to the streetscape as the proposed changes will encroach further into the front setback;*

- c. The proposed changes will reduce the extent of, and opportunities for landscape areas on site.*

## Hearing

8. The hearing was held at the Premises on 13 October 2022 commencing at about 11.00am and finished at about 1.00pm (including the site inspection).
9. The Appellant was present at the hearing and represented by Marcus Brennan and Georgina Price with Kerri Coyle and Lisa Pienaar attending on behalf of the Council.
10. At the hearing, both parties made oral submissions in support of their respective positions with the Appellant also providing copies of plans that formed part of the application material.
11. During the hearing, the Tribunal together with the parties also undertook an inspection of the Premises and the streetscape of Kingfisher Drive between Heron Street to the south and Pelican Street to the north.

## The Appeal

12. The Appellant filed a Notice of Appeal (Form 10) dated 27 May 2022 with the Tribunal's Registry which was received on 27 May 2022.
13. The Appellant's Form 10 is attached with "Appendix 1 – Grounds for Appeal" which sets out the Appellant's grounds of appeal.
14. The Council's reasons for refusal concern alleged non-compliances with the Medium Density Residential Zone code and Dual Occupancy and Multiple Dwelling code of the Council's planning scheme being the Noosa Plan 2020.
15. In summary, the Appellant acknowledges that the proposed changes do not comply with the prescriptive standards contained in the Noosa Plan 2020 in relation to site cover, plot ratio and building setback but submits that the proposed changes comply with the relevant codes as a whole, as the proposed development complies with the purpose and overall outcomes of the codes.
16. At the hearing, the issues in dispute were narrowed to focus on the three key issues, being:
  - (a) Site cover;
  - (b) Plot ratio;
  - (c) Front setback.
17. These issues primarily concern the Medium Density Residential Zone code of the Noosa Plan 2020 and the impact of the proposed extension of the second level deck and associated roof line on streetscape and amenity.

## Jurisdiction

18. Schedule 1 of the PA governs the matters that may be appealed to a tribunal.<sup>1</sup>
19. Section 1(1) of Schedule 1 of the PA provides that Table 1 states the matters that may be appealed to a tribunal. However, pursuant to section 1(2) of Schedule 1 of the PA,

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<sup>1</sup> Section 229(1)(a) of the PA.

Table 1 only applies to a tribunal if the matter involves a matter set out in subsection (2).

20. Section 1(2)(f) of Schedule 1 of the PA, relevantly refers to a decision for a change application for a development approval that is only for a material change of use of a classified building.
21. A classified building is a building classified as a class 1 building under the Building Code of Australia<sup>2</sup> which includes a duplex.
22. The Appeal is against the decision to refuse a change application for a development approval that is only for a material change of use of a classified building, and accordingly satisfies section 1(2)(f) of Schedule 1 of the PA.
23. The Tribunal is therefore satisfied that it has jurisdiction to decide the Appeal.

### **Decision framework**

24. The Appellant is the applicant for the Change Application and must establish that the Appeal should be allowed and the Change Application approved.<sup>3</sup>
25. The Tribunal is required to hear and decide the Appeal by way of a reconsideration of the evidence that was before Council when it decided the Change Application.<sup>4</sup>
26. The Tribunal may (but need not) consider other evidence presented by a party with leave of the Tribunal.<sup>5</sup>
27. The PA provides the Tribunal with broad powers to inform itself in the way it considers appropriate when conducting a tribunal proceeding and may seek the views of any person.<sup>6</sup>
28. The Tribunal may consider other information that the Registrar asks a person to give to the Tribunal.<sup>7</sup>
29. The Tribunal may decide that the Tribunal has no jurisdiction to decide the tribunal proceedings.<sup>8</sup> Otherwise, the Tribunal is required to decide the appeal in one of the following ways set out in section 254(2) of the PA:
  - (a) *confirming the decision; or*
  - (b) *changing the decision; or*
  - (c) *replacing the decision with another decision; or*
  - (d) *setting the decision aside and ordering the person who made the decision to remake the decision by a stated time; or*
  - (e) *for a deemed refusal of an application:*

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<sup>2</sup> Schedule 2 of the PA.

<sup>3</sup> Section 253(2) of the PA.

<sup>4</sup> Section 253(4) of the PA.

<sup>5</sup> Section 253(5)(a) of the PA.

<sup>6</sup> Section 249 of the PA.

<sup>7</sup> Section 253 and section 246 of the PA.

<sup>8</sup> Section 252(1) of the PA.

- (i) *ordering the entity responsible for deciding the application to decide the application by a stated time and, if the entity does not comply with the order, deciding the application; or*
- (ii) *deciding the application.*

**Material considered**

30. The material considered in arriving at this decision comprises:
- (a) 'Form 10 – Appeal Notice', grounds for appeal and information accompanying the appeal lodged with the Development Tribunals Registrar on 27 May 2022;
  - (b) Written submission of the Appellant dated 2 November 2022;
  - (c) Written submission of the Council dated 2 November 2022;
  - (d) Written submission of the Appellant dated 24 February 2023;
  - (e) Written submission of the Council dated 24 February 2023;
  - (f) *Planning Act 2016*;
  - (g) *Noosa Plan 2020*.

**Findings of fact**

31. The Tribunal finds in relation to the development parameters of the proposed changes:
- (a) The site cover is in excess of 40% and does not comply with PO10 of the Medium Density Residential Zone code;
  - (b) The plot ratio is 0.48:1 and does not comply with PO11 of the Medium Density Residential Zone code;
  - (c) The front building setback is approximately 4.635m from Kingfisher Drive and 2.5m from the corner truncation with Brolga Place and does not comply with AO12.1 of the Medium Density Residential Zone code.
32. With respect to the calculation of the site cover of the proposed development, the parties disagree as to the proposed site cover although it is common ground that however the figure is calculated it exceeds 40% which is the maximum allowable site cover prescribed by PO10.
33. The following table summarises the relevant parameters of the existing and proposed development:

<b>Performance Outcome / Acceptable Outcome – Medium Density Residential Zone code</b>	<b>Proposal</b>	<b>Noosa Plan 2020</b>	<b>Existing Development</b>
<b>Site Cover (PO10)</b>	46%	40%	37.6%
	(Council calculation)		(Council calculation)
	41.6%		35%

	(Appellant calculation)		(Appellant calculation)
<b>Plot Ratio</b> (PO11)	0.48:1	0.4:1	0.42:1
<b>Front Setback</b> (AO12.1)	4.635m (to Kingfisher Drive)	6m	6m

### Issues in dispute in the Appeal

34. Council contends that the proposal does not comply with the following provisions of the Noosa Plan 2020:
- (a) Overall Outcome 2 (c), Performance outcomes PO9, PO10, PO11, PO12 and PO14 of the Medium Density Residential Zone;
  - (b) Acceptable outcome AO12.1 and corresponding Performance outcome PO12 (a) and (f) of the Medium Density Residential Zone;
  - (c) Overall outcome (2) (b) and (c) and Performance Outcomes PO4 & PO10 (b), & (e) of the Dual Occupancy and Multiple Dwelling Code.
35. The Appellant acknowledges that the proposed changes do not comply with the standards for site cover, plot ratio and building setback but submits that the proposed changes comply with the purpose and overall outcomes of the relevant codes.
36. At the hearing and in subsequent submissions, the parties focused on the following issues being central to the determination of the Appeal:
- (a) Site cover;
  - (b) Plot ratio;
  - (c) Front setback;
- and the impact of these on streetscape and amenity.
37. No material concerns about the internal changes to Unit 1 or the proposed plunge pool and deck adjoining Unit 1 on the southern side of the Premises have been raised by Council and the Tribunal concurs with Council's position that these aspects of the proposed changes do not give rise to any issues in the Appeal.

### Reasons for the Decision

38. The Change Application is required to be assessed and decided in accordance with sections 81 and 81A of the PA. This requires the Change Application to be assessed against the matters it would or may be assessed against or to which regard may be had if the change application were a development application.<sup>9</sup>

<sup>9</sup> Section 81(2)(da) of the PA.

39. The Tribunal is required to have regard to the statutory instrument in effect at the time the development application for the development approval was made but may give the weight it considers appropriate to the statutory instrument in effect when the change application was made.<sup>10</sup>
40. Perhaps unsurprisingly given the development application was made and approved in 1979, the parties focused their submissions on compliance with the Noosa Plan 2020 being Council's current planning scheme and the Tribunal considers it is appropriate to give primary weight to the Noosa Plan 2020 as reflecting Council's current planning intentions and policy.
41. As noted above, the proposed changes do not comply with the relevant prescriptive standards in relation to site cover, plot ratio and building setback.
42. The non-compliance, and extent thereof, is a relevant matter for the overall exercise of the planning discretion.<sup>11</sup> The Court of Appeal in *Development Watch v Sunshine Coast Regional Council* [2022] QCA 6 endorsed the observation that "not every non-compliance is contrary to the public interest or will warrant refusal".<sup>12</sup>
43. Accordingly, where non-compliance with the planning scheme is established, it is a relevant fact but does not mandate refusal of the development application.<sup>13</sup> The exercise of the planning discretion is a broad, evaluative judgment.<sup>14</sup> In the exercise of that judgment, the Planning and Environment Court has been willing to consider the absence of impacts to be a relevant matter that could allow the approval of development even if there are non-compliances with the planning scheme.<sup>15</sup>
44. It is therefore necessary to consider the nature and significance of the non-compliances with the Noosa Plan 2020 and the impacts of the proposed changes.
45. The non-compliance with the Noosa Plan 2020 primarily concerns the Medium Density Residential Zone code. The Tribunal notes that in relation to site cover (PO10) and plot ratio (PO11), the relevant prescribed standards form part of the performance outcome. In contrast, in relation to building setback, the prescribed standard is an acceptable outcome (AO12.1) and the performance outcome for building setback (PO12) is qualitative in nature.
46. For building scale and bulk (PO9), there are no prescribed standards (or acceptable outcome) and the performance outcome is qualitative. For streetscape (PO14), there are no prescriptive standards but a range of qualitative acceptable outcomes and performance outcomes.
47. Having regard to the compliance with the Medium Density Residential Zone code, the Tribunal considers:

#### Site Cover

- (a) Council submits the existing site cover of the development is 37.6% and the proposed site cover is 46% whereas the Appellant submits the existing site cover is 35% and the proposed cover is 41.6%.

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<sup>10</sup> Section 81(3) to (5) of the PA.

<sup>11</sup> *Abeleda v Brisbane City Council* (2020) 6 QR 441 at 461.

<sup>12</sup> At [34].

<sup>13</sup> *Abeleda & Anor v Brisbane City Council & Anor* [2021] QPELR 103; *Wu & Kuo Childcare & Anor v Brisbane City Council & Anor* [2022] QPEC 27 at [7].

<sup>14</sup> *Brisbane City Council v YQ Property Pty Ltd* [2021] at [59].

<sup>15</sup> *Drivas v Brisbane City Council & Anor* [2021] QPEC 68 at [49]; *Lawrence v The City of Gold Coast & Anor* [2022] QPEC 19 at [42].

- (b) While the parties disagree about the extent of the exceedance, it is common ground that the proposed site cover will exceed the performance outcome of 40% under the Noosa Plan 2020.
- (c) Council submits that the site cover of the proposed development will exceed the site cover of existing development along Kingfisher Drive, which Council submits is as follows:
  - (i) 16 Kingfisher Drive – 40%;
  - (ii) 18 Kingfisher Drive – 49.38% upper floor / 23.2% lower floor;
  - (iii) 20 Kingfisher Drive – 29%.
- (d) The Appellant concurs with these figures (although makes no reference to the lower floor figure for 18 Kingfisher Drive).
- (e) The parties disagree as to the calculation of the site cover of the existing and proposed development. Based on the information provided by the parties, the Tribunal is unable to reconcile this difference but notes that it is common ground that the proposed development exceeds the prescribed site cover.
- (f) For the purposes of determining this appeal the Tribunal considers the mathematical calculation of the proposed site cover is not critical and the issue is required to be resolved by regard to the qualitative impacts of the proposed development
- (g) Whether the proposed site cover is 46% as submitted by Council or 41.6% as submitted by the Appellant, it exceeds the 40% maximum prescribed by PO10.
- (h) The proposed extensions to the existing building will undoubtedly result in a larger building extending further to the southern boundary and eastern street frontage to Kingfisher Drive (as well as the corner truncation with Brolga Place).
- (i) The Tribunal however considers that this will not adversely impact the adjoining development or local streetscape. In terms of the adjoining development at 20Kingfisher Driver, it is considered that the extension to the south of the existing building will not have any unacceptable impact.
- (j) With regard to the streetscape, the Tribunal is of the opinion that the streetscape will not be adversely affected and the proposed changes are in character with the existing streetscape. Between Brolga Place to the north and Heron Street to the south, the existing buildings are generally larger and located closer to the street frontage than the existing development on the Premises. The proposed changes will result in a larger building on the Premises located closer to Kingfisher Drive but the Tribunal considers that this will not result in out-of-character development or adversely affect the streetscape.
- (k) While Council has highlighted that the existing buildings between Brolga Place and Heron Street were approved under former planning schemes and the Noosa Plan 2020 has expressly adopted a lower site cover maximum to deliver smaller buildings, it is considered that overall the proposed development will continue to present as a relatively small scale development with sufficient provision for landscaping.
- (l) Further, the proposed changes will present a more contemporary and aesthetic façade to Kingfisher Drive and result in an overall improvement in streetscape.



With respect to Brolga Place, this is a secondary frontage and it is considered that the proposed changes will not have unacceptable impacts on Brolga Place, including the truncated corner of Brolga Place and Kingfisher Drive.

#### Plot Ratio

- (m) The parties agree that the plot ratio of the proposed changes is 0.48:1 which exceeds the maximum plot ratio of 0.40:1 prescribed in PO11.
- (n) Council submits that the plot ratio of the proposed development will exceed the plot ratio of existing development along Kingfisher Drive, which Council submits is as follows:
  - (i) 16 Kingfisher Drive – 0.45:1;
  - (ii) 18 Kingfisher Drive – Not specified;
  - (iii) 20 Kingfisher Drive – 0.45:1.
- (o) With respect to 16 and 20 Kingfisher Drive, Council states that these approvals complied with the planning scheme in effect at the time of the approvals. In relation to 18 Kingfisher Drive, Council states that no plot ratio requirements applied to houses at the time of approval.
- (p) The Appellant concurs with the figures stated by Council in relation to 16 and 20 Kingfisher Drive but additionally submits that 18 Kingfisher Drive has a plot ratio of 0.46:1.
- (q) The Tribunal considers that whilst the proposed changes will result in a larger building on the Premises, the increase is relatively modest and is consistent with the size and scale of adjoining existing developments along Kingfisher Drive, particularly when viewed along Kingfisher Drive south to Heron Street.
- (r) The Tribunal notes Council's submission that the Noosa Plan 2020 seeks to deliver smaller buildings to minimise bulky buildings and achieve more meaningful landscaping with a maximum plot ratio of 0.40:1 and that some of the existing buildings in Kingfisher Drive were developed under a previous planning scheme with a maximum plot ratio of 0.45:1.
- (s) The Tribunal accepts Council's submissions that the setting of a maximum plot ratio of 0.4:1 in PO11 is an important criterion for assessment of built form and expresses Council's policy intent to avoid buildings of excessive bulk and scale.
- (t) However, the plot ratio standard in PO11 does not operate as an absolute maximum figure or a prohibition on development in exceedance of the prescribed figure. While non-compliance is a relevant factor, the impact and significance of the non-compliance must still be assessed.
- (u) As noted by both parties, existing development in Kingfisher Drive between Heron Street and Brolga Place already has buildings with a larger plot ratio of around 0.45:1.
- (v) While the proposed changes will increase the plot ratio on the Premises to 0.48:1 which will be more than the adjoining development to the south along Kingfisher Drive, the Tribunal does not consider this to be excessive or to cause adverse impacts to amenity or streetscape.

- (w) The Premises are smaller than the lots to the south, so while the plot ratio will be higher on the Premises, the relative building size on the Premises will be modest and will continue to present as a smaller building compared to those to the south.
- (x) Further, the proposed changes in relation to the extension to Kingfisher Drive are limited to a 1.4m extension to the upper deck and roofline. This is considered to be a relatively lightweight design element.
- (y) Finally, it is noted that plot ratio of the existing development at 0.42.:1 currently exceeds the maximum of 0.4:1 under PO11 of the Medium Density Residential Zone code in circumstances where the existing building clearly presents as a much smaller building with a greater setback than the existing buildings to the south.

#### Building Setback

- (z) The proposed development has a setback of 4.635m from Kingfisher Drive and 2.53m from the truncated corner with the intersection of Kingfisher Drive and Brolga Place. It is common ground that the building setback does not comply with the 6m standard prescribed in AO12.01.
- (aa) The Appellant submits that despite not complying with the acceptable outcome, the proposed development complies with the performance outcome PO12. The Appellant in its written submissions of 2 November 2022 outlines a series of grounds as to why it submits that the performance outcome is satisfied. These include:
  - (i) Achieving a high level of amenity for the users of the subject site;
  - (ii) The proposed extensions will maintain visual and acoustic privacy for adjoining residents;
  - (iii) The proposed setback will provide for sufficient landscaping areas;
  - (iv) The proposed extensions will maintain consistency with the predominant character of the streetscape.
- (bb) Council in its further written submissions of 2 November 2022 raises concerns that while the existing setback of the building on the Premises is consistent with the average setback of buildings in Kingfisher Drive, the proposed setback is not.
- (cc) Further, Council is of the opinion that the increase and intrusion further into the front setback will appear bulky when viewed from Kingfisher Drive and Brolga Place. Council further submits that the extension will result in a building further forward of the neighbouring duplex's upper floor which will be imposing to Kingfisher Drive and particularly the corner of Brolga Place.
- (dd) Council submits that the following setbacks currently exist in Kingfisher Drive between Brolga Place to the north and Heron Street to the south:
  - (i) 16 Kingfisher Drive – 3.7m to upper deck and 6m to wall;
  - (ii) 18 Kingfisher Drive – 3.7m to upper deck, > 6m otherwise;
  - (iii) 20 Kingfisher Drive – 6m.

- (ee) The Appellant concurs with Council's reference to 3.7m for 16 and 18 Kingfisher but disagrees with respect to 20 Kingfisher Drive which the Appellant submits is set back 5.5m from the outmost projection of the pavilions and 2.14m from the pool and associated screen.
  - (ff) The Tribunal accepts that the proposed extension does not comply with the 6m boundary setback standard set by AO12.1 and will result in a building closer to the street frontage of Kingfisher Drive than the adjoining duplex.
  - (gg) However, the Tribunal does not consider that this will cause unacceptable impacts. Having regard to PO12, the Tribunal is satisfied that the proposed extension will achieve the outcomes specified in PO12(a) to (f).
  - (hh) While the proposed variation of 1.365m in setback from Kingfisher Drive is considered to be potentially the most impactful noncompliance of the proposed development, when considered in the context of surrounding and adjoining developments on Kingfisher Drive, the Tribunal considers the proposed change will have a minimal impact and will be consistent with the current Kingfisher Drive streetscape.
  - (ii) In particular, the Tribunal prefers the Appellant's submissions in relation to setback. At the hearing, there was disagreement between the parties as to the setbacks of the developments to the south of the Premises, including some debate as to whether the constructed developments were in accordance with the relevant approvals.
  - (jj) Without expressing any view on the issues raised, the Tribunal from its site inspection is satisfied that the developments to the south present as being closer to the street frontage than the existing building on the Premises and the proposed extension will not materially impact the streetscape or change how the subject building is viewed in the streetscape.
  - (kk) The Tribunal also considers that while the proposed extension will further reduce the setback to the truncated corner with Brolga Place, this will not materially affect the streetscape and does not provide a sufficient reason to refuse the Change Application.
48. Overall, the Tribunal is satisfied that despite the non-compliances with the prescribed standards for site cover, plot ratio and building setback in the Medium Density Residential Zone code, the scale and bulk of the proposed development is not excessive and will not adversely impact adjoining development or the character of the locality.
49. Similarly, having regard to PO9 (building scale and bulk) and PO14 (streetscape), the Tribunal is satisfied that the proposed changes comply with the relevant performance outcomes.
50. The Tribunal considers that in the context of the Premises, the proposed extensions to the existing building are modest and in keeping with the existing and intended character of the local area.
51. The existing building, whilst reasonably well maintained, is undoubtedly aged and adds little, if anything, positive to the streetscape and local character.
52. The proposed extensions, particularly in relation to the front setback, exceed the relevant parameters prescribed by the Medium Density Residential Zone code but when considered in context will not have a detrimental impact on the amenity of adjoining properties and the surrounding area in general.

53. Furthermore, having regard to the purpose and overall outcomes of the Medium Density Residential Zone code, the Tribunal is satisfied that the proposed changes comply with overall outcome 6.3.2.2(2)(c) and will make a positive contribution to the look and feel of the residential neighbourhood by maintaining a low scale character with a well designed extension and landscaping that enhances the streetscape.
54. For completeness, the Tribunal also notes that Council originally based its reasons for refusal on the proposed changes being contrary to the Overall outcome (2)(b) and (c) and Performance outcomes PO4 and PO10(b) and (e) of the Dual Occupancy and Multiple Dwelling code. Council did not pursue these issues at the hearing or in its further submissions of 2 November 2022.
55. Nevertheless, the Tribunal has considered these provisions and for the reasons set out above is satisfied that the proposed changes do not result in a building that is of a bulk and scale that is out of character, contribute to the streetscape and will provide sufficient opportunity for landscaping, and accordingly comply with PO4 and PO10 of the Dual Occupancy and Multiple Dwelling Code.

### **Summary**

56. The Tribunal finds that the proposed development the subject of the Change Application does not comply with the relevant prescribed standards for site cover, plot ratio and building setback of the Noosa Plan 2020.
57. While these prescribed standards are relevant and important considerations in the assessment of the merits of the Change Application, the Tribunal is of the opinion that in the circumstances of the proposed development the nature and extent of non-compliance is not material and do not give rise to any significant adverse impacts.
58. Having regard to the streetscape and surrounding development, the Tribunal considers that the proposed changes will not result in development of the Premises that is out of character or incompatible with the locality or will otherwise adversely affect amenity of the adjoining development.
59. Regardless of whether the streetscape is considered between Heron Street and Brolga Place (as generally argued by the Appellant) or more broadly between Heron and Pelican Street (as submitted by Council), the Tribunal finds that the proposed changes are compatible and do not give rise to any adverse impacts.
60. The Tribunal therefore finds that the Council's decision to refuse the Change Application should be replaced with a decision to approve the Change Application.
61. Under section 81A(2)(a) of the PA, the responsible entity may decide to make the change, with or without imposing or amending development conditions in relation to the change.
62. Through the Registry, the Tribunal invited to the parties to make submissions as to what, if any, changes to the development conditions were appropriate for the change.
63. The Appellant submitted that the changes to the conditions of the Development Approval should be limited to the inclusion of the updated plans the subject of the Change Application.
64. Council submitted new conditions should be imposed in relation to:
  - (a) The driveway accessing the site from Brolga Place which Council states does not have approval and should be required to be removed or obtain approval;

- (b) Landscaping which Council submits has been removed from the site over time and replaced with hardstand areas and should be reinstated;
  - (c) Landscape works which Council considers should be included to assist in softening the building, fence and reinstate vegetation in the existing hardstand areas.
65. The Tribunal considers that the issues raised by Council in relation to alleged non-compliance with the conditions of the Development Approval are outside of the scope of the Appeal which is confined to proposed changes the subject of the Change Application. Accordingly, it is not considered appropriate to impose or amend development conditions in relation to the driveway and former landscape areas and any issues in relation to compliance with these conditions need to be separately addressed by Council in accordance with the PA.
66. However, the Tribunal considers it is reasonable or relevant to impose new development conditions to mitigate the impacts of the proposed extensions the subject of the Change Application.

The Tribunal pursuant to section 81A(2)(a) of the PA imposes the development conditions set out in Appendix A.

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**Stafford Hopewell**

**Development Tribunal Chair**

**Date: 3 March 2022**

### **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 Energy and Public Works  
GPO Box 2457  
Brisbane QLD 4001

**Telephone: 1800 804 833**

**Email: [registrar@epw.qld.gov.au](mailto:registrar@epw.qld.gov.au)**

## APPENDIX A – IMPOSED DEVELOPMENT CONDITIONS

### Approved Plans

15. Development associated with the minor change approval must generally comply with the approved plans of development. The approved plans are listed in the following table unless otherwise amended by these conditions.

Plan No.	Rev.	Plan/Document Name	Date
DD.01	02	<i>Proposed Site Plan</i> , prepared by Georgina Price Design	06/10/2021
DD.05	02	<i>Level G - Proposed Floor Plan</i> , prepared by Georgina Price Design	08/10/2021
DD.06	02	<i>Level 1 - Proposed Floor Plan</i> , prepared by Georgina Price Design	06/10/2021
DD.07	02	<i>Proposed East &amp; South Elevations</i> , prepared by Georgina Price Design	08/10/2021
DD.08	02	<i>Proposed Images (page 1 of 1)</i> prepared by Georgina Price Design	06/10/2021

### Landscaping Works

16. The development site must be landscaped. All works must be completed in conjunction with the relevant construction stage or as otherwise agreed by Council. The works must include:
- (a) The works generally shown on the approved plans associated with Town Planning Consent; and
  - (b) Vegetated screening of the built form must be incorporated along the southern, eastern, and northern boundaries and include refurbishment of the existing garden bed designed such that a minimum 30% of the built forms will be screened when viewed from the neighbouring dwelling. Vegetation utilised must include the following species planted at 1.5 metre centres in a minimum 25 litre pot size:
    - (i) *Banksia Integrifolia*
    - (ii) *Syzygium oleoseum*
    - (iii) *Backhousia myrtifolia*
    - (iv) *Acronychia imperforata*
    - (v) *Melaleuca nodosa*
  - (c) Two street trees (*Melaleuca viminale* in 45 litre pot size) must be provided to both Brolga Place and Kingfisher Drive street frontages.
17. All landscape works must be completed prior to completion of the building works. Certification by a suitably qualified landscaping consultant must be submitted to Council that all works have been carried out in accordance with the approved plans and conditions of the decision notice prior to the final building inspection.

18. All landscape works must be established and maintained in accordance with the approved design for the life of the development and in a manner that ensures healthy and sustained plant growth. All plant material must be allowed to grow to full form and be refurbished when its life expectancy is reached.”



Figure 1 – landscaping required for minor change approval