



## Development Tribunal – Decision Notice

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### Planning Act 2016

<b>Appeal Number:</b>	<b>23-029</b>
<b>Appellant:</b>	About Momentum Pty Ltd
<b>Assessment Manager:</b>	Sunshine Coast Regional Council
<b>Concurrence Agency:</b> (if applicable)	N/A
<b>Site Address:</b>	1/71 & 71 Broadsea Ave, Maroochydore and described as Lot 0 SP 325612 and Lot 1 SP 325612 – the subject site

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### Appeal

Appeal under section 229(1)(a)(i) and schedule 1, section 1(1), table 1, item 1(c) of the *Planning Act 2016* (PA) against the Sunshine Coast Regional Council's (Respondent) decision to approve a development application for Building Works for an extension to a dual occupancy, subject to the following requirements:

- a) conditions 6 and 7, requiring the setting back by 1 metre of two panels of the front boundary wall and landscaping the strip in front of the wall; and
  - b) deletion of a proposed awning which partly encroaches into the prescribed 4.5 metre setback to the Broadsea Avenue alignment.
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<b>Date and time of hearing:</b>	Wednesday 23 August 2023 at 1.00pm
<b>Place of hearing:</b>	The subject site
<b>Tribunal:</b>	John Panaretos – Chair Lindy Osborne Burton – Member
<b>Present:</b>	Kerry Roberts for About Momentum Pty Ltd – Appellant John McKennarney – Appellant representative Tracey Douglas – Council representative Kelly Taylor – Council representative

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### Decision:

The Development Tribunal (Tribunal), in accordance with section 254(2)(b) of the *Planning Act 2016* (PA), changes the decision of the respondent as follows:

- a) Deleting condition 6 and the portion of condition 7 requiring landscaping in front of set back wall panels;
- b) Deleting Council's red-marked amendments on the approved plans and reference to a 3.3 metre setback to the front awning;
- c) The front awning to be 2.518 metre setback from the Broadsea Avenue alignment; and
- d) The front one third of the awning to be of transparent material such as polycarbonate.

## Background

The subject site is a corner site with two street frontages, occupied by an existing approved dual occupancy in the Low Density Residential Zone. The development proposal is an extension of the corner dwelling unit, in the form of an awning and pergola facing Broadsea Avenue and Buna Street respectively. A 1.8 metre high wall to the front boundaries is also proposed.

Both the proposed awning and pergola extend into the street setbacks prescribed by the Sunshine Coast Planning Scheme's Dual Occupancy Code Acceptable Outcomes, thus triggering a development application subject to Code Assessment. Specifically, alternative solutions were proposed to the following Acceptable Outcomes and assessed by Council against the relevant Performance Outcomes:

- a) AO3.2 requires a 4.5 metre setback from street frontages, with garages setback at least 6 metres – The original proposal was for a 2.518 metre setback to the awning, later changed to 3.3 metres, and a 1.2 metre setback to the pergola;
- b) AO6.3 requires a 1 metre wide landscape strip along the full length of frontage (excluding driveways and pathways) – Council requires the landscape strip to face the street with any boundary wall set back behind it;
- c) AO6.5 requires either that no fences or walls are provided along street frontages, or where provided, a maximum height is specified – The proposal is for a 1.8 metre high masonry wall along both street frontages. The upper portion of the wall facing Broadsea Ave consists of battens and is largely transparent while two full panels positioned at the corner and facing Buna St comprise vertical battens and are sufficiently transparent to allow a view of the landscaping internal to the site from the street.

Council's Decision Notice, issued on 19 May 2023, qualified its approval of the application, modifying the approved plans by:

- Deleting the proposed awning entirely; and
- Repositioning two panels of the front boundary wall 1 metre back from the front alignment. Council supported this change with Conditions 6 and 7 requiring landscaping to screen the setback panels.

Consequently, this appeal seeks to overturn Council's amendments to the proposal.

## Material Considered

The material considered in arriving at this decision comprises:

- a) Form 10 – Appeal Notice, grounds for appeal and correspondence/attachments accompanying the appeal lodged with the Tribunals Registrar 5 June 2023
- b) The *Planning Act 2016* (PA)
- c) The Planning Regulation 2017 (PR)
- d) The Sunshine Coast Planning Scheme 2014 (the Plan)
- e) Sunshine Coast Planning Scheme Dual Occupancy Code (the Code)
- f) The verbal submissions made by the parties at the hearing and during the site inspection
- g) A subsequent option proffered to the parties by the Tribunal dated 1 September 2023, for a partially transparent awning, i.e. 1/3 of the awning to be open pergola or constructed of transparent material such as polycarbonate
- h) The related email exchange shared by the Tribunal, appellant and Council commenting on the option.

## Findings of Fact

The Tribunal makes the following findings of fact:

- Approximately one third of the proposed awning projects into the prescribed 4.5 metre setback. At its rear, it overlaps above the existing roof at the front of the low-set house. Nevertheless, Council deleted the entire awning, including the compliant two thirds, since, positioned above the existing roof, it was considered to be prominent in the streetscape and its truncation would result in an aesthetically poor outcome.
- The awning is to the north side of the house thus providing functional shade, as well as articulating the house façade.
- The appellant pointed out that the awning slopes down, with the front fascia at eaves height of the house. Also 'several properties in the area ...have structures closer to their boundary than 2.5m'. It should be noted that the locality consists of primarily dwelling houses with some dual occupancies.
- Council acknowledged the functionality of the awning, and that much of it is compliant, and was willing to consider a less prominent alternative outcome.
- The awning is to be assessed against relevant clauses of Performance Outcome PO3, which, amongst other things, require that it make a 'positive contribution to the *streetscape* character of the locality' (clause (b)) and that it 'provide shading to walls and windows of the *dual occupancy*' (clause (c)).
- By email following the hearing, the appellant accepted the Tribunal's proposed awning solution. Council also notified that the proposal would satisfy Performance Outcome PO3, but subject to the landscape conditions it imposed on the development approval.
- With respect to the front boundary wall, the appellant argued that an existing large eucalypt in the verge at the street corner provided a landscaped centrepiece which enhanced the streetscape, downplaying the need for front landscape strips in the two nearby wall panels. The appellant also planted additional street trees in Broadsea Avenue.
- Additionally, the appellant argued that the two transparent panels with vertical battens allowed the internal landscape elements to project into the streetscape, offsetting the need for front landscape strips.
- The relevant clauses of Performance Outcome PO6 require that the development provide 'an attractive landscape setting' (clause (a)) and 'integrate the development into the surrounding urban landscape' (clause (b)).
- During the Tribunal's deliberations it emerged that conflict existed between submitted plans and the appellant clarified that the appeal was based on the 2.518 metre awning setback.
- While awaiting the Tribunal's determination, the appellant notified the Registrar that it had completed the partially transparent awning construction based on the Tribunal's proposal.

## **Reasons for the Decision**

The awning can provide aesthetic and functional benefits to the dwelling which are consistent with the relevant Performance Outcomes, particularly PO3(a), (b) and (c). Rather than deleting it entirely, its prominence in the streetscape can be moderated by altering the front third of the awning, (i.e., approximately 1.1 metres of the width of the awning, closest to the site boundary on Broadsea Ave.), to a timber framed pergola with either no covering (open), or with timber battening and/or a transparent sheeting material (e.g., polycarbonate), and which is in keeping with the character of the renovated existing dwelling.

The proposed solution, softened by a partially transparent awning, is consistent with the locality, without the additional landscaping measures proposed by the Council.

The existing battened panels in the front wall allow the internal landscaping to project into the streetscape. Combined with the battened upper portion of the front wall facing Broadsea Avenue, it provides a level of transparency that complements the streetscape.

The large eucalypt at the corner verge centres a mulched garden area which complements the landscape character of the streetscape external to the site.

While the Tribunal noted that the awning construction had been completed during the appeal process, this had no bearing on the Tribunal's deliberations.

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**John Panaretos**  
**Development Tribunal Chair**

**Date: 24 October 2024**

## **Appeal Rights**

Schedule 1, Table 2 (1) of the *Planning Act 2016* provides that an appeal may be made against a decision of a Tribunal to the Planning and Environment Court, other than a decision under section 252, on the ground of -

- (a) an error or mistake in law on the part of the Tribunal; or
- (b) jurisdictional error.

The appeal must be started within 20 business days after the day notice of the Tribunal decision is given to the party.

The following link outlines the steps required to lodge an appeal with the Court.

<http://www.courts.qld.gov.au/courts/planning-and-environment-court/going-to-planning-and-environment-court/starting-proceedings-in-the-court>

## **Enquiries**

All correspondence should be addressed to:

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](mailto:registrar@epw.qld.gov.au)**