



Development Tribunal – Decision Notice

Planning Act 2016, section 255

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| Appeal number: | 23-033 |
| Appellant: | Richard Ford |
| Respondent: (Assessment manager) | Noosa Shire Council |
| Site address: | Units 1 and 2, 6 Martin Street (Avoca Lodge), Peregian Beach and described as Lots 1 and 2 on SP215946 and Lot 0 on GTP345 – the subject site |

Appeal

This is an appeal under section 229, section 1 of Schedule 1 and item 2 of Table 1 of the *Planning Act 2016 (PA)* against the Noosa Shire Council's (**Respondent**) decision made on 16 May 2023 to approve, subject to conditions, an application for an other change to change an existing approval for a material change of use to carry out an extension to a duplex dwelling (**Change Application**), given by a Decision Notice dated 23 May 2023 (**Decision Notice**).

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| Date and time of hearing: | 7 August 2023 at 10.00am |
| Place of hearing: | The Subject Site |
| Tribunal: | Samantha Hall – Chair Warren Rowe – Member |
| Present: | Appellant Richard Ford and Justine Marechal – Property Owners (Unit 2) Stephen and Angela McCabe – Property Owners (Unit 1) Pete Sparks – Town Planner, Adams & Sparkes Town Planning Duncan Cox – Building Designer, DCM Building Design Respondent Georgina Schramm – Development Planner, Development and Regulation Nadine Gorton – Development Planner, Environment and Sustainable Development Department |

Decision:

The Development Tribunal (**Tribunal**), in accordance with section 254(2)(c) of the PA **replaces** the decision of the Respondent to approve the Change Application subject to conditions, with a decision to approve the Change Application as amended by the Proposed Revision G 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 Units 1 and 2, 6 Martin Street, Peregian Beach (Lots 1 and 2 on SP215946) and Lot 0 on GTP345). The subject site is on the corner of Martin Street and Avocet Parade. There are two units on the subject site that are jointly named, "Avoca Lodge".
2. Peregian Beach is a coastal suburb within the Noosa Shire Council local government area. Along Martin Street between its intersections with Peregian Esplanade and Avocet Parade, dwellings consist of multiple dwelling units of varying sizes and duplex units, which are predominantly two storeys and of an older, coastal construction. Heading north along Avocet Parade from its intersection with Martin Street, the dwellings become residential in nature, largely comprising two storey established dwellings on residential blocks. There is little sign of urban renewal or renovation taking place.
3. The subject site is approximately 882.2m² in area and has dual frontage to Avocet Parade and Martin Street. At present, both Units 1 and 2 access the subject site from Martin Street. The subject site is flat and generally rectangular in shape. The subject site currently hosts a duplex dwelling of mixed construction materials – Unit 1 being two storeys in height, with the first storey being rendered masonry and the second storey clad in manufactured compressed sheeting and Unit 2 comprising its original single storey brick construction. There is considerable visual variation between the two units particularly with regard to height and building bulk.
4. The subject site is located approximately 100 metres from Peregian Beach Park and 200 metres from the beach. It is 300 metres south of a patrolled beach and 1.4 kilometres north of the main Peregian Beach surf club, approximately 1.4 kilometres from a range of sporting, recreation and community facilities, 250 metres from public transport (bus stop) on David Low Way and 1.4 kilometres from the Peregian Beach local commercial centre. In this context, the subject site is regarded as well located from an urban amenity perspective in the context of a beach side suburb in the Noosa area.
5. The subject site is located within the Medium Density Residential zone of the *Noosa Plan 2020 (Planning Scheme)*.
6. At the time that the duplex was first constructed on the subject site, it was accepted development and did not require a development approval.
7. On 4 November 2004, a development approval was given to extend Unit 1 of the duplex to increase the ground floor area and include an additional storey (**Earlier Approval**). The development application to extend Unit 1 largely met the criteria of the then 1990 Noosa Shire Council Planning Scheme (**Superseded Scheme**), including the requirements for plot ratio and gross floor area.
8. On or about 25 May 2022, a code assessable application for an "other change" was made, seeking to change the Earlier Approval, largely to facilitate renovations to and the expansion of the existing Unit 2. The changes would result in most of Unit 2 being demolished to allow for a second storey, new driveway access and a garage accessed from Avocet Parade with a deck over the garage.
9. On or about 16 May 2023, the Respondent decided to approve the Change Application, subject to conditions (**Change Approval**).
10. At the hearing, the parties described numerous discussions and negotiations held between 25 May 2022 and 16 May 2023, to address issues raised by the Respondent as the Change Application was being assessed. The Appellant referred to several plan iterations and design changes undertaken to address concerns raised by officers of the Respondent.

11. The Change Approval was decided by the Respondent and was approved to be carried out generally in accordance with the approved plans, being a specified set of plans titled 21-068-DD, Revision E, dated 4 May 2023 (**Approved Revision E Plans**).
12. On or about 20 June 2023, this appeal was filed by way of a Form 10 – Notice of Appeal.
13. In the Notice of Appeal, the Appellant appealed against 2 of the conditions of the Change Approval and raised the following grounds for the appeal:
 - (a) Condition 1 – Approved Plans:
 - (i) Condition 1 requires “*The total gross floor area of the development is to be reduced, to not exceed a plot ratio of 0.4:1*”.
 - (ii) The Appellant submitted an amended suite of plans titled 21-068-DD, Revision G, dated 21 June 2023 (**Proposed Revision G Plans**).
 - (iii) Pursuant to the Proposed Revision G Plans, the combined plot ratio of Unit 1 and Unit 2 would be 0.414:1, only a minor exceedance of the maximum plot ratio of 0.4:1 in Acceptable Outcome AO11 (**AO11**) and Performance Outcome PO11 (**PO11**) of the *Medium Density Residential Zone Code* of the Planning Scheme (**MDRZ Code**).
 - (iv) When the Earlier Approval was given to extend Unit 1, the Superseded Scheme identified a maximum plot ratio of 0.45:1, thus allowing Unit 1 a greater floor area than is now allowed under the Planning Scheme.
 - (v) A gross floor area (**GFA**) for Unit 2 of 184m² is proposed in the Proposed Revision G Plans whereas the GFA for Unit 1 approved by the Earlier Approval is 182m². If the Change Application was decided under the Superseded Scheme, it would have complied.
 - (vi) Given the size of the extension permitted for Unit 1, the attached nature of the dual occupancy and the small exceedance of the maximum plot ratio by the Change Application, weight should be given to the Earlier Approval to allow a similar scale, built form and floor area for Unit 2.
 - (vii) The proposed development would not be out of context or character with the scale and nature of surrounding development and aligns with the expectations of the community and the overall outcomes of the MDRZ Code.
 - (b) Condition 48 – Side boundary setback and landscaping requirements:
 - (i) Condition 48 states “*The boundary setback along the common boundary with Lot 343 P93114 is to be for soft landscaping only, no services are to be provided in this area.*”
 - (ii) The Appellant submitted that the plans lodged with the initial Change Application included a built to boundary garage on that common boundary. However, through the development assessment process, following repeated pushback from the Respondent that a built to boundary garage was not acceptable, the Appellant provided revised plans to the Respondent (the Approved Revision E Plans), which showed a 1.0m setback from the garage along that common boundary.
 - (iii) With the submission of the Proposed Revision G Plans to the Tribunal, the Appellant wished to revert to the built to boundary garage along that common boundary and have condition 48 deleted.
 - (iv) The Appellant considered the requirements of the relevant assessment benchmarks in the MDRZ Code, being Acceptable Outcome AO12.1 (**AO12.1**) and Performance Outcome PO12 (**PO12**), concluding that the proposed

development would not result in adverse impacts upon amenity, overshadowing of or additional noise impacts to the adjoining premises. Further, the proposed development provided several landscaping elements to buffer the proposed development and reduce any appearance of bulk.

- (v) Consent to the proposal to build the garage along the northern boundary had been obtained from the adjoining property owners, comprising the owners of Lot 343 P93114 at 27 Avocet Parade and the adjoining duplex, Unit 1.
- (vi) Several examples of built to boundary garage structures within Avocet Parade were provided.

Jurisdiction

14. Schedule 1 of the PA states the matters that may be appealed to the Tribunal.¹
15. 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).
16. 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”.
17. The PA defines a “change application” as an application to change a development approval.²
18. 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(a) building (being one of a group of attached dwellings being a town house, row house or the like).
19. So, Table 1 of Schedule 1 of the PA applies to the Tribunal.
20. 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 owners of Unit 2 of the subject site, Richard Ford and Justine Marechal, who made the development application. Mr Ford and Ms Marechal are therefore the Appellant. The respondent to the appeal is the assessment manager, who in this case is the Respondent.
21. In circumstances where the Decision Notice was dated 23 May 2023 and was received on the same day⁴, this appeal was to be filed on or before 20 June 2023.⁵ This was satisfied, with the appeal being filed on or about 20 June 2023.
22. Accordingly, the Tribunal is satisfied that it has the jurisdiction to hear this appeal.

Decision framework

23. The Decision Notice was issued by the Respondent on 23 May 2023. At that time, the PA was in force.

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.

24. The Appellant filed a Form 10 – Notice of Appeal / Application for Declaration on or about 20 June 2023.
25. 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.
26. 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
27. 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
28. 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.
29. This appeal was conducted by way of hearing, preceded by a site inspection by the Tribunal, at 10.00am on Monday 7 August 2023.
30. 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 person¹⁰.
31. The Tribunal may consider other information that the Registrar asks a person to give to the Tribunal¹¹.
32. At the conclusion of the hearing, the Appellant and Respondent each undertook to take further actions. The Tribunal formalised this by way of the following orders circulated by the Tribunal's Registrar by email dated 9 August 2023 (**Orders**):

1. ***“On or before 11 August 2023, the Appellant is to provide a list of changes between the set of plans number 21-068-DD, Revision E dated 4 May 2023 (Approved Revision E Plans) and the revised set of those same plans, being Revision G dated 21 June 2023 (Proposed Revision G Plans);***
2. ***On or before 25 August 2023, the Respondent is to carry out an assessment of the Proposed Revision G Plans and provide a written submission to the Registry comprising no more than 2-3 typed pages that sets out the Respondent's position with respect to the Proposed Revision G Plans;***
3. ***On or before 8 September 2023, both parties are to provide a written submission to the Registry comprising no more than 2 – 3 typed pages that sets out the party's position with respect to whether the Development Tribunal has the jurisdiction to replace the Approved Revision E Plans with the Proposed Revision G Plans and specifically whether in doing so, the Development Tribunal can approve:***
 1. *an increase to the gross floor area of the proposed development;*
and

⁶ Section 253(2) of the PA.

⁷ Section 253(4) of the PA.

⁸ Section 249(1) of the PA.

⁹ Section 249(4) of the PA.

¹⁰ Section 249 of the PA.

¹¹ Section 253 and section 246 of the PA.

2. *a decrease in the side boundary setback from the currently approved 1.5m between the boundary and the proposed garage, to a built to boundary garage wall.*

4. ***On or before 8 September 2023, the parties may provide further submissions to the Registry comprising no more than 2 typed pages to provide further information to the Development Tribunal about any matters discussed at the hearing.***

33. By email dated 11 August 2023, Mr Pete Sparkes provided the Appellant's response to paragraph 1 of the Orders, which can be summarised as follows:

- (a) A full copy of the Approved Revision E Plans and the Proposed Revision G Plans, was provided with annotations made to the Proposed Revision G Plans to highlight the differences between those plans and the Approved Revision E Plans.
- (b) The Approved Revision E Plans were submitted in response to comments provided by the Respondent during the assessment process and they relevantly included:
 - (i) A 1.0m garage setback;
 - (ii) Reduced entry area and kitchen layout on the ground floor;
 - (iii) Removal of bedroom 3, repositioning of bathroom and an increase in void area on Level 1;
 - (iv) A reduction in gross floor area and plot ratio from that of the previous revision;
 - (v) Proposed gross floor area of 361.3m² and plot ratio of 0.409; and
 - (vi) Compliant site cover of 40%.
- (c) The proposed changes from the Approved Revision E Plans to the Proposed Revision G Plans were:
 - (i) the introduction of a built to boundary garage wall and removal of the 1m garage setback for the following reasons:
 - (1) to remove an undesirable area between the garage and the retaining wall; and
 - (2) the 1m setback did not provide ample width for the provision of landscaping in that area;
 - (ii) the reintroduction of a landscape planter on Level 1 with 1500mm setback to the boundary;
 - (iii) the inclusion of a recessed planter box and extension of the pergola roof over the planter box;
 - (iv) a revised entry way;
 - (v) a revised laundry location;
 - (vi) the reintroduction of bedroom 3 on Level 1 and removal of the void;
 - (vii) an increase in the total gross floor area of 4.7m²;
 - (viii) a total gross floor area of 366m² and plot ratio of 0.414;
 - (ix) no change to the site cover which remained compliant at 40%.

- (d) The Proposed Revision G Plans were the Appellant's preferred internal layout, floor area and garage setback.
 - (e) The Appellant emphasised that the changes reflected in the Proposed Revision G Plans did not include any design elements that had not already been considered by the Respondent in past iterations of the proposed development and they most closely resembled those of Revision D (dated 13 February 2023) which had been submitted to the Respondent on 21 February 2023.
34. By email dated 31 August 2023, Ms Georgina Schramm provided the Respondent's response to paragraph 2 of the Orders, which can be summarised as follows¹²:
- (a) Plot Ratio:
 - (i) The Respondent assessed and decided the Change Application based on the Approved Revision E Plans.
 - (ii) The Respondent advised the Appellant prior to giving the Change Approval that a condition requiring compliance with plot ratio would be included in the Change Approval.
 - (iii) The Proposed Revision G Plans change the circumstances of the Change Approval.
 - (iv) Both AO11 and PO11 require the plot ratio of development to not exceed 0.4:1.
 - (v) With the subject site having a site area of 882.3m², the plot ratio provision of 0.4:1 results in a maximum GFA of 352.8m².
 - (vi) The Approved Revision E Plans proposed a GFA of 361.3m² which was 8.5m² over the maximum GFA. Thus, the Respondent considered condition 1 requiring the reduction of 8.5m² to be reasonable.
 - (vii) The Proposed Revision G Plans identify a total floor area of 366m². This was 13.2m² over the maximum GFA allowed under the Planning Scheme. It was also an additional 4.7m² more than that proposed in the Approved Revision E Plans, which the Respondent had already decided had to be reduced.
 - (viii) Neither the Approved Revision E Plans nor the Proposed Revision G Plans complied with PO11 and therefore must be assessed against the purpose and overall outcomes of the MDRZ Code.
 - (ix) When conducting that assessment, the proposed plot ratio of the proposed development was not consistent with the low scale character of the neighbourhood which provided for unit development that complied with the GFA provisions of the Planning Scheme.
 - (b) Building Setbacks:
 - (i) AO12.1 requires a 1.5 metre setback up to 4.5 metres height for a side boundary.

¹² It is noted that the Respondent's response to paragraph 2 of the Orders was due on or before 25 August 2023, however, by email dated 25 August 2023 from Ms Georgina Schramm to the Tribunal's Registrar, the Respondent requested a 3 day extension to provide the Respondent's response. The Tribunal's Registrar provided the Tribunal's consent to the requested extension by way of an email dated 25 August 2023 providing an extension to 4.30pm on Wednesday 30 August 2023.

- (ii) The Approved Revision E Plans proposed a 1 metre setback for Unit 2's garage to the northern boundary.
 - (iii) The Proposed Revision G Plans changed that by removing the setback and replacing it with the garage being built to the northern boundary.
 - (iv) The Proposed Revision G Plans did not comply with the required 1.5 metre setback in AO12.1 and must be assessed against PO12.
 - (v) PO12 identified a number of elements with respect to amenity, distance from adjoining land uses, landscaping to be used as a buffer to development and consistency with the character of the surrounding area.
 - (vi) The proposed built to boundary garage in the Proposed Revision G Plans was unable to be softened by landscaping as there was no room for landscaping to be provided between the proposed garage and the adjoining property.
 - (vii) The proposed built to boundary garage may have an impact on existing tree root systems of vegetation on the adjoining premises.
 - (viii) A streetscape analysis identified only 1 example of a garage built to the side boundary in Martin Street and Avocet Parade. That example was not on a prominent corner block such as the subject site.
 - (ix) The proposed scale was not appropriate for the locality and did not respect the visual amenity of adjoining residences and streetscape character.
35. By email dated 18 September 2023, Ms Erin Coghlan provided the Appellant's response to paragraphs 3 and 4 of the Orders, which can be summarised as follows:
- (a) Jurisdiction of Tribunal to replace the Approved Revision E Plans with the Proposed Revision G Plans:
 - (i) The Appellant reiterated comments made in its response to paragraph 1 of the Orders.
 - (ii) Section 254 of the Planning Act identified the decision rules for the Tribunal and indicated that the Tribunal could make a change to a development application but that change was limited to a minor change.
 - (iii) The changes shown in the Proposed Revision G Plans were minor and met the definition of a "minor change" provided in Schedule 2 of the Planning Act and Schedule 1 of the *Development Assessment Rules 2017*.
 - (b) Further submissions:
 - (i) GFA and Plot Ratio:
 - (1) It was acknowledged that the proposed development did not satisfy AO11 or PO11 but contended that it did satisfy the purpose and overall outcomes of the MDRZ Code.
 - (2) The scale of the proposed development would be compatible with surrounding development, would not be an overdevelopment of the site and not present an appearance of excessive bulk.
 - (3) Overall outcomes (a), (b), (c) and (d) would be satisfied, with no conflict with the remaining outcomes.
 - (4) This was supported by the proposed development's compliance with PO8, PO9 and PO10.

- (5) A reduction in the GFA to strictly satisfy PO11, resulted in the removal of 13.2m² and would only impact the internal liveability of the home and would not visibly reduce the bulk, scale or streetscape appearance of the building.
 - (ii) Built to Boundary Garage:
 - (1) AO12.1 required a side setback of 1.5 metres for the proposed garage and any reduction to that must demonstrate compliance with PO12.
 - (2) There was no consistent streetscape character in the area.
 - (3) The proposed development complied with PO12 as it would not result in adverse impacts upon amenity or overshadowing of the adjoining premises to the north. It provided a high level of amenity and habitable spaces would meet required setbacks from the northern boundary. A built to boundary garage wall would only marginally exceed the height of a compliant fence and therefore would visually present in the same manner as a boundary fence.
 - (4) A 1 metre setback as suggested by the Respondent would provide no benefit to the subject site or its neighbour.
 - (5) Setting the garage wall back 1 metre – 1.5 metres would still not enable the softening of the northern boundary by landscaping.
 - (6) The landowner to the north provided consent to the proposed development.
36. By email dated 19 September 2023, Ms Georgina Schramm provided the Respondent's response to paragraphs 3 and 4 of the Orders, which can be summarised as follows:
 - (a) Jurisdiction of Tribunal to replace the Approved Revision E Plans with the Proposed Revision G Plans:
 - (i) The Respondent agreed with the Appellant's contention that the Tribunal would have jurisdiction to replace the Approved Revision E Plans with the Proposed Revision G Plans where the Tribunal was satisfied the change was a "minor change" to the development approval for the purposes of the Planning Act.
 - (b) Further Submissions:
 - (i) GFA and Plot Ratio:
 - (1) The increase of GFA in the Proposed Revision G Plans raised further conflict with the Planning Scheme and if it had been the subject of the Respondent's assessment and decision, the Respondent may not have issued the Change Approval.
 - (ii) Built to Boundary Garage:
 - (1) Condition 48 of the Change Approval required landscaping be provided between the approved location of the garage and the northern common boundary. It did not require the provision of the approved building setback.
 - (2) The approved building setback was shown on the Approved Revision E Plans whereas the built to boundary setback did not relate to a development condition and was therefore not considered a matter for consideration of the appeal.
 - (3) The Respondent contended that the deletion of condition 48 and amendment to condition 1 to reflect the Proposed Revision G Plans could not be considered by the Tribunal as it did not directly relate to a development condition.

37. By email dated 16 October 2023, the Tribunals' Registrar made the following request of the Respondent (**Further Orders**):

“...

The Development Tribunal has been making its assessment and is close to finalising a decision, however, in considering the Appellant's change to the development as shown in the Proposed Revision G Plans, the Tribunal is interested in the Council's position with respect to the proposed recessed landscaped planter box in the garage roof deck, which is to have the pergola roof extended over it.

Should the Tribunal decide to approve the Proposed Revision G Plans with the built to boundary garage wall, the Tribunal would like to understand the Council's reasonable views with respect to the specifications of that proposed planter box in terms of width, depth and species selection to best meet the intent of PO12 of the Medium Density Residential Zone Code.

The Tribunal asks that the Council please provide its views in this regard on or before 5pm this Friday, 20 October 2023.”

38. By email dated 19 October 2023, Ms Georgina Schramm provided the Respondent's response to the Further Orders, which can be summarised as follows:
- (a) The Respondent remained of the view that pursuant to PO12(e), the building setback was to allow for space and landscaping between buildings and to include an area at ground level for appropriate landscaping and that the built to boundary proposal would not allow for this.
 - (b) Removing the 1 metre building setback removed the ability to provide deep soil planting of large shrubs and trees as aboveground landscaping would not share the same benefits as deep soil planting.
 - (c) If the Tribunal decided to support the proposed built to boundary garage wall, the Respondent recommended that:
 - (i) *“The planter box be extended along the frontage of the “garage roof deck” to provide a soft element to the front and streetscape;*
 - (ii) *Deep planting that includes tree species that grow up to a minimum height of 4 metres be provided in front of the built to boundary building to screen and soften the impact of the building to the streetscape;*
 - (iii) *The selected species are to be in accordance with the Planning Scheme Policy PSP6 of the Noosa Plan 2020.”*
39. By email dated 20 October 2023, Mr Pete Sparkes advised the Tribunal on behalf of the Appellant that the Appellant had no objection to the Respondent's recommendations set out in paragraph 38(c) above.
40. The Tribunal is required to decide the appeal in one of the following ways set out in section 254(2) of the PA:
- (a) *confirming the decision; or*
 - (b) *changing the decision; or*
 - (c) *replacing the decision with another decision; or*
 - (d) *setting the decision aside and ordering the person who made the decision to remake the decision by a stated time; or*

- (e) *for a deemed refusal of an application:*
 - (i) *ordering the entity responsible for deciding the application to decide the application by a stated time and, if the entity does not comply with the order, deciding the application; or*
 - (ii) *deciding the application.*

Material considered

41. The material considered in arriving at this decision comprises:

- (a) 'Form 10 – Appeal Notice', grounds for appeal and correspondence accompanying the appeal lodged with the Tribunal's Registrar on or about 20 June 2023;
- (b) An email dated 11 August 2023, from Mr Pete Sparkes on behalf of the Appellant to the Tribunal's Registrar, providing the Appellant's response to paragraph 1 of the Orders with attached:
 - (i) Approved Revision E Plans;
 - (ii) Proposed Revision G Plans; and
 - (iii) Table 1: Summary of Plan Revisions & Changes;
- (c) An email dated 31 August 2023, from Ms Georgina Schramm on behalf of the Respondent, providing the Respondent's response to paragraph 2 of the Orders;
- (d) An email dated 18 September 2023, from Ms Erin Coghlan on behalf of the Appellant, providing the Appellant's response to paragraphs 3 and 4 of the Orders;
- (e) An email dated 19 September 2023, from Ms Georgina Schramm on behalf of the Respondent, providing the Respondent's response to paragraphs 3 and 4 of the Orders;
- (f) An email dated 19 October 2023, from Ms Georgina Schramm on behalf of the Respondent, providing the Respondent's response to the Further Orders;
- (g) An email dated 20 October 2023, from Mr Pete Sparkes on behalf of the Appellant, providing the Appellant's response to the Respondent's email of 19 October 2023;
- (h) Development Assessment Delegated Report prepared by Ms Georgina Schramm and dated 16 May 2023;
- (i) the Planning Scheme;
- (j) *Development Assessment Rules 2017*; and
- (k) *Planning Act 2016 (Planning Act)*.

Findings of fact

The Tribunal makes the following findings of fact:

Issue in dispute in appeal

- 42. This appeal has been brought by the Appellant against the Respondent's decision to approve the Change Application made by the Appellant, subject to conditions.
- 43. The Change Application sought to change the Earlier Approval, largely to facilitate renovations to Unit 2, to allow for a second storey, new driveway access and a garage with a deck over the garage.

44. This appeal is against two of the conditions of the Change Approval, as follows:
 - (a) Condition 1, which required that the total gross floor area of the proposed development be reduced to not exceed a plot ratio of 0.4:1; and
 - (b) Condition 48 which required soft landscaping be provided in the side boundary setback.
45. However, during the hearing, it became apparent that the Appellant was asking the Tribunal to make a change to the Change Application the subject of the Change Approval as part of the Appellant's submissions. This was only identified by the Tribunal when the referees realised that the Appellant's material submitted with the Form 10 – Appeal Notice included the Proposed Revision G Plans and not the Approved Revision E Plans.
46. While the Tribunal was disappointed at the lack of clarity in the way in which the Appellant went about requesting the change, once that intent was identified, the Tribunal was able to seek submissions from the parties about the change sought.
47. The change to the Change Application sought by the Appellant raised jurisdiction questions with respect to whether the Tribunal could make a change to the Change Application and, if so, whether the Tribunal had the jurisdiction to make the actual changes sought.

Jurisdiction issues

Can the Tribunal change the Change Application?

48. Pursuant to section 254 of the Planning Act, the Tribunal has the power to make a change to a development application, so long as that change is a "minor change".
49. "Minor Change" is defined in Schedule 2 of the Planning Act to mean a change that:
 - (1) does not result in a "substantially different development"; and
 - (2) would not cause the application as amended by the proposed change to:
 - (i) include prohibited development; or
 - (ii) trigger referral to any additional referral agencies; or
 - (iii) trigger public notification.
50. What constitutes a "substantially different development" is set out in Schedule 1 of the *Development Assessment Rules 2017*.
51. Paragraph 3 of the Tribunal's Orders sought submissions from the parties with respect to the Tribunal's jurisdiction to change the Change Application.
52. Both parties provided submissions in response to paragraph 3 of the Tribunal's Orders agreeing that the Tribunal would have the jurisdiction to replace the Approved Revision E Plans with the Proposed Revision G Plans.
53. The Respondent's submissions qualified its agreement, noting that the Tribunal would need to be satisfied that the change was a "minor change" to the Change Application.
54. The Appellant's submissions went on to assess the change sought, against the requirements of the Planning Act and the *Development Assessment Rules 2017* for a minor change. The Appellant's submissions concluded that replacing the Approved Revision E Plans with the Proposed Revision G Plans would meet the tests for a "minor change".

55. The Tribunal has considered the analysis undertaken by the Appellant in this regard and is satisfied that a change from the Approved Revision E Plans to the Proposed Revision G Plans would meet the test for a minor change.
56. Accordingly, the Tribunal is satisfied that it can change the Change Application as sought by the Appellant, that is to replace the Approved Revision E Plans with the Proposed Revision G Plans.

Can the Tribunal make the changes sought?

57. The Respondent's submissions in response to the Tribunal's Orders identified a concern that the removal of condition 48 of the Change Approval was not a matter that could be considered by the Tribunal, as condition 48 did not impose a building setback, but referred instead to landscaping within the building setback area. The Appellant's change to the Change Application was seeking to remove the building setback altogether.
58. The Tribunal appreciates the Council's point in this regard, however, the Tribunal is of the view that the reduction of the building setback area was not addressed by condition 48 but instead, by condition 1, which required the development to be undertaken generally in accordance with the Approved Plans. It was the approved plans that the Appellant was seeking to change, from the Approved Revision E Plans to the Proposed Revision G Plans. The changes in the plans included the removal of the 1 metre setback. The consequence of that change would be that condition 48 of the Change Approval would be redundant as there would no longer be a setback within which the planting could be done.
59. Accordingly, the Tribunal is satisfied that it has the authority to consider and approve the changes proposed by a change from the Approved Revision E Plans to the Proposed Revision G Plans.

The planning framework

Making the Change Application

60. A person may make an application (a change application) to change a development approval.¹³
61. 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.
62. A change application can take the form of a "minor change" or an "other change".
63. 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 Planning Act and planning analysis.
64. The Change Application was made as an "other change" for the purposes of the Planning Act.
65. In assessing the Change Application, being for an "other change", the Respondent was relevantly required to consider:
 - (a) the information the Appellant included with the Change Application; and

¹³ Section 78 of the PA.

¹⁴ Section 78A of the PA.

- (b) all matters the Respondent would or may assess against or have regard to if the change application were a development application.¹⁵
66. In deciding the Change Application, the Respondent must decide to:
- (a) make the change, with or without imposing or amending development conditions in relation to the change; or
 - (b) refuse to make the change.¹⁶
67. Following a number of discussions and negotiations between the parties, the Respondent issued the Change Approval, which approved the Change Application subject to conditions and generally in accordance with the Approved Revision E Plans.
68. The Appellant has sought a minor change to the Change Application by submitting the Proposed Revision G Plans. As stated elsewhere in this decision, neither the Tribunal nor the Respondent understood the significance of the Proposed Revision G Plans at the commencement of the hearing but came to understand that the Appellant was seeking to change the Change Approval.
69. The Tribunal must assess the Change Application as amended by the Proposed Revision G Plans (**Changed Change Application**) as if it was a development application, that is, as if it was the Earlier Approval as changed by the Changed Change Application.

Assessing the Changed Change Application

70. So, turning to the relevant matters the Respondent would have assessed the Changed Change Application against if it was a development application, that is, as if it was the Earlier Approval as changed by the Changed Change Application.
71. The Changed Change Application was to be assessed against all the relevant acceptable outcomes in the MDRZ Code with which it complied and in respect of any acceptable outcome with which it did not comply, being AO11 and AO12.1, the Changed Change Application must instead to be assessed against the corresponding performance outcomes for those acceptable outcomes, being PO11 and PO12.
72. In assessing the suitability of the Changed Change Application and accepting that the Proposed Revision G Plans are the relevant set of plans, an assessment must be made of the Proposed Revision G Plans against the appropriate provisions of the Planning Scheme. As identified elsewhere in this decision the most relevant matters to guide the assessment of the Changed Change Application are contained in the MDRZ Code.
73. The proposed development as presented in the Proposed Revision G Plans largely complied with the requirements of the MDRZ Code except for those contained in AO11 and AO12.1. These provisions related to site cover, plot ratio and building setbacks. The extent of noncompliance with the requirements of these AOs was agreed to by both the Appellant and the Respondent. What was the subject of this appeal was the extent to which the non-compliances could satisfy the intent of the PO's as expressed in the relevant AO's.
74. The issues in dispute in this appeal were therefore whether the Proposed Revision G Plans met the performance outcomes of PO11 and PO12 and whether the Tribunal was prepared to approve the Changed Change Application or uphold the Revision E plans and the Council's decision and conditions.

¹⁵ Section 81 of the PA.

¹⁶ Section 81A of the PA.

Reasons for the decision

Assessment of the Change Application as changed by the Proposed Revision G Plans

GFA and Plot Ratio

75. The Proposed Revision G Plans identified a total floor area of 366m². This was 13.2m² over the maximum GFA allowed under the Planning Scheme. It was also an additional 4.7m² more than that proposed in the Approved Revision E Plans, which the Respondent had already decided had to be reduced. Neither the Approved Revision E Plans nor the Proposed Revision G Plans complied with PO11 and therefore must be assessed against the purpose and overall outcomes of the MDRZ Code.
76. The purpose of the MDRZ Code was simply to “provide for medium density multiple dwellings.”¹⁷
77. The overall *outcomes of the MDRZ Code* relevantly provided:
- (a) *“Medium density residential neighbourhoods are predominantly home to permanent residents.*
 - (b) *The character of medium density residential neighbourhoods varies due to factors such as proximity to beaches, the Noosa River, recreation spaces, centres, topography, availability of views, the established vegetated character, the presence of visitor accommodation and the age of development.*
 - (c) *Development makes a positive contribution to the look and feel of residential neighbourhoods by maintaining a low scale character with well designed buildings and landscaping that enhance the streetscape...”*
78. In the Proposed Revision G Plans, the combined plot ratio of Unit 1 and Unit 2 would be 0.414:1, only a minor exceedance of the maximum plot ratio of 0.4:1 identified in AO11 and PO11.
79. The combined intent of both Performance Outcome 10 of the MDRZ Code and PO11 is to ensure that building bulk and design do not have a negative impact on adjoining and surrounding development.
80. It is considered that given the minimal overall exceedance in plot ratio and GFA, the building bulk of the final development would have little or no impact on adjoining and surrounding development and the existing streetscape. This is particularly relevant when considered in the context of the existing adjoining unit 1.
81. When considering the proposed development as reflected in the Proposed Revision G Plans, the Tribunal is satisfied that the overall outcomes of the MDRZ Code would not be offended.
82. Both Unit 1 and Unit 2 were designed to and as far as the Tribunal is aware, actually do, house permanent residents. The character of the neighbourhood surrounding the subject site is varied, with Martin Street comprising a variety of multiple dwellings and duplexes of varying sizes and architectural styles which reflect the age of the neighbourhood and its beachside location. It is the Tribunal’s view that the proposed development in the Changed Change Application would not look out of character within that context. Similarly, the side of the proposed dwelling fronting Avocet Parade would not offend the character of that street, as it would present as a two-storey home, consistent with many such homes along the street.

¹⁷ Section 6.3.2.2(1) of the MDRZ Code.

83. Finally, the Tribunal is satisfied that the proposed development would make a positive contribution to the neighbourhood, as it would present as a two-storey home, representing a modern architectural feel, consistent with renovated homes in the area.
84. For these reasons, the Tribunal is satisfied that the GFA and plot ratio of the Changed Change Application is consistent with the provisions of the purpose and overall outcomes of the MDRZ Code.

Built to Boundary Garage

85. Condition 48 of the Change Approval required the provision of landscaping between the approved location of the garage and the northern common boundary with Lot 343 P93114.
86. AO12 required a side boundary setback of 1.5 metres between the garage and the northern common boundary. Following discussions during the assessment of the Change Application, the Respondent approved a reduced 1 metre setback in the Change Approval.
87. The Proposed Revision G Plans removed the 1 metre setback and instead showed the proposed garage as being built to the boundary.
88. PO12, which must be considered where AO12 is not met, was directed to ensuring adequate separation is provided between new developments and adjoining developments. It provided for, amongst other things:
 - (a) *“provide a high level of amenity to users of the subject site and adjoining premises, including provision of visual and acoustic privacy;*
 - (b) *not unreasonably obstruct views or cause overlooking of private open space or habitable areas of adjoining premises;*
 - (c) *provide adequate distance from adjoining land uses;*
 - (d) *preserve existing vegetation that will help buffer development;*
 - (e) *allow for space and landscaping to be provided between buildings including adequate area at ground level for landscaping with trees, shrubs, outdoor living and utilities;*
 - (f) *be consistent with the predominant character of the surrounding area...”.*
89. When assessing the Changed Change Application against PO12, the Tribunal makes the following comments:
 - (a) As noted above, the proposed development is architecturally designed and should provide a high level of amenity to the users of Unit 2 and those looking at Unit 2 from the surrounding streets. With respect to visual and acoustic privacy, the garage has no windows facing the northern common boundary and the garage roof deck would be screened via a privacy screen as shown on the Proposed Revision G Plans;
 - (b) The proposed development would not unreasonably obstruct the views of any neighbouring property;
 - (c) The distance between the proposed development and the neighbouring property would be adequate, so long as sufficient privacy screening can be provided, given the setback of the neighbouring property from the boundary and the existing vegetation on the neighbouring land;
 - (d) The proposed development would reduce the amount of vegetation between the proposed built to boundary garage and the neighbouring residence;

- (e) The proposed garage, being built to the boundary, would not allow for space and landscaping to be provided on the subject site between the proposed garage and the neighbouring residence. However, the neighbouring residence is set back from the boundary and existing vegetation on that land could be supplemented if required;
 - (f) As discussed above, the proposed development would be consistent with the predominant character of the neighbourhood.
90. The Tribunal considers that given the existing slope of the land from the northern boundary to the Martin Place frontage and evidence provided that the adjoining property owners on the northern boundary had no objection to the Changed Change Application, the built to boundary proposal is capable of being approved.
91. The intent of PO12 is that the amenity and privacy of the adjoining residence are maintained and not adversely affected by the proposed development. The proposed built to boundary garage does not offend this, as the garage has no windows facing the boundary. Indeed, the concerns raised by the Respondent did not relate to the garage but instead to the balcony above it.
92. The Proposed Revision G Plans show that balcony being screened by way of a privacy screen, as well as a planter box along the width of the balcony. Provided that planter box was appropriately planted with screening species of a sufficient height, the Tribunal is satisfied that the combination of the vegetation planting in the planter box and the screen would be sufficient to meet the intent of PO12.
93. Further the Respondent has expressed a concern that the built to boundary garage would reduce landscaping opportunities to the streetscape and thus negatively impact upon the amenity of Avocet Parade.
94. The Proposed Revision G Plans already show proposed planting at street level along the frontages of both Martin Street and Avocet Parade. However, to address the Respondent's concern, any visual impact of the balcony above the garage could be softened by the extension of the planter box that is already being provided along the width of the balcony on the northern side. The planter box could extend along the length of the frontage of the balcony to Avocet Parade and be planted with vegetation sufficient to provide screening to the street.
95. Accordingly, the Tribunal is satisfied that while the Changed Change Application largely complies with PO12, to respond to the requirement for appropriate landscaping along the northern boundary of the proposed dwelling and along the frontage to Avocet Parade, the proposed development should be conditioned to require the provision of substantial planting on the balcony above the garage with species approved by the Respondent. The Tribunal has prepared a replacement condition 48 that reflects this position.

Conclusion

96. Based on the above analysis, the Tribunal has decided to make the change sought by the Changed Change Application subject to conditions, being the amendment of the conditions of the Change Approval.
97. The Tribunal is satisfied that the GFA and plot ratio of the Changed Change Application, as set out in the Proposed Revision G Plans, is consistent with the provisions of the purpose and overall outcomes of the MDRZ Code.
98. The Tribunal is also satisfied that the proposed built to boundary garage wall set out in the Proposed Revision G Plans of the Changed Change Application, largely complies with PO12. However, to address the need for appropriate screening and landscaping along the northern boundary of the proposed dwelling and along the frontage to Avocet Parade, the proposed development should be conditioned to require the expansion of the

proposed planter box on the balcony above the garage and the provision of substantial planting within the expanded planter box with species approved by the Respondent.

99. The Tribunal has prepared a replacement condition 48 and a new condition 49 of the Change Approval that reflects the additional planting requirements, which is set out in *Appendix 1 – Amended Decision Notice* of this decision notice.
100. The Tribunal therefore replaces the decision of the Respondent to approve the Change Application subject to conditions, with a decision to approve the Change Application, as amended by the Proposed Revision G Plans (the Changed Change Application), as shown in yellow highlight and track changes in *Appendix 1 – Amended Decision Notice* of this decision notice.

Samantha Hall
Development Tribunal Chair

Date: 13 November 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 (07) 1800 804 833

Email: registrar@epw.qld.gov.au

APPENDIX 1 – AMENDED DECISION NOTICE

1. ASSESSMENT MANAGER CONDITIONS

Land Use

Approved Plans

- Development authorised by this approval must be undertaken generally in accordance with the Approved Plans listed in the table/s below. ~~The plans must be amended to incorporate the amendments listed within the table below and resubmitted to Council prior to the issue of any Development Permit for Operational Works*.~~

| Plan No. | Rev. | Plan/Document Name | Date |
|-------------------------|------|--|---------------------------------------|
| 132004.4029 | | | |
| SK01 A | - | Site Plan, prepared by unknown | March 2004 |
| SK02 A | - | Ground Floor Plan, prepared by unknown | March 2004 |
| SK03 A | - | Upper Floor Plan, prepared by unknown | March 2004 |
| SK04 A | - | Roof Plan, prepared by unknown | March 2004 |
| SK05 A | - | South and East, prepared by unknown | March 2004 |
| SK06 A | - | North and West, prepared by unknown | March 2004 |
| 132004.4029.01 | | | |
| 21-068-DD-02 | EG | Proposed Site & Roof Plan, prepared by DCM Building Design + Drafting | 4 May 2023 21 June 2023 |
| 21-068-DD-11 | EG | Unit 1 Existing + Demolition + Proposed, prepared by DCM Building Design + Drafting | 4 May 2023 21 June 2023 |
| 21-068-DD-03 | EG | Landscaping & Areas Plan, prepared by DCM Building Design + Drafting | 4 May 2023 21 June 2023 |
| 21-068-DD-05 | G | Unit 2 Proposed Ground Floor Plan, prepared by DCM Building Design + Drafting | 21 June 2023 |
| 21-068-DD-06 | G | Unit 2 Proposed First Floor Plan, prepared by DCM Building Design + Drafting | 21 June 2023 |
| 21-068-DD-12 | G | 3D Elevations 01, prepared by DCM Building Design + Drafting | 21 June 2023 |
| 21-068-DD-13 | G | 3D Elevations 02, prepared by DCM Building Design + Drafting | 21 June 2023 |
| 21-068-DD-15 | G | Elevations 01, prepared by DCM Building Design + Drafting | 21 June 2023 |
| 21-068-DD-16 | G | Elevations 02, prepared by DCM Building Design + Drafting | 21 June 2023 |
| 21-068-DD-18 | G | Sections 01, prepared by DCM Building Design + Drafting | 21 June 2023 |

| | | | |
|---------------------|----------|---|---------------------|
| <u>21-068-DD-19</u> | <u>G</u> | <u>Sections 02, prepared by DCM Building Design + Drafting</u> | <u>21 June 2023</u> |
| <u>21-068-DD-20</u> | <u>G</u> | <u>Site 3D View, prepared by DCM Building Design + Drafting</u> | <u>21 June 2023</u> |

The following plans require amendment.

| <u>Plan No.</u> | <u>Rev.</u> | <u>Plan/Document Name</u> | <u>Date</u> |
|---------------------|---|--|-------------------|
| <u>21-068-DD-05</u> | <u>E</u> | <u>Unit 2 Proposed Ground Floor Plan, prepared by DCM Building Design + Drafting</u> | <u>4 May 2023</u> |
| <u>21-068-DD-06</u> | <u>E</u> | <u>Unit 2 Proposed First Floor Plan, prepared by DCM Building Design + Drafting</u> | <u>4 May 2023</u> |
| <u>21-068-DD-12</u> | <u>E</u> | <u>3D Elevations 01, prepared by DCM Building Design + Drafting</u> | <u>4 May 2023</u> |
| <u>21-068-DD-13</u> | <u>E</u> | <u>3D Elevations 02, prepared by DCM Building Design + Drafting</u> | <u>4 May 2023</u> |
| <u>21-068-DD-15</u> | <u>E</u> | <u>Elevations 01, prepared by DCM Building Design + Drafting</u> | <u>4 May 2023</u> |
| <u>21-068-DD-16</u> | <u>E</u> | <u>Elevations 02, prepared by DCM Building Design + Drafting</u> | <u>4 May 2023</u> |
| <u>21-068-DD-18</u> | <u>E</u> | <u>Sections 01, prepared by DCM Building Design + Drafting</u> | <u>4 May 2023</u> |
| <u>21-068-DD-19</u> | <u>E</u> | <u>Sections 02, prepared by DCM Building Design + Drafting</u> | <u>4 May 2023</u> |
| <u>21-068-DD-20</u> | <u>E</u> | <u>Site 3D View, prepared by DCM Building Design + Drafting</u> | <u>4 May 2023</u> |
| <u>Amendments</u> | <u>The total gross floor area of the development is to be reduced, to not exceed a plot ratio of 0.4:1.</u> | | |

*(Refer to Advisory Note)

2. The development must be undertaken and operated in a manner that causes no detrimental effect upon the amenity of the neighbourhood by reason of the creation of excessive noise, lighting nuisance or other emissions.
3. All fencing shall be setback at least 1 metre from the front property boundary, with at least half of the fencing to be setback 2 metres. The area of land between the fence and the front property boundary shall be densely landscaped to screen any fencing.
4. Any deck areas shall not be enclosed with shutters, glass panelling or the like, thus remaining as open structures.

Landscaping Works

5. The open space and setback areas are to be landscaped in accordance with Council's Policy on Landscaping Guidelines and a properly prepared landscape plan. Such landscaping is to be completed prior to the premises being occupied and maintained at all times thereafter. The landscape plan is to include the following:
 - 5.1. The implementation of garden beds with screening vegetation consisting of a mixture of native trees with mid and understorey planting in the setback area along the Martin Street road frontage and along the eastern boundary.
 - 5.2. The mature coconut palm in the south-eastern corner of the site shall be replaced with a large endemic tree (100 Litre +) to achieve a height of 8-10 metres.
 - 5.3. A large endemic tree (75 Litre +) shall be provided in the rear garden of Unit 1 to replace the trees required to be removed due to the extensions, in order to maintain the amenity of the area.
 - 5.4. The landscaping area specific to Unit 2 is to be undertaken in accordance with an Operational Works approval and the Noosa Plan for that specific area, and must include in particular:
 - a. the areas shown on the approved concept landscape plan as listed in Condition 38.
 - b. all landscape garden beds located wholly within the property.
 - c. 2 street trees are to be provided along each frontage, and are to be setback a minimum of 1 metre from the road verge, and are to be of a species that do not impact on services.
 - 5.5 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.
 - 5.6 All landscape works must be maintained generally in accordance with the approved design for the life of the development.
6. Existing trees on the site and within road reserves are to be retained, except where required to be removed due to building operations or the conduct of the approved use. The landscape plans referred to above are to denote areas of existing vegetation or existing trees proposed to be retained.
7. The landscaping plans referred to in the conditions are to be prepared and certified by a suitability qualified and experienced Landscape Architect or Horticulturalist.
8. DELETED.
9. The proposed development shall have all kitchen, laundry and bathroom fittings that comply with the AAA Water Conservation Rating System as defined by the AS/NZS 6400 (Water Efficient Products - Rating and Labelling 2003) and AS/NZS 3500 (National Plumbing and Drainage Standard Part 1.2). All tap ware and shower roses shall not exceed a maximum flow of 9 litres per min. Dishwashers and washing machines are excluded from this requirement.

10. Security in the form of a cash bond or trading bank guarantee to the sum of **\$10,000** must be submitted to secure performance of all conditions of this approval, prior to the issue of a Development Permit for operational works. The cash bond or trading bank guarantee will be returned on performance of the conditions of approval less any costs incurred by Council in respect of enforcing performance of this permit.
11. The requirements of this development approval are to be effected, prior to the use of the premises. Council reserves the right to call upon the bond or guaranteed sum referred to in this approval to effect compliance with conditions.
12. DELETED.
13. This Development Permit for a material change of use of premises lapses if:-
 - 13.1. the use or erection of a building or other structure associated with the use, has not been commenced by 4 November 2008, unless application is made and approved by Council for an extension; or
 - 13.2. the use of any premises pursuant to the Development Permit ceases.
14. The developer must obtain all of the other Development Permits referred to in the Decision Notice, prior to obtaining a Development Permit for building works.

Land Development

15. DELETED.
16. DELETED.

Carparking

Off Street

17. DELETED.
18. A minimum of 4 car parking spaces must be provided on the site. The works must include dimensions, crossfalls and gradients in accordance with Australian Standard AS2890: Parking Facilities.
19. DELETED.

Pathway Contributions

20. A pathway contribution of **\$68.00** towards external major pathways, in accordance with Planning Scheme Policy PSP41 *Coastal Major Pathway Contributions*, shall be paid to the Council prior to obtaining a Development Permit for Operational Works. This amount will be subject to variations in the Price Index, All Groups Brisbane from **June 2004** until the date of payment.

Stormwater Drainage

21. The site must be provided with a stormwater drainage system connecting to a lawful point of discharge. The works must be generally in accordance with RECOR's Stormwater Management Plan (20220116-SWMP01) dated 27 September 2022.

Sewer Mains

22. The site shall be connected to Council's existing sewerage reticulation systems and be constructed in accordance with Council's standards and requirements at no cost to Council.

Town Water Supply

23. The site shall be connected to Council's existing town water supply and be constructed in accordance with Council's standards and requirements at no cost to Council.

Service Easements

24. A registered easement shall be created over the existing sewer main that crosses the site. The easements shall generally be parallel to and centred over the sewer main and be equivalent in width to twice the depth to invert level of the sewer at the deepest point within the allotment (measured from the finished surface) and be no less than 3.0 metres wide.

In this regard, plans submitted for Operational Works approval shall accurately show the location of the easement.

In addition to this the Applicant's Solicitor shall give Council's Solicitor an appropriate undertaking in writing that the Title Deed and the easement documents will be lodged at the Land Titles Office and any additional Titles Office forms or requisitions requiring the consent of Council will be attended to promptly.

A duly executed copy of the easement shall be submitted to Council for perusal prior to the use commencing.

Any changes required by Council's Solicitor must be corrected immediately.

25. No building or other structure shall be constructed or encroach over an easement. Any building or structure within proximity of an easement or any other public utility's underground must have its foundations designed so that **no surcharge loads** are imposed upon such underground infrastructure. Foundations must be taken down a minimum of 1 metre below a line of influence measured 1 metre in the direction of the foundation from the centreline of the closest underground service and along the natural angle of repose of the foundation soil type(s).

Plans, and supportive documents, detailing these proposed foundations shall be designed by a registered practicing Geotechnical Engineer and submitted with the application for a Development Permit for Operational Works.

Headworks

26. Contributions shall be paid to Council in accordance with Planning Scheme Policies PSP28 and PSP30 on Water Supply Headworks Contributions and Sewerage Headworks Contributions respectively and at the rates applicable at the time of payment. An estimate only of the contribution rates as of **June 2004** under the current policies is as follows:

| | |
|--------------|----------------|
| Water Supply | \$1,097 |
| Sewerage | \$1,271 |
| TOTAL | \$2,368 |

All headworks contributions must be paid prior to the issue of a Development Permit for Operational Works.

Alternatively a trading bank guarantee shall be submitted to Council plus 20%. Should the headworks contributions not be paid at the due time, Council shall call upon the trading bank guarantee in full.

In the event that the Development Permit for Material Change of Use of Premises lapses or is cancelled, the contribution or trading bank guarantee will be returned.

Erosion and Sediment Control

27. Any person acting on this permit shall prevent erosion and sediment export from leaving the site. Site control measures such as silt fencing, controlled gravel access to the site and controlled disposal of waste, will be necessary.

28. In this regard plans detailing the methods of controlling erosion and sediment are required to be submitted to the Council for approval prior to obtaining a Development Permit for Operational Works.

General

29. Any damage caused to any public utility during the course of construction shall be repaired to Council's standards and at no cost to Council.
30. Any alteration of any public utility or other facilities necessitated by the development of the land or associated construction works external to the site shall be at no cost to Council.
31. The transportation of all materials to and from the site shall be undertaken in a manner such that no particle matter escapes onto a public road. All vehicles carrying materials either to or from the site shall be covered to prevent materials including dust being windblown from the vehicle.

Building Services

32. A contour survey of the subject site is to be carried out by a Licensed Surveyor and is to be submitted to Council at the time of application for building approval. Such survey shall set out the natural surface levels of the site and the position of buildings on the site.
33. A verification survey of the building is to be carried out by a Licensed Surveyor and a certificate lodged with Council at completion of the work confirming compliance with the maximum building height above natural surface, required by the provisions of the Planning Scheme.

Environmental Health

34. The developer must provide a suitably screened imperviously paved area large enough for all refuse and recycling containers.
35. Swimming pool or spa pumps are to be contained in an acoustically treated enclosure or located in a manner which prevents a noise nuisance beyond the subject land in accordance with the nuisance provisions of the Environmental Protection Regulation 1998. On the spot fines apply for such offences.
36. Noise emission from air conditioning equipment shall comply with the following requirements:
 - 36.1. The equipment shall be installed and located in a manner which prevents noise nuisance beyond the subject land in accordance with the nuisance provisions of the Environmental Protection Regulation 1998 and Council's Local Law No. 12 - Control of Nuisances. Infringement Notices (on-the-spot fines) may apply for offences.
 - 36.2. Submission of written certification from a suitably qualified person confirming that the noise levels comply when measured at the nearest residential boundary. This is required immediately after installation of the equipment and prior to any occupation of the building, and in a format approved by Council.
 - 36.3. A person must not use equipment on any day if it makes or causes noise to be made –
 - 36.3.1. Before 7am or after 10pm: More than the lower of either –
 - 40 d(B)A
 - 3 d(B)A above the background noise level
 - 36.3.2. From 7am to 7pm: More than the lower of either –

- 50 d(B)A
- 5 d(B)A above the background noise level

36.3.3. From 7pm to 10pm: More than 3 d(B)A above the background noise level.

Additional Conditions – 17 May 2023

Site Access and Driveways

37. A sealed access driveway must be provided from Avocet Parade to all parking and manoeuvring areas of Unit 2 (Lot 6 on 2SP215946). The works must be undertaken in accordance with an Operational Works approval and must be generally in accordance with the proposed driveway design included as part of RECOR's Proposed Residential Development drawing set (20220116) dated 27 September 2022.

Geotechnical Stability

38. All works must be carried out in accordance with a Geotechnical Report (or part thereof) prepared by a qualified person* and endorsed through an Operational Works approval.

Earthworks and Retaining Walls

39. All fill and associated batters must be contained entirely within the subject site unless written permission from the respective landowner(s) is provided to Council. All earthworks must be undertaken in accordance with the provisions of Australian Standard AS3798: Guidelines on Earthworks for Commercial and Residential Developments.
40. Where the development involves excavation or filling over, or adjacent to, drainage, water supply or sewerage infrastructure, all access chamber surface levels must be adjusted to provide a freeboard of 100mm above the finished ground surface level.
41. All retaining walls must be designed and constructed in accordance with the planning scheme and must be certified by an RPEQ where exceeding 1.0m in height. All retaining walls that are publicly accessible and exceed 1.0m in height must be fitted with a commercial grade safety fence.

Damage to Services and Assets

42. Any damage caused to existing services and assets as a result of the development works must be repaired at no cost to the asset owner at the following times:
- a. where the damage would cause a hazard to pedestrian or vehicle safety, immediately; or
 - b. where otherwise, upon completion of the works associated with the development.

Any repair work which proposes to alter the alignment or level of existing services and assets must first be referred to the relevant service authority for approval.

Building Appearance

43. External design features, materials and finishes must be as shown on the Approved Plans, with no inclusions or alterations made without approval in writing by Council.
44. External finishes of the building must be a mix of lightweight and textured external finishes, with masonry areas incorporating a variety of textured finishes to break up the surface.
45. All deck and balcony areas must not be enclosed with shutters, louvres, glass panelling or the like thus remaining as open structures.
46. External colours and finishes must be of an understated colour scheme and low-reflective roofing and cladding materials.

47. Waste storage areas, clothes drying areas and external storage areas must be screened from view of the street.

48. The boundary setback along the common boundary with Lot 343 P93114 is to be for soft landscaping only, no services are to be provided in this area. The garage roof deck located on the first floor of the northern side of Unit 2 adjoining the common boundary with Lot 343 P93114 must include the following:

48.1 screening to the adjoining property comprising deep planting in the balcony planter box as shown on the approved plans, that is constructed to a depth sufficient to accommodate and maintain the deep planting;

48.2 screening to the frontage and the streetscape comprising deep planting in an extension of the balcony planter box shown on the approved plans along the full frontage of the garage roof deck to Avocet Parade that is constructed to a depth sufficient to accommodate and maintain the deep planting;

48.3 for the purposes of this condition 48, "deep planting" in the balcony planter box as extended means the planting of tree species that meet the following requirements:

a. that grow up to a minimum height of 4 metres;

b. that are planted in spacings sufficient to:

(i) for deep planting pursuant to condition 49.1, obscure any direct views into habitable room windows or private open space areas of the adjoining property; and

(ii) for deep planting pursuant to condition 49.2, screen and soften the impact of the building to the streetscape of Avocet Parade;

c. are in accordance with Planning Scheme Policy PSP6 of the Noosa Plan 2020.

49. The fixed privacy screens shown on the approved plans on the first floor of the northern side of Unit 2 adjoining the common boundary with Lot 343 P93114 must be provided and be positioned in such a way to obscure direct views into any habitable room windows or private open space of the adjoining property.

48-50. The upper-level balcony located on the eastern building face of Unit 1 must include either balcony planter boxes, balustrading or fixed external screens, positioned in such a way to obscure direct views into the habitable room windows or private open space areas of the adjoining property. Any fixed external screen(s) must not extend more than 50% of the length of the balcony.

RECONFIGURING A LOT

When Conditions must be Complied With

1. Unless otherwise stated, all conditions of this Decision Notice must be complied with prior to the use commencing, and then compliance maintained at all times while the use continues.
2. Development undertaken in accordance with this approval must generally comply with the approved plans of development. The approved plans are listed in the following table unless otherwise amended by these conditions.

| Plan No. | Rev. | Plan/Document Name | Date |
|--------------|------|---|-------------|
| 10626 PROP C | - | Proposed Boundary Realignment, prepared by Skyline Surveyors (annotated by Council) | 23 May 2022 |

Currency Period

3. This development approval lapses if the use has not happened by **17 May 2027** unless an application to extend the currency period is approved by Council.

Boundary Encroachments

4. Certification must be submitted to Council from a Licensed Surveyor which certifies that:
 - a. the setback/s to any new boundaries for any existing buildings remaining on the site comply with the relevant provisions of the planning scheme and the Building Act 1975, unless varied by this Decision Notice
5. all constructed access and roadworks (including associated fill batters and retaining walls) are fully contained within a dedicated reserve or registered easement
6. all utility services and connections (eg. electricity, telecommunications, water, sewerage) are wholly located within the lot they serve or alternatively included within an easement
7. all retaining walls and structures are fully contained within the lot they retain
8. any fill, including fill batters, are wholly contained within the subject site and not on adjacent properties
9. for the community title scheme, the road pavement changes required by this Decision Notice accurately demarcate the boundaries of the public and private land.

2. REFERENCE DOCUMENTS

| Plan No. | Rev. | Plan/Document Name | Date |
|-----------------|------|--|-------------------|
| 2022016 | 01 | RECOR's Proposed Residential Development drawing set (20220116) dated 27 September 2022. | 27 September 2022 |
| 20220116-SWMP01 | 0 | Stormwater Management Plan, prepared by RECOR Consulting dated 27 September 2022. | 27 September 2022 |

3. REFERRAL AGENCIES

The referral agencies applicable to this application are:

| Referral Status | Referral Agency and Address | Referral Trigger | Response |
|-----------------|--|---|--|
| Concurrence | SARA at DILGP SARA at DILGP Via MyDAS2 at https://prod2.dev-assess.qld.gov.au/suite/ (for assistance, contact DILGP at 5352 9701 or email:SEQNorthSARA@dilgp.qld.gov.au | Schedule 10, Part 4, Division 3, Table 1 - Areas with substantial potential for UXO | The agency provided its response on 12 July 2022(Reference No. 2206-29296 SRA). A copy of the response is attached |

4. ADVISORY NOTES

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

PLANNING

Aboriginal Cultural Heritage Act 2003

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

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 and Resources Tribunal, and the Minister administering the ACH 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 to discuss any obligations under the ACH Act.

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); and
 - c. the Disability (Access to Premises – Buildings) Standards.

Development Compliance Inspection

3. Prior to the commencement of the use, please contact Council's Development Assessment Branch to arrange a Development Compliance Inspection.

Resubmission of Amended Plans Required

- ~~4. The conditions of this Decision Notice require resubmission of plan/s to Council with amendments. Please address the amended plan/s to Council's Development Assessment Branch with the Reference No. 132004.4029.01 separate to any Operational Works application. To avoid delays and assessment issues with the Operational Works application, it is recommended the plan/s be resubmitted prior to lodgement of any Operational Works application. However, should the plan/s not be submitted, the applicant is advised that a Preliminary Approval may be issued in lieu of a Development Permit.~~

Building and Construction Industry (Portable Long Service Leave) Levy

- ~~5.4.~~ The QLeave levy must be paid prior to the issue of a development permit where it is required. Council will not be able to issue a Decision Notice without receipt of details that the Levy has been paid.

Co-ordination of Operational Works Assessment

- ~~6.5.~~ Additional application fees apply to Operational Work applications where the different aspects of the works are lodged separately. Significant savings in application fees will result if all works are lodged in a single application.

Qualified Person

- ~~7.6.~~ For the purpose of preparing a Geotechnical Report, and for certifying geotechnical stability for the development, a qualified person is considered to be a person who:
 - a. is a Registered Professional Engineer of Queensland (RPEQ); and
- ~~8.7.~~ has a degree in civil engineering or engineering geology; and
- ~~9.8.~~ has a minimum of 5 years experience in the field of geotechnical engineering or engineering geology.

Infrastructure Charges

- ~~10.9.~~ All developments and/or changes to existing developments may require payment of "Infrastructure Charges" (as applicable) in accordance with Council's "Charges Resolution" made pursuant to the planning legislation and regulations current at the time of issue. For further information, please refer to <https://www.noosa.qld.gov.au/planning-development/development-tools-guidelines/infrastructure-charges>