



Building and Development Dispute Resolution Committees—Decision

Sustainable Planning Act 2009

Appeal Number:	30 – 16
Applicant:	Dr Roz Glazebrook and Dr John Glazebrook
Assessment Manager:	North Shore Building Approvals
Concurrence Agency: (if applicable)	Sunshine Coast Council (Council)
Site Address:	537 Eumundi - Kenilworth Road, Eerwah Vale, Qld 4562, Lot 15 RP 217112 – the subject site

Appeal

Appeal under section 527 of *Sustainable Planning Act 2009* (SPA) against the Decision Notice of the Assessment Manager to refuse a Class 10a shipping container (storage facility) and shade structure. Sunshine Coast Council (Council) as the Concurrence Agency directed the Assessment Manager to refuse the buildings as they did not meet and could not be conditioned to meet the performance outcomes of the Sunshine Coast Planning Scheme 2014, Dwelling House Code 9.3.6, Table 9.3.6.3.1, Performance Outcome P05.

Date and time of hearing:	Friday 16 September 2016 at 10.00am
Place of hearing:	The subject site - 537 Eumundi - Kenilworth Road, Eerwah Vale, Qld 4562, Lot 15 RP 217112
Committee:	Richard Prout– Chair
Present:	Dr Roz Glazebrook – Applicant Dr John Glazebrook – Applicant Steve Rosenius – Council representative

Decision:

The Building and Development Dispute Resolution Committee (Committee), in accordance with section 564 of the SPA **sets aside** the decision of the Assessment Manager to refuse the Class 10a shipping container, Class 10a roofed veranda and deck at the direction of Council. The Committee approves the Class 10a buildings with the following conditions:

- The proposed building shall not be converted to or used as a Class 1a building i.e. a habitable building;
- A landscaping buffer of minimum 1.5 metres width and 25 metres length consisting of screen planting of plants growing to a minimum height of 3 metres is required to be established and maintained between the shipping container/roofed veranda and the existing shed and the eastern side boundary. The landscaping buffer is to be established within 3 months of the date of this decision notice and is to be maintained (watering, fertilising, mulching, weeding, and the like) for the life of the buildings; and

- The existing painted external surfaces (walls and doors) of the shipping container are to be, after adequate preparation, repainted in soft natural colours (green, grey, brown, or similar) within 3 months of the date of this decision notice.

The new paintwork on the shipping container is to be maintained and re-applied at regular intervals to ensure the satisfactory aesthetic appeal of the container at all times. The on-going maintenance of the external paintwork is to be performed for the life of the building; and

- The Applicants shall, prior to any building work commencing onsite, gain a Development Approval for Building Work.

Background

The subject site is a 149900 m² allotment located at 537 Eumundi – Kenilworth Road, Eerwah Vale and is zoned Rural under the Sunshine Coast Planning Scheme 2014.

The majority of the subject site is covered in dense native vegetation. The quality of this native vegetation is reflected in over half of the allotment being captured in the Sunshine Coast Planning Scheme 2014 Biodiversity, Waterways and Wetlands overlay.

In contrast the location of the existing dwelling and the location of the subject Class 10a building although vegetated is sparse in comparison to the southern portion of the allotment.

The Applicants (present owners) purchased the allotment in 1987 and with some support from Council and groups such as Land Care have endeavoured to improve the native vegetation on the site.

In contrast, between 1987 and 2011 the adjoining eastern allotment which was of similar size to the subject allotment, has been subdivided into four (4) allotments and a further three (3) dwellings have been built.

Due to work commitments the Applicants have never lived at the property instead renting out the dwelling and camping onsite when working on the land. In 2008 the Applicants purchased a shipping container which had previously been converted to a land sales office. The Applicants placed the shipping container onsite to use as a Class 10a shed/storeroom with an 8 m setback from the eastern side boundary.

They subsequently erected a free standing roof over the top of the shipping container forming a roofed veranda and deck around three sides of the building. The Applicants assert they were unaware the work triggered a Development Approval for Building Work.

In 2011 the Applicants lodged a Development Application for Building Work with a private building certifier for a second Class 10a shed to be sited alongside the shipping container with a 10 m setback from the eastern side boundary. The application was approved and building work commenced in 2011. At the hearing it was noted that this building had not been completed.

In 2011 a new dwelling was built on the adjoining eastern allotment. In 2013 this dwelling was sold and in 2014 the Council received a complaint from the new owners regarding the shipping container.

Council officers investigated the matter and identified that the shipping container, roofed veranda and deck did not have a Development Approval for Building Work and was sited within the prescribed side boundary setback of 10 m, as per Acceptable Outcome A05.1 of the Sunshine Coast Planning Scheme 2014, Dwelling House Code 9.3.6, Table 9.3.6.3.1.

As such on the 15 August 2015, Earthcert Building Approvals lodged a request for referral agency response for building work with Council on the Applicant's behalf.

The Council issued a Concurrence Agency Response on 5 February 2016 instructing the Assessment Manager to refuse the application as it did not meet, and could not be conditioned

to meet, the Performance Outcomes of the Sunshine Coast Planning Scheme 2014, Dwelling House Code 9.3.6, Table 9.3.6.3.1, Performance Outcome P05 (a) (b) (c).

North Shore Building Approvals (Assessment Manager) issued a Decision Notice on 5 August 2016 refusing the Class 10a shipping container, roofed veranda and deck as directed by the Concurrence Agency.

The Applicants lodged an Application for Appeal (Form 10) with the Committee's Registrar on 5 August 2016.

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 Committees Registrar on 5 August 2016;
2. Letter and report from John Glazebrook dated 29 August 2016, to the Committee detailing the grounds for the appeal , response to the Council reasons for refusal, and addressing performance criteria of the Sunshine Coast Planning Scheme, Dwelling House Code 9.3.6, Table 9.3.6.3.1, Performance Outcomes P05 (a) (b) (c);
3. IDAS Form 1 - Application Details, IDAS Form 2 - Building work requiring assessment against the *Building Act 1975*;
4. Sunshine Coast Council Application Form – 2013/4 Regional Strategy and Planning Request for Referral Agency Response for Building Work dated 15 August 2015, lodged by Earthcert Building Approvals. Plus an unnamed and undated report addressing performance outcomes Sunshine Coast Planning Scheme, Dwelling House Code 9.3.6, Table 9.3.6.3.1, Performance Outcomes P04 to P05;
5. Information Request from Council dated 27 November 2015;
6. Letter/report from John Glazebrook dated 27 January 2016 responding to the Council Information Request of the 27 November 2015;
7. The followings drawings from WD Architects dated 28 August 2016:
 - Drawing A101 site plan and elevations;
 - Drawing A300 plan view.
8. Untiled drawings namely – isometric drawing of container detailing its dimensions, site plan detailing setbacks of shed, container, deck and roofed veranda from side eastern boundary
9. Concurrence Agency Response – Refusal from Council dated 5 February 2016;
10. Email from Roz Glazebrook to Council officer Steve Rosenius dated 10 March 2016 responding to Council Concurrence Agency Response, Refusal;
11. Letter dated 7 April 2016 from Mike Whittaker, Chief Executive Office, Sunshine Coast Council to Mr and Mrs Glazebrook responding to email from Roz Glazebrook;
12. Letter dated 29 April 2016 to Mike Whittaker, Chief Executive Officer, Sunshine Coast Council from Roz and John Glazebrook responding to his letter of the 7 April 2016;
13. Enforcement Notice dated 31 May 2016 issued by Council to the property owners regarding the unauthorised shipping container, deck, and roofed veranda;

14. Letter dated 29 July 2016 from Mike Whittaker, Chief Executive Office, Sunshine Coast Council to Mr and Mrs Glazebrook responding to John Glazebrook letter of the 24 June 2016;
15. Decision Notice issued by North Shore Building Approvals dated 5 August 2016, refusing a Class 10a converted shipping container storage facility and shade structure;
16. Verbal submissions at the hearing from all parties to the appeal;
17. The Sunshine Coast Planning Scheme 2014;
18. The *Sustainable Planning Act 2009* (SPA);
19. The *Building Act 1975* (BA);
20. Queensland Development Code (QDC).

Findings of Fact

The Committee makes the following findings of fact:

Subject Site

1. The subject site is a 149900 m² allotment located at 537 Eumundi – Kenilworth Road, Eerwah Vale and is zoned Rural under the Sunshine Coast Planning Scheme 2014;
2. The existing shipping container, deck area and roofed veranda were erected on the site without a Development Approval for Building Work having been obtained;
3. At its closest point the shipping container is setback 8 m from the eastern side boundary;
4. At its closest point the deck area and roofed veranda surrounding three sides of the shipping container is setback 5.75 m from the eastern side boundary;
5. As per Acceptable Outcome A05.1 of the Sunshine Coast Planning Scheme 2014, Dwelling House Code 9.3.6, Table 9.3.6.3.1, the minimum side boundary setback for a dwelling houses including any associated garage, carport or shed on lots greater than 2 hectares is 10m;
6. The adjoining allotment bounding the shipping container, deck area and roofed veranda is zoned Rural and has an area of 2 hectares. As per Acceptable Outcome A05.1 of the Sunshine Coast Planning Scheme 2014, Dwelling House Code 9.3.6, Table 9.3.6.3.1, the minimum side boundary setback for dwelling houses including any associated garage, carport or shed on lots of 2 hectares or less is 3 m;
7. As per Acceptable Outcome A011.1.2(a) of the Sunshine Coast Planning Scheme 2014, Dwelling House Code 9.3.6, Table 9.3.6.3.1, it is an as of right for the adjoining property owner to building a secondary dwelling with a 90 m² gross floor area 3 m from the subject side boundary;
8. The private open space area of the adjoining dwelling is not visible from the subject Class 10a building.

Application Process

1. In late 2014 Council officers investigating a complaint from an adjoining property owner contacted the Applicants to advise them that the shipping container, roofed veranda and deck did not have a Development Approval for Building Work and was sited within the prescribed side boundary setback of 10 m, as per Acceptable Outcome A05.1 of the Sunshine Coast Planning Scheme 2014, Dwelling House Code 9.3.6, Table 9.3.6.3.1;
2. The Applicants engaged Earthcert Building Approvals to lodge a referral agency response for building work with Council on their behalf;

3. Earthcert Building Approvals lodged a referral agency response for building work with Council on the 15 August 2015, with a report addressing the relevant performance outcomes Sunshine Coast Planning Scheme, Dwelling House Code 9.3.6, Table 9.3.6.3.1;
4. Section 33 (Alternative provisions to QDC boundary clearance and site cover provisions for particular buildings) of the BA 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 Outcomes A05.1 and A05.2 are alternative provision to the QDC;
5. The Council issued an Information Request on 27 November 2015 namely:
 - Provide drawings/detail that include clearly shown dimensions of the overall length, width, height/s and elevations of the proposed shipping container and roof; and*
 - Provide an amended site plan showing the setback of the shipping container and skillion roof to the affected boundary **and** from the north or south boundary; and*
 - Provide an amended site plan showing the setback of the shed to the affected boundary.*
6. The Applicants provided the additional information to Council on 27 January 2016;
7. The Council issued a Concurrence Agency Response on the 5 February 2016 instructing the development application to be refused:
 - In accordance with section 289(1) the reasons for refusal are as follows:*
 - The proposed development 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, Performance Outcome P05.*
 - Where for a dwelling house, the development:-*
 - (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; and*
 - (c) *Minimise opportunities for residents to overlook the private open space area of neighbouring premises.*
8. On receipt of the Council Response the Applicant's tried to lodge an appeal against Council's advice with the Committees registry. The Registry advised the Applicants that until a decision notice was issued by a Building Certifier refusing their proposed development they did not have any appeal rights;
9. The Applicants were advised by Earthcert Building Approvals that they had not lodged a development application for building work with them and that they were not prepared to be engaged for the project;
10. Therefore the Applicants lodged a development application for building work with North Shore Building Approvals who issued a Decision Notice on 5 August 2016, refusing the Class 10a converted shipping container storage facility and shade structure;
11. The Committees Registrar received the application for appeal, Form 10 from the Applicants on the 31 August 2016.

Reasons for the Decision

The Committee conditionally sets aside the decision of the Assessment Manager to refuse the shipping container, deck area and roofed veranda at the direction of Council for the following reasons:

The Committee is of the opinion that the development is compliant with the Performance Outcome P05 (a) (b) and (c) as:

P05 (a) maintain an open visual landscape dominated by natural elements (rather than structures)

The subject site is a large 14 hectare property with no other buildings located within 10m of the side eastern boundary. In contrast the adjoining land has been sub divided into smaller allotments some as small as 2 hectares and has been developed for predominately a residential purpose.

The subject Class 10a building is small in nature with only a very small portion of the building encroaching into the side boundary setback. When compared to the length of this boundary the encroachment could only be described as insignificant.

It should also be noted that the adjoining allotment is only 2 hectares in size and as per Acceptable Outcome A05.1, can locate a secondary dwelling, garage, carport or shed with a 3 m side boundary setback.

It is also noted that P05 (a) in its description refers to *structures*. The shipping container and roofed veranda are buildings not structures. This appears to be a drafting error however it could be argued that P05 (a) is not applicable to buildings.

P05 (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; and

As previously stated the subject Class 10a building is small in nature with only a very small portion of the building encroaching into the side boundary setback. When compared to the length of this boundary this encroachment could only be described as insignificant.

P05(c) Minimise opportunities for residents to overlook the private open space area of neighbouring premises.

The dwelling on the adjoining allotment is approximately 140 m away from the eastern boundary of the subject site. Due to the natural fall of the land only the roof of the dwelling is visible from the veranda of the shipping container.

As such there is no overlooking of the private open space around the neighbouring premises

Richard Prout
Building and Development Committee Chair
Date: 20 September 2016

Appeal Rights

Section 479 of the *Sustainable Planning Act 2009* provides that a party to a proceeding decided by a Committee may appeal to the Planning and Environment Court against the Committee's decision, but only on the ground:

- (a) of error or mistake in law on the part of the Committee or
- (b) that the Committee had no jurisdiction to make the decision or exceeded its jurisdiction in making the decision.

The appeal must be started within 20 business days after the day notice of the Committee's decision is given to the party.

Enquiries

All correspondence should be addressed to:

The Registrar of Building and Development Dispute Resolution Committees
Building Codes Queensland
Department of Housing and Public Works
GPO Box 2457
Brisbane QLD 4001
Telephone (07) 1800 804 833 Facsimile (07) 3237 1248