



## Building and Development Dispute Resolution Committees—Decision

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### *Sustainable Planning Act 2009*

<b>Appeal Number:</b>	<b>07/2010</b>
<b>Appellant:</b>	<b>Mr Daniel Cameron and Ms Andrea Wardrop</b>
<b>Assessment Manager:</b>	<b>Neil Barralet, Building Certifier</b>
<b>Concurrence Agency:</b>	<b>Sunshine Coast Regional Council (Council)</b>
<b>Site Address:</b>	26 Maple Court, Yandina and described as Lot 3 on SP226601 – the subject site

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### **Appeal**

Appeal under section 527(1)(a) of the *Sustainable Planning Act 2009* (SPA) against the concurrence agency direction of Council dated 12th January 2010 to refuse a development application for building works - siting of a shed.

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<b>Date of hearing:</b>	Monday 1 <sup>st</sup> March 2010 at 9.00am
<b>Place of hearing:</b>	26 Maple Court, Yandina
<b>Committee:</b>	Mr Chris Schomburgk – Chairperson Ms Kari Stephens – General Referee
<b>Present:</b>	Mr Fred Vicary – Council' s representative Mr Daniel Cameron – Appellant Mr Neil Barralet –Building Certifier

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### **Decision:**

The Committee, in accordance with section 564 (2) (c) **sets aside** the decision of Council to refuse a development application for siting of a shed; and replaces it with the following decision:-

The Committee, in accordance with section 564(2)(c), **directs** the assessment manager to **approve** the development application, subject to compliance with the following conditions:-

1. Landscaping is to be provided between the proposed shed and the rear and side boundaries, to comply with Council's Code for Landscaping Design. Trees and shrubs are to have a minimum height of 1.0 metres at planting, and be of a type/species to achieve visual screening of the shed within 5 years.
2. The shed is to be painted, or built of materials that are coloured, to match the colour of the roof of the existing dwelling on the site.

3. The northern side boundary of the subject site is to be fenced with a minimum of 1.8m high fence, extending from the rear (Farrell St) boundary to a point no less than 10.0m from the Maple Court frontage of the property.
4. Wall heights of the shed are to be a maximum of 2.4m above finished ground level, with the roof height to be a maximum of 3.33m.

**Material Considered:**

The material considered in arriving at this decision comprises:

1. 'Form 10 – Application for Appeal', grounds for appeal, supporting plans and documentation received by the Registrar on 4<sup>th</sup> February 2010.
2. A site inspection of the site and the locality, undertaken by the Chairperson and General Referee.
3. The concurrence agency response from Council, dated 12th January 2010.
4. Verbal and written submissions from the parties at the hearing.
5. The 2000 Planning Scheme for the former Maroochy Shire Council – in particular, Code 4.1 Code for Development of Detached Houses and Display Homes.
6. The Queensland Development Code (QDC) – Part MP1.2.
7. The *Integrated Planning Act 1997* and the *Sustainable Planning Act 2009*.

**Findings of Fact:**

*The Committee makes the following findings of fact:*

- The subject site is currently occupied by a single-storey dwelling under construction, and is in a new estate that is partly occupied with new or currently-under-construction dwellings, predominantly of single storey height.
- The subject site is generally flat, and is irregularly-shaped, having a relatively narrow street frontage but widening out towards the rear. The rear boundary is angled relative to the side boundaries and also relative to the orientation of the house under construction on the site.
- The rear boundary is also a road reserve boundary (Farrell St), however, no lawful or practical access is obtainable to that road. Farrell Street is under the control of the Department of Transport and Main Roads, and is part of the former Bruce Highway. The Farrell Street road reserve was recently widened, and there is now a wider than normal space between the road carriageway and the rear of allotments in the subject estate. That space has recently been planted with shrubs and trees, which provide a visual buffer to that road.
- The rear boundary is currently fenced with a 1.8m (approximately) high timber paling fence.
- The proposed shed is at the rear of the allotment, and is to be accessed from the street (Maple Court) via a driveway to be constructed alongside the house. The house has been designed such that only a part of the shed would be visible from the Maple Court frontage.

- Council's decision to refuse the application is based on alleged non-compliance with provisions of the Code for the Development of Detached Houses and Display Homes, in particular Element 1, Performance Criterion P2, which states:

***P2** Buildings and Structures are sited to contribute positively to the streetscape, maximise community safety, and maintain the amenity of adjacent land and dwellings by having regard to the following:*

- a) views and vistas;*
- b) building character and appearance;*
- c) casual surveillance; and*
- d) an adequate area suitable for landscaping being provided for at the front of the lot.*

- In particular, Council's concerns are that the shed should be set back from the rear boundary by at least 3.0m. The proposal involves a setback that varies from about 1.343m at the closest point to about 3.013m at the furthest point, due to the angled rear boundary.
- At the hearing on site, the Council provided a written statement, suggesting a smaller shed that could meet the 3.0m setback, but this option was not considered satisfactory by the applicant. The applicant explained that the shed was required for storage of work vehicles and equipment, separate from their private vehicles which were to be garaged in a double garage under the main roof at the front of the house.
- An inspection of the locality shows that there are a small number of sheds/garages erected at the rear of properties, but that the nearest of these was recently approved by the Council and required a minimum of 3.0m setback from the rear boundary. That property was regularly shaped, and does not have the angled rear boundary that the subject site has.

Based on an assessment of these facts, it is the Committee's decision that the decision notice being appealed against be **set aside** and that the application for siting of a shed be approved, subject to compliance with the following conditions:

1. Landscaping is to be provided between the proposed shed and the rear and side boundaries, to comply with Council's Code for Landscaping Design. Trees and shrubs are to have a minimum height of 1.0 metres at planting, and be of a type/species to achieve visual screening of the shed within 5 years.
2. The shed is to be painted, or built of materials that are coloured, to match the colour of the roof of the existing dwelling on the site.
3. The northern side boundary of the subject site is to be fenced with a minimum of 1.8m high fence, extending from the rear (Farrell St) boundary to a point no less than 10.0m from the Maple Court frontage of the property.
4. Wall heights of the shed are to be a maximum of 2.4m above finished ground level, with the roof height to be a maximum of 3.33m.

## **Reasons for the Decision**

The rear boundary (Farrell St) is a road frontage in the strict sense of the term, but there is no practical access obtained or likely to be obtained, from that road. For all practical purposes, it is a rear boundary, not a road boundary.

That rear boundary is angled (as opposed to perpendicular) relative to the side boundaries and the orientation of the house. The angle means that, as proposed, the shed will achieve an average setback to the rear boundary of approximately 2.18m.

The conditions as set out above, together with the position of the shed relative to the existing house, will ensure that the shed is not intrusive into the streetscape.

No detrimental impacts are likely to be caused to views and vistas or casual surveillance.

Landscaping is to be provided around the rear and side boundaries to soften any potential visual impacts.

The proposal, as amended by these conditions, will comply with the purpose and relevant performance criteria of the Planning Scheme Code for Detached Houses and Display Homes.

The proposal complies with the relevant provisions of the Queensland Development Code Part MP1.2 P2 for the rear boundary clearance for buildings or structures. The Farrell Street boundary is, as above, for all practical purposes, a rear boundary.

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**Chris Schomburgk**  
**Chairperson, Building and Development Dispute Resolution Committee**  
**Date: 31 March 2010**

## **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  
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