



## Development Tribunal – Decision Notice

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### *Planning Act 2016, section 255*

<b>Appeal Number:</b>	<b>18 - 053</b>
<b>Appellant:</b>	Taylor'd Distinction
<b>Respondent (Assessment Manager):</b>	Greg Roberts of BA Group
<b>Co-respondent (Concurrence Agency):</b>	Sunshine Coast Regional Council – Local Government
<b>Site Address:</b>	23 Reliance Place Pelican Waters and described as Lot 8 on SP138679 – the subject site

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### **Appeal**

Appeal under section 229 and item 1(a) of table 1 of section 1 of schedule 1 of the *Planning Act 2016* against the refusal of an application (to build a roofed alfresco area) at the direction of Sunshine Coast Regional Council (council), acting as concurrence agency on the basis council considers the application does not comply with the requirements of the Sunshine Coast Planning Scheme 2014 Dwelling House Code Performance Outcome PO6(b).

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<b>Date and time of hearing:</b>	11:00 am, Friday 5 April 2019
<b>Place of hearing:</b>	Sunshine Coast Regional Council Offices, Coonowrin Room, Level 3, 1 Omrah Avenue, Caloundra
<b>Tribunal:</b>	Anne Maccheroni – Chair Elizabeth Anderson – Member Paul Bourke – Member
<b>Present:</b>	Anthony Wright – Appellant Gaylene Wright – Appellant Pete Taylor – Appellant Representative, of Taylor'd Distinction Terry Frey–Appellant Representative, of Emerge Planning & Development Paul Chamberlain –Council Representative, Sunshine Coast Regional Council

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### **Decision:**

The Development Tribunal (Tribunal), in accordance with section 254 of the *Planning Act 2016* (PA) replaces the decision of the Assessment Manager with another decision namely, that the development application be approved as per revised drawings Attachment A to the Additional Information Cover Letter from the appellants to the Sunshine Coast Regional Council dated 16 May 2019.

## Background

1. The subject site is a property with canal frontage in the Pelican Waters development at Caloundra. The site is improved by a large family home to which the appellants are seeking to make a series of internal and external reconfigurations and changes by way of the building application the subject of this appeal.
2. This appeal relates to a single aspect of the appellants building application – whether an alfresco area seeking to be extended to the edge of the existing canal revetment wall is permitted to have a flat roof supported by upright posts, built to match the remainder of the existing residence.
3. The contentious aspect of the request to build a roof over the extended alfresco area is that this roof structure and its supports, will occupy an additional 2.56m of airspace within the 4.5m building boundary setback generally observed for the Pelican Waters canal development, as set by the provisions of the Sunshine Coast Planning Scheme 2014.
4. On the basis council considered the proposed roof structure and supports are incapable of being satisfactorily conditioned to comply with relevant performance outcome PO(6)(b) of the Sunshine Coast Planning Scheme 2014 Dwelling House Code, as concurrence agency to the application decision, it directed the application be refused. This direction was made by council by letter dated 6 December 2018 to Mr Greg Roberts of BA Group, the Assessment Manager for the relevant building application.
5. The appellants remained of the view their proposal complies with the relevant performance outcome and have appealed this aspect of the decision to the Tribunal.
6. At the hearing of this appeal, the appellants indicated they may be prepared to reconsider the bulk and scale of the proposed roof structure and supports in an effort to further reduce impact on views and vistas from adjoining properties.
7. At the hearing of the appeal, the appellants also offered to provide further photographic evidence of the site to the Tribunal and information about built structures on a number of other canal front properties in the vicinity of the site at which the appellants had observed structures located within the prescribed 4.5m building boundary setback for the development.
8. By letter dated 16 May 2019 to the Tribunal, the appellants provided Revised Proposed Plans, and further written submissions regarding the application, including further photographic evidence and information about structures on other canal properties in the vicinity of the site.
9. This further material provided by the appellants after the hearing was provided to council for its comment, particularly in relation to the information about the structures on other canal properties in the vicinity.
10. By email of 6 May 2019 Council provided the Tribunal with further information about the approval status and particulars of the structures identified by the appellants on other canal properties in the vicinity of the site.
11. The appellants contend that the changes made in the Revised Proposed Plans and the further evidence and information provided after the hearing is sufficient to warrant a relaxation of the standard canal boundary setback in the particular circumstances of the site.

## **Jurisdiction**

This is an appeal under section 229 and item 1(a) of table 1 of section 1 of schedule 1 of the PA, against the refusal of an application (to build a roofed alfresco area) at the direction of Sunshine Coast Regional Council (council), acting as concurrence agency.

The precondition in section 1(2) of schedule 1 for the application of table 1 to a development tribunal is satisfied as the matter involves an application for approval of building works required to comply with the building assessment provisions under the *Building Act 1975* and accordingly section 1(2)(g) applies.

## **Decision framework**

This appeal is being conducted in accordance with section 253 of the PA. The onus rests on the appellant to establish this appeal should be upheld.

The tribunal is required to hear and decide this appeal by way of a reconsideration of the evidence that was before council and Mr Greg Roberts, the building certifier who made the decision being appealed against, in accordance with the direction received from council as concurrence agency.

The Tribunal also may, and in the case of this appeal has decided to, consider other evidence presented by both the appellant and the council, with leave of the Tribunal.

The Tribunal is required to decide the appeal in one of the ways mentioned in section 254(2) of the PA.

## **Material Considered**

The material considered in arriving at this decision comprises:

1. 'Form 10 – Appeal Notice', grounds for appeal and correspondence accompanying the appeal lodged with the Tribunals Registrar on 10 January 2019  
  
Letter dated 20 December 2018 from Emerge Planning to the Tribunal with 4 supporting attachments:  
  
Attachment A – Decision Notice CAR180580  
  
Attachment B – Proposal Plans.  
  
Attachment C – Council Information Request  
  
Attachment D – Information Request Response
2. Letter dated 16 May 2019 from Emerge Planning to the Tribunal with 6 supporting attachments:  
  
Attachments A & B – Revised Proposal Plans  
  
Attachment C – Survey of structures on surrounding canal front properties  
  
Attachment D – Photo Study of proposal expected visual impacts  
  
Attachments E & F – Letters of support from adjoining neighbours

3. Email from Council to the Tribunal dated 6 June 2019 responding to Attachments A, B & C of the further material provided by the appellant dated 16 May 2019
4. *Sunshine Coast Planning Scheme 2014*, PO6 of the Dwelling House Code
5. *Planning Act 2016*

### **Findings and reasons for decision**

The tribunal makes the following findings:

- The Revised Proposal Plans contained in Attachments A & B of the letter dated 16 May 2019 to the Tribunal demonstrate sufficient compliance with performance outcome PO(6)(b) of the Sunshine Coast Planning Scheme 2014 Dwelling House Code.
- Having regard to all of the circumstances relevant to the particular site, the visual impact of the proposed 2.56m extension of the roof to the extended alfresco area will not result in an unreasonable loss of amenity to adjacent land and dwellings having regard to privacy and overlooking, views and vistas or building character and appearance.
- The appellant has established there is precedent for minor roofed structures to be approved within the Pelican Waters development 4.5m canal frontage setback, both under the current and the immediately preceding planning scheme applicable to residential development in the Pelican Waters development.
- The canal frontage of the subject site is not straight, but curves away from the potentially affected neighbouring property to the north. This, combined with the position of the alfresco area to be extended being on the southern side of the site's canal boundary, is sufficient to significantly reduce the likelihood of the proposed roof structure and supports blocking views from this northern side property.
- The property adjoining the southern boundary of the site shares a straight edge of the canal with the site.
- Performance Outcome 6(b) of the Sunshine Coast Planning Scheme 2014 Dwelling House Code relevantly states:

Buildings and structures are adequately setback from canals and other artificial waterways or waterbodies (e.g. lakes) to:

(a)...

(b) Ensure no unreasonable loss of amenity to adjacent land and dwellings having regard to:-

- (i) privacy and overlooking;
- (ii) views and vistas;
- (iii) building character and appearance:

(c)...

- The tribunal is being asked to assess whether the extra visual intrusion of 2.56m of flat roof and three 140mm square vertical upright timber supports will cause an unreasonable loss of amenity to adjacent land and dwellings, based on the above three criteria of Performance Outcome 6(b).

- Regarding each of these three criteria:

- (i) The requested alfresco area extension is equally capable of being occupied whether it has a roof or not and in the occupied scenario, privacy and overlooking potential is identical whether there is a roof or not.

Taking into account that council approved the extension of the alfresco area floor, the request to approve a roof and supports does not adversely impact privacy and overlooking from adjacent land and dwellings.

- (ii) Taking into account the backward curve of the adjoining canal frontage property to the north of the site and the placement of the proposed building footprint extension on the site, the proposed roof and supports to the extended alfresco area floor will have minimal impact on the views and vistas of this neighbour's land or existing dwelling. This neighbour has provided the Tribunal a letter of support for the proposal.

The adjoining land to the south of the site, while sharing a straight canal boundary with the site is presently improved by a dwelling pool and enclosed pool house all orientated towards capturing southerly views and vistas and to take advantage of the corner canal frontage of this property. Therefore, this neighbouring property, with twice the amount of canal frontage as most others in the development is proportionately less affected by a decision to allow the proposed roof and supports to be constructed within the standard boundary setback. This neighbour has also provided the Tribunal with a letter of support for the proposal.

- (iii) The appellants are considered to have satisfactorily addressed issues of building character and appearance by redesigning and representing to the Tribunal the proposed roof in scale to match the remainder of the dwelling and reducing the scale of the proposed supports to less than the remaining brick columns on the dwelling to appear more in keeping with a landscaping or garden style of structure such as a Bali hut or pergola, being 140mm timber posts and less like an extension or continuation of the dwelling as was first proposed. This change has struck an acceptable balance between maintaining the general character and appearance of the remainder of the dwelling and creating the appearance of the posts as more of an outdoor landscaping feature than a dwelling extension.

Overall, the proposed roof structure and redesigned supports are less visually intrusive, when viewed from neighbouring properties and across the canal, than examples of other structures identified by the appellants to have been either previously approved or are existing within the canal boundary setback for the Pelican Waters canal development. For example, the appellants identified an approved Bali style gazebo in the close surrounding area with a thatched peaked roof and rendered block corner supports. By comparison, the flat roofed structure and timber supports proposed by the appellants is visually less intrusive and imposing than peaked roof gazebo style structures.

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**Anne Maccheroni**

**Development Tribunal Chair**

**Date: 19 July 2019**

## **Appeal Rights**

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

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

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

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

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

## **Enquiries**

All correspondence should be addressed to:

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

**Telephone (07) 1800 804 833**

**Email: [registrar@hpw.qld.gov.au](mailto:registrar@hpw.qld.gov.au)**