



Development Tribunal – Decision Notice

Planning Act 2016, section 255

Appeal Number:	19-029
Appellant:	Mr David Milligan and Mrs Eleanor Milligan
Respondent (Assessment manager):	Sunshine Coast Regional Council
Site Address:	2/34 Booker Parade, Golden Beach and described as Lot 2 on GTP 121 - the subject site

Appeal

Appeal under section 229 and item 1 of table 1 of section 1 of schedule 1 of the *Planning Act 2016* against the refusal of a development application for building work for construction of a roof over an existing patio (Works Associated with a Dual Occupancy). The Assessment Manager refused the application on the basis that it did not meet the performance criteria PO3 or overall outcomes of the Dual Occupancy Code under the Sunshine Coast Planning Scheme 2014 (planning scheme) and the application could not be conditioned to comply.

Date and time of hearing:	13 September 2019 – 2pm
Place of hearing:	2/34 Booker Parade, Golden Beach
Tribunal:	James Dunstan – Chair Jenny Owen – Member Joelie Clark – Member
Present	David Milligan – Appellant Danya Cook – Appellant's representative Tegan Hackett – Council representative Peter Chamberlain – Council representative

Decision:

The Development Tribunal (Tribunal), in accordance with section 254 of the *Planning Act 2016* (PA) confirms the decision of the assessment manager to refuse the application for development approval for the patio roof.

Background:

The subject land is located at 2/34 Booker Parade, Golden Beach, and formally described as Lot 2 on GTP 121.

The site has an area of 119m² and contains Unit 2 of an existing duplex. A proposed skillion roof addition to Unit 2 is the subject of this appeal.

The site is a corner block with two street frontages, Booker Parade to the north and June Street to the west. On the 1st April 2019, the Appellant lodged a development application for building work for a class 10a building (patio roof).

The proposal plans provide for new skillion roof over an existing paved area, having a floor area of 12.7m², a width of 2.7 m and a length of 4.7m. It is set back from the June Street boundary by 300mm. The skillion roof rakes toward the boundary with a maximum height of approximately 3.2m where it extends over the existing building and approximately 2.5m at the point closest to the boundary of June Street.

On 13th June 2019, the application was refused by the Assessment Manager for the following reasons:

1. *The development does not meet PO3 of the Dual Occupancy Code.*
2. *The development does not meet the overall outcomes of the Dual Occupancy Code.*

On 13th July 2019, the appeal was lodged with the Registrar.

Jurisdiction:

The Tribunal has jurisdiction to hear the appeal under section 229 and Schedule 1, Section 1, Table 1, Item 1(a), of the PA as the appeal is against the refusal of a development application.

For section 1(2) of schedule 1, paragraph (g) applies as the matter involves construction of a proposed patio roof required to comply with the *Building Act 1975*.

Decision Framework:

Under section 253(2) of the PA, the appellant must establish the appeal should be upheld.

Under section 235(4) the Tribunal must hear and decide the appeal by way of a reconsideration of the evidence that was before the person who made the decision appealed against. The Tribunal may nevertheless (but need not) consider other evidence presented by a party with leave of the Tribunal or any information provided under s.246 of the PA (pursuant to which the registrar may require information for tribunal proceedings).

The Tribunal is required to decide the appeal in one of the ways mentioned in s.254(2) of the PA, including in this case by:

- (a) confirming the decision; or
- (b) changing the decision; or
- (c) replacing the decision with another decision.

Material Considered:

The material considered in arriving at this decision comprises:

1. 'Form 10 – Appeal Notice', grounds for appeal and correspondence accompanying the appeal lodged with the Tribunals Registrar on 13th July 2019.
2. The application material.

3. The Decision Notice issued by the Assessment Manager dated 13th June 2019.
4. Oral submissions made by the one of the Appellants, Mr David Milligan, the Appellants' representative Danya Cook and the Assessment Manager's representatives at the hearing.
5. The *Planning Act* 2016 (PA).
6. The Dual Occupancy Code (DOC) under the planning scheme.
7. The records of development approvals for the duplex, provided to the Registry by the respondent by email on the 16th September titled: *18891052 82260680002 34 Booker ~ This is a digitised version of a physical file which includes documents and A0 Plans between 25 06 1974 and 13 08 1990*
8. The Council Assessment Report of the application for the development approval of the patio roof, provided to the Registry by the respondent by email on the 16th September titled: *Code Assessable Dual Occupancy Report - DBW190051.DOCX*

A copy of items 7 and 8, above, was provided to the Registrar by the Council and the Registrar duly furnished a copy to the Appellants on 16 September 2019. No further representations were made by the Appellants.

Findings of Fact:

The Tribunal makes the following findings of fact:

1. The subject site is a 119m² corner allotment located at 2/34 Booker Parade, Golden Beach (Lot 2, GTP 121)
2. The allotment is improved by a duplex (Unit 2).
3. The allotment is generally rectangular in shape, with boundaries to Booker Parade and June Street (the predominant frontage).
4. The June Street streetscape consists of a duplex (Unit 2 being the subject of this appeal), and other residential dwellings located along the street frontage. The site opposite the subject site to the west is Jensen Park, a public park. There are no dwellings on this side of the street.
5. Unit 1 of the duplex has an existing roofed patio on the June Street boundary with nil set back. Council's records of development approvals do not include an approval for Unit 1's roofed patio.
6. The owners at Unit 2 are proposing to build a patio roof described generally as a structure supported by 4 columns, with no enclosing walls or screens and with a setback of 300mm from the June Street boundary. The owners advised that the purpose of the patio roof is to provide shade and weather protection to the existing paved area and doors opening onto the paved area. The patio roof proposed at Unit 2 is of a similar scale to the existing roofed patio at Unit 1.
7. Under the planning scheme Part 5.7 – Categories of development and categories of assessment – building work, building work is code assessable against the relevant use code (Dual Occupancy Code) where development does not meet the acceptable outcomes. Specifically, the proposed patio roof is assessable against the Sunshine Coast Planning Scheme Dual Occupancy Code (P03).
8. The Acceptable Outcome of A03.2 of the Dual Occupancy Code requires that:

“The dual occupancy is setback at least 4.5 metres from any street frontage, with any garage or carport associated with the dual occupancy setback at least 6m.” 12. The application is to be assessed against the relevant assessment benchmarks in the Sunshine Coast Planning Scheme 2014 being the Dwelling Occupancy Code (DOC)

9. Under part 9.3.5.2 (1) the purpose of the Dual Occupancy Code (DOC) is

“to ensure dual occupancies are appropriately located, achieve a high level of comfort and amenity for occupants, maintain the amenity of neighbouring premises and are compatible with the character and streetscape of the local area.”

10. Under PO3 addressing the streetscape character the performance outcomes require that the dual occupancy is designed and constructed to:-

- (a) provide an attractive address to all street frontages;
- (b) make a positive contribution to the preferred streetscape character of the locality;
- (c) provide shading to walls and windows of the dual occupancy;
- (d) minimise opportunities for residents to overlook the private open space areas of neighbouring premises; and
- (e) maximise the retention of existing mature trees within the frontage setback, to retain streetscape character.

11. Under the Acceptable outcomes to achieve PO3, AO3.2 provides that:

The dual occupancy is setback at least 4.5 metres from any street frontage, with any garage or carport associated with the dual occupancy setback at least 6 metres.

12. As the proposed patio roof did not comply with the Acceptable Outcome A03.2 of the Dual Occupancy code, Ian Simpson from My Cert, the building certifier acting on behalf of the property owners, lodged a Development Application to Council on 1 April 2019. The application included an application form, plans and a letter/report addressing the non-compliance.

13. Council issued a Decision Notice (Refusal) for the Development Application on 20 June 2019.

14. The property owners lodged an appeal against Council’s decision with the Building and Development Tribunal on 13 July 2019.

Reasons for the Decision:

The Tribunal is **not** satisfied that the location of the proposed patio roof meets Performance Outcomes P03(a) and Po3(b) of the Dual Occupancy Code of the Sunshine Coast Planning Scheme.

Performance outcome P03(a) of the Dual Occupancy Code requires the building to *“provide an attractive address to all street frontages.”*

The Tribunal considers that the proposed patio roof would not provide an attractive addition to the existing street frontages as it is not complementary to the existing neighbourhood. The proposed patio roof is set back approximately 300mm from the road boundary, well forward of the line of buildings in the street. The location of the patio roof would not maintain the visual continuity and pattern of development in the streetscape, which is predominantly open with two dwellings along the eastern side of June Street – one being the dual occupancy dwelling the subject of this appeal and another dwelling. Each of these dwellings is set back from the street approximately 4.5m.

The tribunal notes that the patio roof constructed on the June Street boundary to Unit 1 of the duplex has not had development approval and therefore should not be regarded as forming part of the June Street streetscape.

The western side of the street is made up entirely of a public park and has no dwellings along its length.

Performance Outcome P03(b) of the Dual Occupancy Code requires the building to “*make a positive contribution to the preferred streetscape character of the locality*”.

The preferred streetscape character is of dwellings set back 4.5m, with landscaped elements and an open, beachy outlook; and no building dominating the streetscape.

The Tribunal considers that the proposed patio roof would not make a positive contribution to the preferred streetscape character as it is incompatible with the character of the street.

James Dunstan

Development Tribunal Chair
Date: 25 November 2019

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.

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:

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Department of Housing and Public Works
GPO Box 2457
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