



Development Tribunal – Decision Notice

Planning Act 2016

Appeal Number:	16 - 18
Appellant:	Pure Building Approvals (Gus Schulz)
Assessment Manager:	Gus Schulz (Pure Building Approvals)
Concurrence Agency: (if applicable)	Sunshine Coast Regional Council (Council)
Site Address:	29 Pacific Boulevard, Buddina, QLD 4575, and described as Lot 69 on RP107475 – the subject site

Appeal

Appeal under section 229 of the *Planning Act 2016* (PA) against the Decision Notice of the Assessment Manager to refuse a Balcony addition to an existing Class 1a Dwelling. Sunshine Coast Regional Council (Council) as the Concurrence Agency directed the Assessment Manager to refuse the addition 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 PO3 (b).

Date and time of hearing:	13 July 2018 at 10.00 am
Place of hearing:	The subject site
Tribunal:	Mr. Andrew Parker – Chair Ms. Carol Dowd - Referee Ms. Wendy Evans - Referee
Present:	Mr. Gus Schulz – Appellant and Assessment Manager Mr. Christian Elliott – Property Owner Mr. Stewart Magill – Pure Building Approvals Mr. Steven Tucker – Council representative

Decision:

The Development Tribunal (Tribunal), in accordance with section 254 of the PA, **confirms** the decision of the Assessment Manager to refuse the balcony addition to the existing Class 1a Dwelling.

Background

The subject site is a 519 m² allotment located at 29 Pacific Boulevard, Buddina, and is zoned Low Density Residential under the Sunshine Coast Planning Scheme 2014. The lot is positioned on a sweeping curve in the road, and is relatively irregular in shape.

The property features a single, detached three storey dwelling with ocean views directly across the street. The first floor level of the home has been designed to incorporate the main living areas, with the lounge portion opening onto a conservatively sized patio facing the eastern views.

The upper floor of the dwelling consists of the Master Bedroom, robe and en suite, with access to a generous private balcony that sits directly above the first-floor patio.

The original double garage at ground level has, with previous approval, been converted into a games/rumpus room, and is positioned directly under the first level living area. A partially enclosed attached double carport, also with approval, has been constructed in front of the original garage, between the dwelling and up to the street boundary. An entry gatehouse has also been constructed to the left side of the carport, between the dwelling and the front boundary, with an approximate front boundary setback of 1200mm. The property is generally considered to be relatively flat, with minimal slope away from the dwelling towards the road frontage.

The owner of the property wishes to modify the current patio design serving the living areas of the first floor level, increasing its area by extending to within 1.59 metres of the front road boundary, directly over the existing carport beneath.

The plans detailing the extent of the proposed alterations were prepared by Peter Cooke Building Designer and lodged with Pure Building Approvals (Assessment Manager) in order to obtain a Development Permit for Building Works.

However, the proposed building design does not comply with Acceptable Outcome AO3 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 in a residential zone, the dwelling house (other than a garage, carport or shed) is setback to any road frontage at least:-

- (a) 4.5 metres for the ground storey; and*
- (b) 6 metres for any levels above ground storey.*

As such the Assessment Manager lodged a request for concurrence agency response for building work with Council on 19 December 2017.

The Council issued a Concurrence Agency Response on 20 March 2018 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 2014 Dwelling House Code Performance Outcome PO3 (b) for Setbacks in Residential Zones, namely:

“the reduction from the DHC A03 (b) Acceptable Outcome 6m setback to 1.59m is not considered a minor variation in frontage depth and is not consistent with other buildings within the streetscape. Therefore the balcony does not maintain a coherent and consistent streetscape”

The Assessment Manager issued a Decision Notice on 20 March 2018, refusing the Class 1a Balcony as directed by Council.

An application for appeal Form 10 was lodged with the Tribunals Registrar by the Appellant on 4 April 2018.

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 04 April 2018;
2. Assessment Manager Decision Notice, Application Number 20176362, dated 20 March 2018, refusing the balcony as directed by Council;

3. Sunshine Coast Regional Council Application Form – 2017/2018 Planning and Environment Request for Concurrence Agency Response (Building Work), dated 19 December 2017, lodged by Gus Schulz;
4. Cover Letter from Pure Building Approvals dated 19 December 2017 accompanying Request for Concurrence Agency Response (Building Work);
5. The four (4) drawings lodged with the Concurrence Agency Response (Building Work) Application, prepared by Peter Cooke Building Designer, Job No. 1744 dated 05 December 2017 and comprising:
 - Cover Sheet including 3D view (indicative only);
 - Sheet 02 – Existing Site Plan and Proposed Site Plan;
 - Sheet 03 – Existing Ground Floor and Proposed Ground Floor;
 - Sheet 04 – Existing First Floor and Proposed First Floor;
6. Information Request Concurrence Agency from Council to Assessment Manager dated 03 January 2018;
7. Email from Gus Schulz to Council employee Vince Whitburn dated 08 January 2018 providing response to Information Request;
8. Email from Council employee Vince Whitburn to Gus Schulz dated 25 January 2018 providing comment about response to Information Request;
9. Email dated 27 February 2018 from Gwen Brown of neighbouring site located at 30 Pacific Boulevard, including attached Adjoining Owner's Consent Form (unofficial form by Pure Building Approvals), and a separate letter to Chris Elliot (sic) dated 23 February 2018 outlining concerns about proposed balcony addition to subject site,
10. Concurrence Agency Response CAR17/2478 from Council dated 20 March 2018 instructing Assessment Manager to refuse Development Application for Building Work;
11. Letter from Gus Schulz to Registrar dated 03 April 2018 outlining supporting information for lodging appeal;
12. Verbal submissions at the hearing from all parties to the appeal;
13. Additional information from Council provided to the Registrar at the request of the Tribunal, subsequent to the onsite hearing, comprising:
 - Copy of Boundary Setback Relaxation approval issued by Caloundra City Council dated 05 January 2004 permitting Open Carport at subject site to be constructed to front boundary subject to conditions;
 - Copy of Development Permit for Building Work SBA04-0636 and approved plans issued by Suncoast Building Approvals dated 18 May 2004 for Alteration/Addition to Dwelling and Carport at the subject site;
 - Copy of Form 21 – Final Inspection Certificate dated 19 April 2005 issued by Suncoast Building Approvals for Building Permit SBA04-0636;
14. Sunshine Coast Regional Council Development Information Site Report for the subject site;

15. Building and Development Dispute Resolution Committees Decision for Appeal 01-13;
16. The Sunshine Coast Planning Scheme 2014;
17. The Queensland Development Code MP 1.2 (QDC MP 1.2);
18. The *Planning Act 2016* (PA);
19. The *Building Act 1975* (BA).

Findings of Fact

The Tribunal makes the following findings of fact:

Subject Site

1. The subject site is a 519 m² allotment located at 29 Pacific Boulevard, Buddina, and is zoned Low Density Residential under the Sunshine Coast Planning Scheme 2014.
2. The lot is positioned on a sweeping curve in the road, and is relatively irregular in shape.
3. The property is generally considered to be relatively flat, with minimal slope away from the dwelling towards the road frontage.
4. The property features a single, detached three storey dwelling with ocean views directly across the street.
5. The first floor level of the home has been designed to incorporate the main living areas, with the lounge portion opening onto a conservatively sized patio facing the eastern views.
6. The upper floor of the dwelling consists of the Master Bedroom, robe and en suite, with access to a generous private balcony that sits directly above the first floor patio.
7. The original double garage at ground level has, with previous approval, been converted into a games/rumpus room, and is positioned directly under the first level living area. A partially enclosed attached double carport, also with approval, has been constructed in front of the original garage, between the dwelling and up to the street boundary.
8. An entry gatehouse has been constructed to the left side of the carport, between the dwelling and the front boundary, with an approximate front boundary setback of 1200mm.
9. The streetscape in Pacific Boulevard predominantly consists of multi-storey residential dwellings interspersed with some residential unit developments, with a mixture of open fronted allotments and up to 1.8 m high front and side boundary fences/walls with soft landscaping.
10. The open deck at neighbouring 28 Pacific Boulevard was the subject of Building and Development Dispute Resolution Committees Appeal 01-13, and has been constructed approximately 2 m from the road frontage.
11. When viewed from the street, the deck at 28 Pacific Boulevard is largely obscured by vegetation. It has minimalistic balustrading, and is attached to a smaller scale two storey residence. In terms of street dominance, it is visually insignificant when compared to the dwelling that exists on the subject site.
12. Apart from the carport and gatehouse located at the subject site, and the unroofed deck located on the property immediately adjacent at 28 Pacific Boulevard, all other buildings within the street appear to be predominantly set back 6 m from the road boundary.

Application Process

1. The owner of the property wishes to modify the current patio design serving the living areas of the first floor level of the dwelling, and proposes to increase its area by extending out directly over the existing carport beneath, to within 1.59 metres of the front road boundary.
2. In December 2017, plans detailing the extent of the proposed alterations were prepared by Peter Cooke Building Designer, and lodged with Pure Building Approvals (Assessment Manager) in order to obtain a Development Permit for Building Works.
3. The proposed building design does not comply with Acceptable Outcome AO3 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 in a residential zone, the dwelling house (other than a garage, carport or shed) is setback to any road frontage at least:-

- (a) 4.5 metres for the ground storey; and*
- (b) 6 metres for any levels above ground storey.*

4. The Assessment Manager lodged a request for referral agency response for building work with Council on 19 December 2017, including the plans detailing the location and design of the proposed balcony addition;
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 AO3 is an alternative provision to the QDC;
6. The Council issued an Information Request on 03 January 2018 to the Assessment Manager stating:

This application has been assessed and Council considers that the balcony does not comply with the Sunshine Coast Planning Scheme 2014 Dwelling House Code Performance Outcomes PO3 (b).

PO3 (b) – Create a coherent and consistent streetscape, with no or only minor variations in frontage depth.

The reduction from the Acceptable Outcome 6m setback to 1.59m is not considered a minor variation in frontage depth and is not consistent with other buildings within the streetscape. Therefore, the setback does not maintain a coherent and consistent streetscape.

At this stage, Council has not refused the application and provides an opportunity for the applicant to withdraw the application and obtain a part refund.

You are invited to discuss the Performance Outcome to ascertain if further information can be submitted to Council which may help in further assessment or changing the design to achieve a compliant Performance Outcome.

7. The Assessment Manager responded to the Information Request by email on 08 January 2018, providing further justification in support of the application:

The proposed deck is to be situated over an existing carport and will not be roofed, so the change is very insignificant and does not have any detrimental impact on the neighbours, public or streetscape. The neighbour to the north has a deck built 1.85m from the front allotment boundary and the southern allotment has a wrap around deck that is also within the prescribed 6m, both are arguably at the same level of the proposed deck.

The existing roof isn't altered to the frontage and the required balustrade with flat tiles is the only real alteration to the current conditions.

With reference to the above performance outcome, the deck is consistent with the adjoining properties and conforms to the streetscape. The setback is minor when considering the change from existing built form conditions.

8. The Council issued a Concurrence Agency Response on 20 March 2018 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 PO3 (b) for Setbacks in Residential Zones, namely:

PO3 (b) – Create a coherent and consistent streetscape, with no or only minor variations in frontage depth.

Reason for refusal

- *The reduction from the DHC AO3 (b) Acceptable Outcome 6m setback to 1.59m is not considered a minor variation in frontage depth and is not consistent with other buildings within the streetscape. Therefore, the balcony does not maintain a coherent and consistent streetscape.*
9. The Assessment Manager issued a Decision Notice on 20 March 2018, refusing the Class 1a Balcony as directed by Council.
 10. An application for appeal Form 10 was lodged with the Development Tribunals Registrar by the Appellant on 4 April 2018;
 11. The Sunshine Coast Planning Scheme 2014 defines “streetscape” as:

The collective combination of urban form elements that constitute the view of a street and its public and private domains. These elements include buildings, roads, footpaths, vegetation, open spaces and street furniture.
 12. The Sunshine Coast Planning Scheme 2014 defines “frontage” as:

Any boundary line, or part thereof, of a lot which coincides with the alignment of a road.
 13. Building and Development Dispute Resolution Committees Decision for Appeal 01-13 permitted the unroofed deck at 28 Pacific Boulevard (adjacent subject site) to be constructed 2 m from the property road frontage. This Appeal was determined under the Caloundra City Plan and the provisions of the QDC MP1.2 which applied at the time of that decision in 2013. These same provisions do not apply to the current Appeal for the subject site.

Reasons for the Decision

The Tribunal **confirms** the decision of the Assessment Manager to refuse the Class 1a Balcony for the following reasons:

PO3 (b) – Create a coherent and consistent streetscape, with no or only minor variations in frontage depth.

Within reasonable proximity of the subject site, the streetscape of Pacific Boulevard predominantly consists of multi-storey residential dwellings, interspersed with some residential unit developments. In the main, most lots are fronted by up to 2 m high front and side boundary fences/walls, some with soft landscaping. There are also several examples of open fronted allotments.

Apart from the existing carport and gatehouse located at the subject site, and the unroofed deck located on the property immediately adjacent at 28 Pacific Boulevard, all other buildings within the

street are principally setback 6 m from the road boundary. At the time of the hearing, there was little evidence of any upper levels of surrounding dwellings being constructed within the 6 m frontage setback.

The proposal before the Tribunal sought to extend what is in effect, the upper level of the dwelling to encroach some 4.41 metres within the required 6 metre setback, to within 1.59 m of the road boundary. The Tribunal does not consider this to constitute a minor variation in frontage depth.

The Tribunal is also of the opinion that the decision of the Building and Development Dispute Resolution Committees for Appeal 01-13 to approve the unroofed deck on the neighbouring property at 28 Pacific Boulevard (adjacent subject site) is irrelevant in determining the outcome for this Appeal. When viewed from the street, the deck at 28 Pacific Boulevard is largely obscured by vegetation. It has minimalistic balustrading, and is attached to a smaller scale two storey residence. This makes it visually insignificant when compared to the street dominance that the existing dwelling on the subject site already maintains, given the bulk and closeness of the enclosed carport to the street frontage.

Further, the existence of one instance of a reduced boundary setback in the street does not characterise the *streetscape* in accordance with the definition provided in the Sunshine Coast Planning Scheme 2014, and to approve the balcony addition as proposed would not contribute to a coherent and consistent streetscape as required by the Performance Outcome PO3.

Andrew Parker
Development Tribunal Chair
Date: 31 August 2018

Appeal Rights

Schedule 1, Table 2, Item 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

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