



Development Tribunal – Decision Notice

Planning Act 2016

Appeal Number:	22-053
Appellant:	Scott Cooper
Respondent (Assessment Manager):	Sunshine Coast Regional Council (Council)
Site Address:	16 Palkana Dve, Warana and described as Lot 7 on W95525 – the subject site

Appeal

Appeal made under section 229(1)(a)(i) and schedule 1, section 1, table 1, item 1(c) of the *Planning Act 2016* (PA) against the imposition of Conditions 4 and 8, concerning site cover and privacy screening respectively, on the Development Approval for a material change of use for a Dual Occupancy development on land located at 16 Palkana Dve, Warana and described as Lot 7 on W95525 (site) by the respondent, Sunshine Coast Regional Council. Council determined that the proposal plans as submitted did not satisfy Performance Outcomes PO2 and PO3 of the Dual Occupancy Code of the Sunshine Coast Planning Scheme 2014 (the planning scheme) without the imposition of relevant conditions.

Date and time of hearing:	Wednesday 15 February 2023 at 10.00 am.
Place of hearing:	Online via <i>Microsoft Teams</i>
Tribunal:	John Panaretos – Chair Fraser Hardman – Member
Present:	For the Appellant: Scott Cooper – Appellant Cameron Adams, Town Planner Aspen Dunn, Town Planner Chris McCabe, Building Designer For the Respondent: Tracey Douglas, Council Development Planner Kelly Taylor, Council Development Planner Andrew Zarb, Council Urban Designer

Decision:

The Development Tribunal (Tribunal), in accordance with section 254(2)(d) of the *Planning Act 2016* (PA) sets aside the decision of the respondent and orders the respondent to approve the application with an amended conditions package, deleting Conditions 4 (site cover) and 8 (privacy provisions to upper-level windows) of the Development Approval, by 14 March 2023.

Background

1. The site is zoned Medium Density Residential, a zone in which Dual Occupancy is categorised as Accepted Development subject to compliance with the Dual Occupancy Code. By virtue of clause 5.3.3(2) of the planning scheme a code assessable Development Application (DA) was required to be lodged since the proposed site cover exceeded that specified in Acceptable Outcome AO2.1.
2. Council issued a Decision Notice on 5 October 2022, approving the application subject to conditions. Conditions 4 (maximum site cover) and 8 (additional privacy provisions to upper floor windows) would require amendments to the approved plans and are the subject of this appeal.

Material considered

3. The material considered in arriving at this decision comprises:
 - a. 'Form 10 – Appeal Notice', grounds for appeal and correspondence accompanying the appeal lodged with the Tribunals Registrar on 18 October 2022, including a set of proposal plans drawn by DCM Design and Drafting dated 12 August 2022, a written submission in response to Council's decision made by Cameron Adams dated 18 October 2022 and Council's Decision Notice dated 5 October 2022;
 - b. Sunshine Coast Planning Scheme 2014;
 - c. Oral submissions made by representatives of both parties at the hearing;
 - d. Written submission made by the Appellant's representative subsequent to the hearing, by email dated 20 February 2023, with four explanatory attachments: Site Cover Calculation Plan, Setbacks Analysis Plan, Dual Occupancy Code Checklist and Neighbouring Multiple Dwelling Approved (with handwritten notations);
 - e. Council response to the Applicant's submission referred to in item 3(d) above, by email dated 24 February; and
 - f. The *Planning Act 2016* (PA).

Findings of fact

4. The Tribunal makes the following findings of fact:
 - a. The site is zoned Medium Density Residential. The purpose of the zone is stated at paragraph 6.2.2.2(1) of the Medium Density Residential zone code envisaging *"low and medium density residential activities generally in a low rise format, predominantly comprising multi-unit residential uses"*.
 - b. It was agreed at the hearing that Council approved a multi-unit residential building, currently under construction, with reduced setbacks on the abutting site to the west within the Medium Density Zone, with a site cover of almost 50% over three storeys.
 - c. The Applicant/Appellant lodged a development application for a material change of use over the subject site for a two-storey Dual Occupancy development, which triggered code assessment due to non-compliance with Acceptable Solution

AO2.1 of the Dual Occupancy Code. In particular, the proposed site cover exceeds both alternative limits prescribed by Acceptable Solution AO2.1, which provides at clause (b) for a maximum average site cover of 40% (the proposal is 42.48%) or clause (c) a maximum site cover of 50% for the ground storey and 30% for the upper story of the proposal.

- d. Consequently, subject to paragraph 5.3.3(2) and Table 5.5.2 of the planning scheme the proposal is assessable development subject to code assessment against the Dual Occupancy Code. Where the application proposes an alternative to the Acceptable Outcomes, it is to be assessed against the applicable Performance Outcomes consistent with the decision-making rules at paragraph 5.3.3(3)(a)(ii) and (iii) of the planning scheme.
- e. The proposed development satisfies all other siting related Acceptable Outcomes of the Dual Occupancy Code.

Site cover

- f. Council approved the development on 5 October 2022, but subject to Condition 4 which imposed a limit on site cover more restrictive than the relevant Acceptable Outcome (AO2.1).
- g. Condition 4 narrows the allowable site cover options prescribed by Acceptable Outcome AO2.1 to the requirement of clause (c) only; significantly the 30% upper floor limit.
- h. While the proposed ground floor site cover at 46% is within the prescribed 50% limit of Condition 4, the upper floor at 38% exceeds the 30% limit.
- i. Condition 4 is based on the respondent's view that the proposed development fails to satisfy clauses (a) and (b) of Performance Outcome PO2. That is, the scale of the proposed building is not compatible with surrounding development and presents an appearance of excessive bulk in its context.
- j. Issues raised by the respondent in support of the restricted site cover imposed by Condition 4 are the predominance of single storey houses in the vicinity, the expectations of local residents, the proposed development only achieves the minimum standards prescribed by other Acceptable Outcomes of the Dual Occupancy Code and portions of the required open space are positioned in articulated indents at the sides of the building and thus should not be included in the 'soft landscaping' calculation of 20% of site area as required by Acceptable Outcome AO6.2 as they are not visible in the streetscape and contribute to an appearance of building bulk.
- k. Conversely, the Appellant's representatives put the case for a relaxation of the upper floor site cover based on the marginal exceedance of average site cover over both levels (2.48%) of the building, its compatibility with the built form envisaged by the Medium Density Zone, its lower site cover than allowed for detached dwellings, proximity to neighbourhood shops, previously approved developments in the area with higher site cover, generous setbacks which exceed Acceptable Outcomes in places and compliance with all other Acceptable Outcomes of the code.
- l. Submissions made by the parties subsequent to the hearing disputed the precise calculation of site cover, and clarified the parties' stances on other matters discussed at the hearing.

- m. In particular, the respondent's subsequent submission clarified its approach to assessment of the development proposal, encapsulated by the following statement: *"Council is not of the opinion that the site cover of an adjacent development of another use type compels it to accept the same site cover on every application and each application must be assessed on its own merits"*.

Privacy screening

- n. Notwithstanding that the approved plans comply with, and in some cases exceed, all setback requirements, Condition 8 requires privacy provisions to windows, which are not required by the Code, as follows:

the windows of the upper level of the eastern, western and southern elevations for 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.*

- o. At the hearing the respondent acknowledged that, by complying with all prescribed setbacks, the approved plans satisfy Performance Outcome PO3(d) – minimising intrusion into private open space of neighbouring dwellings – thus, there is no need for the additional privacy provisions of Condition 8.

Reasons for the decision

5. With respect to site cover, the approved plans represent a well-articulated built form compatible in bulk and scale with the purpose of the Medium Density Zone, a zone in which Multi Unit Dwellings of higher site cover are envisaged.
6. Contrary to the respondent's stated approach to assessment of site cover in paragraph 4(m) above, Performance Outcome PO2 requires that the bulk and scale of development be assessed in context of surrounding development irrespective of use type, not in isolation from surrounding development.
7. The Tribunal could identify no circumstances which would warrant the imposition of restrictions more stringent than those envisaged as 'acceptable' by the Acceptable Solutions of the Dual Occupancy Code.
8. There is nothing in the Dual Occupancy Code to suggest that soft landscaping behind the façade of the building, used to articulate and 'break up' the built form, should not be included in the minimum 20% soft landscaping required by Acceptable Outcome AO6.2. The Tribunal also notes non-compliance with AO6.2 was not cited as a trigger for making the development application.
9. It was agreed by the parties to the hearing that the provisions of Condition 8 are not required in the circumstances.

John Panaretos

Development Tribunal Chair

Date: 1 March 2023

Appeal rights

Schedule 1, Table 2 (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.

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