



Development Tribunal – Decision Notice

Planning Act 2016, section 255

Appeal Number:	22-049
Appellant:	Christopher Wilson and Jennifer Wilson
Respondent: (Assessment Manager)	Sunshine Coast Regional Council
Site Address:	70 Buderim Street, Battery Hill Qld 4551 and described as Lot 60 on C92818

Appeal

Appeal under section 229(1)(a)(i) and Schedule 1, Section 1, Table 1, Item 1(a) of the Planning Act 2016 against the refusal of a development application for Building Work Assessable Against the Planning Scheme for the construction of a shed in a residential zone.

Date and time of hearing:	Tuesday 6 December 2022 at 10.00am
Place of hearing:	70 Buderim Street, Battery Hill
Tribunal:	Kim Calio – Chair Danielle Sibenaler – Member Catherine Baudet - Member
Present:	Christopher Wilson – Landowner and Appellant Cameron Wilson – Planner – Council representative Tracey Douglas – Planner – Council representative John Dunn – JDBA Certifiers – Certifier

Decision:

The Development Tribunal, in accordance with section 254(2)(a) of the *Planning Act 2016*, confirms the decision of the Assessment Manager to refuse the development application for Building Work Assessable Against the Planning Scheme for the construction of a shed in a residential zone.

Background

1. On or about 21 March 2022, JDBA Certifiers (**JDBA Certifiers**) issued a decision notice for a development application for building work (BA220047) approving '*Alterations Ground Floor, Extension 2nd Storey Master Suite inc Ensuite WIR Deck & Shed and Swimming Pool and Pool Barrier*' (**Building Approval**) in respect of land located at 70 Buderim Street, Battery Hill, described as Lot 60 C92818 (**Land**).

2. A stop work notice was subsequently issued by Sunshine Coast Regional Council (**Council**) in response to complaints about the construction of the shed, on the basis that the shed allegedly did not comply with the Building Approval which, amongst other things, approved it at 3.250m above natural ground level.
3. A development application for a development permit for building work assessable against the planning scheme (**Application**) was submitted to Council by JDBA Certifiers on or about 29 August 2022 seeking retrospective approval for the shed the subject of this proceeding (**Shed**).
4. At the time the Application was submitted, the Shed had already been substantially constructed.
5. The Sunshine Coast Planning Scheme 2014 (**Scheme**) regulates building work in accordance with sections 32 and 33 of the *Building Act 1975*.
6. On or about 6 September 2022, Council's delegate decided to refuse the Application citing, amongst other things, the following reasons for refusal of the Application:

**'REASON 1. The development would not meet Performance Outcome PO2
(a) of the Dwelling House Code:**

- (a) *Garages carports and sheds preserve the amenity of adjacent land and dwelling houses.*

The proposed shed would negatively impact the amenity of the adjacent dwelling houses/land to the east and south. The proposed shed would not have compliant side/rear boundary setbacks, as the mean height of the shed within the required 1.5 metre setbacks would exceed the maximum 3.5 metres (as per Acceptable Solution A2 (d) of the Queensland Development Code) and would be located adjacent to the backyards/recreational areas of the adjoining premises. Due to the height and location of the shed, the proposal would have a dominant appearance from the adjoining lot and present unacceptable amenity impacts to the adjacent dwelling houses. For this reason, the proposed shed height, when considering the close proximity to the neighbour's dwellings and land, would impact the amenity of the adjacent dwelling houses and would therefore not meet compliance with PO2 (a).

REASON 2. The development would not achieve the Purpose and Overall Outcome 2(b) of the Dwelling House Code:

PURPOSE

- (1) *The purpose of the Dwelling house code is to ensure dwelling houses achieve a high level of comfort and amenity for occupants, maintain the amenity and privacy of neighbouring residential premises and are compatible with the character and streetscape of the local area.*

OVERALL OUTCOME

(2).....

- (b) *a dwelling house is sited and designed to protect the amenity and privacy of neighbouring residential premises;*

The proposed shed would not maintain the amenity of the neighbouring residential premises, particularly the adjoining lots to the east and south. The scale and bulk of the shed would have a dominant presence to both adjoining lots and would negatively impact their amenity. Further, the proposed height of the shed is more aligned to a shed anticipated in rural or industrial zoned areas and is not compatible with the character of a low density residential area. As such, the proposal would not meet the Purpose and Overall Outcomes of the Dwelling House Code.'

7. The owners of the Land, Mr Christopher Wilson and Ms Jennifer Wilson, filed this appeal on or about 4 October 2022 in response to the refusal of the Application.
8. This appeal and Appeal No. 22-050 were dealt with concurrently by the Development Tribunal (**Tribunal**) at the hearing held on 6 December 2022, which was conducted at the Land.

Jurisdiction

9. Section 229(1) of the Act identifies that schedule 1 states the matters that may be appealed to the Tribunal.
10. Table 1 of Schedule 1 of the Act states the matters that may be appealed to the Planning and Environment Court or the Tribunal subject to (in the case of the Tribunal) the pre-conditions stated in section 1(2) of Schedule 1.
11. The Tribunal has jurisdiction to determine this appeal under section 229, Schedule 1, Section 1(2)(g) and Schedule 1, Section 1(1)(b), Table 1, Item 1(a) of the Act.

Decision framework

12. The onus rests on the Appellants to establish that the Appeal should be upheld.¹
13. 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.²
14. The Tribunal may nevertheless (but need not) consider other evidence presented by a party with leave of the Tribunal or any information provided under section 246 of the Act.
15. Leave was given by the Tribunal pursuant to section 253(5)(a) of the Act to the parties to present the other evidence specifically identified in the list of 'material considered' below.
16. The Tribunal is required to decide the Appeal in one of the ways mentioned in section 254(2) of the Act.

Material considered

17. The material considered by the Tribunal pursuant to section 253(4) and section 253(5) of the Act in arriving at this decision comprises:
 - (a) Development Application (Form 2) – Building Work Assessable Against the Planning Scheme submitted by JDBA Certifiers to Council for a shed located at 70 Buderim Street, Battery Hill (Lot 60 C92818) on 29 August 2022. The Application

¹ Section 253(2) of the Act.

² Section 253(4) of the Act

was accompanied by plans, being Sheets A01 (REV E), A02 (REV D), A03 (REV D), A04 (REV F), A05 (REV E), A06 (REV D), A07 (REV F) and A08 (REV D) dated 29 August 2022 (**Application Plans**) and a nine page consultant report prepared by JDBA Certifiers.

- (b) Sunshine Coast Regional Council Assessment Report dated 5 September 2022.
- (c) The decision notice dated 6 September 2022 issued by Council refusing the Application.
- (d) Form 10 – Appeal Notice against the Assessment Manager’s decision to refuse the Application, grounds for appeal and correspondence accompanying the Appeal lodged with the Registrar on or about 4 October 2022.
- (e) Email received by the Registrar from Council on or about 6 December 2022 providing a copy of a street view photograph illustrating the previous shed which was demolished to make way for the Shed.
- (f) Email received by the Registrar from JDBA Certifiers on or about 6 December 2022 enclosing a copy of the letter of consent from the resident located at 68 Buderim Street, Battery Hill dated 19 August 2022.
- (g) Emails received by the Registrar from JDBA Certifiers on or about 7 December 2022 providing:
 - (i) A copy of the Building Approval and approved plans;
 - (ii) A copy of the letter of consent from the adjoining neighbour to the east³ dated 19 August 2022 in relation to the Shed and a Referral Agency Response Request lodged with Council on or about 29 August 2022;
 - (iii) A copy of a photograph of the concrete slab which remained after the demolition of the original shed and which formed part of the footings for the Shed.
- (h) Email received by the Registrar from JDBA Certifiers on or about 8 December 2022 providing nine photographs of other sheds in the area, including 36 Buderim Street, 73 Buderim Street, 81 Buderim Street, 2 Culla-Culla Street, 53 Careen Street, and 9 Elinya Street.
- (i) Email received by the Registrar from JDBA Certifiers on or about 22 December 2022 providing:
 - (i) A Survey Plan of the southwest corner of the Land prepared by Axis Surveys dated 21 December 2022;
 - (ii) An As-Constructed Height Certificate dated 22 December 2022 prepared by Axis Surveys (**Height Certificate**). The Height Certificate states, in part: *'We hereby certify the following, that, at the date of survey (15/12/2022),... the three roof peaks, that were able to be accessed, (being the NE, SW and NW corners) of the new structure (garage/store), measured between 4.43m and*

³ 68 Buderim Street, Battery Hill.

4.54m above the QLD Building Act 1975 and associated Building Regulation 2021 definition of the "Natural Ground Surface".⁴

- (iii) A Location Certificate dated 20 December 2022⁵ and survey plan dated 20 December 2022 prepared by Axis Surveys which illustrated the side and rear setbacks for the northeast, southeast and southwest corners of the Shed, as duplicated below:

CORNER	SHED	EAVELINE	GUTTERLINE
NE	0.48m	0.43m	0.29m
SE	0.50m	0.44m	0.31
SW	0.63m	0.59m	NA

- (j) *Planning Act 2016.*
- (k) *Planning Regulation 2017.*
18. The Tribunal received an email from the Registrar on or about 18 January 2023, which had been received from JDBA Certifiers on or about the same date. This email enclosed the following:
- (a) A Survey Plan of the southwest corner of the subject site prepared by Axis Surveys dated 21 December 2022, as previously provided by JDBA Certifiers on 22 December 2022.
- (b) The Height Certificate, as previously provided by JDBA Certifiers on 22 December 2022.
- (c) A Location Certificate and survey plan which illustrated the side and rear setbacks for the northeast, southeast and southwest corners of the shed, as previously provided by JDBA Certifiers on 22 December 2022.
- (d) Amended plans for the Shed, being Sheets A01 (REV F), A02 (REV E), A03 (REV E), A04 (REV G), A05 (REV F), A06 (REV F), A07 (REV H) and A08 (REV F) dated 9 and 16 January 2023 (**Amended Plans**).
19. The covering email from JDBA Certifiers dated 18 January 2023 stated: "Attached are the amended plans requested by the Referees."
20. There was no explanation provided by JDBA Certifiers as to why they provided the Amended Plans or what changes had been made to the Application Plans.
21. This resulted in the Tribunal having to undertake a review of the Amended Plans to ascertain what changes had been made.
22. The Tribunal identified, amongst other things, the following modifications:

⁴ It is unclear why a height was not provided for the southeast corner of the Shed, and no explanation was provided. Therefore, the Shed height is not known in this location. It could potentially exceed 4.54m.

⁵ The Certificate was accompanied by page 1 of 4 from Form 12 – Aspect Inspection Certificate (Appointed Competent Person) and page 2 of 3 from Form 15 Compliance Certificate for building design or specifications.

- (a) relocation of the boundary line;
 - (b) relocation of the shed so that it is located 600mm from the dwelling house on the Land, rather than 800mm as depicted on the plans included in the Application;
 - (c) the skillion roof of the shed overhanging the boundary line;
 - (d) omission of the shed door;
 - (e) relocation of the shed a further 200m from the side boundary;
 - (f) inclusion of dimensions to the pitching point and height of the shed from natural ground level; and
 - (g) including of the shed ceiling height.
23. The Amended Plans were not requested by the Tribunal. They were not reasonably required for the proceedings.
 24. Leave is not given by the Tribunal to JDBA Certifiers to present the Amended Plans.
 25. For the purpose of section 253(5)(a), the Amended Plans have not been considered by the Tribunal in making this decision.

Findings of fact

The Tribunal makes the following findings of fact:

The land and immediate streetscapes

26. The Land is approximately 597m² in area. It has a frontage of approximately 18.89m to Buderim Street.
27. It is generally rectangular in shape and is adjacent to five residential properties, located on the southern, eastern and western boundaries.
28. The Land generally slopes in an easterly direction from west to east. The height of the Shed above natural ground level at the northeast, northwest and southwest corners varies from 4.43m to 4.54m.
29. Vehicle access to the Land is obtained via a concrete drive from Buderim Street to the Shed located in the rear corner.
30. The Land contains a detached dwelling, the Shed and an inground swimming pool.
31. The dwelling is presently single storey, although the Building Approval authorises modifications to it. The majority of the dwelling is of masonry construction with a metal roof.
32. As at the date of the hearing, the Shed was partially constructed. It was not externally clad but has a complete metal roof.
33. Both the dwelling and the Shed have skillion metal roofs sloping down towards the east. The pitch of the dwelling roof is greater than the pitch of the shed roof.

34. The side and rear setbacks for the northeast, southeast and southwest corners of the Shed, are as duplicated below:

CORNER	SHED	EAVELINE	GUTTERLINE
NE	0.48m	0.43m	0.29m
SE	0.50m	0.44m	0.31
SW	0.63m	0.59m	NA

35. The Buderim Street streetscape in the vicinity of the Land is mostly characterised by single storey dwellings, with some two storey dwellings located further away from the Land.
36. The Land adjoins properties to the rear with frontage to Elinya Street which all contain two storey dwellings.
37. Outdoor recreation areas for the adjoining dwellings with a frontage to Elinya Street are located at the rear of those properties, adjacent to the rear boundary of the Land and in immediate proximity to the shed.

Proposal

38. The Application, as referred to Council on 29 August 2022, seeks approval for a 9m x 6m (ie 54m²) Shed located in the rear south-east corner of the Land.
39. The Shed exceeds 3.6 metres in height. The roof peaks of the Shed have been certified to vary in height from 4.43m to 4.54m above natural ground at the northeast, northwest and southwest corners.
40. The minimum setback of the outmost projection of the Shed has been certified to be 0.29m at the northeast corner, 0.31m at the southeast corner and 0.59m at the southwest corner of the Land.

The hearing

41. During the hearing of the Appeal, the Appellant advised:
- (a) The Land had been owned since 1981.
 - (b) The house located on the Land had been rented to family.
 - (c) Renovations have been occurring since March 2022 and the owners of the Land moved in around early November 2022.
 - (d) Plans were drawn up for renovations to the house which included a new shed with a height of 3.6m, being at a floor level 200mm lower than the adjacent paved area.
 - (e) The Building Approval was issued by JDBA Certifiers on 21 March 2022.
 - (f) The Shed has been substantially constructed but does not comply with the approved plans referred to in the Building Approval as it is higher than 3.6m.
 - (g) A change was made during construction to accommodate the size of the caravan to be stored in the Shed.

- (h) Council issued a letter to stop work on the construction of the Shed.
 - (i) The Original Plans were prepared and included in the Application and referral agency request submitted to Council on or about 29 August 2022.
 - (j) The adjoining neighbour to the east provided their consent to the Original Plans on 19 August 2022.⁶
42. The Tribunal members noted that the height of the shed approved by JDBA Certifiers on 21 March 2022 was never going to be suitable to accommodate a caravan of the size owned by the Appellant, which was observed by the Tribunal members in the partially constructed Shed during the hearing.
43. During the hearing, John Dunn of JDBA Certifiers advised:
- (a) The natural ground level illustrated on the drawings submitted with the Application had been accepted without any verification during assessment of the Application, as is purportedly the normal practice.
 - (b) The Shed has been constructed at the same ground level as the previous shed located on the Land which was demolished.
 - (c) JDBA Certifiers undertook to provide a copy of the current Building Approval issued and a copy of the neighbour's consent letter to the Registrar, which were not in the possession of the Tribunal at the time of the hearing.
44. During the hearing Council's representatives advised:
- (a) Two complaints were received about the Shed.
 - (b) A stop work notice was issued in respect of the Shed.
 - (c) Their key concern was visual amenity impacts.
45. The Tribunal noted the height of the Shed as depicted on the Original Plans was ambiguous and clarity was required as to the height of the ground level.
46. Relevantly, the Scheme contains the following definition of Ground Level:
- "The level of the natural ground, or, where the level of the natural ground has been changed, the level as lawfully changed.*
- Note—lawfully changed ground level is:*
- (a) *the as constructed level of the ground in accordance with an operational works development permit;*
- OR
- (b) *where a site has been filled to manage a flood hazard, a level no higher than:*

⁶ It is noted by the Tribunal that the plans attached to the neighbour's consent letter are dated 15 August 2022 but appear to be consistent with the plans lodged with Council in terms of the shed height and location.

- (i) *the level of the defined flood event (DFE) or the defined storm tide event (DSTE) for the site; or*
- (ii) *if the DFE or DSTE have not been modelled for the area, the highest recorded flood level or storm tide inundation level for the site; or*
- (iii) *the level determined by the Council, in all other circumstances."*

47. At the time of the hearing, the Tribunal was unable to ascertain, with any certainty, the actual height of the Shed above the ground level due to the lack of detail contained within the Application Plans.
48. The Appellant undertook to arrange for a survey to be prepared and to provide this additional information to the Registrar.

Post hearing

49. Additional information and documentation was received by the Registrar from the parties subsequent to the hearing, as previously described in the 'Material considered'.

Reasons for the Decision

50. The Scheme regulates building work in accordance with sections 32 and 33 of the *Building Act 1975*.
51. Section 9.3.6 Dwelling House Code forming part of the Scheme applies to an assessment of the Application.
52. Acceptable Outcome AO2.1 of the Dwelling House Code states as follows:
'Where located on a lot in a residential zone, a garage, carport or shed:-
(a) is setback at least 6 metres from any road frontage;
(b) does not exceed a height of 3.6 metres; and
(c) has a total floor area that does not exceed 56m².'
53. Although the Shed is set back more than 6 metres from the road frontage and does not exceed 56m², the Tribunal notes, with the benefit of the Height Certificate, that the height of the Shed exceeds 3.6m as contemplated by Acceptable Outcome AO2.1(b) of the Dwelling House Code.
54. The dimensions of the Shed are 9m x 6m (ie 54m²). Given these dimensions, and the location of the Shed to the rear of the Land, the Tribunal is satisfied that the Shed complies with Acceptable Outcome AO2.2 of the Dwelling House Code which states:
'Where located on a lot in a residential zone, the total width of a garage door facing a street (and that is visible from the road frontage) does not exceed 6 metres within any one plane, with any additional garage door being set back a further 1 metre from the street frontage to break up the apparent width of the garage façade.'
55. Notwithstanding, the non-compliance with Acceptable Outcome AO2.1(b) of the Dwelling House Code means that an assessment against Performance Outcome PO2 is required.

56. Performance Outcome PO2 states as follows:⁷

'Garages, carports and sheds:-

- (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.'*

57. The Tribunal finds that due to its location at the rear of the Land, the Shed complies with Performance Outcomes PO2(b), PO2(c) and PO2(d).

58. However, assessment against Performance Outcome PO2(a) of the Dwelling House Code is also required. This necessitates consideration as to whether the Shed preserves the amenity of adjacent land and dwelling houses.

59. The Shed ranges in height from 4.43m – 4.54m at the three corners surveyed (northeast, northwest and southwest), and is both visually prominent and overbearing.

60. The visually imposing nature of the Shed, and its bulk, height and scale, is exacerbated by the elevated location of the Land, which sits significantly higher than the adjoining properties to the south and the east.

61. The close proximity of the Shed to the southern and eastern boundaries leaves no opportunity for the provision of any form of landscaping to soften the visual impact of the structure. It is difficult to identify any reasonable opportunities that might be available to the neighbouring residents to visually obscure the Shed and reduce the impact upon their amenity, particularly in the short-term.

62. In addition to the provision of open space located at the rear of their properties, the adjoining residents to the rear (south) have balconies which overlook their backyards as well as windows of habitable rooms. It is reasonable to presume that these balconies are used by residents as part of their ongoing occupation and enjoyment of their properties.

63. Therefore, an assessment of the amenity impacts upon adjacent land and dwelling houses is not just restricted to residents' use and enjoyment of the backyard open space, but also their use and enjoyment of their balcony areas.

64. Although shadow diagrams were not adduced by either party to the proceeding, it would be reasonable to expect that any shadow impacts which would be occasioned upon the adjoining properties by the Shed in its current location which would be less than that resulting from a shed of a lesser height and with greater setbacks to the southern and eastern boundaries.

65. Any additional shadow impacts would also be likely to impact upon the amenity of the neighbouring residents, in addition to the use and enjoyment of their backyards. This alone, however, is not determinative.

⁷ Pursuant to section 1.3.3(1) of the Scheme, a word followed by “;” or alternatively “; and” is considered to be “and”.

66. The Shed is imposing in terms of its height, bulk and scale and visually dominating in its location. It does not preserve the amenity of adjacent land and dwelling houses.
67. The Tribunal finds that the height, bulk and scale of the Shed, in conjunction with its limited setbacks to the southern and eastern boundaries, will adversely impact upon the amenity of adjacent land and dwelling houses. It does not 'preserve' the amenity of these properties. Consequently, it does not comply with Performance Outcome PO2(a) of the Dwelling House Code forming part of the Scheme.
68. Pursuant to section 5.3.3(3)(a)(iii), assessable development requiring code assessment that complies with:
- (a) the purpose and overall outcomes of the code complies with the code;
 - (b) the performance outcomes or acceptable outcomes of the code complies with the purpose and overall outcomes of the code
69. On the basis that the Shed does not comply with Acceptable Outcome AO2.1(b) and Performance Outcome PO2(a) of the Dwelling House Code, an assessment against the purpose and overall outcomes of the code is required.
70. Section 9.3.6.2(1) of the Scheme states that the purpose of the Dwelling house code is to ensure dwelling houses achieve a high level of comfort and amenity for occupants, maintain the amenity and privacy of neighbouring residential premises, and are compatible with the character and streetscape of the local area.
71. The purpose of the Dwelling house code is sought to be achieved through the following overall outcomes:
- (a) *a dwelling house incorporates a high standard of design and makes a positive contribution to the streetscape character of the area in which it is located;*
 - (b) *a dwelling house is sited and designed to protect the amenity and privacy of neighbouring residential premises;*
 - (c) *a dwelling house provides a high level of amenity to the residents of the dwelling house;*
 - (d) *a dwelling house is provided with an acceptable level of infrastructure and services; and*
 - (e) *where provided, a secondary dwelling:-*
 - (i) *is located, designed, constructed and used to have an association with the primary dwelling; and*
 - (ii) *is small in size, such that the secondary dwelling is ancillary to the primary dwelling.*
72. Although the overall outcomes refer expressly to a 'dwelling house', the definition of 'dwelling house' contained in both the Scheme and the Regulation include out-buildings and works normally associated with a dwelling house.
73. The Regulation defines a 'domestic outbuilding' to mean 'a non-habitable class 10a building that is:

- (a) a shed, garage or carport; and
 - (b) ancillary to a residential use carried out on the premises where the building is.
74. The Tribunal is satisfied that the Shed falls within the definition of 'domestic outbuilding' and is therefore, within the scope of the definition of 'dwelling house'.
75. For the reasons identified previously, the Shed does not comply with section 9.3.6.2(2)(b) of the Scheme, which requires that it be sited and designed to protect the amenity and privacy of neighbouring residential premises. The siting and design of the Shed does not protect the amenity of neighbouring residential premises. It adversely impacts upon that amenity.
76. The Shed also fails to comply with the purpose of the Dwelling House Code, which seeks to ensure, amongst other things, that the amenity and privacy of neighbouring residential premises are maintained. The Shed does not maintain the amenity of neighbouring residential premises and will adversely impact upon the amenity currently enjoyed by the residents of those properties.
77. The Appellants have not discharged their onus.
78. While it is not relevant to any determination of whether the Application complies with Dwelling house code, the Tribunal observes that the Shed authorised by the Building Approval could never have accommodated the caravan owned by the Appellants, despite the Tribunal being informed during the hearing that this was the purpose for which the Shed was constructed.
79. The Tribunal confirms the decision of the Assessment Manager to refuse the Application

Kim Calio

Development Tribunal Chair

Date: 17 March 2023

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