



Development Tribunal – Decision Notice

Planning Act 2016, section 255

Appeal number:	23-001
Appellant:	Tim Unsted and Tracey Jackson
Respondent: (Assessment manager)	Sunshine Coast Regional Council
Site address:	33 Peacock Crescent, Bokarina and described as Lot 50 on CP B9608 – 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 made on 21 December 2022 to refuse an application to change a development approval for a material change of use of premises to establish a dual occupancy (**Change Application**), given by a Decision Notice dated 3 January 2023 (**Decision Notice**).

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 Pat Ferris –Town Planner, JDBA Certifiers Respondent Tracey Douglas – Lead Senior Development Planner, Planning Assessment Unit

Decision:

The Development Tribunal (**Tribunal**), in accordance with section 254(2)(c) of the PA **replaces** the decision of the Respondent to refuse the Change Application with a decision to approve the Change Application as amended by the Revised Plans as shown in yellow highlight and track changes in the document titled “Amended Decision Notice” at *Appendix 1* of this decision notice.

Background

1. The subject site is described as 33 Peacock Crescent, Bokarina (Lot 50 on CP B9608). Bokarina is a coastal suburb of Kawana Waters in the Sunshine Coast Regional Council local government area and is an area typified by older style low density residential

development. A number of homes in the area are being renovated and the suburb is undergoing what appears to be the early stages of urban renewal with an increasing number of new residential developments being seen amongst the older styles.

2. The subject site is approximately 542m² in area, located mid street with an 18m frontage on the southern side of Peacock Crescent. The subject site is flat and generally regular in shape. The subject site currently hosts a single storey dwelling house of brick construction.
3. The subject site is located approximately 250m from the beach, 200m from major sporting facilities, 400m from significant educational facilities, 2 kilometres from the Sunshine Coast University Hospital and 60 meters from a major public transport (bus) route. In this context the subject site is regarded as well located from an urban amenity perspective.
4. The subject site is located within the Low Density Residential zone of the *Sunshine Coast Planning Scheme 2014 (Planning Scheme)*.
5. On or about 28 September 2022, the Respondent decided to approve a development application for a development permit for a Material Change of Use of Premises to Establish a Dual Occupancy on the subject site, subject to conditions (**Development Approval**).
6. The development application was subject to code assessment and the Respondent applied the following Advisory Note (Advisory Note number 1) to the Development Approval:

“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 Dual occupancy code and applicable overlay codes, except where varied by the conditions of this development approval.”
7. The Appellant subsequently lodged the Change Application with the Respondent on 25 November 2022 to change the Development Approval.
8. The Change Application proposed a minor change to the Development Approval to vary the upper floor plan to include an additional small media area towards the rear of the building of each unit.
9. In the application material, the Appellant stated that the inclusion of the small media area represented an additional increase of 1.85% upper-level site cover for each unit and in doing so, the proposed site cover would not comply with Acceptable Outcome AO2.1 of the *Dual occupancy code* of the Planning Scheme (**AO2.1**), which required 50% site cover at ground level and 30% site cover at the upper level. The Appellant indicated that the proposed site cover was 49.6% at ground level and 33.4% at the upper level.
10. In the Decision Notice, the Respondent advised the Appellant that in relation to the Change Application, the Respondent decided on 21 December 2022 to refuse the proposed change.
11. It has been assumed by the Tribunal that the refusal of the Change Application was directly related to the apparent noncompliance with AO2.1 and the inability of the proposed development to be consistent with the relevant Performance Outcome, PO2 of the *Dual occupancy code* of the Planning Scheme (**PO2**).
12. In the covering letter dated 24 November 2022 provided by the Appellant as part of the Change Application, the Appellant provided an assessment of the proposed development against the Dual occupancy code of the Planning Scheme. The letter identified the

noncompliance of the proposed development with AO2.1 and consequently assessed the proposed development against the five limbs of PO2.

13. In this regard it is understood by the Tribunal that the following assessment is the view of the Appellant and no further information has been provided that represents the Respondent's position on these matters. However it is considered that the following material is relevant in the context of Council's Advisory Note included in the Development Approval.

"PO2

The dual occupancy: -

(a) is of a scale that is compatible with surrounding development

Comment: *The inclusion of an additional 20m² or 3.7% total site cover at upper level towards the rear of the building would not make the development incompatible with surrounding development. The average site cover across both level is 41.5%. With regards to site cover this is 8.5% below that permitted in the Sunshine Coast Region for a dwelling house where 50% is permitted across both levels under QDC MP1.1 and 1.2. Both dual occupancies and dwelling houses are consistent uses within the Low Density Residential Zone.*

(b) does not present an appearance of bulk to adjacent premises, road or other areas in the vicinity of the site;

Comment: *Given that it is only 3.7% above upper-level site cover, or 20m² (10m² per unit) it is difficult to see how this would present an appearance of unnecessary bulk compared to AO compliant outcome. Setbacks of 2m to the side boundary is maintained to the upper level. A dwelling house could be rebuilt on the site currently and have an additional 89.5m² of area at upper level as of right. Given the above rationale, and with the additional area occurring to the rear of the upper level there is not impact on 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;

Comment: *The proposed change is occurring at upper level towards to the rear of the building. There will be no impact on existing approved ground level landscaping.*

(d) allows for adequate area at ground level for outdoor recreation, entertainment, clothes drying and other site facilities; and (e) facilitates on-site stormwater management and vehicular access.

Comment: *The proposed change is occurring at upper level towards to the rear of the building. There will be no impact on existing approved ground level landscaping."*

14. Following the filing of this appeal by way of a Notice of Appeal on 17 January 2023, the Appellant and the Respondent continued to engage in further discussions seeking a resolution of the matters in dispute.

Jurisdiction

15. Schedule 1 of the PA states the matters that may be appealed to the Tribunal.¹
16. 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).
17. 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 for a classified building”.
18. The PA defines a “change application” as an application to change a development approval.²
19. 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).
20. So, Table 1 of Schedule 1 of the PA applies to the Tribunal.
21. Under item 2 of Table 1 of Schedule 1 of the PA, for a change application other than an excluded application³, an appeal may be made against “the responsible entity’s decision on the change application”. The appeal is to be made by the applicant, who in this case was the subject site’s owners, Tim Unsted and Tracey Jackson, who made the development application. Mr Unsted and Ms Jackson are therefore the Appellant. The respondent to the appeal is the assessment manager, who in this case is the Respondent.
22. In circumstances where the Decision Notice was dated 3 January 2023 and was received on the same day⁴, this appeal was to be filed on or before 1 February 2023.⁵ This was satisfied, with the appeal being filed on or about 17 January 2023.
23. Accordingly, the Tribunal is satisfied that it has the jurisdiction to hear this appeal.

Decision framework

24. The Decision Notice was issued by the Respondent on 3 January 2023. At that time, the PA was in force.
25. The Appellant filed a Form 10 – Notice of Appeal / Application for Declaration on or about 17 January 2023.
26. 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.
27. 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.⁶

¹ Section 229(1)(a) of the PA.

² Section 78(1) of the PA.

³ An “excluded application” is defined in Schedule 2 of the PA to mean a change application that has been called in under a call in provision, been decided by the Planning and Environment Court or has been made to the Minister for an application that was called in under a call in provision. None of these apply to the Change Application.

⁴ See Item 3 (Date written notice of decision received) of the Form 10 – Notice of Appeal / Application for Declaration of this appeal.

⁵ Section 229 of the PA.

⁶ Section 253(2) of the PA.

28. 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.⁷
29. The Chairperson of a tribunal must decide how tribunal proceedings are to be conducted⁸ and the tribunal must give notice of the time and place of the hearing to all parties⁹.
30. 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.¹⁰
31. On 3 February 2023, Ms Tracey Douglas, on behalf of the Respondent, advised the Tribunal's Registrar by email that the Respondent had been in discussions with the Appellant with a view to reaching agreement about the issue in dispute in the appeal. Ms Douglas' email identified that the parties had been discussing "*the inclusion of landscaped screening along the side boundaries to screen the bulk of the additional area to the adjacent premises.*" The email went on to identify that the Appellant was preparing an amended landscape plan for the Respondent's consideration.
32. On 8 February 2023, Mr Pat Ferris, on behalf of the Appellant, sent by way of email to the Tribunal's Registrar, a copy of the amended plans referred to in Ms Douglas' email (**Revised Plans**).
33. On 8 February 2023, Ms Douglas sent a further email on behalf of the Respondent to the Tribunal's Registrar advising that the Respondent was "*satisfied that the amended plans provided by the applicant satisfy the requirements of the Dual Occupancy code and are happy to settle the Appeal and approve the amended plans, subject to the Tribunal directions.*"
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 person¹¹.
35. The Tribunal may consider other information that the Registrar asks a person to give to the Tribunal¹².
36. The Tribunal considered the parties' emails and caused the Tribunal's Registrar to write to the parties by email dated 1 March 2023, advising that the Tribunal was pleased the parties could reach agreement about the issue in dispute and went on to communicate the following Orders of the Tribunal (**Orders**):
 1. *That the Respondent provides to the Registry and to the Appellant's agent on or before 4pm on Tuesday 7 March 2023 the following:*
 - (a) *Confirmation that the revised plans referred to in the Appellant's agent's email to the Registrar of 8 February 2023 is a complete set;*
 - (b) *An explanation of the differences between the revised plans referred to in paragraph (a) and the approved plans referred to in the Respondent's decision the subject of the appeal (the explanation to be no more than 2 pages in length); and*

⁷ Section 253(4) of the PA.

⁸ Section 249(1) of the PA.

⁹ Section 249(4) of the PA.

¹⁰ Section 249(3) of the PA.

¹¹ Section 249 of the PA.

¹² Section 253 and section 246 of the PA.

(c) *A marked up Decision Notice showing the agreed terms of settlement in track changes and highlighting, including the revised plans (Settlement Terms).*

2. *That the Appellant advises the Registry and the Respondent by way of email on or before 4pm on Friday 10 March 2023 as to whether or not the Appellant agrees that the issues in dispute in the appeal would be satisfied by a decision that reflects the Settlement Terms.*

37. By email dated 2 March 2023, Ms Douglas provided the Respondent's response to the Orders as follows:

(a) *"I confirm that the revised plans referred to in the Appellant's agent's email to the Registrar of 8 February 2023 is a complete set, however there are a number of plans that council would not ordinarily include in the approved plans set. Please see c. below which includes the draft new approved plans set as council would approve;*

(b) *An explanation of the differences between the revised plans referred to in paragraph (a) and the approved plans referred to in the Respondent's decision the subject of the appeal (the explanation to be no more than 2 pages in length);*

Unit 1

The revised plans include:

- *A media room shown generally in the area previously approved as bedroom 2.*
- *Bedroom 2 moves to what was bedroom 3*
- *Linen moved from top of stairs beside bedroom 2 to hall*
- *Bedroom 3 is additional area (additional 1.85% site cover)*
- *Additional landscaping to the side boundary*

Unit 2

The revised plans include:

- *A media room shown generally in the area previously approved as bedroom 3.*
- *Linen moved from top of stairs beside bedroom 3 to hall*
- *Bedroom 3 is additional area (additional 1.85% site cover)*
- *Additional landscaping to the side boundary*

(c) *A marked up Decision Notice **[Amended Decision Notice]** showing the agreed terms of settlement in track changes and highlighting, including the revised plans (Settlement Terms). Please see attached."*

38. On 6 March 2023, Mr Ferris, on behalf of the Appellant, sent an email to the Tribunal's Registrar advising "*I am satisfied by the drafted Decision Notice by Council which appropriately reflects the settlement terms agreed to.*"

39. 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:*
 - (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

40. 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 17 January 2023;
- (b) An email dated 3 February 2023, from Ms Douglas on behalf of the Respondent to the Tribunal's Registrar, advising the Tribunal of discussions being held between the parties;
- (c) An email dated 8 February 2023, from Mr Ferris on behalf of the Appellant providing a copy of the Revised Plans;
- (d) An email dated 8 February 2023, from Ms Douglas on behalf of the Respondent, providing the Respondent's confirmation that the Respondent considered the Revised Plans satisfied the issue in dispute in this appeal;
- (e) An email dated 2 March 2023, from Ms Douglas on behalf of the Respondent, providing the Respondent's response to the Orders;
- (f) An email dated 6 March 2023, from Mr Ferris on behalf of the Appellant, providing the Appellant's response to the Orders;
- (g) the Amended Decision Notice;
- (h) the Revised Plans comprising:

Plan No.	Rev.	Plan Name	Date
R1	-	<i>Site Plan – Ground</i> prepared by Taylor'd Distinction	07/02/23
R2	-	<i>Site Plan – Upper</i> , prepared by Taylor'd Distinction	07/02/23
R6	-	<i>Site Works Plan</i> , prepared by Taylor'd Distinction	07/02/23
R7	-	<i>Site Landscaping Plan</i> , prepared by Taylor'd Distinction	07/02/23
R9	-	<i>Ground Floor Plan</i> , prepared by Taylor'd Distinction	07/02/23
R10	-	<i>Upper Floor Plan</i> , prepared by Taylor'd Distinction	07/02/23
R12	-	<i>East and North Elevation</i> , prepared by Taylor'd Distinction	07/02/23
R13	-	<i>South and West Elevation</i> , prepared by Taylor'd Distinction	07/02/23

- (i) the Planning Scheme; and
- (j) *Planning Act 2016 (PA)*.

Findings of Fact

The Tribunal makes the following findings of fact:

Issue in dispute in appeal

- 41. This appeal has been brought by the Appellant against the Respondent's refusal of the Change Application made by the Appellant, which requested changes to the Development Approval.
- 42. The Change Application sought to change the approved plans in the Development Approval to vary the upper floor plan of each building in the dual occupancy to include an additional media area towards the rear of the building of each unit.
- 43. The letter from JDBA Certifiers dated 24 November 2022 which supported the Change Application (**Change Application Letter**) identified that the inclusion of the media area would increase the upper level site cover by 1.85%. This would result in the upper level site cover exceeding the maximum site cover allowable under the Planning Scheme.
- 44. Based upon the Appellant's grounds of appeal, when read in conjunction with the Development Approval, the Change Application supporting material and the Decision Notice, it was the Tribunal's understanding that the changes sought by the Change Application did not comply with Acceptable Outcome AO2.1. AO2.1 required the following:

"The site cover of the dual occupancy does 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."*

- 45. The Change Application Letter identified that the proposed site cover, with the inclusion of the media area for each unit, would be 49.6% at ground and 33.4% at the upper levels, thus, achieving compliance with AO2.1 for the ground floors but exceeding the maximum site cover specified in AO2.1 for the upper floors by 3.4%.
- 46. Given the non-compliance with AO2.1, the Respondent was tasked with considering whether in the absence of compliance with AO2.1, the Change Application instead complied with Performance Outcome PO2 of the Dual Occupancy Code of the Respondent's Planning Scheme (**PO2**).
- 47. 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.”

48. The Appellant’s grounds of appeal were as follows:

“No RFI or rationale provided by Council. The minor change complied with relevant performance criteria and new recent development approvals issued by Council for same development type within the same area.”

49. The issue in dispute in this appeal therefore would be whether the Change Application complied with PO2 and if it did, whether the Change Application should have been approved rather than refused.

The planning framework

Making the Change Application

50. A person may make an application (a change application) to change a development approval.¹³

51. Depending upon the nature of the proposed change and the development approval being changed, a change application is to be made to a referral agency, the assessment manager, the planning and environment court or the Minister.¹⁴ In this case, the Change Application was required to be made to the assessment manager, the Respondent.

52. A change application can take the form of a “minor change” or an “other change”.

53. Determining whether a proposed change is a “minor change” or an “other change” requires analysis against the definition of “minor change” in Schedule 2 of the PA and planning analysis.

54. For the purposes of this decision, the Tribunal is satisfied that the Appellant’s representative, Mr Ferris, would have carried out that analysis when preparing the Change Application. Accordingly, the Tribunal is prepared to accept that his resultant conclusion that the Change Application was a “minor change” as expressed in the Change Application Letter, is correct. Supporting this assumption is the lack of any challenge by the Respondent to the assertion that the Change Application was a “minor change”. Accordingly, the Tribunal is prepared to accept that the Change Application was a “minor change” for the purposes of the PA.

55. In assessing the Change Application, being for a minor change, the Respondent was relevantly required to consider:

- (a) the information the Appellant included with the Change Application; and
- (b) all matters the Respondent would or may assess against or have regard to if the change application were a development application.¹⁵

56. In deciding the Change Application, being for a minor change, the Respondent must decide to:

- (a) make the change, with or without imposing or amending development conditions in relation to the change; or

¹³ Section 78 of the PA.

¹⁴ Section 78A of the PA.

¹⁵ Section 81 of the PA.

- (b) refuse to make the change.¹⁶

Assessing the Change Application

57. So, turning to the relevant matters the Respondent would have assessed the Change Application against if it was a development application, that is, as if it was the Development Approval as changed by the Change Application.
58. 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.
59. Accepted development does not require a development approval.¹⁷
60. This meant that on the subject site, a dual occupancy development would be accepted development and would not require a development approval where it complied with the acceptable outcomes of the Dual Occupancy Code.
61. 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.”

62. The Dual Occupancy Code contained a number of acceptable outcomes, including AO2.1.
63. The Change Application did not comply with AO2.1¹⁸ and therefore instead of the Change Application being accepted development as set out in Table 5.5.1 of the Planning Scheme, it would be code assessable development¹⁹.
64. Section 5.3.3(3)(a) of the Planning Scheme relevantly identified the assessment benchmarks for code assessable development that occurred as a result of 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).”

65. This meant that the Change Application 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, being AO2.1, the Change

¹⁶ Section 81A of the PA.

¹⁷ Section 1.4 of the Planning Scheme and section 44(4) of the PA.

¹⁸ This was acknowledged on page 1 of the Change Application Letter.

¹⁹ 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.

Application was instead to be assessed against the corresponding performance outcome for that acceptable outcome, being PO2.

66. The issue in dispute in this appeal was therefore whether the Change Application met the performance outcomes of PO2 and if so, whether the Council should have approved the Change Application instead of refusing it.

Resolution of issue in dispute

67. Prior to a date being set for the hearing of the appeal by the Tribunal's Registrar, the parties advised the Tribunal that both parties had agreed that the Revised Plans as set out in the Amended Decision Notice resolved the issue in dispute in this appeal and therefore by implication, satisfied the requirements of PO2.
68. The differences between the plans approved in the Development Approval and the Revised Plans, were described by Ms Douglas in her email to the Tribunal's Registrar dated 2 March 2023. It is those changes that would need to be assessed when considering whether the Change Application met the requirements of PO2.
69. It is noted that Ms Douglas on behalf of the Respondent, the assessment manager for the Change Application, communicated to the Tribunal's Registrar that the Respondent was "*satisfied that the amended plans provided by the applicant satisfy the requirements of the Dual Occupancy code and are happy to settle the Appeal and approve the amended plans, subject to the Tribunal directions.*"

Reasons for the decision

Assessment of the Change Application as changed by the Revised Plans

70. While both parties were satisfied that the Change Application as amended by the Revised Plans resolved the issue in dispute in this appeal, the Tribunal must also be satisfied that the Change Application as amended by the Revised Plans reflects a lawful and reasonable outcome before making a decision in respect of the Respondent's refusal of the Change Application.
71. The Change Application proposed just one change to the Development Approval; the variation to the upper floor plan to include an additional media area toward the rear of each unit. The Change Application Letter identified AO2.1 as the only acceptable outcome of the Dual Occupancy code of the Planning Scheme that was not met by the proposed change. The Change Application Letter went on to provide an assessment of the proposed change against PO2.
72. The Revised Plans incorporated the change proposed in the Change Application but also included additional landscaping to the side boundary of each unit. It can be deduced by the Tribunal that it was the additional landscape screening that satisfied the Respondent that PO2 could be met by the Change Application as amended by the Revised Plans.
73. Therefore, in assessing the Change Application, the Tribunal needs to assess both the Change Application as well as the Revised Plans against the outcomes in PO2.
74. Upon considering the Change Application Letter and assessing the Change Application as amended by the Revised Plans against the five criteria in PO2, the Tribunal is comfortable that if the proposed development proceeded in accordance with the Change Application as amended by the Revised Plans, it would comply with PO2 for the following reasons.
75. AO2.1 required that site coverage of a 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 Change Application Letter stated that the proposed site cover for the ground

floor and upper floor of the proposed development were 49.6% and 33.4% respectively. This resulted in a 41.5% site coverage across both storeys. The Revised Plans did not change the site cover sought by the Change Application.

76. 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.
77. Notwithstanding the non-compliance with AO2.1, the visual impact of the non-compliance of the development proposed by the Change Application would be unlikely to be significant. The proposed development would meet the site cover requirement for the ground floor being below 50% site cover (49.6%) and would only exceed the upper floor site cover limit in PO2(a) on the Revised Plans by 3.4%. The Change Application Letter identified that the site cover increase on the upper level of each unit would be an additional 20m² in area.
78. The Tribunal can accept that this exceedance of site cover on the upper floors would have little discernible impact on the appearance and presentation of the proposed development to the surrounding area.
79. The subject site is surrounded by one storey, predominantly brick homes with only one two storey dwelling located on the corner of Bluebird Parade and Peacock Street. This might have presented a concern to the Tribunal if it were assessing the development approved by the Development Approval against PO2(a), as a two storey dual occupancy use would not be of a scale compatible with the surrounding development. However, the Development Approval is in place and the Tribunal is merely considering the impact of the change to that Development Approval.
80. As such, the addition of 20m² in area to the upper floor level, would not change the scale of the proposed development in any material way.
81. The Change Application Letter also makes the point that the overall site cover of the proposed development, would be 8.5% lower than that permitted in the Planning Scheme for a dwelling house, which is a consistent use in the Low Density Residential zone.
82. For these reasons, the Tribunal is comfortable that the proposed development built in accordance with the Change Application as amended by the Revised Plans would be consistent with PO2(a).
83. PO2(b) 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*”. As noted above with respect to the scale of the proposed development, arguably, if assessing the development approved by the Development Approval against PO2(b), as a two storey dual occupancy use, it would present an appearance of bulk to all of the adjacent premises, road and other areas in the vicinity of the subject site.
84. However, when considering the Change Application as amended by the Revised Plans, which adds an additional 20m² of area to the rear of the upper level, the non-compliance with the requirements of AO2.1 would not, in the Tribunal’s view, present an appearance of bulk to adjacent premises or the road frontage any greater than when the proposed development complied with the site cover limit for the upper floors in the Development Approval.
85. In addition, the Tribunal’s view is supported by comments made in the Change Application Letter, which identifies that appropriate setbacks are maintained for the upper level and that a dwelling house could be constructed on the subject site that would have an additional 89.5m² of area in the upper level as of right.

86. The Tribunal now turns briefly to the remaining three elements of PO2.
87. 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.
88. It is these requirements that the Revised Plans were prepared to address. The Revised Plans included additional landscaping to the side boundary of each unit to provide greater screening to neighbouring properties. This was to be in the form of "Callistemon slim landscaping" to be "screen planted at 1500m maximum centres". The Respondent indicated that this would alleviate its concerns about compliance with PO2.
89. The Tribunal considers that the increased landscaping provided in the Revised Plans, combined with the garden beds and feature planting in the front garden between the units, as well as the garden to be provided along the rear boundary of the subject site, would provide soft landscapes between the proposed units and the street. There is a grassed area and pool to be provided at the rear for each unit which would provide adequate outdoor recreation and entertainment opportunities and a fold down clothesline is identified for each unit.
90. It is also noted that Conditions 14 to 18 of the Development Approval, which remained unchanged in the Amended Decision Notice, imposed requirements upon the Appellant to provide a minimum standard of landscaping.
91. All these factors combined to satisfy the Tribunal that the requirements of PO2(c) and (d) were adequately addressed by the Change Application as amended by the Revised Plans.
92. Lastly, the Tribunal is satisfied that the requirements of PO2(e), which require the proposed development facilitate on-site stormwater management and vehicular access, are adequately addressed by conditions 19 and 21 of the Development Approval which remain unchanged in the Amended Decision Notice.

Conclusion

93. Essentially this appeal has been resolved by the parties working together to agree the redesign and additional provision of landscaping on the subject site to minimise the impact of the increased upper floor area of the proposed development on the surrounding areas.
94. Based on the above analysis, the Tribunal finds that Change Application as amended by the Revised Plans, meets the requirements of PO2. Accordingly, the Tribunal agrees that the Revised Plans as set out in the Amended Decision Notice resolve the issue in dispute in this appeal and that the decision of the Respondent to refuse the Change Application should be replaced.
95. The Tribunal therefore orders that the decision of the Respondent to refuse the Change Application be **replaced** with a decision to approve the Change Application as amended by the Revised Plans as shown in yellow highlight and track changes in the document titled "Amended Decision Notice" in *Appendix 1* of this decision notice.

Samantha Hall

Development Tribunal Chair

Date: 13 April 2023

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 DECISION NOTICE

Development Approval

APPLICATION DETAILS

Application No:	MCU22/0233
Street Address:	33 Peacock Crescent, BOKARINA
Real Property Description:	Lot 50 B 9608
Planning Scheme:	Sunshine Coast Planning Scheme (16 May 2022)

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

CURRENCY PERIOD OF APPROVAL

Unless lawfully 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*.

CONDITIONS

DEVELOPMENT PERMIT FOR MATERIAL CHANGE OF USE OF PREMISES TO ESTABLISH A DUAL OCCUPANCY – MCU22/0233

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 development approval.

Building Height

3. The maximum height of the development must not exceed 8.5m above the natural ground level.
4. Certification must be submitted to council from a cadastral surveyor which certifies that the building/s does not exceed the maximum height requirement of this development approval.

Street Identification

5. 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

6. 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 approval in writing by council.
7. 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.

Protection of Privacy

8. To ensure privacy is protected between adjoining properties, the windows of the upper level of the eastern, western and southern elevation of both units must either:
 - (a) have a minimum window sill height of 1.5m above floor level;
 - (b) be fitted with translucent glazing below 1.5m above floor level; or
 - (c) be fitted with a fixed external screen.

Fencing and Walls

9. Any street fencing and walls must not exceed a maximum height of 1.2m and must be situated behind the frontage landscaping.
10. Unless otherwise agreed by the adjoining owner in writing, a 1.8m high solid screen fence 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.
11. Unless otherwise agreed by the adjoining owner in writing, any built-to-boundary wall (less than 750mm to common boundary) must be maintenance free and if masonry, must remain unpainted or untreated masonry.

Community Management Statement

12. 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.
13. All clauses and by-laws of the proposed Community Management Statement must accord with the requirements of this development approval.

LANDSCAPING & ECOLOGY

Landscaping Works

14. The development site must be landscaped in accordance with the Approved Plans/documents and conditions detailed in this Decision Notice. The works must include in particular:
 - (a) the works shown on the Approved Plans
 - (b) a minimum 1m wide landscaping strip along the road frontage of the subject site, exclusive of the access driveway, generally uncompromised by infrastructure items
 - (c) frontage fencing located behind the required 1m wide landscape strip
 - (d) provision of one (1) street tree within the road reserve for every 6m of road frontage
**(Refer to Advisory Note)*
15. Landscape works must be supervised, constructed and certified by qualified persons*.
**(Refer to Advisory Note)*
16. Trees (including street trees) must:
 - (a) meet *AS 2303:2015 Tree stock for landscape use*
 - (b) be located in accordance with engineering requirements for safe vehicle and pedestrian sight lines.
**(Refer to Advisory Note)*
17. 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.
18. Prior to commencement of use the following (prepared by respective qualified persons* and certifying compliance with approvals) must be submitted to council:
 - (a) landscaping certification confirming all works have been constructed in accordance with conditions of approval
 - (b) Arborist certification, addressing each street tree specimen in accordance with *AS 2303:215 Tree stock for landscape use*.
**(Refer to Advisory Note)*

ENGINEERING

Property Access and Driveways

19. A sealed access driveway must be provided from the site frontage to all parking and manoeuvring areas of the development for each unit. The works must be undertaken in accordance with an Operational Works approval and must include in particular driveway crossovers generally in accordance with Council's standard drawings *IPWEA RS-049 and RS-050*.

On-site Parking

20. A minimum of two (2) car parking spaces must be provided per dwelling on the site. The works must be undertaken in accordance with an Operational Works approval and must include in particular:
 - (a) A minimum of one (1) parking space per dwelling capable of being covered;
 - (b) Dimensions, clearances, crossfalls and gradients in accordance with *AS 2890 - Parking facilities*.

Stormwater Drainage

21. 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 Operational Works approval and the *Queensland Urban Drainage Manual*, and must include in particular:
 - (a) Collection and discharge of stormwater directly to the kerb and channelling within the site frontage to the greatest practical extent. Stormwater to the street frontage must include provision of kerb adaptors.
 - (b) Inclusion of field pits to the south of each proposed unit to collect rear surface stormwater obstructed by the 'built to boundary' design of the subject units. Pits to be sized to capture flows for discharge to the kerb and channelling.
 - (c) The use of gravity stormwater drainage and not surcharge pits.

Flood Immunity

22. The minimum floor level of all buildings constructed on the site must be in accordance with a current Flood Search Certificate.

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@dsdmip.Qld.Gov.Au	Contaminated land – Unexploded ordinance	The agency provided its response on 19/08/2022 (reference No. 2208-30324 SRA).

DEVELOPMENT PLANS

The following development plans are Approved Plans for the development:

Approved Plans

Plan No.	Rev.	Plan Name	Date
R1	-	<i>Site Plan – Ground</i> , prepared by Taylor'd Distinction	3/08/22 07/02/23
R2	-	<i>Site Plan – Upper</i> , prepared by Taylor'd Distinction	3/08/22 07/02/23
R6	-	<i>Site Works Plan</i> , prepared by Taylor'd Distinction	3/08/22 07/02/23
R7	-	<i>Site Landscaping Plan</i> , prepared by Taylor'd Distinction	3/08/22 07/02/23
R9	-	<i>Ground Floor Plan</i> , prepared by Taylor'D Distinction	3/08/22 07/02/23
R10	-	<i>Upper Floor Plan</i> , prepared by Taylor'D Distinction	3/08/22 07/02/23
R12	-	<i>East and North Elevation</i> , prepared by Taylor'D Distinction	3/08/22 07/02/23
R13	-	<i>South and West Elevation</i> , prepared by Taylor'D Distinction	3/08/22 07/02/23

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:

Accepted Development

1. 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 *Dual occupancy code* and applicable overlay codes, except where varied by the conditions of this development approval.

Equitable Access and Facilities

2. 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

3. 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*.

Environmental Advisory Notes

4. 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.

Easements and Future Works over External Land

5. Should the approved development necessarily require easements or works to be undertaken over land external to the site, including crane overhang into neighbouring airspace, council recommends that easement, access agreements and works requirements are negotiated with the relevant land owner/s prior to advancing to detailed design stages of the development to avoid unexpected costs or delays. To discuss easement or works requirements over council owned or controlled land, please liaise directly with council's Property Management Unit and note that compensation may be payable.

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.

Infrastructure Charges

8. 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.

Development Compliance Inspection

9. 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

10. 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.sunshinecoastl.qld.gov.au).

Qualified Person

11. Qualified Person, for the purpose of:
- (a) supervising 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.

Street Tree Species

12. Street trees species are to be selected for successful establishment and long term benefit in regards to location and soil type. Council suggests the following species selection:

Coastal (east of Bruce Highway), except for Buderim:

- (a) *Melaleuca quinqueneriva* – Broad-leaved Paperbark
- (b) *Cupaniopsis anacardioides* – Tuckeroo
- (c) *Elaeocarpus obovatus* – Hard Quandong
- (d) *Banksia integrifolia* – Coastal Banksia
- (e) *Syzygium hemilamprum* syn. *Acmena hemilampra* – Blush Satinash

with overhead powerlines:

- (f) *Acronychia imperforata* – Fraser Island Apple
- (g) *Melaleuca viminalis* / *Melaleuca salignus* syn. *Callistemon salignus* – Weeping Bottlebrush / Willow Bottlebrush

Hinterland (west of Bruce Highway) and including Buderim:

- (a) *Tristaniopsis laurina* 'Luscious'
- (b) *Elaeocarpus eumundii* – Eumundi Quandong
- (c) *Syzygium hemilamprum* syn. *Acmena hemilampra* – Blush Satinash
- (d) *Syzygium floribundum* syn. *Waterhousea floribunda* – Weeping Satinash

with overhead powerlines:

- (e) *Backhousia citriodora* – Lemon Scented Myrtle

Alternate species may be considered by agreement with council.

PROPERTY NOTES

Not applicable.

VARIATION APPROVAL

Not applicable.

FURTHER DEVELOPMENT PERMITS REQUIRED

- Development Permit for Operational Works (Engineering Works and Landscaping Work)
- Development Permit for Building Works Assessable against the *Building Act 1975* (Building Certifier)

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.