



Development Tribunal – Decision Notice

Planning Act 2016

Appeal Number:	51-17
Appellant:	Noosa Building Certifiers
Assessment Manager:	Sunshine Coast Regional Council (Council)
Concurrence Agency: (if applicable)	N/A
Site Address:	50 Crescent Road, Eumundi, Qld 4562, Lot 1 RP221269 – the subject site

Appeal

Appeal under section 229 of *Planning Act 2016* (PA) against the Decision Notice of the Assessment Manager Sunshine Coast Regional Council to refuse a development application for the construction of a Class 10a shed as it did not meet and could not be conditioned to meet the following:

- The performance outcomes of the Sunshine Coast Planning Scheme 2014, Dwelling House Code 9.3.6, Table 9.3.6.3.1, Performance Outcome P02 (Garages, Carports and Sheds); and
 - The performance criteria of the Queensland Development Code MP1.2 (Design and Siting Standard for Single Detached Housing – On Lots 450 m² and Over) Performance Criteria P2 (Buildings and Structures).
-

Date and time of hearing:	18 December 2017 at 10:00 am
Place of hearing:	The subject site - 50 Crescent Road, Eumundi, Qld 4562, Lot 1 RP221269 – the subject site
Tribunal:	Mr. Richard Prout – Chair Mr. Graham Osborne – Member
Present:	Mr. Gavin Wright – Property Owner Mrs. Julie Wright – Property owner Mr. Luke Neller – Noosa Building Certifiers Mr. Steven Tucker – Council representative

Decision:

The Development Tribunal (Tribunal), in accordance with section 254 of the PA **replaces** the decision of the Assessment Manager to refuse the development application for the construction of a Class 10a Shed with a decision approving the development application subject to the following conditions:

- The proposed Class 10a shed must be sited and built in accordance with the following drawings:
 - Fertile Soil Pty Ltd, Survey Plan, Site Plan, Plan Number DE18007-1, dated 15/1/2018;
 - Southern Cross Sheds, Site Plan, Drawing Number 51-17, Dated 31/1/2018, Sheet 1 of 2 (see Attachment 1); and
 - Southern Cross Sheds, Elevation Views and Plan View, Drawing Number 51-17, Dated 31/1/2018, Sheet 2 of 2 (see Attachment 2).
- The maximum roof pitch for the shed must not exceed 22.5°;
- The finished roof cladding, external wall cladding and external finishes of the shed must not be of a highly reflective colour i.e. white, silver, zincalume, etc. so as to limit the reflection of light towards the adjoining neighbouring properties; and
- The Applicant shall, prior to any building work commencing onsite, apply for and gain, a Development Approval for Building Work.

Background

The subject site is a 2371 m² allotment located at 50 Crescent Road, Eumundi and is zoned Low Density Residential under the Sunshine Coast Planning Scheme 2014. The allotment is an elevated battle axe block which in general is not visible from Crescent Road.

The existing dwelling on the site was built in 1972 and is located on the highest portion of the allotment i.e. southwest corner of the allotment. The remainder of the allotment is very steep and the only practical location for off street parking is to the rear of the existing dwelling in the southwestern corner of the allotment.

The existing dwelling complies with the setback provisions of the Sunshine Coast Planning Scheme 2014 and the Queensland Development Code MP1.2 (QDC MP1.2) but does not incorporate any practical covered off street parking.

In August 2017 the property owner engaged Southern Cross Sheds (Builder) a company specialising in prefabricated sheds/garages, carports and the like, to design and construct a new Class 10a shed with a floor area of 121 m², with an overall height of 5.70m located to the rear of the existing dwelling with a 1.5m setback from the southern and western boundaries.

As part of their service the Builder lodged a Development Application for Building Work with Noosa Building Certifiers (Applicant) in August 2017.

However the proposed shed did not comply with the following applicable codes:

- Acceptable Outcome A02.1 (b) and A02.1(c) of the Sunshine Coast Planning Scheme 2014, Dwelling House Code 9.3.6, Table 9.3.6.3.1 which states the following:

Where located on a lot in a residential zone, a garage, carport or shed:

- (b) *does not exceed a height of 3.6 metres; and*
- (c) *has a total floor area that does not exceed 56m².*

- Acceptable Solution A2 (a) and A2 (d) (Side and rear boundary clearance) of the Queensland Development Code MP1.2 (Design and Siting Standard for Single Detached Housing – On Lots 450 m² and Over) which states the following:

*(a) The **side and rear boundary clearance** for a part of the building or structure is –*

- (i) where the height of that part is 4.5m or less - 1.5m; and*
- (ii) where the height of that part is greater than 4.5m but not more than 7.5m - 2m; and*

(iii) where the height is greater than 7.5m - 2m plus 0.5m for every 3m or part exceeding 7.5m.

*(d) Subject to A2(c), **class 10a** buildings or parts may be within the boundary clearances nominated in A2(a) and (b) where –*

(i) the height of a part within the boundary clearance is not more than 4.5m and has a mean height of not more than 3.5m; and

(ii) the total length of all buildings or parts, of any class, within the boundary clearance is not more than 9m along any one boundary; and

(iii) the class 10a buildings or parts within the boundary clearance are located no closer than 1.5m to a required window in a habitable room of an adjoining dwelling.

As such the Applicant lodged a Code Assessable Development Permit for Building Work assessable against the planning scheme with the Council on 21 August 2017. The Council as the Assessment Manager issued a Decision Notice on 29 September 2017 refusing the application as it did not meet and could not be conditioned to meet the following:

- The performance outcomes of the Sunshine Coast Planning Scheme 2014, Dwelling House Code 9.3.6, Table 9.3.6.3.1, Performance Outcome P02 (Garages, Carports and Sheds); and
- The performance criteria of the Queensland Development Code MP1.2 (Design and Siting Standard for Single Detached Housing – On Lots 450 m² and Over) Performance Criteria P2 (Buildings and Structures).

The Tribunal received application for appeal Form 10 from the Applicant on 16 October 2017.

Material Considered

The material considered in arriving at this decision comprises:

1. Form 10 – (Application for appeal/declaration), grounds for appeal and correspondence accompanying the appeal lodged with the Development Tribunal Registrar on 16 October 2017;
2. Letter from property owners to Development Tribunal Registrar dated 11 October 2017 advising that Noosa Certifiers has authority to act on their behalf in the Development Tribunal Appeal;
3. Decision Notice (Development Permit for Building Work assessment against the Planning Scheme) from Council dated 29 September 2017, Council reference DW17/2016, refusing the application;
4. Information Request from Council to Applicant dated 24 August 2017;
5. DA Form 2 – Building work detail – Applicant Noosa Building Certifiers;
6. Letter from Applicant to Council dated 5 September 2017 responding to the Council Information Request;
7. Letter from Noosa Building Certifier to Council dated 21 August 2017 addressing the Performance Outcome P02 of Sunshine Coast Council Dwelling House Code 9.3.6, Table 9.3.6.3.1, and the Performance Criteria P2 of the QDCMP1.2;

8. Letter of support dated 2 February 2017 signed by the owners of 54 Crescent Road, Eumundi;
9. Letter of support dated 2 February 2017 signed by the owners of 52 Crescent Road, Eumundi;
10. Development Information Site Report dated 18 August 2017 down loaded from the Council website;
11. The following drawings:
 - Site Plan, undated by Sothern Cross Sheds;
 - Floor Plan & Elevation, undated by Sothern Cross Sheds;
12. Photographs of the subject site provided by Applicant;
13. Verbal submissions at the hearing from all parties to the appeal;
14. The Sunshine Coast Planning Scheme 2014;
15. The Queensland Development Code MP 1.2 (QDC MP1.2);
16. The *Planning Act 2016* (PA);
17. The Building Act 1975 (BA).

Findings of Fact

The Tribunal makes the following findings of fact:

Subject Site

1. The subject site is a 2371 m² allotment located at 50 Crescent Road, Eumundi and is zoned Low Density Residential under the Sunshine Coast Planning Scheme 2014;
2. The allotment is a steep elevated battle axe block which in general is not visible from Crescent Road;
3. The existing dwelling complies with the setback provisions of the Sunshine Coast Planning Scheme 2014 and the Queensland Development Code MP1.2 (QDC MP1.2);
4. The property has compliant off street parking in accordance with Acceptable Outcome A08(a) (Access and Car Parking) of the Sunshine Coast Planning Scheme 2014, Dwelling House Code 9.3.6, Table 9.3.6.3.1 which states the following:
 - (a) *for a lot exceeding 300m² – at least 2 (two) car parking spaces with at least one space capable of being covered.*
5. The allotment was created on 19 September 1988;
6. The following buildings were noted onsite at the Hearing:
 - A dwelling with a single non-conforming lockup garage approved by Council in October 1972; and
 - A roofed deck area located on the southeast side of the allotment close to the driveway access approved by a private building certifier in April 2017.
7. The allotment does not have any reticulated water or sewer infrastructure;
8. The allotment has one small easement that forms part of the driveway access however this easement does not constrain the site;

9. The allotments within the surrounding area consist of large Low Density Residential allotments which are more akin to Rural Residential allotments due to their sizes and lack of Council and Unitywater services;

Application Process

1. In August 2017 the property owner engaged Southern Cross Sheds (Builder) a company specialising in prefabricated sheds/garages, carports and the like, to design and construct a new Class 10a shed with a floor area of 121 m², with an overall height of 5.70m located to the rear of the existing dwelling with a 1.5m setback from the southern and western boundaries;

2. As part of their service the Builder lodged a Development Application for Building Work with a Private Building Certifier, Noosa Building Certifiers (Applicant) in August 2017;

3. However the proposed shed did not comply with the following applicable codes:

- Acceptable Outcome A02.1 (b) and A02.1(c) of the Sunshine Coast Planning Scheme 2014, Dwelling House Code 9.3.6, Table 9.3.6.3.1 which states the following:

Where located on a lot in a residential zone, a garage, carport or shed:

- (b) does not exceed a height of 3.6 metres; and*
- (c) has a total floor area that does not exceed 56m².*

- Acceptable Solution A2 (a) and A2 (d) (Side and rear boundary clearance) of the Queensland Development Code MP1.2 (Design and Siting Standard for Single Detached Housing – On Lots 450 m² and Over) which states the following:

*(a) The **side and rear boundary clearance** for a part of the building or structure is –*

- (i) where the height of that part is 4.5m or less - 1.5m; and*
- (ii) where the height of that part is greater than 4.5m but not more than 7.5m - 2m; and*
- (iii) where the height is greater than 7.5m - 2m plus 0.5m for every 3m or part exceeding 7.5m.*

*(d) Subject to A2(c), **class 10a** buildings or parts may be within the boundary clearances nominated in A2(a) and (b) where –*

- (i) the height of a part within the boundary clearance is not more than 4.5m and has a mean height of not more than 3.5m; and*
- (ii) the total length of all buildings or parts, of any class, within the boundary clearance is not more than 9m along any one boundary; and*
- (iii) the class 10a buildings or parts within the boundary clearance are located no closer than 1.5m to a required window in a habitable room of an adjoining dwelling.*

4. The Applicant lodged a Code Assessable Development Permit for Building Work assessable against the planning scheme with the Council on 21 August 2017 along with the following information:

- A site plan detailing the location of the proposed shed and;
- A report addressing the Performance Outcome P02 of Sunshine Coast Council Dwelling House Code 9.3.6, Table 9.3.6.3.1, and the Performance Criteria P2 of the QDCMP1.2.

5. The Council issued an Information Request on 24 August 2017, to the Applicant stating;

Amend the height of the proposed shed to ensure the proposal does not have unacceptable impacts on the amenity of adjacent land and dwelling houses.

6. The Applicant responded to the Council Information Request on 5 September 2017, providing letters of support from the adjoining property owners and a letter stating the following:

In consideration of comments provided by SCR on the information request the roof height has been reduced by dropping the pitch from 30° to 25°.

The owner wants a shed to fit the character of the area, and wishes to achieve this by using a steep gable roof pitch the same as the three surrounding dwelling houses.

The proposal was disused with the two adjoining land owners, who agreed that the proposed shed would look best with a steeper roof pitch. They have provided signed letters indicating they understand what is proposed and have no objection.

7. The Council issued a Decision Notice on 29 September 2017 refusing the application on the following grounds:

- *The proposed shed does not comply with Performance Outcomes P02 of the Dwelling House Code as it will have unacceptable amenity impacts on the adjacent residential premises;*
- *The proposed shed does not comply with the Purpose and Overall Outcomes of the dwelling House Code as it will have unacceptable amenity impacts on the adjacent residential premises;*
- *The proposed shed does not comply with Performance Outcome P2 of the Queensland Development Code MP1.2 as it will have unacceptable amenity impacts on the adjacent residential premises;*
- *Compliance with the applicable assessment benchmarks cannot be achieved by imposing development conditions.*

8. The Tribunal received the application for appeal, Form 10 from the applicant on the 16 October 2017.

Hearing Discussion

At the hearing, the appeal parties discussed a number of options which included:

- Reducing the roof pitch of the proposed Class 10a Shed in order to reduce the overall height of the building above natural ground level; and
- Reducing the height of finished ground level in the location of the shed by increasing the depth of the site cut thus improving the access to the building and reducing the overall height of the building above natural ground level.
- The hearing was suspended to allow the Applicant the opportunity to develop a revised site plan, elevation views, and earthworks plan for Council to consider;
- The Applicant submitted an amended design to Council and the Tribunal on the 17 January 2018;
- The Council provided a response to the Tribunal on the 17 January 2018 and 22 January 2018 stating that they were satisfied with the amended design for the proposed shed subject to the following:
 - The pitched changed to 22.5° in order to further reduce the overall height of the building, the following; and
 - The shed to be clad in a non-reflective colorbond of a colour sympathetic to the existing dwelling.

Reasons for the Decision

The Tribunal as mentioned above, replaces the decision of the Assessment Manager refusing the development application with a decision approving the development application, subject to conditions for the following reasons:

The Tribunal is of the opinion that the subject allotment and surrounding allotments are more akin to Rural Residential allotments rather than their present zoning Low Density Residential.

This position is based on the size of the subject allotment i.e. 2371 m² and the size of the surrounding allotments along with their lack of Council and Unitywater services.

As such the Tribunal is of the opinion that the total floor area of the proposed shed is in keeping with an allotment of this size.

However as per Acceptable Outcome A05.1 (a) of the Sunshine Coast Council Dwelling House Code 9.3.6, Table 9.3.6.3.1, the minimum side and rear boundary setback in a Rural Zone of 2 hectares or less is 3m.

Likewise, it is the opinion of the Tribunal that the proposed shed needs to be reduced in height in order to achieve the Performance Outcomes of P2 of QDC MP1.2, given its close proximity to the adjoining allotment boundaries.

Richard Prout
Development Tribunal Chair
Date: 31 January 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

Telephone (07) 1800 804 833 Facsimile (07) 3237 1248

QBCC Licence No: 110 7409

SITE PLAN

**SOUTHERN
CROSS
SHEDS**


- **Address :** 50 Crescent road, Eumundi
- **Lot/Plan :** 1RP221269
- **Shed Size :** 9.000 x 11.000 x 3.100

★ *individually designed,
competitively priced*



ELEVATION



 *individually designed,
competitively priced*

- **Address :** 50 Crescent road, Eumundi
- **Lot/Plan :** 1RP221269
- **Shed Size :** 9.000 x 11.000 x 3.100

