



## Development Tribunal – Decision Notice

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### *Planning Act 2016, section 255*

<b>Appeal Number:</b>	19-027
<b>Appellant:</b>	Adam Prescott
<b>Respondent (Assessment Manager):</b>	John Dunn, JDBA Certifiers
<b>Co-respondent (Concurrence Agency):</b>	Sunshine Coast Regional Council
<b>Site Address:</b>	34 Tombarra Street, Mooloolaba and described as Lot 211 on RP 129674 – the subject site

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### **Appeal**

Appeal under section 229 and Schedule 1, section 1, table 1, item 1 of the *Planning Act 2016* (PA), against the decision of JDBA Certifiers dated 6 June 2019 to refuse a development application to carry out building work assessable under the *Building Act 1975* (BA) for a shed, as a result of a direction that the application be refused from Sunshine Coast Regional Council (Council) the concurrence referral agency for the application on the basis that it did not comply with the Dwelling house code section 9.3.6 of the Sunshine Coast Planning Scheme 2015 (SCPS2015).

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<b>Date and time of hearing:</b>	30 September 2019 at 2.30pm
<b>Place of hearing:</b>	The subject site
<b>Tribunal:</b>	John O'Dwyer– Chair Belinda Scott - Member
<b>Present:</b>	Adam Prescott – Appellant Peter Chamberlain – Sunshine Coast Regional Council representative John Dunn – Assessment Manager

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### **Decision:**

The Development Tribunal (Tribunal), in accordance with section 254(2)(a) of the *Planning Act 2016* (PA) confirms the decision of the assessment manager to refuse the development application.

## **Background:**

1. This appeal arose as a result of a decision notice dated 6 June 2016, in which the Assessment Manager advised the Applicant that the application for carrying out building work assessable under the BA for a shed (Class 10a structure) with an area over 10 m<sup>2</sup> located less than 6.0 m from a road boundary, was refused. The refusal was dictated by a concurrence agency refusal notice from Sunshine Coast Regional Council.
2. The refusal related to the partly constructed shed with a set-back of 1.742m from the front property boundary in lieu of the Dwelling House Code prescribed minimum 6.0m set-back. The reasons for the refusal were stated as:

‘Dwelling House Code PO2(d) ”maintain the visual continuity and pattern of buildings and landscape elements within the street”.

  - The visual continuity and pattern of buildings in the street comprises of sheds set approximately 6m or more from the road frontage with the continuity of the built form generally being maintained. As the shed is proposed with a minimal setback of 1.742m, set forward of the general line of the buildings in the street, Council considers that the shed will not maintain the visual continuity and pattern of buildings (sheds) within the street.’
3. The design of the current dwelling on the subject site did not take into account the need to provide for a shed compliant with the BA and the PA and in fact showed a location for a future shed on the street frontage in the south-east corner of the subject site.
4. Some time after the completion of the current structure, the Appellant started the erection of the current structure. The partly constructed shed is located in the north-eastern corner of the allotment. The existing works comprise a slab on the ground, wall framing and a roof.
5. Council advised during the hearing that it had received a complaint from a member of the public about the shed, and that it had inspected the works and advised the Appellant that an approval was needed. As a result, the development application for the shed was lodged with the Assessment Manager. Council commented that the complainant had complained about many other structures being erected and that the complainant was motivated by a refusal to allow such a structure on their property.

## **Jurisdiction:**

6. The tribunal has jurisdiction under section 229 and Schedule 1, section 1, table 1, item 1 of the PA. The precondition under section 1(2) of schedule 1 for the application of table 1 to a tribunal is satisfied in this instance in light of section 1(2)(g) as the application is for building work assessable under the building assessment provisions of the BA.

## **Decision Framework:**

7. The onus of proof rests on the appellant to establish that the appeal should be upheld (s.253(2) of the PA).
8. The tribunal is required to hear and decide the appeal by way of a reconsideration of the evidence that was before the person who made the decision appealed against (s.253(4) of the PA). The tribunal may nevertheless, but need not, consider other evidence presented by a party with leave of the tribunal or any information provided under s.246 of the PA.
9. The tribunal is required to decide the appeal in one of the ways mentioned in s.254(2) of the PA.

**Material Considered:**

The material considered in arriving at this decision comprises:

- i. 'Form 10 – Appeal Notice', grounds for appeal and correspondence accompanying the appeal lodged with the Tribunals Registrar on 24 June 2019.
- ii. The *Planning Act 2016*
- iii. The *Building Act 1975*
- iv. SCPS2014 Section 9.3.6 Dwelling House Code (Refer to extract below)
- v. The building plans for the existing dwelling showing 'Provision for future shed concrete slab only' in the south-eastern corner of the allotment with no set-back from the frontage and a width of 4m and a depth of 3.5m were shown to the parties by the Appellant. Refer to attached extract showing Site Plan Proposed that includes the reference to the "Provision for future shed".

The following is an extract from SCPS2014 confirming the basis for Council's recommendation.

**9.3.6.3 Performance outcomes and acceptable outcomes<sup>4</sup>**

**Table 9.3.6.3.1 Requirements for accepted development and performance outcomes and acceptable outcomes for assessable development**

Performance Outcomes		Acceptable Outcomes	
<i>Garages, Carports and Sheds</i>			
PO2	Garages, carports and sheds:- (a) preserve the amenity of adjacent land and dwelling houses; (b) do not dominate the <i>streetscape</i> ;	AO2.1	Where located on a lot in a <i>residential zone</i> , a garage, carport or shed:- (a) is <i>setback</i> at least 6 metres from any <i>road frontage</i> ;
	(c) maintain an adequate area suitable for landscapes adjacent to the <i>road frontage</i> ; and (d) maintain the visual continuity and pattern of buildings and landscape elements within the street.	AO2.2	(b) does not exceed a height of 3.6 metres; and (c) has a total floor area that does not exceed 56m <sup>2</sup> .  Note—AO2.1(b) and (c) do not apply to a garage under the main roof of a <i>dwelling house</i> .  Note—AO2.1(a) alternative provision to QDC.
			Where located on a lot in a <i>residential zone</i> , the total width of a garage door facing a street (and that is visible from the <i>road frontage</i> ) does not exceed 6 metres within any one plane, with any additional garage door being set back a further 1 metre from the <i>street frontage</i> to break up the apparent width of the garage facade.

**Findings of Fact:**

The Tribunal makes the following findings of fact:

- i. A shed has been partly constructed on the subject site without a development approval
- ii. The site is in the Low Density Residential Zone on the Zoning Map and is in Precinct LDR1 (Protected Housing AREA) and the partly built structure is intended to be a shed
- iii. AO2.1(a) is an alternative provision to the QDC
- iv. The shed does not comply with the Acceptable Solution AO2.1(a) in that it is not set back 6 metres from the frontage
- v. Council, by an Information Request dated 22 March 2019 gave the applicant the opportunity to withdraw the application as the works were not compliant with the Dwelling House Code

- vi. The shed if approved, would be the only shed in the 6m frontage set-back in the part of Tombarra Street running in a northerly direction from Brentwood Avenue.

### **Considerations and Reasons:**

10. A site inspection was conducted prior to commencing the actual hearing. It is apparent that there is limited space on the site for a shed of the dimensions proposed. The Appellant advised that it was proposed to install a roll-a-door on the street frontage of the shed as the access and to paint the structure white to match the dwelling.
11. In assessing the appeal the following considerations were taken into account in reaching the Tribunal's decision:
  - The part of Tombarra Street running in a northerly direction from Brentwood Avenue is the part of Tombarra Street to be considered for the purposes of the SCPS2014 Dwelling House Code PO2(d)
  - The view of the subject site from Lawrence Street approaching Tombarra Street from the east is to be considered in determining visual continuity and pattern of buildings and landscape elements within the streetscape.
12. As the subject site is in a residential zone and the partly built structure is intended to be a shed, Dwelling House Code PO2 applies to the application and the set-back provisions of the SCPS2014 Dwelling House Code apply in lieu of the QDC in relation to the frontage set-back.
13. The shed is clearly visible through the car port on the subject site when approaching from the south in Tombarra Street. The roof and part of the shed is visible when approaching from the north in Tombarra Street.
14. The upper part of the shed is clearly visible when approaching from the east in Lawrence Street, particularly as the slope of the existing approved carport on the subject site is downwards to the north and this directs the eye to the view of the partly constructed shed. This visibility of the shed, if approved, would be increased by the final cladding being painted white to match the existing structure and having vision of the upper part of the roll-a-door.
15. The Tribunal gave no weight to the complaint or the complainant's motivation that led to the application that is the subject of this appeal.
16. The shed if approved would be the only enclosed structure within the frontage 6m set-back in this section of Tombarra Street. All other structures within this frontage set-back in this section of Tombarra Street are car ports or in the case of 48 Lawrence Street that has other structures with open sides in the secondary frontage to Tombarra Street. The shed increases the building bulk on the site. The proposed roll-a-door is not consistent with the appearance of other structures along the street frontage.
17. The design of the current dwelling did not take into account the need to provide for a shed compliant with the BA and the PA and in fact showed a location for a future shed on the street frontage in the south-east corner of the subject site. Some time after the completion of the current structure, the Appellant started the erection of the current structure in the north east corner of the site.

**Summary:**

18. The shed if approved, will be the only enclosed structure in the frontages in this section of Tombarra Street thus changing the patterns of buildings and the visual continuity within the street and thus will not comply with Dwelling House Code performance outcome PO2(d).
19. The shed if approved would add bulk to the site, and the cluttered set-back is not consistent with appearance of other properties in the street.
20. The proposed roll-a-door would introduce a new design element not consistent with the existing open carports elsewhere in this section of Tombarra Street.

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**John O'Dwyer RPIA JP (Qual)**

**Development Tribunal Chair  
Date: 25 October 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)**