Development Tribunal – Decision Notice

Planning Act 2016, section 255

Appeal Number:	**22-058**
Appellant:	Bay 2 Bay Developments Pty Ltd ACN 618 305 374
Respondent: **(Assessment Manager)**	Sunshine Coast Regional Council
Site Address:	4 Palkana Drive, Wurtulla and described as Lot 74 on CP W95524 ─ 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 25 October 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** Pat Ferris –Town Planner, JDBA Certifiers **Respondent** John Hernando – 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 Palkana Drive, Wurtulla (Lot 74 on CP W95524). 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 546m^2 in area. It is located on Palkana Drive (18.1m frontage) and is 3 lots from the corner of Palkana Drive and Oceanic Drive. The subject site is occupied by one single storey brick dwelling house.

4. The beach is approximately 100m to the east of the property. The Warana employment centre is approximately 400m to the south west and the subject site is equidistant (1.2k) from the Buddina State School and the Kawana Waters High School to the north and south respectively.

5. The subject site is located in the Low Density Residential Zone of the *Sunshine Coast Planning Scheme 2014* (**Planning Scheme**).

6. In early 2022, the Appellant lodged with the Respondent, a development application for a Development Permit for a Material Change of Use of Premises (**Development Application**) to establish a Dual Occupancy (**proposed development**).

7. The Development Application was subject to code assessment against the Local Categorising Instrument, the Planning Scheme and specifically, the following codes of the Planning Scheme:

   (a) Dual Occupancy Code (**Dual Occupancy Code**);

   (b) Kawana Waters Local Plan Area Code;

   (c) Low Density Residential Zone Code.

8. On 11 May 2022, the Respondent sought further information about the Development Application by way of an Information Request that identified the following (**Information Request**):

   > *(a) The site cover for the upper level of the development is 38.6%. This will exceed the 30% maximum specified in AO2.1 (c) of the Dual Occupancy Code…*
   >
   > *(b) The setback of the eastern boundary is 1.4m. This will exceed the 1.5m required under AO3.4 of the and the QDC MP1.3…*
   >
   > *(c) The setback of the garages from the main face of the dwelling would not comply with the 1.5m setback required under AO3.3 of the Dual Occupancy Code…*
   >
   > *(d) The size and location of the required open space areas for both dwellings are not shown on the plans…*
   >
   > *(e) The submitted plans indicate that 15.5% of the site area is provided for soft landscaping. This will not meet the requirement of 20% under AO6.2 of the Dual Occupancy Code…*
   >
   > *(f) The submitted plans show a curved 1.8m high wall set back 1m from the frontage of the lot. This would not comply with AO6.5 which requires that fences or walls are not provided along frontages OR are no more than 1.2m high where not on a major road…*
   >
   > *(g) The plans do not show the location of the waste storage area.*

9. The Appellant provided a response to the Information Request by way of an undated document that addressed each of the matters identified by the Respondent (**Response to Information Request**). In respect of site cover, the Appellant advised the following:

> *Comparable site cover on the same sized lots in the same area have been supported by Council before on numerous occasions in the past 12 months (examples provided in original RFI response to refer to). The side setbacks now comply with the acceptable outcomes. There will be no additional impacts caused by the 36.5% upper-level site cover with complying setbacks and reduced ground floor site cover. The site cover at ground level is only 47.6% (50% permitted) which offsets the exceedance at the upper level.*
>
> *The site cover proposed is similar to recent dual occupancy approvals issued by Council at 2 Bluebird Parade (MCU21/0337). The site cover proposed is comparable to that approval across the road at 6 Wiluna St (MCU21/0480). The site cover is comparable to a dual occupancy approval issued by Council at 17 Perina St couple blocks north (MCU21/0069). The proposed site cover is comparable to recent Council approval MCU21/0423 approved 158 Oceanic Drive. More examples can be provided with site cover exceeding 30% at upper level. It really has no visual impact.*

10. On 11 October 2022, the Respondent issued a further request for information (**Further Advice**), which identified that:

> *The submitted response to Councils' Information Request dated 11 May 2022 does not provide sufficient information to demonstrate how Performance Outcome(s) PO1 or PO2 of the Dual occupancy code have been addressed. The development will not satisfy site cover requirements under the Dual occupancy code. The proposed development has a site cover of 38.6%%* [sic] *on the upper level, exceeding the 30% upper-level site cover. The cumulative alternative outlined in the application material is not accepted and the refenced approvals are considered irrelevant due to their dates of approval.*
>
> *As the site area (546m^2) is significantly under the 800m^2 requirement applicable to sites within the Low density residential zone, the development must satisfy site cover requirements to demonstrate the site has sufficient area and dimensions to accommodate the use (PO1(e)). As the development does not satisfy site cover requirements, the proposal does not satisfy PO1(e) of the code.*

11. The Further Advice went on to require that the Appellant:

> *Provide amended plans to demonstrate how the applicable Performance Outcome(s) can be achieved. This must include:*
>
> *(a) Reducing the site cover to achieve either the 40% requirement specified in AO2.1(b) of the code, or the 50% for the ground floor, and 30% for the upper floors, specified in AO2.1(c) of the code.*

12. The Appellant provided a response to the Further Advice by way of an email dated 18 October 2022 from Mr Pat Ferris of JDBA Certifiers on behalf of the Appellant. Mr Ferris advised as follows:

> *The applicant feels this matter has been adequately addressed to do* [sic] *date in the original planning report material and RFI response.*
>
> *We acknowledge it does not comply with an Acceptable Outcome. Please assess against the correlating Performance Outcome (PO2) and finalise your*

decision based on the current plans and your assessment of the Performance criteria.

Please note that the site cover figures in the Further Advice are incorrect upper level is ***36.5%*** *with ground level is 47.6%. The combined average is 42%...*

13. The Respondent provided a response by way of an email dated 20 October 2022 from Mr John Hernando, Development Planner of the Respondent to Mr Ferris identifying the following:

    (a) The Respondent had received 'significant community engagement and complaints' about dual occupancy development on lots under 800m^2 and the impact they were having on the neighbouring premises and the streetscape;

    (b) The site area of 546m^2 was significantly less than the 800m^2 requirement applicable to sites within the Low Density Residential Zone;

    (c) The proposed development needed to satisfy site cover, setback, open space and landscaping requirements to demonstrate that the subject site had sufficient area and dimensions to accommodate the proposed use (as required by PO1 of the Dual Occupancy Code).

    Nonetheless, Mr Hernando concluded by noting that the Respondent had decided to approve the Development Application subject to conditions.

14. The Respondent issued a decision notice dated 25 October 2022 formally advising the Appellant of its decision to approve the Development Application subject to conditions (**Decision Notice**). The accompanying document titled 'Notice about Decision – Statement of Reasons' gave the following reasons for the decision:

    - *The application was properly made and followed the process set down in the Development Assessment Rules in effect at the time the application was properly made;*
    - *The application was assessed against the applicable Assessment Benchmarks identified in this Notice;*
    - *The assessment manager found that, subject to the imposition of the development fs contained in the Decision Notice, the development complied with the relevant Assessment Benchmarks applicable to the development identified in this notice.*

15. On or about 3 November 2022, the Appellant filed an appeal via lodgement of the Form 10 – Appeal Notice with the Registry of the Tribunal.

16. The grounds of the appeal identified that the Appellant was appealing against conditions 2 and 4 of the Development Approval which stated:

    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) …*

Site Cover

4. 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 floor.

17. The Appellant's grounds for appealing these conditions were stated to be:

Site cover is considered to comply with relevant performance outcome.

Amending site cover to achieve condition 4 is not possible with submitted design. Considered unlawful condition. Basis of its imposition not based on bound code assessment, but policy/political pressures.

Jurisdiction

18. Schedule 1 of the PA states the matters that may be appealed to the Tribunal.[1]

19. Section 1(1) of Schedule 1 of the PA provides that Table 1 states the matters that may be appealed to a tribunal. However, pursuant to section 1(2) of Schedule 1 of the PA, Table 1 only applies to a tribunal if the matter involves one of a list of matters set out in sub-section (2).

20. 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'.

21. '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.

22. 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).

23. So, Table 1 of Schedule 1 of the PA applies to the Tribunal.

24. 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 subject site's owner's town planner, Mr Stephen Bryan of JDBA Certifiers, who made the development application on behalf of the owner of the subject site, Bay 2 Bay Developments Pty Ltd. At the time of filing the appeal, Mr Bryan was no longer associated with the proposed development and the owner of the subject site filed this appeal on its own behalf. In these circumstances, the Tribunal is satisfied that the owner of the subject site is the proper appellant for the purposes of item 1 of Table 1 of Schedule 1 of the PA. Finally, the respondent to the appeal is the assessment manager, who in this case is the Respondent.

25. In circumstances where the Decision Notice was dated 25 October 2022 and was received on the same day[2], this appeal was to be filed on or before 22 November 2022.[3] This was satisfied, with the appeal being filed on or about 3 November 2022.

26. Accordingly, the Tribunal is satisfied that it has the jurisdiction to hear this appeal.

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[1] Section 229(1)(a) of the PA.
[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.

Decision framework

27. The Decision Notice was issued by the Respondent on 25 October 2022. At that time, the PA was in force.

28. The Appellant filed a Form 10 – Notice of Appeal / Application for Declaration on or about 3 November 2022.

29. 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.

30. 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]

31. 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]

32. The Chairperson of a tribunal must decide how tribunal proceedings are to be conducted[6] and the tribunal must give notice of the time and place of the hearing to all parties[7].

33. 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]

34. On 7 December 2022, Mr John Hernando, on behalf of the Respondent, advised the Tribunal's Registrar by telephone and by confirmation email, that the Respondent had been in negotiations with the Appellant with a view to reaching agreement about the issues in dispute in the appeal. Mr Hernando's email requested that the Registry postpone setting down a hearing date to a later date in January to allow the parties to continue their negotiations and reach agreement. It would also allow for a relevant officer of the Respondent to attend any hearing, as that officer was on leave over the Christmas period.

35. The Tribunal considered Mr Hernando's email and caused the Tribunal's Registrar to write to the parties by email dated 12 December 2022, advising that the Tribunal considered it sensible to postpone the setting down of the hearing, both in light of the negotiations and also the limited availabilities of all parties over the Christmas period. The email went on to communicate the following Orders of the Tribunal (**Orders**):

    (a) That both parties advise the Registry by way of email on or before 4pm on Wednesday 14 December 2022 as to whether they agree to the delay of the hearing of this appeal until the end of January 2023.

    (b) If both parties agree to delay the hearing, the Registry will make contact with both parties to arrange a date and time for the hearing in late January that is acceptable to the parties and the Tribunal.

    (c) The parties to the appeal are to keep the Registry informed in respect of the settlement of any or all issues in dispute in this appeal and in particular, on or before the date that is 7 days before the date set down

[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.

for the hearing, advise the Registry whether the parties require additional time for negotiations or whether the hearing is to proceed.

36. Neither party complied with paragraph (a) of the Orders.

37. However, by email dated 16 January 2023, Mr Hernando advised the Tribunal's Registrar that the Respondent and the Appellant had reached agreement about a resolution to the issues in dispute in the appeal and that agreement could be reflected in a revised Decision Notice prepared by the Respondent, which would include a revised set of plans that the Appellant had prepared and provided to the Respondent on 13 December 2022 (**Revised Plans**), as well as the removal of condition 4 of the Decision Notice (**Offer**).

38. The PA provides the Tribunal with broad powers to inform itself in the way it considers appropriate when conducting a tribunal proceeding and may seek the views of any person[9].

39. The Tribunal may consider other information that the Registrar asks a person to give to the Tribunal.[10].

40. The Tribunal considered the Offer and caused the Tribunal's Registrar to write to the parties by email dated 17 January 2023, giving the following directions (**Further Orders**):

    (1) That the Respondent provides to the Registry and to the Appellant on or before 4pm on 23 January 2023, the following:

    a. a complete set of the revised plans referred to in the Respondent's email (received by the Respondent on 13 December 2022);

    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 [**Approved Plans**] *(the explanation to be no more than 2 pages in length); and*

    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 Wednesday 25 January 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.

    (3) If the Appellant advises the Registry that it agrees to the Settlement Terms, the Development Tribunal will proceed to prepare a Decision Notice in the appeal which reflects the Settlement Terms.

41. The Respondent complied with paragraph (1) of the Orders by way of an email dated 20 January 2023, from Mr Hernando on behalf of the Respondent to the Tribunal's Registrar, providing the following:

    (a) a marked up Decision Notice showing the changes in bold text and the deleted text with strikethrough (**Amended Decision Notice**);

[9] Section 249 of the PA.

[10] Section 253 and section 246 of the PA.

(b) a copy of the Revised Plans; and

(c) an explanation of the differences between the Revised Plans and the Approved Plans, as follows:

- *The lower level remains unchanged with a site cover proposed of 47.6%.*
- *The upper level floor layout has been amended to reduce the upper level site cover from 36.5% to 34.9%. This has been achieved through layout reconfigurations. In particular, Bedroom 1 has been reduced in size and repositioned to achieve a reduced site cover. This has resulted in increased setbacks in the upper floor and reduced bulk and scale when viewed from neighbouring properties. It is noted that all setbacks comply with the code requirements.*
- *The overall built form and building design remains consistent to what was originally proposed.*

42. The Appellant complied with paragraph (2) of the Orders by way of an email also dated 20 January 2023, from Mr Pat Ferris of JDBA Certifiers on behalf of the Appellant to the Tribunal's Registrar, advising that '*on behalf of the owner, the issues in dispute in the appeal are satisfied by these plans and amendments made (the settlement terms)'*.

43. 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

44. 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 3 November 2022;

(b) An email dated 7 December 2022, from Mr Hernando on behalf of the Respondent to the Tribunal's Registrar, advising the Tribunal of discussions being held between the parties;

(c) An email dated 16 January 2023, from Mr Hernando on behalf of the Respondent to the Tribunal's Registrar, advising the Tribunal of the Offer;

(d) An email dated 20 January 2023, from Mr Hernando on behalf of the Respondent to the Tribunal's Registrar, with the following attachments:

(i) the Amended Decision Notice; and

(ii) the Revised Plans comprising:

Job No.	Rev.	Plan Name	Date
22.11	DA Drawings	Ground Floor Plan	13/12/22
22.11	DA Drawings	*First Floor Plan*	13/12/22
22.11	DA Drawings	*Western Elevation*	13/12/22
22.11	DA Drawings	*Eastern Elevation*	13/12/22

(e) An email dated 20 January 2023 from Mr Ferris on behalf of the Appellant to the Tribunal's Registrar, providing the Appellant's response to the Further Orders;

(f) *Sunshine Coast Planning Scheme 2014* (**Planning Scheme**); and

(g) *Planning Act 2016* (**PA**).

Findings of fact

The Tribunal makes the following findings of fact:

Issues in dispute in appeal

45. This appeal has been brought by the Appellant against Conditions 2 and 4 with respect to the maximum site cover of the proposed development.

46. The Tribunal did not receive written or oral evidence from the parties, given their negotiations to settle the issues in the appeal.

47. However, based upon the Appellant's grounds of appeal, it was the Tribunal's understanding that the proposed development did not comply with Acceptable Outcome AO2.1 of the Dual Occupancy Code of the Respondent's Planning Scheme (**AO2.1**) and the Respondent sought to condition compliance with AO2.1 by way of Condition 4 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.*

48. The Tribunal notes an obvious error in the wording of Condition 4 – 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. This error has appeared in similar conditions imposed by the Respondent upon other developments, appeals in respect of which have been filed with the Registry. The Tribunal therefore urges the Respondent to reconsider its standard condition wording to correct this error in future decisions that it makes.

49. Putting aside the error, the intent of Condition 4 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.

50. The Appellant's grounds of appeal were as follows:

> *Site cover is considered to comply with relevant performance outcome.*
>
> *Amending site cover to achieve condition 4 is not possible with submitted design. Considered unlawful condition. Basis of its imposition not based on sound code assessment but policy/political pressures.*

51. No evidence was provided to the Tribunal to support the allegation of policy or political pressure influencing the Respondent's decision making in respect of the proposed development and accordingly the Tribunal considers that allegation not to form part of the issues in dispute.

52. Putting that aside, the Respondent, and now the Tribunal, was tasked with considering whether in the absence of compliance with AO2.1, the Development Application instead complied with Performance Outcome PO2 of the Dual Occupancy Code of the Respondent's Planning Scheme (**PO2**).

53. 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.*

54. The issue in dispute therefore would come down to whether the Development Application instead complied with PO2 thus not requiring the imposition of Condition 4.

55. The Tribunal notes that Condition 2 was also raised as an issue in this appeal. Condition 2 required amendments be made to the approved plans listed in the Decision Notice to reflect changes to the proposed development that would be necessitated by compliance with Condition 4. The need for any change to Condition 2 would be consequent upon whether or not Condition 4 is upheld by this Tribunal. Accordingly, Condition 2 did not require separate consideration at length by the Tribunal.

<u>The planning framework</u>

56. Accepted development does not require a development approval.[11]

57. 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.

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

58. This meant that on the subject site, 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.

59. 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.*

60. 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.*

61. As the Appellant's grounds of appeal implied, the proposed development did not comply with AO2.1[12] 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 development[13].

62. 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).*

63. 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.

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[12] This was acknowledged on page 3 of the Consultant Report dated 6 April 2022 lodged with the Development Application. It is noted that the Consultant Report identified other benchmarks of the Dual Occupancy Code that the proposed development did not meet, however, these were not the subject of the issues in dispute in this appeal.

[13] 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.

64. 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.

65. The issue in dispute in this appeal was whether Condition 4, 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

66. Prior to a date being set for the hearing of the appeal by the Tribunal's Registrar, the parties advised the Tribunal of the Offer and both parties agreed that the terms of the Offer as captured by the Revised Plans and Amended Decision Notice were acceptable to them as a resolution of the issues in dispute in the appeal.

67. The Offer was expressed in the email from Mr Hernando to the Tribunal's Registrar dated 16 January 2023 and fully explained in the email from Mr Hernando to the Tribunal's Registrar dated 20 January 2023 to which was attached the Amended Decision Notice, the Revised Plans and an explanation of the differences between the Revised Plans and the Approved Plans.

68. The Amended Decision Notice showed changes to:

    (a) Condition 2 (Approved Plans) – removing the requirement that the Approved Plans be amended;

    (b) Condition 4 (Site Cover) – deleting the condition;

    (c) Development Plans - deleting the list of 'Plans Requiring Amendment' including the list of required amendments and instead inserting a list of Approved Plans, being the Revised Plans; and

    (d) Advisory Note 1 (Resubmission of Amended Plans Required) – deleting the note.

69. By way of email dated 20 January 2023, Mr Ferris on behalf of the Appellant, communicated that the Appellant considered the issues in dispute in the appeal would be satisfied by the Offer as set out in the Amended Decision Notice and the Revised Plans.

Reasons for the decision

The statutory conditions power

70. 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.

71. 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 4.

72. Accordingly, the Tribunal has not considered the lawfulness or otherwise of Condition 4.

Assessment of the Offer

73. 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.

74. The Offer encompassed the deletion of Condition 4, which indicated to the Tribunal that the parties and in particular, the Respondent, were satisfied that the Amended Decision Notice and Revised Plans resulted in the proposed development meeting the requirements of PO2, in the absence of compliance with AO1.2.

75. For the reasons that follow, this Tribunal is also comfortable that if the proposed development proceeded in accordance with the Revised Plans and the Amended Decision Notice, it would comply with PO2 for the following reasons.

76. Condition 4 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 two or more storeys in height. The Consultant Report dated 6 April 2022 lodged with the Development Application (**Consultant Report**) stated that the site cover for the ground floor and upper floor of the proposed development were 47.1% and 38.6% respectively. This resulted in a 42.85% site coverage across both storeys. In further correspondence between the Appellant and the Respondent it would appear that agreement was reached that the accepted value for the upper floor site cover was 36.5%.

77. The Revised Plans changed the site cover even further, with the ground floor remaining unchanged at 47.1% site cover and the upper floor level being changed from 36.5% to 34.9%. Mr Hernando in his email dated 20 January 2023 identified that this reduction in site cover was achieved through layout reconfigurations, which allowed for increased setbacks in the upper floor.

78. 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.

79. Notwithstanding the non-compliance with AO2.1, the visual impact of the non-compliance of the proposed development would be unlikely to be significant. The proposed development would meet the site cover requirement for the ground floor being below 50% site cover (47.1%) and would only exceed the upper floor on the Revised Plans by 4.9% or an overall exceedance across both storeys of just 1%.

80. 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, especially given the view expressed by Mr Hernando in his email dated 20 January 2023 that the Revised Plans '*resulted in increased setbacks in the upper floor and reduced bulk and scale when viewed from neighbouring properties*.' Therefore, the Tribunal is comfortable that the proposed development built in accordance with the Revised Plans would be of a scale that would be compatible with surrounding development.

81. 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'*. The small non-compliance with the requirements of AO2.1 with respect to the upper floor site cover, would not, in the Tribunal's view, present an appearance of bulk to adjacent premises or the frontage road any greater than if the proposed development complied with the site cover limit for the upper floor. The Revised Plans depict a building height and scale that are comparable with two storey homes in the vicinity of the subject site and the Tribunal accepts the proposition in the Consultant Report that '*the scale of the*

development is compatible with the surrounding development and based on the increased ground level front setback and upper-level variations and articulation, development will not present an appearance of bulk to adjacent premises or to the road.'

82. The Tribunal now turns briefly to the remaining three elements of PO2.

83. 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 Revised 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. There is a planter box feature in the front garden between the units which the Consultant Report describes as '[breaking] *up the built form to the streetscape and reduces building scale*'. It is also noted that Conditions 16 and 17 of the Amended Decision Notice impose requirements upon the Appellant to provide a minimum standard of landscaping. These factors are sufficient to satisfy the Tribunal that the requirements of PO2(c) and (d) are adequately addressed by the Revised Plans and the Amended Decision Notice.

84. Lastly, the Tribunal is satisfied that the requirements of PO2(e), which require the proposed development to facilitate on-site stormwater management and vehicular access, are adequately addressed by conditions 12, 13 and 14 of the Amended Decision Notice.

<u>Conclusion</u>

85. Based on the above analysis, the Tribunal finds that the proposed development either meets or can be adequately conditioned to meet the requirements of PO2 and that the restriction imposed by Condition 4 of the Decision Notice is not reasonably required. Accordingly, the Tribunal agrees with the terms of the Offer.

86. 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: 1 March 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 DEVELOPMENT APPROVAL

Development Approval

APPLICATION DETAILS

Application No:	MCU22/0116
Street Address:	4 Palkana Drive, WARANA
Real Property Description:	Lot 74 W 95524
Planning Scheme:	Sunshine Coast Planning Scheme (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

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*).

The currency period for this approval is subject to any further extension of time declared by the State government for the “COVID-19 emergency applicable event” pursuant to s275E 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

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.

~~**Site Cover**~~

~~4. 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 floor~~

Street Identification

4. 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

5. 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.

6. 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

7. The area of land between the fence and the front property boundary must be densely landscaped to screen any fencing from the street.

8. Any street fencing and walls must not exceed a maximum height of 1.5m.

9. A 1.8m high solid screen fence 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

10. 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.

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

Property Access and Driveways

12. A sealed access driveway must be provided from each 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

13. 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, crossfalls and gradients in accordance with *AS 2890 - Parking facilities.*

Stormwater Drainage

14. 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 in Palkana Drive to the greatest practical extent. Stormwater to the street frontage must include provision of kerb adaptors.
    (b) The use of gravity stormwater drainage and not surcharge pits.

Flood Immunity

15. The minimum floor level of all buildings constructed on the site must be in accordance with a valid Flood Search Certificate. The levels must be verified through a current Flood Search Certificate with appropriate floor levels established as part of the building approval process.

Landscaping

16. The development site must be landscaped. The works must be undertaken in accordance with an Operational Works approval and must include in particular:
    (a) A minimum 1.0m wide landscaping strip along the road frontage of the subject site, exclusive of the access driveway, generally uncompromised by infrastructure items
    (b) provision of one (1) street tree within the road reserve for every 6m of road frontage

    **(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.

REFERRAL AGENCIES

Not applicable.

DEVELOPMENT PLANS

The following development plans are Approved Plans for the development:

Approved Plans

Plan No.	Rev.	Plan Name	Date
1	**22.11**	***Ground Floor Plan*, prepared by SB/MM**	**13/12/22**
2	**22.11**	***First Floor Plan*, prepared by SB/MM**	**13/12/22**
3	**22.11**	***Northern & Western Elevation*, prepared by SB/MM**	**13/12/22**
4	**22.11**	***Southern & Eastern Elevation*, prepared by SB/MM**	**13/12/22**

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

~~**Plans Requiring Amendment**~~

~~Plan No.~~	~~Rev.~~	~~Plan Name~~	~~Date~~
~~Page 1~~	~~-~~	~~*Ground Floor Plan*, prepared by SB/MM~~	~~28/08/2022~~
~~Page 2~~	~~-~~	~~*First Floor Plan*, prepared by SB/MM~~	~~28/08/2022~~
~~Page 3~~	~~-~~	~~*Northern & Western Elevation*, prepared by SB/MM~~	~~28/08/2022~~
~~Page 4~~	~~-~~	~~*Southern & Eastern Elevation*, prepared by SB/MM~~	~~28/08/2022~~
~~**Amendments**~~	~~With regards to site cover, amend the above plans to achieve one of the following outcomes. Either:- • 40% site cover for both storeys • 50% site cover for the ground floor and 30% site cover for the upper~~		

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 requires 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

1. 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

2. 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

3. 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

4. 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

5. 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

6. 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

7. 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

8. 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

Environmental Advisory Notes

9. 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.

Landscaping

10. 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 anacardiodies – 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

Qualified Person

11. 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.

Landscaping Works

12. In this instance, a further Development Permit for Operational Works (Landscape is required.

PROPERTY NOTES

Not applicable.

VARIATION APPROVAL

Not applicable.

FURTHER DEVELOPMENT PERMITS REQUIRED

- Development Permit for Operational Work (Landscaping)
- Development Permit for Building Work (Private Certification)

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 us 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.