

Decision notice approval
Section 282 of the Planning Act 2016 for a decision notice (approval) under s63 Planning Act 2016



PLEASE QUOTE: DBW19/0006

YOUR REFERENCE:

OUR REFERENCE: BJ:MP1904241201

ENQUIRIES TO: Byron Jones – A/Manager Planning Services

24 April 2019

Rodney & Sharon Feeney
PO Box 40
YUNGABURRA QLD 4884

Via email: rodandsharon15@gmail.com

Dear Sir & Madam

DBW19/0006 - Development application for Building Work Assessable Against a Planning Scheme for an Oversize Class 10a Shed with Boundary Setback Dispensation on land described as Lot 23 on NR7906, situated at 11 Taylor Street, Kurrimine Beach

I acknowledge receipt of the above application on 18 April 2019 and confirm the following details.

I wish to advise that, on 24 April 2019 the above development application was -

- ☐ approved in full or
- ☐ approved in part for the following or
- ☒ approved in full with conditions. The conditions of this approval are set out in Attachment 1. These conditions are clearly identified to indicate whether the assessment manager or a concurrence agency imposed them or
- ☐ approved in part for the following, with conditions

The conditions of this approval are set out in **Attachment 1**. These conditions are clearly identified to indicate whether the assessment manager or a concurrence agency imposed them.

Approval under s64(5)

This application is ☐ / is not ☒ taken to have been approved (a deemed approval) under section 64(5) of the Planning Act 2016.

1. Details of the approval

The following approvals are given:

	Planning Regulation 2017 reference	Development Permit	Preliminary Approval
Development assessable under the planning scheme, superseded planning scheme, a temporary local planning instrument, a master plan or a preliminary approval which includes a variation approval - building work assessable under the planning scheme - plumbing or drainage work - material change of use - reconfiguring a lot - operational work		<input checked="" type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>

2. Conditions

This approval is subject to the conditions in Attachment 1.

3. Further development permits

Please be advised that the following development permits are required to be obtained before the development can be carried out:

- Building Permit

4. Other requirements under section 43 of the Planning Regulation

4.(a) Building work under section 43 (c) of the Planning Regulation

The classification OR proposed classification of the building OR parts of the building under the Building code are as follows:

- Class 10a

5. Approved plans and documents

Plan/Document number	Plan/Document name	Date
201903 – Feeney	Site Plan	Dated: 17/04/2019 Received by Council 18/04/2019

6. Currency period for the approval (s.85)

The currency period for the development approval (Building work assessable against a Planning Scheme) shall be two (2) years starting the day the approval is granted or takes effect. In accordance with Section 85 of the Planning Act 2016 (PA), the development approval for Building work assessable against a Planning Scheme lapses if the building work under the approval is not complete within the abovementioned currency period.

An applicant may request Council to extend the currency period provided that such request is made in accordance with Section 86 of PA and before the development approval lapses under Section 85 of PA.

7. Appeal rights

The rights of an applicant to appeal to a tribunal or the Planning and Environment Court against a decision about a development application are set out in chapter 6, part 1 of the Planning Act 2016. For particular applications, there may also be a right to make an application for a declaration by a tribunal (see chapter 6, part 2 of the Planning Act 2016).

Appeal by an applicant

An applicant for a development application may appeal to the Planning and Environment Court against the following:

- the refusal of all or part of the development application
- a provision of the development approval
- the decision to give a preliminary approval when a development permit was applied for
- a deemed refusal of the development application.

An applicant may also have a right to appeal to the Development tribunal. For more information, see schedule 1 of the *Planning Act 2016*.

The timeframes for starting an appeal in the Planning and Environment Court are set out in section 229 of the Planning Act 2016.

Attachment 2 is an extract from the *Planning Act 2016* that sets down the applicant's appeal rights and the appeal rights of a submitter regarding this decision.

If you wish to discuss this matter further, please contact A/Manager Planning Services, Byron Jones on Ph: (07) 4030 2208.

Yours faithfully



Manfred Boldy
DIRECTOR PLANNING & REGIONAL DEVELOPMENT

Attachment 1—Conditions of the approval

Part 1—Conditions imposed by the assessment manager

1. **Proposal:** That the development be undertaken generally in accordance with the application, documentation and plans in the table below, accepted by Council on 18 April 2019, all relating to Development Application - DBW19/0006, except where varied by the following conditions.

Plan/Drawing Number	Plan Name	Date
201903 – Feeney	Site Plan	Dated: 17/04/2019 Received by Council 18/04/2019

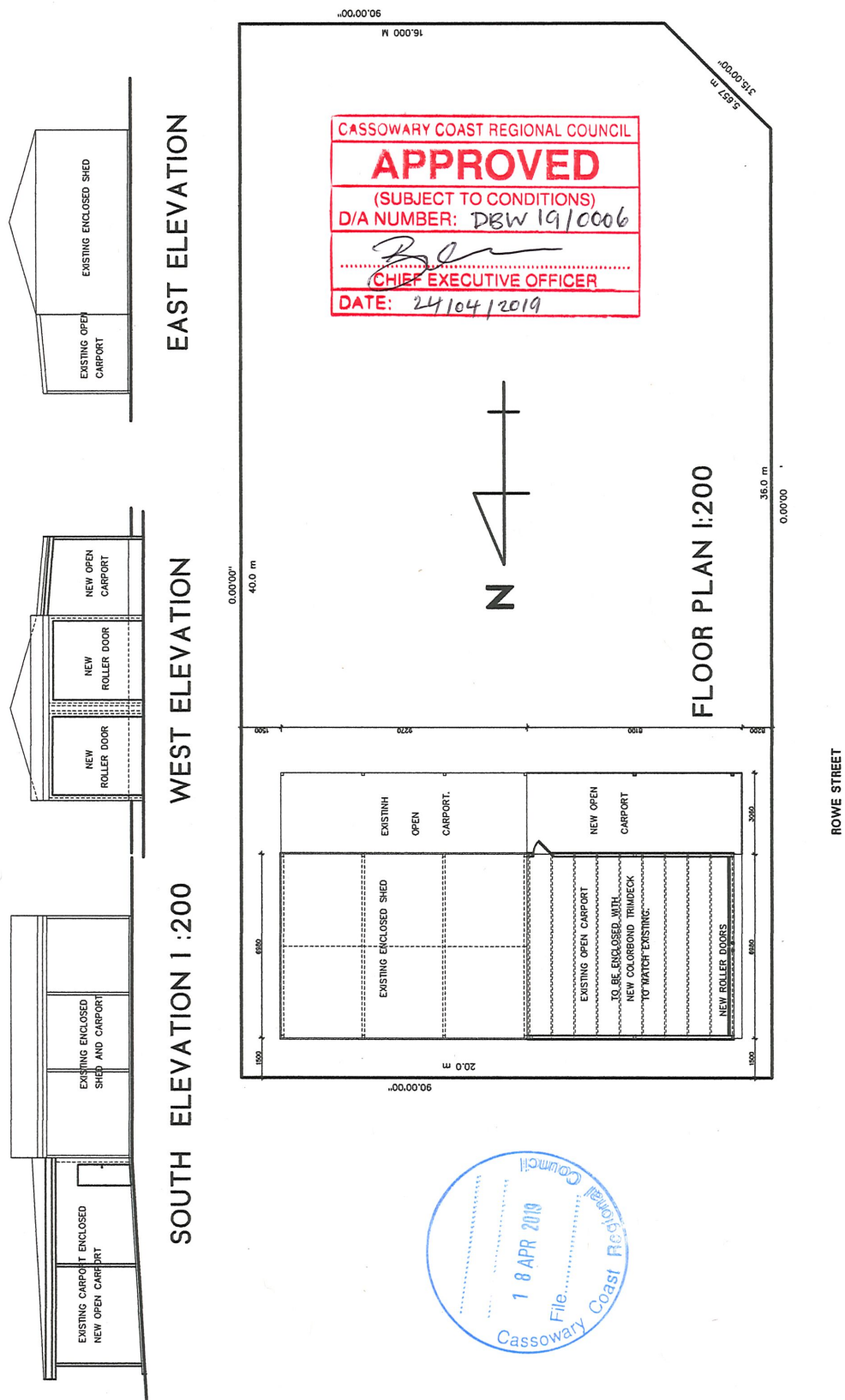
2. **Timing of Effect:** The conditions of the Development Permit must be complied with prior to the commencement of use, except where specified otherwise in these conditions of approval.
3. **Setbacks:** The applicant/owner is to ensure that the shed (Class 10a) is located a minimum distance of 0.82 metres from the western side boundary to Rowe Street, 1.5 metres from the eastern side boundary and 1.5 metres from the rear boundary, measuring for the outermost projection of the structure (including the fascia and guttering), to the satisfaction of the Director Planning and Regional Development.
4. **Building Material:** The exterior cladding of the shed (Class 10a) is to be constructed of materials sympathetic to the surrounding environment. Visible surfaces including any flashing, guttering and downpipes are to be of non-reflective and natural colours, to the requirements and satisfaction of the Director Planning and Regional Development.
5. **Building Class:** The shed (Class 10a) is approved as a non-habitable building or structure and must remain so at all times, to the requirements and satisfaction of the Director Planning and Regional Development.
6. **Stormwater Discharge:** The applicant/owner must ensure that the flow of all external stormwater from the property is directed to a lawful point of discharge, such that stormwater does not adversely affect surrounding properties to the requirements and satisfaction of the Director Planning and Regional Development.

Assessment Manager's Advice

- a) **Currency Period:** The currency period for the development approval (Building work assessable against a Planning Scheme) shall be two (2) years starting the day the approval is granted or takes effect. In accordance with Section 85 of the *Planning Act 2016 (PA)*, the development approval for Building work assessable against a Planning Scheme lapses if the building work under the approval is not complete within the abovementioned currency period.
An applicant may request Council to extend the currency period provided that such request is made in accordance with Section 86 of *PA* and before the development approval lapses under Section 85 of *PA*.
- b) **Required Approvals:** A Development approval for Building works will be required, with a permit for these works issued prior to any works commencing.
- c) **Cultural Heritage:** The applicant/owner is to ensure compliance with the requirements of the Aboriginal Cultural Heritage Act and in particular 'the duty of care' that it imposes all landowners, developers and the alike.

- d) Engineering Works: The applicant/owner is to ensure that the engineering works involved in the proposed development are designed and constructed in accordance with the FNQROC Development Manual.
- e) Environmental Nuisance: The Environmental Protection Act 1994 states that a person must not carry out any activity that causes, or is likely to cause, environmental harm unless the person takes all reasonable and practicable measures to prevent or minimise the harm. Environmental harm includes environmental nuisance. In this regard persons and entities, involved in the civil, earthworks and construction phases of this development, are to adhere to their "general environmental duty" to minimise the risk of causing environmental harm.

Environmental harm is defined by the Act as any adverse affect, or potential adverse affect whether temporary or permanent and of whatever magnitude, duration or frequency on an environmental value and includes environmental nuisance. Therefore, no person should cause any interference with the environment or amenity of the area by reason of the emission of noise, vibration, smell, fumes, smoke, vapour, steam, soot, ash, dust, waste water, waste products, grit, sediment, oil or otherwise, or cause hazards likely in the opinion of the Council to cause undue disturbance or annoyance to persons or affect property not connected with the use.
- f) Vegetation Clearing: Native vegetation clearing is regulated through the Vegetation Management Act 1999. It is recommended that you contact the Department of Natural Resources and Mines to determine any relevant requirements prior to undertaking vegetation clearing on the site.



17 APRIL 2019
SCALE AS SHOWN
AEC No 201903

**PROPOSED ALTERATIONS TO EXISTING SHED AT
11 TAYLOR STREET
KURRAMINE BEACH FOR
ROD AND SHARON FEENEY**

DRAWN _____
MA/BS: MBDAQ.
QBSA No1097925

**P & VR FARNSWORTH
DESIGN DRAFTING
PO BOX 64
MOURILYAN QLD 4858
PHONE 07 40 654889
FAX 07 40 654673
MOB 0416 073509**

Attachment 2–Planning Act 2016 extract on appeal rights

Chapter 6 Dispute resolution

Part 1 Appeal rights

229 Appeals to tribunal or P&E Court

- (1) Schedule 1 of the *Planning Act 2016* states –
 - (a) Matters that may be appealed to –
 - (i) either a tribunal or the P&E Court; or
 - (ii) only a tribunal; or
 - (iii) only the P&E Court; and
 - (b) The person-
 - (i) who may appeal a matter (**the appellant**); and
 - (ii) who is a respondent in an appeal of the matter; and
 - (iii) who is a co-respondent in an appeal of the matter; and
 - (iv) who may elect to be a co-respondent in an appeal of the matter.

(Refer to Schedule 1 of the Planning Act 2016)

- (2) An appellant may start an appeal within the appeal period.
- (3) The **appeal period** is –
 - (a) for an appeal by a building advisory agency – 10 business days after a decision notice for the decision is given to the agency; or
 - (b) for an appeal against a deemed refusal – at any time after the deemed refusal happens; or
 - (c) for an appeal against a decision of the Minister, under chapter 7, part 4, to register premises or to renew the registration of premises – 20 business days after a notice is published under section 269(3)(a) or (4); or
 - (d) for an appeal against an infrastructure charges notice – 20 business days after the infrastructure charges notice is given to the person; or
 - (e) for an appeal about a deemed approval of a development application for which a decision notice has not been given – 30 business days after the applicant gives the deemed approval notice to the assessment manager; or
 - (f) for any other appeal – 20 business days after a notice of the decision for the matter, including an enforcement notice, is given to the person.

Note –

See the P&E Court Act for the court's power to extend the appeal period.

- (4) Each respondent and co-respondent for an appeal may be heard in the appeal.
- (5) If an appeal is only about a referral agency's response, the assessment manager may apply to the tribunal or P&E Court to withdraw from the appeal.
- (6) To remove any doubt. It is declared that an appeal against an infrastructure charges notice must not be about-
 - (a) the adopted charge itself; or
 - (b) for a decision about an offset or refund-
 - (i) the establishment cost of trunk infrastructure identified in a LGIP; or
 - (ii) the cost of infrastructure decided using the method included in the local government's charges resolution.

230 Notice of appeal

- (1) An appellant starts an appeal by lodging, with the registrar of the tribunal or P&E Court, a notice of appeal that-
 - (a) is in the approved form; and
 - (b) succinctly states the grounds of the appeal.
- (2) The notice of appeal must be accompanied by the required fee.
- (3) The appellant or, for an appeal to a tribunal, the registrar must, within the service period, give a copy of the notice of appeal to –
 - (a) the respondent for the appeal ; and
 - (b) each co-respondent for the appeal; and
 - (c) for an appeal about a development application under schedule 1, table 1, item 1 – each principal submitter for the development application; and

- (d) for and appeal about a change application under schedule 1, table 1, item 2 – each principal submitter for the change application; and
 - (e) each person who may elect to become a co-respondent for the appeal, other than an eligible submitter who is not a principal submitter in an appeal under paragraph (c) or (d); and
 - (f) for an appeal to the P&E Court – the chief executive; and
 - (g) for an appeal to a tribunal under another Act – any other person who the registrar considers appropriate.
- (4) The *service period* is –
- (a) if a submitter or advice agency started the appeal in the P&E Court – 2 business days after the appeal has started; or
 - (b) otherwise – 10 business days after the appeal is started.
- (5) A notice of appeal given to a person who may elect to be a co-respondent must state the effect of subsection (6).
- (6) A person elects to be a co-respondent by filing a notice of election, in the approved form, within 10 business days after the notice of appeal is given to the person.

231 Other appeals

- (1) Subject to this chapter, schedule 1 and the P&E Court Act, unless the Supreme Court decides a decision or other matter under this Act is affected by jurisdictional error, the decision or matter is non-appealable.
- (2) The *Judicial Review Act 1991*, part 5 applies to the decision or matter to the extent it is affected by jurisdictional error.
- (3) A person who, but for subsection (1) could have made an application under the Judicial Review Act 1991 in relation to the decision or matter, may apply under part 4 of that Act for a statement of reasons in relation to the decision or matter.
- (4) In this section –
 - decision* includes-
 - (a) conduct engaged in for the purpose of making a decision; and
 - (b) other conduct that relates to the making of a decision; and
 - (c) the making of a decision or failure to make a decision; and
 - (d) a purported decision ; and
 - (e) a deemed refusal.
 - non-appealable*, for a decision or matter, means the decision or matter-
 - (a) is final and conclusive; and
 - (b) may not be challenged, appealed against, reviewed, quashed, set aside or called into question in any other way under the Judicial Review Act 1991 or otherwise, whether by the Supreme Court, another court, a tribunal or another entity; and
 - (c) is not subject to any declaratory, injunctive or other order of the Supreme Court, another court, a tribunal or another entity on any ground.

232 Rules of the P&E Court

- (1) A person who is appealing to the P&E Court must comply with the rules of the court that apply to the appeal.
- (2) However, the P&E Court may hear and decide an appeal even if the person has not complied with the rules of the P&E Court.

Statement of Reasons

The following information is provided in accordance with section 63 of the Planning Act 2016.



Development Application:	DBW19/0006
Property Description:	Lot 23 on NR7906
Property Address:	11 Taylor Street, Kurrimine Beach
Proposal:	Building Work Assessable Against a Planning Scheme for an Oversize Class 10a Shed with Boundary Setback Dispensation
Planning Scheme:	Cassowary Coast Regional Council Planning Scheme 2015
Decision Date:	Approved with conditions on 24 April 2019

REASONS FOR DECISION

The positioning of the shed at the rear of the lot will not negatively impact on the amenity of the locality. This positioning also allows sufficient area for the subsequent construction of a dwelling on the remainder of the lot. In addition to this, the proposed shed will be setback 6.4 metres from the formed section of Rowe Street which allows for vehicles to enter and exit the site in a safe manner.

ASSESSMENT BENCHMARKS

Assessment Benchmarks:	Cassowary Coast Regional Council Planning Scheme 2015 <ul style="list-style-type: none">• Township Zone Code• Villages Local Plan Code• Dwelling House Code
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COMPLIANCE WITH BENCHMARKS

Assessment Benchmark	Reasons for the approval despite non-compliance with benchmark
6.2.7 Township zone code AO3.1 ▼ Buildings, other structures and car parking areas are set back: (a) where a use code applies to the development, in accordance with any setbacks specified in the applicable use code; or (b) where a use code does not apply to the development or the applicable use code does not contain setbacks for the development, at least:	PO3 Buildings, other structures and car parks are set back to ensure that they are compatible with the character of the area and do not adversely affect the amenity of the area or other uses, particularly adjacent residential activities located in a residential or residential choice precinct. Complies with PO3 The proposed shed is set back 0.82 metres from the western secondary street frontage to Rowe Street, 1.5 metres from the eastern side

<ul style="list-style-type: none"> (i) 6 metres from the primary street frontage; (ii) 4 metres from any secondary street frontage; (iii) 3 metres from the side and rear boundaries where the land is in a recreation precinct; (iv) 1.5 metres from the side and rear boundaries in all other precincts. 	<p>boundary and 1.5 metres from the rear boundary and a significant distance from other boundaries. The proposed shed will be setback 6.4 metres from the formed section of Rowe Street which allows for vehicles to enter and exit the site in a safe manner.</p>
<p>6.2.7 Township zone code AO4.1 ▼ Class 10a buildings: (a) cannot have a gross floor area greater than 100m²; (b) must be erected at the same time or subsequent to the construction of a Class 1-9 Building on the lot.</p>	<p>PO4 The construction and use of out-buildings and sheds must not adversely affect the amenity of the surrounding area.</p> <p>Complies with PO4 The proposed shed (class 10a) will have a gross floor area of 121m² and will be constructed prior to the dwelling house (class 1a). The proposed shed will be sited toward the rear of the lot, which provides sufficient space for a future dwelling house to be constructed on the lot.</p> <p>The proposed oversize shed (class 10a) is to be positioned at the rear of the lot adjacent to a vacant lot and will not negatively impact on the amenity of the locality</p>
<p>9.3.10 Dwelling house code AO1.1 ▼ Buildings and other structures in the township zone are set back: (a) at least: <ul style="list-style-type: none"> (i) 1.5 metres from any side and rear boundaries; (ii) 6 metres from the primary street frontage; (iii) 3 metres from any other street frontage, or (b) in accordance with the Queensland Development Code unless a greater setback is required by (a) above</p>	<p>PO1 Buildings and other structures are of an appropriate design, scale and location so as to: <ul style="list-style-type: none"> (a) blend in with the surrounding environment; (b) avoid any detrimental impact on the amenity of the locality; (c) avoid any detrimental impact on surrounding land uses. </p> <p>Complies with PO1 The proposed shed is set back 0.82 metres from the western secondary street frontage to Rowe Street, 1.5 metres from the eastern side boundary and 1.5 metres from the rear boundary and a significant distance from other boundaries. The proposed shed will be setback 6.4 metres from the formed section of Rowe Street which allows for vehicles to enter and exit the site in a safe manner</p>