



Development Tribunal – Decision Notice

Planning Act 2016, section 255

Appeal Number:	22-048
Appellant:	Stephen Christie
Respondent: (Assessment Manager)	Sunshine Coast Regional Council
Site Address:	4 Wurley Drive, Wurtulla and described as Lot 370 on W93239 – the subject site

Appeal

This is an appeal under section 229, section 1 of Schedule 1 and item 1 of Table 1 of the *Planning Act 2016 (PA)* against the Sunshine Coast Regional Council's (**Respondent**) decision to impose a condition with respect to the maximum site cover of the approved building in a development approval for a material change of use of premises to establish a dual occupancy, given by a Decision Notice dated 8 September 2022 (**Approval**).

Date and time of hearing:	N/A (appeal decided by written submissions)
Place of hearing:	N/A
Tribunal:	Samantha Hall – Chair Warren Rowe – Member
Submissions provided by:	Appellant Michael Lyell – Senior Town Planner, Adams & Sparkes Town Planning Respondent Jeffrey Dodd – Senior Development Planner, Planning Assessment Unit

Decision:

The Development Tribunal (**Tribunal**), in accordance with section 254(2)(b) of the PA **changes** the decision of the Respondent to approve the Development Application as shown in yellow highlight and track changes in the document titled “Amended Development Approval” at *Appendix 1* of this decision notice.

Background

1. The subject site is described as 4 Wurley Drive, Wurtulla (Lot 370 on W93239). Wurtulla is a coastal suburb of Kawana Waters in the Sunshine Coast region and is an area typified by older style low density residential development.

2. Many homes in the area are being renovated and the suburb is undergoing a phase of urban renewal with an increasing number of modern homes being seen amongst the older styles. This redevelopment phase has also included redevelopment of selected blocks for small increases in density such as dual occupancy.
3. The subject site is approximately 555m² in area. It is located on Wurley Drive (18.5m frontage) and is 3 lots from the corner of Wurley Drive and Oceanic Drive. The subject site currently is occupied by one single story brick dwelling house. Wurtulla Beach is located approximately 200m east of the subject site and the Sunshine Coast University Hospital is located approximately 2 kilometres west of the subject site.
4. The subject site is located in the Low Density Residential Zone of the *Sunshine Coast Planning Scheme 2014 (Planning Scheme)*.
5. In early 2022 the Appellant lodged with the Respondent, a development application for a **(Development Application)**:
 - (a) Development Permit for Material Change of Use of Premises to Establish a Dual Occupancy (**proposed development**); and
 - (b) Development Permit for Operational Work (Landscaping, Stormwater and Vehicle Crossover).
6. The subject site is also located across Wurtulla Drive from the Bokarina Beach Master Planned Development. This area is included within the Respondent's *Development Control Plan 1 – Kawana Waters* and subject to the Kawana Waters Development Agreement. This area is intended to be developed with a mix of uses and a range of residential outcomes of varying form and density. This area also allows for a permitted site cover of up to 60% for single detached dwellings. Further, under the Queensland Development Code MP1.2, dwelling houses (outside of Bokarina Beach) are permitted to be constructed to 50% site cover over all levels.
7. The Development Application was subject to code assessment, with the *Dual Occupancy Code* of the Planning Scheme (**Dual Occupancy Code**), *Height of Buildings and Structures Overlay Code* of the Planning Scheme and the Queensland Development Code MP1.3 being the applicable assessment benchmarks.
8. The development proposed a site cover of 46% on the ground level and 35% on the upper level. It was acknowledged by the Appellant and the Respondent that this did not satisfy the maximum site cover prescribed in acceptable outcome 2.1 of the Dual Occupancy Code (**AO2.1**) of either 50% on the ground level and 30% for the levels above the ground, or an average of 40% across all levels. The proposed development would, if approved, result in an average site cover across both levels of 40.5%.
9. On or about 5 September 2022, the Appellant was advised that the Respondent had decided to approve the Development Application subject to conditions (**Decision Notice**). The Respondent further advised that the following type of approval had been issued (**Development Approval**):
 - (a) Development Permit for Material Change of Use of Premises to Establish a Dual Occupancy; and
 - (b) Development Permit for Operational Work (Landscaping, Stormwater and Vehicle Crossover).
10. A copy of the Development Approval was sent to the Appellant by correspondence dated 8 September 2022, together with a copy of the relevant appeal provisions.

11. On or about 30 September 2022, the Appellant filed an appeal via lodgement of the Form 10 – Appeal Notice with the Registry of the Tribunal.
12. The grounds of the appeal identified that the Appellant was appealing against condition 5 of the Development Approval, which stated (**Condition 5**):

“Site Cover

5. *The maximum site cover of the development must not (sic) satisfy either one of the following outcomes. Either: -*
 - (a) *40% site cover for both storeys; or*
 - (b) *50% site cover for the ground floor and 30% site cover for the upper”.*

13. The Appellant’s grounds for appealing against Condition 5 included the following:

- (a) *“The development is compatible with surrounding development, noting that several Dual Occupancies, exceeding site cover controls under A02.1, have been approved by Council under the current Sunshine Coast Planning Scheme 2014, and within close proximity to the site.”*
- (b) Drawing on excerpts from the Respondent’s Delegate Reports for other dual occupancy developments in the surrounding area, the Appellant addressed the criteria in Performance Outcome PO2.1 of the Dual Occupancy Code of the Planning Scheme (**PO2**) as follows:

“Despite not satisfying A02.1 of the code, the proposal would satisfy the associated Performance Outcome (PO2) for the following reasons:

- *The development is of a size and scale that is compatible with the surrounding development in the Stockland Oceanside [Bokarina Beach] residential estate, which comprises predominantly double storey dwellings with upwards of 60% site cover found on certain lots within the estate. Furthermore, the development is consistent with the development outcomes found nearby along Oceanic Drive which includes double storey dwellings with high percentages of site cover;*
- *The dual occupancy is of a scale compatible with surrounding development. Oceanic Drive is characterised by large dwelling houses and dual occupancies dispersed along its length. The two-storey dual occupancy will be in keeping with the built form of developments in the area. The upper level will be below 40% (37%) and whilst the ground level will exceed the 40% requirement (44%), the impact of the non-compliance will not be significant due to built form design characteristics which includes voids and setbacks, variety of colours and materials, vertical and horizontal building articulation. Given the increased site cover is on the ground floor, it is unlikely to present the appearance of bulk to adjoining premises or the frontage. The scale of the development will therefore be in keeping with the expected scale of dual occupancy developments in this particular area;*
- *The proposed site cover exceedance on the ground level has not resulted in any loss of amenity for the future residents of the development, or the adjoining sites. This is achieved through fully compliant setbacks to all site boundaries, as well as compliant car parking, building height and a complying frontage landscaping outcome, in addition to private open space areas exceeding the minimum requirements;*

- *The development has fully compliant setbacks, height, and upper level site cover, ensuring it will not present with an appearance of bulk to the adjoining neighbours;*
- *The proposed development provides ground level setbacks that are well in excess of the minimum required, ensuring that the exceedance of site cover on the ground level will not result in the loss of privacy or visual amenity for the adjoining premises;*
- *The development provides highly functional ground level private open space areas for each unit ensuring that the exceedance of site cover does not result in any loss of amenity for the future occupants of the dwellings; and*
- *The proposed development allows for soft landscapes to be located between the building and adjoining premises, with the delivery of a complying landscaping outcome along the front boundary.*
- *The dual occupancy facilitates on-site stormwater management and vehicular access. The dual occupancy will be provided with a stormwater drainage system connecting to a lawful point of discharge. Further, the development has been appropriately conditioned to ensure a sealed access is provided from Oceanic Drive to all parking and manoeuvring areas, noting the driveways are required to be constructed generally in accordance with Council's standard drawings."*

14. The site inspection for and hearing of the Appeal was set down for 24 November 2022.
15. On 17 November 2022, the Tribunal's Registrar received email correspondence from Mr Jeff Dodd, Senior Development Planner of the Respondent, advising the Tribunal that the parties to this appeal had held conversations and had verbally agreed to terms that were acceptable to both parties that would settle the issues in dispute in this appeal. By email dated 18 November 2022, the Respondent then forwarded a marked up Decision Notice that removed Condition 5 and made some consequential changes (**Amended Decision Notice**).
16. By email dated 18th November 2022, Mr Michael Lyell from Adams and Sparks Town Planning advised on behalf of the Appellant, that "*we formally accept Council's settlement offer subject to the changes to the decision notice being made as per the document titled 'SCC Proposed Amended Decision Notice – MCU220123 & OPW220198.DOCX' issued to the tribunal on 18 November.*"

Jurisdiction

17. Schedule 1 of the PA states the matters that may be appealed to the Tribunal.¹
18. 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, Table 1 only applies to a tribunal if the matter involves one of a list of matters set out in sub-section (2).
19. Section 1(2)(b)(i) of Schedule 1 of the PA, relevantly refers to "a provision of a development approval for ... a material change of use for a classified building".
20. "Provision" is defined in Schedule 2 of the PA in respect of a development approval to mean all words or other matters forming, or forming part of, the approval. The PA goes on to give as an example, a development condition.

¹ Section 229(1)(a) of the PA.

21. The PA defines a “classified building” as including a “class 1 building”. By reference to Australia’s national building classifications, the proposed development encompasses a class 1 building (being a house or dwelling of a domestic or residential nature).
22. So, Table 1 of Schedule 1 of the PA applies to the Tribunal.
23. Under item 1 of Table 1 of Schedule 1 of the PA, an appeal may be made against “a provision of the development approval”. The appeal is to be made by the applicant, who in this case was the Appellant and the respondent to the appeal is the assessment manager, who in this case was the Respondent.
24. In circumstances where the Decision Notice was dated 8 September 2022 and was received on the same day², this appeal was to be filed on or before 10 October 2022.³ This was satisfied, with the appeal being filed on 30 September 2022.
25. Accordingly, the Tribunal is satisfied that it has the jurisdiction to hear this appeal.

Decision framework

26. The Decision Notice was issued by the Respondent on 8 September 2022. At that time, the PA was in force.
27. The Appellant filed a Form 10 – Notice of Appeal / Application for Declaration on or about 30 September 2022.
28. The appeal is a PA appeal, commenced after 3 July 2017 under section 229 of the PA. As such, the appeal is to be heard and determined under the PA.
29. This is an appeal by the Appellant, the recipient of the Decision Notice and accordingly, the Appellant must establish that the appeal should be upheld.⁴
30. The Tribunal is required to hear and decide the appeal by way of a reconsideration of the evidence that was before the Respondent which decided to give the Decision Notice the subject of this appeal.⁵
31. The Chairperson of a tribunal must decide how tribunal proceedings are to be conducted⁶ and the tribunal must give notice of the time and place of the hearing to all parties⁷.
32. If the tribunal decides that an appeal is to be decided on written submissions, the tribunal must give all parties a notice asking for the submissions to be made to the tribunal within a stated reasonable period of time.⁸
33. By email dated 17 November 2022, Mr Jeff Dodd, on behalf of the Respondent, advised the Tribunal’s Registrar that the Respondent and the Appellant had held verbal discussions with a view to reaching agreement about the issues in dispute in the appeal. The email went on to advise that the Respondent offered that it would be satisfied with deleting Condition 5 and endorsing the Appellant’s plans as “approved plans” without any further amendment being required (**Offer**). The email advised that the Respondent understood the Appellant had verbally agreed to the Offer.

² See Item 3 (Date written notice of decision received) of the Form 10 – Notice of Appeal / Application for Declaration of this appeal.

³ Section 229 of the PA.

⁴ Section 253(2) of the PA.

⁵ Section 253(4) of the PA.

⁶ Section 249(1) of the PA.

⁷ Section 249(4) of the PA.

⁸ Section 249(3) of the PA.

34. 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 person⁹.
35. The Tribunal may consider other information that the Registrar asks a person to give to the Tribunal¹⁰.
36. The Tribunal considered the Offer and caused the Tribunal's Registrar to write to the parties by email dated 18 November 2022, giving the following directions (**Orders**):
- (a) *“That both parties advise the Registry by way of email on or before 4pm on Monday 21 November 2022 as to whether or not they agree to the offer of settlement proposed by the Respondent in the attached email (Offer).*
 - (b) *If both parties agree to the Offer:*
 - a. *The hearing date of this appeal on 24 November 2022 is vacated; and*
 - b. *The Development Tribunal will proceed to prepare a Decision Notice in the appeal which reflects the terms of the Offer.*
 - (c) *If both parties do not agree to the Offer, the hearing of this appeal will proceed on 24 November 2022.”*
37. By email dated 18 November 2022 sent at 9.30am from Mr Dodd on behalf of the Respondent to the Tribunal's Registrar, the Respondent confirmed the Offer it made to settle the appeal and confirmed it agreed that the hearing would not be required as set out in the Orders. Mr Dodd's email went on to identify the Respondent had prepared the Amended Decision Notice for the Tribunal and Appellant to consider, with proposed changes shown in yellow highlight and track changes to reflect the Offer. The Amended Decision Notice was attached to the email and titled “*SCC Proposed Amended Decision Notice – MCU220123 & OPW220198.DOCX*” .
38. By email dated 18 November 2022 sent at 11.11am, Mr Lyell on behalf of the Appellant, advised the Tribunal's Registrar that the Appellant formally accepted the Offer as confirmed in Mr Dodd's email and agreed with the changes to the Decision Notice shown in the Amended Decision Notice.
39. By email dated 22 November 2022, the Tribunal's Registrar cancelled the hearing of this appeal.
40. 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:*

⁹ Section 249 of the PA.

¹⁰ Section 253 and section 246 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

41. 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 Tribunal's Registrar on or about 30 September 2022;
- (b) An email dated 17 November 2022, from Mr Dodd on behalf of the Respondent to the Tribunal's Registrar, advising the Tribunal of the Offer;
- (c) An email dated 18 November 2022, from Mr Dodd on behalf of the Respondent to the Tribunal's Registrar, providing the Respondent's response to the Orders, with attached:
 - (i) Amended Decision Notice, being an amended copy of the Decision Notice with proposed changes shown in yellow highlight and track changes to reflect the Offer; and
 - (ii) The approved plans listed in the Amended Decision Notice comprising **(Approved Plans)**:

Plan No.	Rev.	Plan Name	Date
22106A/200	A	Proposed Site Plan	4/7/2022
22106A/201	A	Proposed Roof Plan	4/7/2022
22106A/300	A	Proposed Ground Floor Plan	4/7/2022
22106A/303	A	Proposed First Floor Plan	4/7/2022
22106A/400	A	Proposed Front Fence Elevation	4/7/2022
22106A/401	A	Proposed East Elevation	4/7/2022
22106A/402	A	Proposed South Elevation	4/7/2022
22106A/403	A	Proposed West Elevation	4/7/2022

- (d) An email dated 18 November 2022 from Mr Lyell on behalf of the Appellant to the Tribunal's Registrar, providing the Appellant's response to the Orders.
- (e) *Sunshine Coast Planning Scheme 2014 (Planning Scheme)*; and
- (f) *Planning Act 2016 (PA)*.

Findings of fact

The Tribunal makes the following findings of fact:

Issues in dispute in appeal

42. This appeal has been brought by the Appellant against Condition 5 with respect to the maximum site cover of the proposed development.

43. In the absence of a hearing of this appeal, the Tribunal did not receive the benefit of written or oral evidence provided by the parties.
44. However, based upon the Appellant's grounds of appeal, it was the Tribunal's understanding that the proposed development did not comply with AO2.1 and the Respondent sought to condition compliance with AO2.1 by way of Condition 5 which mirrored the requirements of AO2.1, as follows:
- "The maximum site cover of the development must not satisfy either one of the following outcomes. Either:-*
- (a) 40% site cover for both storeys; or
- (b) 50% site cover for the ground floor and 30% site cover for the upper."
45. There is an obvious error in the wording of the condition – the words, "must not satisfy", do not seem to make sense, particularly when read with AO2.1. The Tribunal queries whether the condition should instead have stated "must satisfy" or, to articulate the meaning more clearly, "must not exceed". However, nothing of substance turns on this error.
46. Putting aside the error, the intent of Condition 5 was to impose a maximum site cover restriction of 40% across both storeys or 50% for the ground floor and 30% for the upper floor.
47. The Appellant's grounds of appeal identified that while the proposed development did not meet the site cover requirements of AO2.1, albeit by only a small margin, instead the proposed development complied with PO2.
48. The issue in dispute therefore would have come down to whether the Development Application instead complied with PO2 thus not requiring the imposition of Condition 5.
49. PO2 relevantly provided the following:

The dual occupancy:-

- (a) *is of a scale that is compatible with surrounding development;*
- (b) *does not present an appearance of bulk to adjacent premises, road or other areas in the vicinity of the site;*
- (c) *maximises opportunities for the retention of existing vegetation and allows for soft landscapes between buildings and the street;*
- (d) *allows for adequate area at ground level of outdoor recreation, entertainment, clothes drying and other site facilities; and*
- (e) *facilitates on-site stormwater management and vehicular access."*

The planning framework

50. Accepted development does not require a development approval.¹¹
51. Table 5.5.1 of the Planning Scheme identified that the category of assessment for a development application for a dual occupancy use within the Low Density Residential Zone would be "accepted development". The only applicable use code (assessment benchmark) was identified as the Dual Occupancy Code.

¹¹ Section 1.4 of the Planning Scheme and section 44(4) of the PA.

52. This meant that on the subject site, dual occupancy development would be accepted development and not require a development approval where it complied with the acceptable outcomes of the Dual Occupancy Code.
53. Section 5.3.3(2) of the Planning Scheme relevantly provided the following:
- “Accepted Development that does not comply with one or more of the nominated acceptable outcomes in the relevant parts of the applicable code(s) becomes code assessable development unless otherwise specified.”*
54. The Dual Occupancy Code contained a number of acceptable outcomes, including AO2.1, which relevantly required (in the case of ‘accepted development’) that the site cover of a dual occupancy not exceed:
- (a) “...;
 - (b) 40% where the dual occupancy is 2 or more storeys in height; or
 - (c) 50% for the ground floor and 30% for the upper floors where the dual occupancy is 2 or more storeys in height.”
55. As the Appellant’s grounds of appeal identified, the proposed development did not comply with AO2.1 and therefore instead of the proposed development being accepted development as set out in Table 5.5.1 of the Planning Scheme, it became code assessable development¹².
56. Section 5.3.3(3)(a) of the Planning Scheme then relevantly identified the assessment benchmarks for code assessable development that occurred as a result of the development becoming code assessable pursuant to section 5.3.3(2) of the Planning Scheme, as follows:
- “(ii) where made assessable development requiring code assessment pursuant to subsection 5.3.3(2) above: -*
- (A) must be assessed against the assessment benchmarks for the development application, limited to the subject matter of the relevant acceptable outcomes that were not complied with or were not capable of being complied with under sub-section 5.3.3(2) (that is, the performance outcome(s) corresponding to the relevant acceptable outcome(s)); and*
 - (B) must still comply with all relevant acceptable outcomes identified in subsection 5.3.3(1) other than those mentioned in sub-section 5.3.3(2).”*
57. This meant that the proposed development was to be assessed against all the relevant acceptable outcomes in the Dual Occupancy Code with which it complied and in respect of any acceptable outcome with which it did not comply, the proposed development was to be assessed against the corresponding performance outcome for that acceptable outcome.
58. Accordingly, as the proposed development exceeded the site cover limits identified in AO1.2, the site cover of the proposed development was to be assessed against PO2.

¹² It is noted that the Planning Report accompanying the Development Application prepared by Adams & Sparkes Town Planning and dated 11 April 2022, indicated that the proposed development did not meet other relevant acceptable outcomes of the Dual Occupancy Code. Any non-compliance of the proposed development with any other acceptable outcomes is not the subject of an issue in dispute in this appeal and has therefore not been considered by the Tribunal.

59. The issue in dispute in this appeal was whether Condition 5, which reflected the site cover limits in AO1.2, should have been imposed or alternatively whether the proposed development met the performance outcomes of PO2.

The Offer

60. Prior to the date set for the hearing of the appeal, the parties advised the Tribunal of the Offer and both parties agreed that the terms of the Offer were acceptable to them as a resolution of the issues in dispute in the appeal.

61. The Offer was set out in the email from Mr Dodd to the Tribunal's Registrar dated 17 November 2022, as follows:

"...deleting condition 5 (see strikethrough below) and endorsing the plans as Approved Plans without any further amendment required to the plans.

~~*5. The maximum site cover of the development must not satisfy either one of the following outcomes. Either:*~~

~~*(a) 40% site cover for both storeys; or*~~

~~*(b) 50% site cover for the ground floor and 30% site cover for the upper".*~~

62. The Offer was further articulated in an email from Mr Dodd to the Tribunal's Registrar dated 18 November 2022, to which Mr Dodd attached a marked up version of the Decision Notice, being the Amended Decision Notice, along with a further copy of the Approved Plans.

63. The Amended Decision Notice showed changes to:

- (a) Condition 2 (Approved Plans) – removing the requirement that the Approved Plans be amended;
- (b) Condition 5 (Site Cover) – deleting the condition;
- (c) Development Plans - deleting the list of amendments; and
- (d) Advisory Note 1 (Resubmission of Amended Plans Required) – deleting the note.

64. By way of email dated 18 November 2022 to the Tribunal's Registrar, Mr Lyell, on behalf of the Appellant, communicated the Appellant's agreement with the terms of the Offer as set out by Mr Dodd.

Reasons for the decision

The statutory conditions power

65. Pursuant to section 65 of the PA, a development condition imposed on a development approval must:

- (a) *be relevant to, but not be an unreasonable imposition on, the development or the use of premises as a consequence of the development; or*
- (b) *be reasonably required in relation to the development or the use of premises as a consequence of the development.*

66. As the parties identified the Offer and agreed that the terms of the Offer were acceptable to them to resolve the issues in dispute in the appeal, the Tribunal was not presented with any written or oral submissions by the parties about the imposition of Condition 5.

67. Accordingly, the Tribunal has not considered the lawfulness or otherwise of Condition 5.

Changing the Development Approval

68. While both parties were satisfied that the terms of the Offer were acceptable, the Tribunal must also be satisfied that the Offer reflects a lawful and reasonable outcome before enshrining the terms of the Offer in its decision.
69. The Offer encompassed the deletion of Condition 5, which indicated to the Tribunal that the parties and in particular, the Respondent, were satisfied that the proposed development did meet the requirements of PO2, in the absence of compliance with AO1.2.
70. For the reasons that follow, this Tribunal is also comfortable that the proposed development complies with PO2.
71. Condition 5 and AO2.1 required that site coverage of the dual occupancy not exceed 50% for the ground floor and 30% for the upper floors, where the dual occupancy was 2 or more storeys in height. The Appellant's grounds of appeal stated the site cover for the ground floor and upper floor of the proposed development were 46% and 35% respectively. This resulted in a 40.5% site cover across both storeys.
72. PO2(a), sought to ensure that new development that did not specifically comply with the maximum site cover specified in AO2.1 was instead of a scale that would be compatible with surrounding development.
73. Notwithstanding the non-compliance with AO2.1, the visual impact of the non-compliance of the proposed development would be unlikely to be significant. Indeed, the proposed development would meet the site cover requirement for the ground floor and only exceed that for the upper floor by 5% or an overall exceedance across both storeys of just 0.5%.
74. The Tribunal can accept that this small exceedance of site cover on the upper floor would have little discernible impact on the appearance and presentation of the proposed development to the surrounding area. Therefore, the Tribunal is comfortable that the proposed development would be of a scale that would be compatible with surrounding development.
75. In respect of PO2(b), this performance outcome sought to ensure that new development "*does not present the appearance of bulk to adjacent premises, road or other areas in the vicinity of the site*". The small non-compliance with the requirements of AO2.1 is not considered significant enough to have a negative impact with respect to the proposed development's appearance of bulk to adjacent premises, roads or the area in general, especially given the compliance of the ground floor with the site cover limits. The Tribunal is satisfied that pedestrians walking past and motorists on the adjoining street would not immediately differentiate the proposed development from other residences in the vicinity of the subject site. Nor would neighbouring dwellings notice a 0.5% exceedance of site cover in the visual bulk of the upper floor.
76. Turning briefly to the remaining three elements of PO2.
77. PO2(c) and (d) relate to the ability of a site to accommodate sufficient area for landscaping, retention of existing vegetation and areas for outdoor recreation. Upon a consideration of the Approved Plans, it seems to the Tribunal that there is sufficient area to the front and rear of the subject site for landscaping, including around the proposed pool areas for each of the two units. Further, upon a consideration of the Decision Notice, the Tribunal is satisfied that the requirements of PO2(c) and (d) are adequately addressed by conditions 31-38 of the Decision Notice which ensure the proposed development will provide adequate landscaping.

78. Lastly, the Tribunal is satisfied that the requirements of PO2(e), which requires the proposed development facilitate on-site stormwater management and vehicular access, are adequately addressed by conditions 15 and 28 of the Decision Notice.

Conclusion

79. Based on the above analysis, the Tribunal finds that the proposed development either meets or has been adequately conditioned to meet the requirements of PO2 and that accordingly, the restriction imposed by Condition 5 is not reasonably required. Accordingly, the Tribunal agrees with the terms of the Offer.

80. The Tribunal therefore orders that the decision of the Respondent to approve the proposed development be **changed** to reflect the terms of the Offer, as shown in yellow highlight and track changes in the document titled "Amended Development Approval" in *Appendix 1* of this decision notice.

Samantha Hall

Development Tribunal Chair

Date: 6 December 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

APPENDIX 1 – AMENDED DEVELOPMENT APPROVAL

Development Approval

APPLICATION DETAILS

Application No: MCU22/0123 & OPW22/0198
Street Address: 4 Wurley Drive, WURTULLA
Real Property Description: Lot 370 W 93239
Planning Scheme: Sunshine Coast Planning Scheme 2014 (24 May 2021)

APPROVAL DETAILS

Nature of Approval: Approval with conditions
Type of Approval: Development Permit for Material Change of Use of Premises to Establish a Dual Occupancy; and
Development Permit for Operational Work (Landscaping, Stormwater and Vehicle Crossover)

CURRENCY PERIOD OF APPROVAL

Unless extended, the currency period for this development approval is 6 years starting the day that this development approval first took effect (Refer to Section 85 "Lapsing of approval at end of currency period" of the *Planning Act 2016*).

INFRASTRUCTURE

Unless otherwise specified, all assessment manager conditions of this development approval relating to the provision of infrastructure are non-trunk infrastructure conditions for Chapter 4 of the *Planning Act 2016*.

ASSESSMENT MANAGER CONDITIONS

DEVELOPMENT PERMIT FOR MATERIAL CHANGE OF USE OF PREMISES TO ESTABLISH A DUAL OCCUPANCY – MCU22/0123

PLANNING

When Conditions Must Be Complied With

1. Unless otherwise stated, all conditions of this development approval must be complied with prior to the use commencing, and then compliance maintained at all times while the use continues.

Approved Plans

2. Development authorised by this approval must be undertaken generally in accordance with the Approved Plans listed within this Decision Notice. The Approved Plans must be amended to incorporate the amendments listed within this Decision Notice and approved by council prior to the lodgement of operational works. **(Refer to Advisory Note)*

Building Height

3. The maximum height of the development must not exceed 8.5m above natural ground level at any point.
4. Certification must be submitted to council from a cadastral surveyor which certifies that the buildings do not exceed the maximum height requirement as shown on the Approved Plans.

Site Cover

- ~~5. The maximum site cover of the development must not satisfy either one of the following outcomes. Either:
(a) 40% site cover for both storeys; or
(b) 50% site cover for the ground floor and 30% site cover for the upper~~
6. The open pergola shown on the plans must not be covered

Street Identification

7. The street address of the development must be clearly visible and discernible from the primary frontage of the site by the provision of a street number and, where appropriate, the building name.

Building Appearance

8. The approved building must be constructed such that it incorporates the external design features as shown on the Approved Plans and/or subsequent council endorsed detailed design drawings, with no inclusions or future alterations being made without approved in writing by council.
9. All air conditioning units or other mechanical equipment must be visually integrated into the design and finish of the building, or otherwise fully enclosed or screened such that they are not visible from the street frontages nor adjoining properties.

Fencing and Walls

10. Any street fencing and walls must not exceed a maximum height of 1.2m unless otherwise shown on the approved plans and in accordance with Condition 10.
11. Any street fencing and walls must be located behind the frontage landscaping.
12. Unless agreed by the adjoining owner in writing, a 1.8m or a combination of screen fence and retaining wall to a maximum total height of 2m compliant with the Queensland Development Code MP 1.3 Acceptable Solution A2(c)(iii), is provided along:
 - (a) the full length of all rear site boundaries
 - (b) the full length of all side site boundaries to the front building line.

Community Management Statement

13. Any proposed Community Management Statement required for the development pursuant to the *Body Corporate and Community Management Act 1997* must be submitted to Council for approval at the same time as submission of the building format plan (or similar) for approval.
14. All clauses and by-laws of the proposed Community Management Statement must accord with the requirements of this development approval.

ENGINEERING

Property Access and Driveways

15. A sealed access driveway must be provided from Wurley Drive Street to all parking and manoeuvring areas of the development. The works must be undertaken in accordance with the associated operational works approval OPW22/0198 and, unless otherwise agreed with Council, must include in particular a driveway crossover in accordance with Council's standard drawings IPWEA RS-049 and RS-050

On-site Parking

16. A minimum of two (2) car parking spaces must be provided and marked on the site. The works must be undertaken in accordance with an associated operational works approval OPW22/0198 and must include in particular:
 - (a) A minimum of one (1) visitor parking spaces within the total, which are clearly marked for that purpose and accessible at all times for visitor use.
 - (b) Dimensions, crossfalls and gradients in accordance with *AS 2890 – Parking facilities*
17. All on-site parking areas and access driveways must be maintained exclusively for vehicle parking and manoeuvring and kept in a tidy and safe condition at all times.

Utility Services

18. Underground reticulated electricity must be provided in accordance with the requirements of the service provider. The applicant must either provide a Certificate for Electrical Supply or apply for a further operational works approval, where Contestable Works are required.
19. An underground telecommunications service must be provided in accordance with the requirements of the service provider.
20. Fibre-ready facilities must be provided to the development site in accordance with the requirements of NBN, unless written confirmation of an exemption* from supplying fibre-ready facilities is supplied to Council.
**(Refer to Advisory Note)*
21. An underground connection to reticulated water and sewerage (where applicable) must be available and/or where necessary provided to the development site in accordance with the standards and requirements of Northern SEQ Distributor–Retailer Authority (Unitywater).

22. Internal private water and sewer reticulation must be constructed in accordance with a compliance approval for plumbing and drainage work issued by Council. Evidence of the compliance approval must be submitted to Council prior to endorsement of the survey plan.
23. Certification must be submitted to Council from all relevant service providers which certifies that the development has met the requirements of development approval and all applicable legislation at the time of construction.

Earthworks and Retaining Walls

24. Safety barriers must be implemented where steep slope or fall hazards exist naturally or are created by the design. The barrier type must be assessed and designed by a RPEQ as being appropriate for each location and the anticipated risks during construction, establishment, maintenance and end use, in accordance with the following criteria and standards:
 - (a) Where located on residential boundary retaining walls greater than 1.0m high, 'full infill' barrier or equivalent performance boundary fence (e.g. 1.8m high timber).
 - (b) All barriers must be certified to the appropriate load conditions from *AS 1170 – Structural design actions* by either the manufacturer or engineering calculations.
25. All retaining walls must be designed and constructed in accordance with the planning scheme and must be certified by a Registered Professional Engineer of Queensland (RPEQ) where exceeding 1m in height.

Damage to Services and Assets

26. Any damage caused to existing services and assets as a result of the development works must be repaired at no cost to the asset owner at the following times:
 - (a) where the damage would cause a hazard to pedestrian or vehicle safety, immediately; or
 - (b) where otherwise, upon completion of the works associated with the development.
27. Any repair work which proposes to alter the alignment or level of existing services and assets must first be referred to the relevant service authority for approval.

Stormwater Drainage

28. The site must be provided with a stormwater drainage system connecting to a lawful point of discharge. The works must be undertaken in accordance with an associated operational works approval OPW22/0198 and the Queensland Urban Drainage Manual, and must include in particular:
 - (a) Collection and discharge of stormwater directly to the kerb and channelling in Wurley Drive to the greatest practical extent, including the provision of kerb adapters for all new Lots.
 - (b) The use of gravity stormwater drainage and not surcharge pits.

Flood Immunity

29. The surface levels of all lots, excluding drainage reserves, must be constructed to provide flood immunity. The works must be undertaken in accordance with the associated operational works approval and must include in particular surface levels that are consistent with the requirements of the Flood hazard overlay code.
30. The minimum floor level of all buildings constructed on the site must be in accordance with the Approved Plans.

LANDSCAPE

31. The development site must be landscaped. The works must be undertaken in accordance with the approved plans and must include in particular:
 - (a) the works shown on the Approved Plans
 - (b) vegetated screening of bin storage areas (where bin storage areas are located on the frontage)
32. 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, sustained and vigorous plant growth. All plant material must be allowed to grow to full form and be refurbished when its life expectancy is reached.
33. Except where otherwise specified in the conditions of this development approval, all landscape works must be established in deep natural ground that is open to the ground below and open to the sky above.

Landscaping Works

34. Landscape works must be supervised, undertaken and certified by qualified persons*. All works must be completed in accordance with this Decision Notice.
*(*Refer to Advisory Note)*
35. Where damage occurs to any council asset as a result of the development works, it must be repaired immediately where it creates a hazard that presents risk to person or property. Other damage must be repaired prior to completion of works.
36. Landscape works must:
 - (a) Delineate all planting to grassed area interfaces with a timber edge.
 - (b) Ensure permanent irrigation is not installed within the road reserve.
 - (c) Ensure mulch is aged, comprised of leaf and limb material of varying sizes, free of foreign matter including anthropogenic waste, rock, soil/sediment contamination and is applied to all planting areas to ensure a minimum 100mm depth once settled.*(*Refer to Advisory Notes)*
37. Shade and public amenity trees* must:
 - (a) Meet AS2303
 - (b) Be located to minimise disruption to services:*(*Refer to Advisory Note)*
38. The road verge, from back of kerb to the property boundary (excluding any new or existing pathway) must be fully turfed and be free of pests, diseases and weeds and be level with adjoining surfaces.

DEVELOPMENT PERMIT FOR OPERATIONAL WORK (LANDSCAPING, STORMWATER & VEHICLE CROSSOVER) – OPW22/0198

PRIOR TO COMMENCEMENT OF WORKS

39. A condition report including photographs of the frontage of the site must be completed and submitted to Council prior to any works commencing.
40. At least five business days prior to any works commencing, written advice must be provided to Council detailing:
 - (a) The name, contact details and ACN for the certifying Registered Professional Engineer of Queensland (RPEQ) and Principal Contractor.
 - (b) Proposed dates for commencement and completion of construction.
41. Any changes to the details associated with the certifying RPEQ or Principal Contractor during construction, must be notified to Council in writing within five business days of the change occurring.
42. Any conflict between the development and an existing or proposed service must be referred to the relevant service authority for determination prior to commencement of works.

DURING CONSTRUCTION

General

43. Where damage occurs to any Council asset as a result of the development works, it must be repaired immediately where it creates a hazard that presents risk to person or property. Other damage must be repaired prior to completion of works.
44. All works must be constructed and work procedure undertaken in accordance with:
 - (a) The approved plans and conditions detailed in this Decision Notice.
 - (b) The relevant conditions of the associated higher order Material Change of Use approval viz. MCU22/0123 to which this approval relates.
 - (c) All relevant Council Planning Scheme Policies, standard drawings, standard specifications and guidelines.
45. All retaining walls must be designed and constructed in accordance with the planning scheme and must be certified by a Registered Professional Engineer of Queensland (RPEQ) where exceeding 1m in height.

Works within Road Reserve / Reinstatement

46. Safe pedestrian access for Wurley Drive must be maintained at all times. Should footpath / road closures be necessary to carry out construction works, Council's Engineering Officer must be notified prior to the proposed closure and all requirements complied with.
47. All frontage works must match neatly with existing road and verge/footpath features. Additional works beyond the frontage may be required to provide an acceptable transition to existing road and verge/footpath profiles.

48. The applicant is fully responsible for all costs associated with the development works including alterations, rectification or removal of public utility as well as any unforeseen or unplanned costs necessary to fulfil the requirements of this approval.

Site Access and Driveways

49. Pavement design for privately owned works must be undertaken in accordance with the relevant standards. Structural integrity of the driveway and car park areas will remain the responsibility of the property owner/developer.
50. Driveway crossovers must be constructed in accordance with Council's adopted standard engineering drawings IPWEA RS-049 and RS-050.
51. Any existing unnecessary or redundant property access must be removed, and the kerb and verge area reinstated to match the existing verge treatments. Grassed verge areas to be reinstated must be provided with 100mm topsoil and turf and must be maintained by the developer until established.
52. The property access must be located a minimum of 1m clear of power poles, streetlights, other signage, street trees and stormwater entry pits. The applicant is responsible for any necessary relocation of existing services to provide this clearance and must contact the relevant service authorities and comply with their requirements in relation to these works.

Earthworks and Retaining Walls

53. All earthworks shall be undertaken in accordance with the provisions of AS 3798 – *Guidelines on earthworks for commercial and residential developments*, with geotechnical testing undertaken in accordance with Section 8 of the Standard, and to a minimum of 'Level 2'. Test results as required by AS 3798, and a certificate of quality and uniformity of fill, shall be provided by a RPEQ and submitted to Council upon practical completion of works.
54. All retaining walls must be designed and constructed in accordance with the planning scheme (notably including a service life in excess of 50 years) and must be certified by a Registered Professional Engineer of Queensland (RPEQ) where exceeding 1m in height.

Structures and Durability

55. All steelwork must comply with an appropriate corrosion resistance in accordance with AS 4312 – *Atmospheric corrosivity zones in Australia*. Where austenitic metals cannot be specified, a corrosion protection system must be specified to comply with AS 2312 - *Guide to the protection of structural steel against atmospheric corrosion by the use of protective coatings*. The specification for steelwork finishing must match or exceed Table SC6.14.8A of the *Planning scheme policy for development works*.

Stormwater Drainage

56. Works associated with this permit must not adversely impact on the existing drainage conditions on other properties (e.g. by blocking or interfering with natural overland flows).

57. Construction of all internal stormwater drainage works must comply with the relevant sections of Australian Standard AS 3500.3 – *Plumbing and Drainage*.

Work Hours

58. Construction and earthworks (including the entry and departure of heavy vehicles) must only occur between the hours of 7:00am to 6:00pm Monday to Saturday with no work on Sunday or Public Holidays unless otherwise approved by Council.

Air Emissions

59. Visible emissions of dust must not occur beyond the boundaries of the subject site Monday to Sunday.
60. A perceptible odour associated with earthworks and construction must not be evident beyond the boundaries of the subject site Monday to Sunday.

Construction Materials, Equipment and Waste

61. Construction materials, equipment and waste (waste* as defined by the *Environmental Protection Act 1994*) resulting from the approved works must be retained wholly within the subject works alignment in accordance with the approved plans. Any waste generated as a result of the works must be disposed only to a facility for waste disposal approved in accordance with the *Environmental Protection Act 1994*, for example a Council operated Waste Facility.
* (Refer to Advisory Note)

FOLLOWING CONSTRUCTION

Supervision/Certification

62. Upon completion of the work written confirmation certifying that the works have been completed in accordance with the Operational Works approval must be submitted to Council.

REFERRAL AGENCIES

The referral agencies applicable to this application are:

Referral Status	Referral Agency and Address	Referral Trigger	Response
Concurrence	SARA AT DSDILGP South East Qld (North) Regional Office PO Box 1129 Maroochydore Qld 4558 Mydas2 At (Https://Prod2.Dev-Assess.Qld.Gov.Au/Suite/) Email:Seqnorthsara@dsmip.Qld.Gov.Au	Contaminated land (unexploded ordnance)	The agency provided its response on dated 26 May 2022 (SARA Ref 2204-28596 SRA). This response forms part of the approval

DEVELOPMENT PLANS

The following development plans require amendment prior to becoming Approved Plans for the development:

The following are Approved Plans for the development

Plans Requiring Amendment

Approved Plans

Plan No.	Rev.	Plan Name	Date
22106A 200	A	Proposed Site Plan 4 Wurley Dr Wurtulla, prepared by AK Building Design	04/07/22
22106A 201	A	Proposed Roof Plan 4 Wurley Dr Wurtulla, prepared by AK Building Design	04/07/22
22106A 300	A	Proposed Ground Floor Plan 4 Wurley Dr Wurtulla, prepared by AK Building Design	04/07/22
22106A 303	A	Proposed First Floor Plan 4 Wurley Dr Wurtulla, prepared by AK Building Design	04/07/22
22106A 400	A	Elevations 4 Wurley Dr Wurtulla, prepared by AK Building Design	04/07/22
22106A 401	A	Elevations 4 Wurley Dr Wurtulla, prepared by AK Building Design	04/07/22
22106A 402	A	Elevations 4 Wurley Dr Wurtulla, prepared by AK Building Design	04/07/22
22106A 403	A	Elevations 4 Wurley Dr Wurtulla, prepared by AK Building Design	04/07/22
LD1	A	Drawing Schedule, Specifications, prepared by Bird Landscape Design	02/04/22
LD2	A	Finishes and Planting Schedule, prepared by Bird Landscape Design	02/04/22
LD3	A	Details, prepared by Bird Landscape Design	02/04/22
LP1	A	Planting Plan, prepared by Bird Landscape Design	02/04/22
LP2	A	Planting Plan, prepared by Bird Landscape Design	02/04/22
220502 C04	B	Proposed Site Layout, prepared by ingeniir	05/04/22
220502 C05	B	Proposed Stormwater and Site Level Layout, prepared by ingeniir	05/04/22
Amendments		<p>1. With regards to site cover, amend the above plans to achieve one of the following outcomes: Either:-</p> <ul style="list-style-type: none"> • 40% site cover for both storeys • 50% site cover for the ground floor and 30% site cover for the upper <p>2. With regards to landscaping, amend the above plans to provide an improved landscape buffer between the two driveways. It is suggested that the pedestrian entry be off the driveways rather than directly onto the street and replace pathway with landscaping.</p>	

REFERENCED DOCUMENTS

Not applicable.

ADVISORY NOTES

The following notes are included for guidance and information purposes only and do not form part of the assessment manager conditions:

Resubmission of Amended Plans Required

~~1. This development approval require resubmission of the drawings to council with amendments. Please address the amended drawings to council's Planning Assessment Unit, separate to any operational works application. To avoid delays and assessment issues with the operational works application, it is recommended the drawings be resubmitted prior to lodgement of any operational works application. Should the amended drawings not be submitted, the applicant is advised that a Preliminary Approval may be issued in lieu of a development permit for the operational works.~~

Infrastructure Charges

2. Infrastructure charges, determined in accordance with council's Infrastructure Charges Resolution, apply to this development approval. The Infrastructure Charges Notice, for council's proportion of the infrastructure charge, has been issued. Unitywater may issue an infrastructure charges notice for their proportion of the infrastructure charge.

Accepted Development

3. Council's assessment of the application was limited to the Acceptable Outcomes of the *Dual occupancy code* that were not complied with. The applicant must ensure that the development complies with all other relevant Acceptable Outcomes of the applicable overlay codes, except where varied by the conditions of this development approval.

Equitable Access and Facilities

4. The plans for the proposed building work have NOT been assessed for compliance with the requirements of the *National Construction Code - Building Code of Australia (Volume 1)* as they relate to people with disabilities. Your attention is also directed to the fact that in addition to the requirements of the National Construction Code as they relate to people with disabilities, one or more of the following may impact on the proposed building work:

- (a) *the Disability Discrimination Act 1992 (Commonwealth)*
- (b) *the Anti-Discrimination Act 1991 (Queensland)*
- (c) *the Disability (Access to Premises – Buildings) Standards.*

Aboriginal Cultural Heritage Act 2003

5. There may be a requirement to establish a Cultural Heritage Management Plan and/or obtain approvals pursuant to the *Aboriginal Cultural Heritage Act 2003*.

The *ACH Act* establishes a cultural heritage duty of care which provides that: “A person who carries out an activity must take all reasonable and practicable measures to ensure the activity does not harm Aboriginal cultural heritage.” It is an offence to fail to comply with the duty of care. Substantial monetary penalties may apply to individuals or corporations breaching this duty of care. Injunctions may also be issued by the Land Court, and the Minister administering the Act can also issue stop orders for an activity that is harming or is likely to harm Aboriginal cultural heritage or the cultural heritage value of Aboriginal cultural heritage.

You should contact the Cultural Heritage Unit on 1300 378 401 to discuss any obligations under the *ACH Act*.

Other Laws and Requirements

6. This approval relates to development requiring approval under the *Planning Act 2016* only. It is the applicant’s responsibility to obtain any other necessary approvals, licences or permits required under State and Commonwealth legislation or council local law, prior to carrying out the development. Information with respect to other council approvals, licences or permits may be found on the Sunshine Coast Council website (www.sunshinecoast.qld.gov.au). For information about State and Commonwealth requirements please consult with these agencies directly.

Restriction on Building Approval until all other Permits are Effective

7. Pursuant to the statutory provisions of the Building Act, a private building certifier must not grant any building development approval related to this development until all necessary development permits for the development (including, for example, operational works approvals) have taken effect under the *Planning Act 2016*. This legislative requirement is critical to ensure that a private certifier’s approval about a component of the development is consistent with the assessment managers’ decisions on other aspects of the overall development.

Development Compliance Inspection

8. Prior to the commencement of the use, please contact council's Development Audit & Response unit to arrange a development compliance inspection.

Use of Premises for Short-Term Accommodation

9. Use of the premises for the purpose of short-term holiday letting and visitor accommodation may require a development permit to be obtained from council in accordance with the applicable planning scheme and Queensland planning legislation in effect at the time of conducting the activity. Under the current Sunshine Coast Planning Scheme 2014, visitor holiday letting is defined as *short-term accommodation* and requires a development permit to be obtained from council. Information with respect to the development applications may be found on the Sunshine Coast Council website (www.sunshinecoast.qld.gov.au).

Dwelling Construction

10. The proposed Duplex B built to boundary garage wall construction is likely to present construction difficulties given the location of the adjoining retained driveway at 11 Parkana Crescent. The builder will need to consider specialist construction techniques to safely construct the partial basement garage without causing disruption and damage to the adjoining structures.

Unitywater - Water and Sewerage Services

11. Where water and sewerage infrastructure is proposed to be constructed within an existing road reserve controlled by Council, a further consent approval for the alignment and extent of works will be required under Section 75 of the *Local Government Act 2009*. This consent must be obtained prior to any water and sewerage related works occurring within the road reserve. The consent request must be submitted in the approved form to Council's Infrastructure Services Department.
12. Where water and sewerage infrastructure is proposed to be constructed within an existing park or reserve controlled or owned by Council, consent approval from Council, as owner of the land, is required for the alignment and extent of works. This consent must be obtained prior to any water and sewerage related works occurring within the park or reserve. The consent request must be submitted in the approved form to Council's Land Management Unit.

Telecommunications

13. Exemptions to supplying fibre-ready facilities are allowed in certain circumstances under the *Telecommunications Act 1997*, in particular for development within non-urban areas. Where an exemption is applicable, a copy of either the associated written correspondence required under the *Telecommunications (Fibre-ready Facilities — Exempt Real Estate Development Projects) Instrument 2021* or an unambiguous exemption authorisation from the relevant authority must be supplied to Council.

Operational Works

14. Council has undertaken an audit check of the Operational Works drawings in relation to the proposed works. A detailed check of the calculations and drawings has not been undertaken, as they have been certified by a RPEQ. The RPEQ bears full responsibility for all aspects of the engineering design. Council reserves the right to require further amendments and/or additions at a later date, should design errors become apparent.

Inspections Request

15. If Council officers are required to undertake additional inspections of the same works, a re-inspection fee will be applicable in accordance with Council's Fees and Charges Register applicable at the time.

Civil Engineering Advisory Notes

16. A separate development permit for Operational Works must be obtained prior to any modification of existing property accesses, the construction of any new property

access, or the commencement of any other works in the road reserve that do not form part of this approval.

Environmental

17. The *Environmental Protection Act 1994* states that a person must not carry out any activity that causes, or is likely to cause, environmental harm unless the person takes all reasonable and practicable measures to prevent or minimise the harm. Environmental harm includes environmental nuisance. In this regard persons and entities involved in the civil, earthworks, construction and landscaping phases of this development are to adhere to their 'general environmental duty' to minimise the risk of causing environmental harm.

Environmental Health

18. *Clean earth* means earth that has trace elements and contaminant levels within the interim ecologically-based investigation levels for urban land use under the document titled *Schedule B(1) - Guideline on Investigation Levels for Soil and Groundwater*, forming part of the *National Environment Protection (Assessment of Site Contamination) Measure 1999, as varied 2011*, made by the National Environment Protection Council under the *National Environment Protection Council Act 1994* (Commonwealth), section 14(1).
19. Waste includes anything, other than a resource approved (i.e. recyclable) under the *Waste Reduction and Recycling Act 2011* (Chapter 8) that is:
 - (a) Left over, or an unwanted by-product, from an industrial, commercial, domestic or other activity; or
 - (b) Surplus to the industrial, commercial, domestic or other activity generating the waste.

Erosion and Sediment Control

20. An Erosion and Sediment Control Plan (E&SCP) must be completed and implemented in accordance with the requirements of the Planning scheme policy *for development works* prior to the onsite pre-start meeting.

Landscaping Works

21. In this instance a further Development Permit for Operational Works (Landscape) is not required.

Street Tree Species

22. Street trees species are to be selected for successful establishment and long term benefit in regards to location and soil type.

Qualified Person

23. Qualified Person, for the purpose of:
 - (a) supervising landscape works and preparing a landscape certification, is considered to be a landscape architect, landscape designer or horticulturist with a minimum of three (3) years current experience in the field of landscape design;

- (b) undertaking landscape construction and establishment works is considered to be a person with five (5) years current experience in commercial landscape construction projects;
- (c) undertaking, supervising tree works and preparing arboriculture certification, is considered to be a person with a minimum three (3) years current experience in tree protection, hazard identification/mitigation and AS 2303:2015 Tree stock for landscape use assessment and either:
 - (i) International Society of Arboriculture (ISA) certification; or
 - (ii) a Diploma of Arboriculture.

PROPERTY NOTES

Not applicable.

VARIATION APPROVAL

Not applicable.

FURTHER DEVELOPMENT PERMITS REQUIRED

- Development Permit for Building Work

SUBMISSIONS

Not applicable.

INCONSISTENCY WITH EARLIER APPROVAL

Not applicable.

ENVIRONMENTAL AUTHORITY

Not applicable.

RIGHTS OF APPEAL

You are entitled to appeal against this decision. A copy of the relevant appeal provisions from the *Planning Act 2016* is attached.

OTHER DETAILS

If you wish to obtain more information about council's decision, please refer to the approval package for the application on Council's Development.i webpage at www.sunshinecoast.qld.gov.au, using the application number referenced herein.

Chapter 6 Dispute resolution**Part 1 Appeal rights****229 Appeals to tribunal or P&E Court**

- (1) Schedule 1 of the *Planning Act 2016* states –
- (a) Matters that may be appealed to –
 - (i) either a tribunal or the P&E Court; or
 - (ii) only a tribunal; or
 - (iii) only the P&E Court; and
 - (b) The person-
 - (i) who may appeal a matter (**the appellant**); and
 - (ii) who is a respondent in an appeal of the matter; and
 - (iii) who is a co-respondent in an appeal of the matter; and
 - (iv) who may elect to be a co-respondent in an appeal of the matter.

(Refer to Schedule 1 of the *Planning Act 2016*)

- (2) An appellant may start an appeal within the appeal period.
- (3) The **appeal period** is –
- (a) for an appeal by a building advisory agency – 10 business days after a decision notice for the decision is given to the agency; or
 - (b) for an appeal against a deemed refusal – at any time after the deemed refusal happens; or
 - (c) for an appeal against a decision of the Minister, under chapter 7, part 4, to register premises or to renew the registration of premises – 20 business days after a notice is published under section 269(3)(a) or (4); or
 - (d) for an appeal against an infrastructure charges notice – 20 business days after the infrastructure charges notice is given to the person; or
 - (e) for an appeal about a deemed approval of a development application for which a decision notice has not been given – 30 business days after the applicant gives the deemed approval notice to the assessment manager; or
 - (f) for any other appeal – 20 business days after a notice of the decision for the matter, including an enforcement notice, is given to the person.

Note –

See the P&E Court Act for the court's power to extend the appeal period.

- (4) Each respondent and co-respondent for an appeal may be heard in the appeal.
- (5) If an appeal is only about a referral agency's response, the assessment manager may apply to the tribunal or P&E Court to withdraw from the appeal.
- (6) To remove any doubt. It is declared that an appeal against an infrastructure charges notice must not be about-
- (a) the adopted charge itself; or
 - (b) for a decision about an offset or refund-
 - (i) the establishment cost of trunk infrastructure identified in a LGIP; or
 - (ii) the cost of infrastructure decided using the method included in the local government's charges resolution.

230 Notice of appeal

- (1) An appellant starts an appeal by lodging, with the registrar of the tribunal or P&E Court, a notice of appeal that-
- (a) is in the approved form; and
 - (b) succinctly states the grounds of the appeal.
- (2) The notice of appeal must be accompanied by the required fee.
- (3) The appellant or, for an appeal to a tribunal, the registrar must, within the service period, give a copy of the notice of appeal to –
- (a) the respondent for the appeal; and
 - (b) each co-respondent for the appeal; and
 - (c) for an appeal about a development application under schedule 1, section 1, table 1, item 1—each principal submitter for the application whose submission has not been withdrawn; and
 - (d) for an appeal about a change application under schedule 1, section 1, table 1, item 2—each principal submitter for the application whose submission has not been withdrawn; and
 - (e) each person who may elect to be a co-respondent for the appeal other than an eligible submitter for a development application or change application the subject of the appeal; and
 - (f) for an appeal to the P&E Court – the chief executive; and
 - (g) for an appeal to a tribunal under another Act – any other person who the registrar considers appropriate.
- (4) The **service period** is –
- (a) if a submitter or advice agency started the appeal in the P&E Court – 2 business days after the appeal has started; or

- (b) otherwise – 10 business days after the appeal is started.
- (5) A notice of appeal given to a person who may elect to be a co-respondent must state the effect of subsection (6).
- (6) A person elects to be a co-respondent to an appeal by filing a notice of election in the approved form—
 - (a) if a copy of the notice of appeal is given to the person—within 10 business days after the copy is given to the person; or
 - (b) otherwise—within 15 business days after the notice of appeal is lodged with the registrar of the tribunal or the P&E Court.
- (7) Despite any other Act or rules of court to the contrary, a copy of a notice of appeal may be given to the chief executive by emailing the copy to the chief executive at the email address stated on the department's website for this purpose.

231 Non-appealable decisions and matters

- (1) Subject to this chapter, schedule 1 and the P&E Court Act, unless the Supreme Court decides a decision or other matter under this Act is affected by jurisdictional error, the decision or matter is non-appealable.
- (2) The *Judicial Review Act 1991*, part 5 applies to the decision or matter to the extent it is affected by jurisdictional error.
- (3) A person who, but for subsection (1) could have made an application under the *Judicial Review Act 1991* in relation to the decision or matter, may apply under part 4 of that Act for a statement of reasons in relation to the decision or matter.
- (4) In this section –
 - decision* includes-
 - (a) conduct engaged in for the purpose of making a decision; and
 - (b) other conduct that relates to the making of a decision; and
 - (c) the making of a decision or failure to make a decision; and
 - (d) a purported decision ; and
 - (e) a deemed refusal.
 - non-appealable*, for a decision or matter, means the decision or matter-
 - (a) is final and conclusive; and
 - (b) may not be challenged, appealed against, reviewed, quashed, set aside or called into question in any other way under the *Judicial Review Act 1991* or otherwise, whether by the Supreme Court, another court, a tribunal or another entity; and
 - (c) is not subject to any declaratory, injunctive or other order of the Supreme Court, another court, a tribunal or another entity on any ground.

232 Rules of the P&E Court

- (1) A person who is appealing to the P&E Court must comply with the rules of the court that apply to the appeal.
- (2) However, the P&E Court may hear and decide an appeal even if the person has not complied with the rules of the P&E Court.