



## Development Tribunal – Decision Notice

---

### *Planning Act 2016*

<b>Appeal Number:</b>	47 - 17
<b>Appellant:</b>	Ms. Ann Catherine Taylor
<b>Assessment Manager:</b>	Noosa Building Certifiers (Luke Neller)
<b>Concurrence Agency:</b> (if applicable)	Sunshine Coast Regional Council (Council)
<b>Site Address:</b>	2 Karri Court, Mapleton, QLD 4560, and described as Lot 21 on RP201135 – the subject site

---

### **Appeal**

Appeal under section 229 of *Planning Act 2016* (PA) against the Decision Notice of the Assessment Manager to refuse a Class 10a Shed. Sunshine Coast Regional Council (Council) as the Concurrence Agency directed the Assessment Manager to refuse the building as it did not meet and could not be conditioned to meet the performance outcomes of the Sunshine Coast Planning Scheme 2014, Part 9.3.6 Dwelling House Code, Performance Outcome PO4.

---

<b>Date and time of hearing:</b>	03 November 2017 at 11.00 am
<b>Place of hearing:</b>	The subject site
<b>Tribunal:</b>	Mr. Andrew Parker – Chair Mr. John Gillespie - Member
<b>Present:</b>	Ms. Ann Catherine Taylor – Appellant and Property Owner Mr. Tom Ryan – Support Person for Appellant Mr. Luke Neller – Assessment Manager (Noosa Building Certifiers) Mr. Peter Chamberlain – Council representative Mr. Steve Rosenius – Council representative Ms. Sandra White – Student Observer with Council

---

### **Decision:**

The Development Tribunal (Tribunal), in accordance with section 254 of the PA **sets aside** the decision of the Assessment Manager to refuse the Class 10a Shed at the direction of Council, and approves the building with the following conditions:

1. The proposed shed must be sited and built in general accordance with the following drawings:
  - i. Amended Site Plan by Australian Garage Supermarket, undated, showing shed located 8.0 metres from the first one-third corner truncation of the lot

at Obi Obi Road, and 3.0 metres from the Karri Court frontage (reduced size copy attached for identification); and

- ii. Amended Building Plan by Marlken Pty Ltd, dated 27 March, Job Number 4731, showing a single bay enclosed garage of dimensions 4.5 metres width, 7.0 metres length, and 2.4 metres wall height at eave (reduced size copy attached for identification); and
2. The wall and roof cladding, roller door and corner mouldings, flashings and trims for the shed are to be of soft, natural colours that allow the building to blend in with the surrounding vegetation; and
3. The shed slab is to be constructed on a levelled pad that is cut into the existing bank, without any filling, in order to absolutely minimise the overall height of the shed above natural ground level; and
4. As much of the existing vegetation as possible is to be retained around the shed site. A new landscaping buffer of minimum 2 metres width, extending continuously from the Obi Obi Road property boundary for the entire length of the shed, consisting of screen planting of plants growing to a minimum height of two (2) metres is required to be established and maintained between the shed and the Karri Court frontage as depicted on the approved site plan. The landscaping buffer is to be established within 3 months of the shed being placed on the site, and maintained (watering, fertilising, mulching, weeding, and the like) for the life of the building; and
5. Any formal crossover or driveway providing direct access from Karri Court to the shed is not to be constructed without any necessary approval (Operational Works Permit or the like) for a second driveway/crossover first being obtained from Sunshine Coast Regional Council; and
6. The Appellant shall, prior to any building work commencing onsite, apply for and gain, a Development Approval for the Building Works. The conditions 1 to 5 above are to be referred to in any final inspection certificate.

## **Background**

The subject site is a 1000 m<sup>2</sup> allotment located at 2 Karri Court, Mapleton, and is zoned Rural Residential under the Sunshine Coast Planning Scheme 2014. It is also contained within the Blackall Range Local Plan Area, and is positioned within the Moderate Hazard Area of the Land Subject to Landslide Hazard and Steep Land Overlay of the same Planning Scheme. The property is a corner allotment with dual road frontages, and is relatively irregular in shape.

There is an existing dwelling on the lot, along with a single carport sited beside. The property is not serviced by sewer infrastructure, and apart from the small area of flat landscaped land immediately adjacent to the dwelling, the site generally slopes quickly away from the dwelling towards both road frontages.

In March 2017 the property owners engaged Australian Garage Supermarket (Builder), a company specialising in prefabricated sheds and carports, patios, gazebos, enclosures etc. to design and construct a new shed. The proposed shed was to be of size 9.0 metres length, 4.5 metres width, and 2.4 metres wall height at eave. The shed was to be located 6.0 metres from the first one-third corner truncation of the lot at Obi Obi Road, and 2.0 metres from the Karri Court frontage.

As part of their service the builder lodged a Development Application for Building Work with Noosa Building Certifiers (Assessment Manager).

However the proposed shed did not comply with Acceptable Outcome AO4.2 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 the Rural residential zone, the dwelling house (including any associated garage, carport or shed) is set back at least:*

(a) 10 metres from any road frontage;

As such the Assessment Manager lodged a request for referral agency response for building work with Council on 07 April 2017.

The Council issued an Information Request on 12 April 2017 to the Assessment Manager requesting that amended drawings be submitted showing an alternate location for the shed to reduce the impact of the building on the street.

The Assessment Manager responded to the Information Request on 19 June 2017, providing an amended design and justification as to why the amended shed should be approved.

The amended shed design reduced the overall size to 7.0 metres length, 4.5 metres width, and 2.4 metres wall height at eave. The shed was also repositioned to increase the road boundary setbacks to 8.0 metres from the first one-third corner truncation of the lot at Obi Obi Road, and 3.0 metres from the Karri Court frontage. The design also included additional landscaping to be established between the shed and the Karri Court road frontage.

The Council issued a Concurrence Agency Response on 30 August 2017 instructing the Assessment Manager to refuse the application as it did not meet and could not be conditioned to meet the requirements of the Sunshine Coast Planning Scheme Performance Outcome PO4 (a) and (b) for Setbacks in Rural and Rural Residential Zones.

The Assessment Manager issued a Decision Notice on 07 September 2017, refusing the Class 10a Shed as directed by Council.

An application for appeal Form 10 was lodged with the Tribunals Registrar by the Appellant on 29 September 2017.

## **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 29 September 2017;
2. Assessment Manager Decision Notice, Application Number 20170316, dated 07 September 2017, refusing the shed as directed by Council;
3. Sunshine Coast Regional Council Application Form – Building Act 1975 Request for Referral Agency Response for Building Works, dated 07 April 2017, lodged by Noosa Building Certifiers (Assessment Manager);
4. Cover Letter from Noosa Building Certifiers dated 07 April 2017 accompanying Concurrence Agency Referral Application;
5. The drawings lodged with the Concurrence Agency Referral Application:

- Site Plan by Australian Garage Supermarket, undated, showing shed located 6.0 metres from the first one-third corner truncation of the lot at Obi Obi Road, and 2.0 metres from the Karri Court frontage; and
  - Building Plan by Marlken Pty Ltd, dated 27 March, Job Number 4731, showing a single bay enclosed garage of dimensions 4.5 metres width, 9.0 metres length, and 2.4 metres wall height at eave;
6. Information Request from Council to Assessment Manager dated 12 April 2017;
  7. Response to Information Request from Assessment Manager to Council dated 19 June 2017;
  8. Amended drawings lodged in response to the Council Information Request, including:
    - Amended Site Plan by Australian Garage Supermarket, undated, showing shed located 8.0 metres from the first one-third corner truncation of the lot at Obi Obi Road, and 3.0 metres from the Karri Court frontage; and
    - Amended Building Plan by Marlken Pty Ltd, dated 27 March, Job Number 4731, showing a single bay enclosed garage of dimensions 4.5 metres width, 7.0 metres length, and 2.4 metres wall height at eave;
  9. Photographs (7 of) of the subject site showing the slope and extent of existing landscaping in the general location of the proposed shed site;
  10. Email with attachments from Appellant to Council dated 07 August 2017 providing further written response to the Council's Information Request and including Google Earth aerial imagery of the property and surrounding area;
  11. Email from Council to Appellant dated 09 August 2017;
  12. Email from Assessment Manager to Council dated 11 August 2017 forwarding documents from Appellant;
  13. Email from Council to Assessment Manager dated 16 August 2017 advising that the application had been re-assessed in relation to the additional information provided, and that the application was still recommended for refusal;
  14. Concurrence Agency Response RAB17/0219 from Council dated 30 August 2017 instructing Assessment Manager to refuse Development Application for Building Work;
  15. IDAS Form 1 - Application Details, IDAS Form 2 - Building work requiring assessment against the *Building Act 1975*;
  16. Verbal submissions at the hearing from all parties to the appeal;
  17. Sunshine Coast Regional Council Development Information Site Report for the subject site;
  18. The Sunshine Coast Planning Scheme 2014;
  19. The Queensland Development Code MP 1.2 (QDC MP 1.2);
  20. The *Sustainable Planning Act 2009* (SPA);
  21. The *Planning Act 2016* (PA);
  22. The *Building Act 1975* (BA).

## **Findings of Fact**

The Tribunal makes the following findings of fact:

### **Subject Site**

1. The subject site is a 1000 m<sup>2</sup> allotment located at 2 Karri Court, Mapleton, and is zoned Rural Residential under the Sunshine Coast Planning Scheme 2014;
2. The property is a corner allotment with dual road frontages, and is relatively irregular in shape;
3. Under the Sunshine Coast Planning Scheme 2014, the site is contained within the Blackall Range Local Plan Area, as well as being positioned within the Moderate Hazard Area of Land Subject to Landslide Hazard and Steep Land Overlay mapping;
4. There is an existing dwelling on the lot, along with a single carport sited beside. The property is not serviced by sewer infrastructure, and apart from a small area of flat landscaped land immediately adjacent to the dwelling, the land generally slopes quickly away from the dwelling towards both road frontages;
5. The site is further constrained by the location of the existing disposal trenches for the onsite septic system, and the positioning of the partially in-ground concrete rainwater tank, constructed to the front of and below the dwelling on the slope fronting Obi Obi Road;
6. Without significant and costly earthworks, the slope of the site provides limited ability for a shed to be built that would comply with the 10m setback requirement from both road frontages, in accordance with Acceptable Outcome AO4.2 of the Sunshine Coast Planning Scheme 2014, Dwelling House Code 9.3.6, Table 9.3.6.3.1;
7. Established landscaping consisting of dense vegetation obscures the proposed shed site when viewed from directly in front of the property on Obi Obi Road;
8. The streetscape in Karri Court and along Obi Obi Road generally consists of rural residential properties mainly with open fronted allotments, some with up to 1.8 m high front and side boundary fences/walls, with a strong emphasis on natural landscaping, and with buildings sited over a wide range of varying setbacks from road boundaries;

### **Application Process**

1. In March 2017 the property owners engaged Australian Garage Supermarket (Builder), a company specialising in prefabricated sheds and carports, patios, gazebos, enclosures etc. to design and construct a new shed. The proposed shed was to be of size 9.0 metres length, 4.5 metres width, and 2.4 metres wall height at eave. The shed was to be located 6.0 metres from the first one-third corner truncation of the lot at Obi Obi Road, and 2.0 metres from the Karri Court frontage;
2. As part of their service, the builder lodged a Development Application for Building Work with Noosa Building Certifiers (Assessment Manager);
3. The proposed shed did not comply with Acceptable Outcome AO4.2 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 the Rural residential zone, the dwelling house (including any associated garage, carport or shed) is set back at least:*

*(a) 10 metres from any road frontage;*

4. The Assessment Manager lodged a request for referral agency response for building work with Council on 07 April 2017, along with plans detailing the location and design of the proposed shed;
5. Section 33 of the BA (Alternative provisions to QDC boundary clearance and site cover provisions for particular buildings) allows a planning scheme to include alternative provisions for single detached Class 1 buildings and Class 10 buildings or structures to the provisions of the QDC for boundary clearance and site cover. Table 9.3.6.3.1 of the Dwelling House Code clearly states that Acceptable Outcome AO4.2 is an alternative provision to the QDC;
6. The Council issued an Information Request on 12 April 2017 to the Assessment Manager stating:

*Council's current position in relation to the proposal is to recommend **refusal**.*

*Council has not **refused** the application in the first instance, in case the applicant wishes to withdraw the application **or** submit an alternative proposal that may also require consideration by Council.*

*The allotment is not constrained, and the location of the proposed shed, is such that an alternative location for the shed **maybe** available, to not significantly encroach upon the Planning Scheme provisions; to have a shed which does not unduly impact upon the streetscape.*

*As the proposed shed is located within the prescribed road boundary setback, please provide amended drawings/detail showing the following:*

- *Shed location changed thus reducing the impact of the building on the street.*

***Alternatively** Demonstrate how the proposed development can generally comply with Sunshine Coast Planning Scheme 2014, Dwelling House Code 9.3.6, Performance Outcomes, as given below:*

#### ***PO4 – Setbacks in Rural and Rural Residential Zones***

*Where located in the Rural zone, the dwelling house is set well back from any road frontage so as to:-*

- a) Maintain an open visual landscape dominated by natural elements (rather than built structures);*
- b) Preserve the amenity and character of the rural or rural residential area, having regard to building massing and scale as seen from the road and neighbouring premises.*

7. The Assessment Manager responded to the Information Request on 19 June 2017, providing an amended design and justification as to why the amended shed should be approved. The amended shed design reduced the overall size to 7.0 metres length, 4.5 metres width, and 2.4 metres wall height at eave. The shed was also repositioned to increase the road boundary setbacks to 8.0 metres from the first one-third corner truncation of the lot at Obi Obi Road,

and 3.0 metres from the Karri Court frontage. The design also included additional landscaping to be established between the shed and the Karri Court road frontage;

8. The Appellant provided an email with attachments to the Council on 07 August 2017, submitting further written response to the Council's Information Request, together with a list of properties in the general vicinity that exhibited buildings with reduced setbacks, and including Google Earth aerial imagery of the property and surrounding area;
9. The Council advised the Appellant via email on 09 August 2017 that the response received on 07 August 2017 needed to be provided to Council via the Assessment Manager;
10. The Assessment Manager forwarded the documents from the Appellant to the Council on 11 August 2017;
11. The Council emailed the Assessment Manager on 16 August 2017 advising that the application had been re-assessed in relation to the additional information provided, and that the application was still recommended for refusal;
12. The Council issued a Concurrence Agency Response on 30 August 2017 instructing the Assessment Manager to refuse the application as it did not meet and could not be conditioned to meet the requirements of the Sunshine Coast Planning Scheme Performance Outcome PO4 (a) and (b) for Setbacks in Rural and Rural Residential Zones, namely:

*In accordance with section 289(1) the reasons for refusal are as follows:*

*The application is REFUSED as:*

*The shed does not comply with and cannot be conditioned to comply with the Sunshine Coast Planning Scheme 2014, Part 9, 9.3.6 Dwelling House Code, Setbacks in Rural and Rural Residential Zones, Performance Outcomes PO4.*

**Setbacks in Rural and Rural Residential Zones**

**PO4**

*Where located in the Rural zone, the dwelling house is set well back from any road frontage so as to:-*

- a) Maintain an open visual landscape dominated by natural elements (rather than built structures);*
- b) Preserve the amenity and character of the rural or rural residential area, having regard to building massing and scale as seen from the road and neighbouring premises.*

13. The Assessment Manager issued a Decision Notice on 07 September 2017, refusing the Class 10a Shed as directed by Council.
14. An application for appeal Form 10 was lodged with the Development Tribunals Registrar by the Appellant on 29 September 2017;
15. The Council confirmed at the hearing that the proposed 8.0 metre setback from the Obi Obi Road frontage was generally in accordance with the intent of the Planning Scheme, but that

the proposed setback of only 3.0 metres to Karri Court in lieu of the required 10 metres was the primary reason for instructing the Assessment Manager to refuse the application;

16. At the hearing, the Council suggested that there was an alternate position available on the site to position the shed, on the small, flat, landscaped section of land above the septic trench disposal area, and immediately adjacent to the dwelling. This area would maintain compliance with the setback requirements of Acceptable Outcome AO4.2 of the Sunshine Coast Planning Scheme 2014, Dwelling House Code 9.3.6, Table 9.3.6.3.1;
17. The Council also expressed at the hearing that a significant concern for the local authority was that the approval of any building within significantly reduced site boundary setback distances has the potential to create a precedent in any streetscape, making it more difficult to police any future applications of a similar nature.

### **Reasons for the Decision**

The Tribunal **sets aside** the decision of the Assessment Manager to refuse the Class 10a Shed for the following reasons:

The Tribunal is of the view that the proposed development can be approved and conditioned to meet the requirements of the Sunshine Coast Planning Scheme Performance Outcome PO4 (a) and (b) for Setbacks in Rural and Rural Residential Zones of the Sunshine Coast Planning Scheme 2014, Dwelling House Code 9.3.6, Table 9.3.6.3.1 as:

*PO4 (a) Maintain an open visual landscape dominated by natural elements (rather than built structures);*

The size of the proposed shed does not untowardly contribute to excessive site coverage, helping to maintain adequate private open space on the subject lot. The wall and roof cladding, roller door and corner mouldings, flashings and trims for the shed will be of soft, natural colours that allow the building to blend in with the surrounding vegetation.

Further, the retention of landscaping consisting of dense vegetation already established between the shed site and the Obi Obi Road frontage obscures the proposed shed site when viewed from that road directly in front of the property. Along with the additional landscaping to be provided on the Karri Court frontage, required by a condition of this decision, it will help to ensure that the landscape is dominated by natural elements rather than built structures.

*PO4 (b) Preserve the amenity and character of the rural or rural residential area, having regard to building massing and scale as seen from the road and neighbouring premises;*

The Council suggested that the small, flat, landscaped section of land above the septic trench disposal area, and immediately adjacent to the dwelling would be a suitable alternate site to construct the shed. However, the Tribunal is of the opinion that to site the shed in such proximity to the dwelling, would unacceptably reduce the level of amenity for the residents of the dwelling.

Taking into consideration the locality of the existing disposal area for the septic trenches, and without significant and costly earthworks, the slope of the remaining available area provides limited ability for a shed to be built that would comply with the 10m setback requirement from both road frontages as required by Acceptable Outcome AO4.2 of the Sunshine Coast Planning Scheme 2014.



The Tribunal is of the view that the proposed shed of reduced size is generally consistent with the character of the area, and includes a landscaped buffer area to reduce the visual impact of the shed when viewed from both Obi Obi Road and Karri Court.

The Tribunal is also satisfied that, subject to the conditions imposed by this decision, the proposed siting of the new shed is of a size, bulk and form that is in keeping with the character of the rural residential area, and will not adversely impact upon the amenity of any neighbouring properties.

At the hearing, the Council expressed that a significant concern for the local authority was that the approval of any building within site boundary setback distances has the potential to create a precedent in any streetscape, making it more difficult to police any future applications of a similar nature. However, in this instance, the Tribunal is satisfied that the subject site is faced with a unique set of physical characteristics that unfortunately prevent the shed from being placed, in terms of cost and practicality, in any other suitable location. These set of circumstances do not exist for neighbouring properties in Karri Court, thus reducing the likelihood of any real precedent being set.

---

**Andrew Parker**  
**Development Tribunal Chair**  
**Date: 28 November 2017**

## **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**

Attachments

Approved Site Plan – Refer Decision Condition 1 (i)



AMENDED

SITE PLAN

Cathy Taylor  
2 Karri Court  
Mapleton 4560  
Lot 21 RP201135

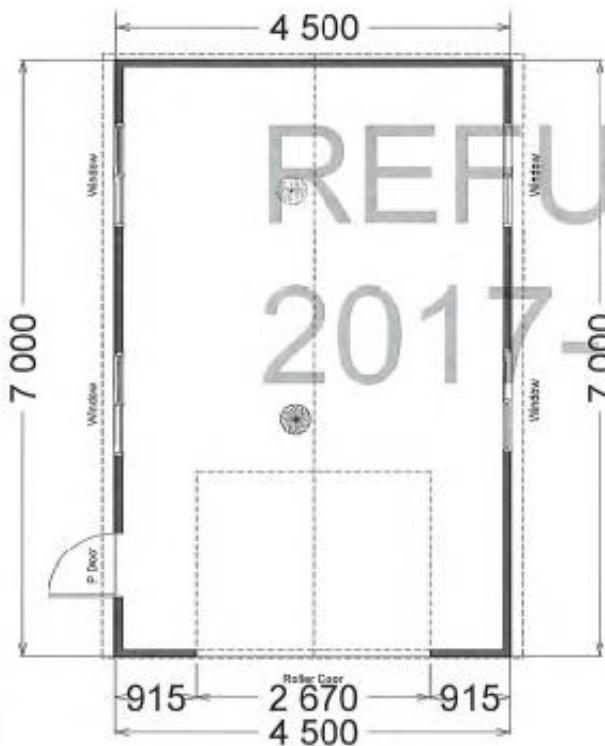
### AMENDED BUILDING PLAN



FRONT VIEW



REAR VIEW



FLOOR PLAN

**NOTES: Foundations and slab:**

All topsoil containing organic material together with any loose foundation material shall be removed from the building pad area  
 Slab Constructed First  
 Constructed by Company  
 Site levelled by Customer (Extra charge if not level)  
 Customer to provide a level compacted site  
 Piers through any fill payable by Customer  
 Access problems extra costs payable by client

**Building description:**

Wind Rating W: 41N (N3) Kit Type: **INSTALLED**  
 Anchorage: Slab Fix  
 Roof Type: Gable Pitch: 10 Deg  
 Building size: 7.00 x 4.50 x 2.4  
 Roof Material: TBN Custom Orb  
 Wall Material: TBN Multiclad  
 Gutters & Cap: TBN TBN  
 Main Doors: 1 x 2100 x 2700 W Domestic R/D/s  
 TBN

Personal Doors: 1 x 2050 x 870 wide  
 TBN

Windows: 4 x 900x1200 Sliding Aluminium  
 TBN

Downpipes: 90mm PVC  
 Connected from gutter to top of floor height only. Drainage away from site is customers responsibility.

Services: Power: Yes Water: Yes

**Comments:**

The Deposit Must Be Paid And The Signed Agreement Must Be Recieved Before Any Work Will Be Done

**Note!** The Plan above is not necessarily drawn to scale refer to production drawings for exact construction details.



**MARLKEN PTY LTD**  
 368 MONS ROAD  
 FOREST GLEN 4556  
 PHONE: (07) 5445 5611  
 FAX: (07) 5445 5668

**(c) Copyright 2017**  
 These plans may not be reproduced in part or whole without the expressed written consent of the company

**PROPOSED: Panelform Garage**  
**FOR: Cathy Taylor**  
**SITE ADDRESS: LOT: RP:**  
**2 Karri Court**  
**Mapleton**  
**HOME : 0412130090 WORK:**  
**APPROVAL BY: Coastal Building**  
**AUTHORITY:**

<b>REPRESENTATIVE :</b>	<b>DATE :</b>
Marlene Best	27, Mar,
<b>DIGGING</b> Unknown	
<b>OBSTRUCTIONS</b> Unknown	
<b>STORMWATER</b> Connected By Client At A Later Date	
<b>SITE CLEANUP</b> Elector To Remove Rubbish	
<b>JOB NUMBER 4731</b>	