



## Development Tribunal – Decision Notice

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### **Planning Act 2016**

<b>Appeal Number:</b>	<b>10- 2018</b>
<b>Appellants:</b>	Jackie and Dominic Stilla c/- Innovative Planning Solutions
<b>Assessment Manager:</b>	Sunshine Coast Regional Council (Council)
<b>Concurrence Agency:</b> (if applicable)	N/A
<b>Site Address:</b>	7-9 Shay Lane Mapleton and described as Lot 41 on SP 209327 – the subject site

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### **Appeal**

Appeal made under section 229(1)(a)(i) of the *Planning Act 2016* (PA), Schedule 1, Table 1, section 1(a) against the assessment manager's refusal of the appellant's development application for building works (a shed) on the basis that the proposal conflicts with nominated code provisions of the Sunshine Coast Planning Scheme 2014.

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<b>Date and time of hearing:</b>	10.00am on 2 July 2018
<b>Place of hearing:</b>	The subject site
<b>Tribunal:</b>	Debbie Johnson – Chair Kim Calio - Member Anne Maccheroni - Member
<b>Present:</b>	Pam Davidson c/- Innovative Planning Solutions for the Appellant Ella King c/- Innovative Planning Solutions for the Appellant Kelly Taylor- Council Representative Stephanie Raven - Council representative

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### **Decision:**

The Development Tribunal (Tribunal), in accordance with section 254(2)(a) of the PA **confirms** the decision of Council to refuse the development application for building works to construct a Class 10a shed.

### **Background**

The subject Lot has a site area of 2839sq/m with an approximate frontage to Shay Lane of 42m. It is one of twelve new lots created in 2009 by reconfiguration.

There is a factory and several associated sheds built on the site. These improvements collectively cover an estimated 500sq/m of land. The factory was operating on this parcel of land when the Lot was created in 2009. The business operating within this factory is a second generation entity, established in 1945, however it is not known when it was established at this location. The registered business and the subject site are both owned by a company whose sole director is one of the appellants. There are no Council records of any dwelling unit having been established on this site.

The site is surrounded by single storey dwellings on large residential parcels. There are no other commercial or industrial activities on adjoining properties.

The appellants sought a development application for building works to erect a Class 10a shed on the subject site. A private building certifier was engaged to undertake the building assessment.

On 21 November 2017, the building certifier lodged a building application to Council on behalf of the appellants as the proposed shed, having an area of 135sq/m, was code assessable against the Dwelling House Code provisions contained in the Sunshine Coast Planning Scheme 2014.

Given the existing industrial business activity on site, and the absence of any dwelling unit, Council sought clarification of the intended use for this building.

On 15 January 2018 written notice was given that the shed would be used for domestic purposes only, such as storage of a caravan and private vehicles.

On 25 January 2018, Council refused the development application stating in part:

1. The development conflicts with nominated provisions of the Industry Uses Code; and
2. The development conflicts with nominated provisions of the Blackall Range Local Plan Code.

On 22 February 2018, the appellants lodged an appeal with the Registrar.

### **Material Considered**

The material considered in arriving at this decision comprises:

1. 'Form 10 – Application for Appeal Notice', grounds for appeal and correspondence accompanying the appeal lodged with the Tribunals Registrar 22 February 2018.

Those documents included:

Land Owner's Authority to Act dated 22 February - Jacqueline Stilla, Sole Director of Musicreach Pty Ltd, appointed Innovative Planning solutions to act on the company's behalf in the matter of the Application for Appeal over the subject site;

Written submission - Grounds of Appeal, by Innovative Planning Solutions dated 22 February 2018;

Sunshine Coast Regional Council's Decision Notice- Refusal DBW17/20147 dated 25 January 2018 with a Notice about Decision- Statement of Reasons, as issued to Mr DM and JW Stilla c/- Suncoast Building Approvals;

Representation to Sunshine Coast Regional Council from Cathy Jensen, Building Certifier with Suncoast Building Approvals dated 17 November 2017;

DA Form 1- Development application details as submitted to Sunshine Coast Regional Council by Cathy Jensen of Suncoast Building Approvals, on behalf of Jackie and Dominic Stilla. No date indicated;

Form 2 -Building work details as submitted to Sunshine Coast Regional Council by Cathy Jensen of Suncoast Building Approvals, on behalf of Jackie and Dominic Stilla. No date indicated;

Hand drawn Site Plan indicating the position of the proposed shed and building Elevations of the proposed shed as submitted to the Sunshine Coast Regional Council by Suncoast Building Approvals;

Emailed correspondence to Sunshine Coast Regional Council from Michael Grummett, Building Certifier with Suncoast Building Approvals dated 15 January 2018;

Aerial view of the subject Lot with location of the proposed shed outlined over;

Part Title Survey Plan (SP209327) with location of proposed shed outlined over.

2. Verbal submissions by the Appellant's representatives at the hearing
3. Verbal submissions by the Assessment Manager's representatives at the hearing
4. Written submission to the Development Tribunal by Innovative Planning Solutions. This was provided to all parties at the hearing and a copy was emailed through to the Registrar for circulation after the hearing.

This documents included:

A revised aerial Site Plan illustrating proposed landscaping for the proposed shed; and

Scaled Elevations of the proposed shed; and

Letters of support from three neighbours most affected by the proposed works. One living directly opposite the site and two neighbours adjacent, being closest to the location of the shed.

In addition, following queries on site regarding the practicality of the proposed landscaping and manoeuvring vehicles such as caravans into the shed a plan was subsequent provided to illustrate turning circles via the Registrar

5. Written submission to the Development Tribunal by Council dated 2 July 2018. This was provided to all parties at the hearing and a copy was emailed through to the Registrar for circulation after the hearing.
6. Observations about the built and natural environment around the location of the subject site
7. The *Planning Act* 2016 (PA)
8. The *Planning Regulation* 2017 (PR)
9. The *Development Application Rules*
10. The *Building Act* 1975 (BA)
11. The *Building Regulation* 2006 (BR)
12. The *Queensland Development Code* (QDC) Part MP 1.2
13. The *Sunshine Coast Planning Scheme* 2014
14. The *National Construction Code* 2016 (NCC)
15. Planning and Development online information for the subject site and surrounding residential properties.

16. Australian Securities and Investment Commission (ASIC) online information for the entity that owns the subject site and the registered business activity on that site.

## **Findings of Fact**

The Tribunal makes the following findings of fact:

### **Proposed Development**

The appellants sought to erect a steel framed, steel clad, 'Monument' coloured shed being 135sq/m in area. The dimensions of the shed were initially indicated as being 15m in length, 9m in width and having a height of 3.4m. The Tribunal was provided with amended drawings at scale that show the shed would be 15m x 9m in size but the roof was 1.2m higher than first indicated, measuring 4.8m to the ridge. The proposed shed is to be situated 15m from the road frontage and 1.5m from the southern side boundary. Vehicular access to the shed is proposed via the property's existing cross over.

The subject site and those surrounding it are not serviced by reticulated water or sewerage. The Blackall Range Local Area Plan notes in section 7.2.3.2 Context and Setting that "*neither a reticulated water supply nor sewerage available or planned to be made available to urban or rural residential areas in the life of the planning scheme.*" Under the current provisions of the local planning scheme, the land is in a Protected Housing Precinct and zoned Low Density Residential within the Local Plan Area for the Blackall Range.

The subject site is peculiar in this location because of the factory situated on it and the industrial business activity conducted there. Through the assessment process, Council sought clarification about the intended use of the proposed shed given the operational industrial use and the absence of any residential activity on the site.

The appellants stipulated that the shed was to be used for domestic purposes only, for the storage of their caravan and private vehicles. In their Grounds of Appeal at point 4, the representatives for the appellants stated:

*(c) there is a direct relationship between the proposed development and the future intended residential use of the land;*

The Tribunal has not been given any details about when the industrial activity will cease, nor is it clear how the existing factory building and associated sheds will be either used or demolished to make way for a future residential use by the company who currently owns the site.

## **Sunshine Coast Planning Scheme 2014**

### **Definition**

A domestic shed is not separately defined in the local planning scheme as the definition for a dwelling house includes out-buildings normally associated with a dwelling house.

### **Dwelling House – Definition Sunshine Coast Planning Scheme 2014**

*A residential use of premises for one household that contains a single dwelling.*

*The use includes out-buildings and works normally associated with a dwelling house and may include a secondary dwelling.*

### **Tables of assessment**

Under Part 5 Material Change of Use tables of assessment, Table 5.5.1 states within the Low Density Residential Zone, a new or significantly intensified industrial activity would trigger an impact assessable material change of use (MCU) application. An impact assessable MCU is assessable against the entire planning scheme provisions.

Under Part 5 Material Change of Use tables of assessment, Table 5.5.1 states within the Low Density Residential zone, a new dwelling house is accepted development provided it meets the

acceptable outcomes of the Dwelling House Code. Where proposed development does not meet the acceptable outcomes for the use code, the development becomes code assessable.

Under Part 5 Building Works Tables of assessment, Table 5.7.1 states building works is accepted development if the applicable use code (Dwelling House) for which the building work is to be undertaken identifies acceptable outcomes applicable to accepted development.

Section 5.3.3 (2) states “*Accepted development that does not comply with one or more of the relevant acceptable outcomes in the relevant parts of the applicable code(s) becomes assessable development requiring code assessment unless otherwise specified.*”

Where proposed development does not meet the acceptable outcomes for the use code, the development becomes code assessable against the use code for which the building work is to be undertaken, the local plan code (Blackall Range) applicable to the *site* on which the building work is to be undertaken and the Transport and Parking code. In this case the proposed use for which the building work is to be undertaken falls under the definition of Dwelling House therefore the Dwelling house code is the relevant use code.

### **Code application and provisions**

Part 9.3.6.1 sets out the application of the Dwelling house Code provisions-

#### *9.3.6.1 Application*

*(1) This code applies to accepted development and assessable development identified as requiring assessment against the Dwelling house code by the tables of assessment in Part 5*

*(2) The acceptable outcomes in Table 9.3.6.3.1 (Requirements for accepted development and performance outcomes and acceptable outcomes for assessable development) are requirements for applicable accepted development.*

Therefore, where accepted development does not meet the prescribed acceptable outcomes, the development becomes assessable development and can be assessed against the corresponding performance outcomes. Council becomes the assessment manager in this situation.

The appellants had initially sought to engage a private building certifier to issue a building permit for the proposed shed. The building certifier determined that the proposed works did not meet all acceptable outcomes AO2 of the Dwelling House code. On behalf of the appellants, the building certifier lodged a building application for the shed, with Council. The application was made on the basis that it was code assessable development against performance criteria PO2 of the Dwelling House Code due to the size and scale of the shed.

Acceptable outcome AO2.1 of the Dwelling House Code states:

*Where located on a Lot in a residential zone, a garage, carport or shed:-*

- (a) is setback at least 6m from any road frontage;*
- (b) does not exceed a height of 3.6m; and*
- (c) has a total floor area that does not exceed 56sq/m.*

Performance outcome PO2 of the Dwelling House Code states:

*Garages, carports and shed;-*

- (a) preserve the amenity of adjacent land and dwelling houses;*
- (b) do not dominate the streetscape;*
- (c) maintain an adequate area suitable for landscapes adjacent to the road frontage; and*
- (d) maintain the visual continuity and pattern of buildings and landscape elements within the street.*

The Dwelling House Code incorporates additional requirements for dwelling houses in certain areas and precincts including the Blackall Range Local Area Plan (PO13 and AO13.1 – 13.4).

Editor's note 3 states *"in accordance with Schedule 1 (Definitions), a reference to a 'dwelling house' in the planning scheme includes a reference to any secondary dwelling or home office associated with the dwelling house, and all outbuildings, structures and works normally associated with a dwelling house"*

AO13.2 states *"The total footprint of the dwelling house, including any associated garage, carport or shed, does not exceed 280m<sup>2</sup>."*

As noted previously the total footprint of structures over the site is currently estimated to be 500sq/m, significantly exceeding this acceptable outcome. It is noted that for the most part these existing structures are associated with the industrial use. With the additional 135sq/m proposed for the new shed, the footprint of structures would be more than double that of the acceptable outcome for structures on the site. As previously noted point 4 of the grounds of appeal stated that there is a direct relationship between the proposed development and the future intended residential use of land although the Tribunal has not been provided with any details of this conversion in use.

### **Surrounding development**

Shay Lane is a cul-de-sac created to provide access to 12 allotments in 2009. The 12 parcels of land vary in size from 1500 sq/m through to 3519 sq/m with the subject site being 2839 sq/m.

Several of the Lots have large areas of native vegetation which are protected by covenants on their titles. While one Lot is still vacant, contemporary single storey homes have been built on the remainder. These properties are all very tidy and well landscaped.

The factory on the subject site is set back approximately 20m from Shay Lane. The factory which is approximately 4.5m high and the associated sheds are set down approximately 1.5m below the level at the shoulder of the lane. This has the effect of reducing the building height when viewed from the lane. The area between the factory and the laneway is predominately grassed and there are several mature trees. Relatively new landscaping is evident along the property frontage. Vehicular access to the site is via a concrete crossover on the nature strip, however the driveway running the length of the site is not sealed.

The site predominately slopes across the frontage to Shay Lane and the majority of the Lot is below the shoulder of the laneway. However, the intended location of the proposed shed is on the highest part of the Lot. This area is slightly higher than the laneway. In contrast to the factory building, the siting of the shed in this location will have the effect of accentuating the 4.8m height and 135sq/m size. The proposed plans illustrate new landscaping is proposed along the southern boundary of the site, that is between the shed and neighbouring properties to the south. However, there is no landscaping proposed between the shed and the street frontage to allow vehicular access to the roller door at the front of the shed. It is proposed that the existing driveway will be 'forked' to provide this access up to the platform where the shed is to be located.

The proposed road boundary setback for the shed is nominated at 15m. While this may be considered a substantial setback for a residential allotment, it is less significant when compared with the size of the Lot at 2839 sq/m. Similarly, given the setback to the factory which sits much lower on the site, is 20m, this shed will predominate the street frontage.

There are several examples of large steel framed, steel clad, free standing sheds in Shay Lane:

- 13 Shay Lane has a single storey dwelling house with a separate 80 sq/m shed being approximately 9M in length and 9M in width. This shed is at the side of the dwelling and set back from the facade of the home. The shed is screened from street view by a landscaped nature strip created to shield on street visitor parking bays. According to Council's PD Online, this shed was approved by private certification in 2015. In 2014 the Sunshine Coast Planning Scheme was adopted and a maximum domestic shed size

was introduced into the Dwelling House Code provisions. The superseded Maroochy Plan 2000 had no such provisions.

- 16 Shay Lane has a dwelling house and a 50 sq/m shed being approximately 9m in length and 6m in width. This shed is quite prominent and sits up high above the laneway, even though it is at the side of the dwelling and set back slightly from the façade of the home. According to Council's PD Online, this shed was approved by private certification in 2011, prior to the introduction of the Sunshine Coast Planning Scheme when a maximum shed size was introduced into the Dwelling house code provisions
- 8 Shay Lane has a dwelling house and a 90 sq/m shed being approximately 15m in length and 6m in width. This shed is at the rear of the allotment and completely concealed from the street. According to Council's PD Online, this shed was approved in 2013, also prior to the introduction of the Sunshine Coast Planning Scheme.

### **The Assessment Manager's Decision**

The application for building works was refused by Council on 25 January 2018. The reasons stated in the Decision Notice are as follows:

- 1. The development conflicts with the Purpose and overall outcomes (a) – (d) of the Industry uses code and does not demonstrate compliance with the Performance Outcome PO1 & PO3 of the Code.*
- 2. The development conflicts with the Purpose and overall outcome (j) of the Blackall Range Local Plan Code and does not demonstrate compliance with the Performance Outcome PO1 of the Code.*

### **Industry uses code provisions**

Under Part 5 Material Change of Use tables of assessment, Table 5.5.1 states within the Low Density Residential Zone, a new or significantly intensified industrial activity would trigger an impact assessable material change of use (MCU) application. An impact assessable MCU is assessable against the entire planning scheme provisions.

The Appellants building application was for a domestic shed. Had the proposed use of this shed been for an extension of the existing industrial activity on this site, an impact assessable MCU application would have been triggered. The Industry uses code provisions would have applied.

The Appellants lodged and Council assessed, the application for building works, the Tribunal finds that the Industry use code provisions do not apply.

### **Blackall Range Local Plan provisions**

The following extracts from the Blackall Range Local Plan are considered to be relevant and 'applicable to the site on which the building work is to be undertaken'.

#### *7.2.3.3 Purpose and overall outcomes*

*(1) The purpose of the Blackall Range Local Plan Code is to provide locally relevant planning provisions for the assessment of development within the Blackall Range local plan area.*

*(2) The purpose of the Blackall Range Local Plan Code will be achieved through the following overall outcomes:-*

*(c) Development retains the key built form, streetscape, landscape character and natural environment elements that contribute to the character and identity of the Blackall Range as an attractive and visually sensitive rural and natural area with discrete rural villages, a strong sense of place and close associations with the past.*

*(d) The form and scale of development is low key with buildings that are low rise and cover a comparatively small area of a site, thereby leaving significant areas for landscaping and private open space.*

*(l) Other than for the purpose of providing a retirement facility or residential care facility in the Low density residential zone, development in the Low density residential zone and Rural residential zone provides for low density living on relatively large urban and rural residential Lots.*

**PO1**

*Development provides for buildings, structures and landscaping that is consistent with and retains the discrete rural village identity and architectural character of the Blackall Range and, in particular, the villages of Montville and Mapleton, in terms of scale, siting, form, composition and use of materials*

**PO2**

*Development provides for buildings and structures that:-*

- (a) are low rise and present a building height consistent with development on adjoining and surrounding land;*
- (b) do not visually dominate the street, adjacent properties, surrounding spaces or the existing skyline, particularly in areas of high scenic value;*
- (c) preserve the amenity of surrounding land, including sunlight to neighbouring properties; and*
- (d) respect the scale of surrounding vegetation.*

**Reasons for the Decision**

The Tribunal finds

- (a) the proposed steel shed will predominate the street frontage for the following reasons:
  - the bulk and scale of the structure being 135 sq/m and 4.8m high;
  - the height of the building pad in relation to the entire balance of the site;
  - the setback of the shed in relation to factory building on the site; and
  - the access to the front of the shed will significantly reduce landscaping opportunities.
- (b) The proposed shed will not maintain the visual continuity and pattern of buildings and landscape elements within the street.

The Tribunal considered other sheds built in this location are considerably smaller and less obtrusive than the proposed shed. Similarly, they were lawfully built prior to the adoption of the current planning scheme which has introduced new provisions about the size of outbuildings on residential allotments

The Tribunal finds that the proposed steel framed shed of the size and scale proposed, positioned at the front of the site, will be inconsistent with the discrete rural village identity and architectural character of the Blackall Range community of Mapleton.

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Debbie Johnson  
**Development Tribunal Chair**  
**Date: 10 August 2018**



## **Appeal Rights**

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

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

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

## **Enquiries**

All correspondence should be addressed to:

The Registrar of Development Tribunals  
Department of Housing and Public Works  
GPO Box 2457  
Brisbane QLD 4001

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