



Building and Development Dispute Resolution Committees—Decision

Sustainable Planning Act 2009

Appeal Number:	58 - 16
Applicant:	Peter John Bartlett
Assessment Manager:	Suncoast Building Approvals
Concurrence Agency: (if applicable)	Sunshine Coast Council (Council)
Site Address:	21 Sovereign Circuit, Pelican Waters, Qld 4551, Lot 431 SP166662 – 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 shed. Sunshine Coast 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, Dwelling House Code 9.3.6, Table 9.3.6.3.1, Performance Outcome P02.

Date and time of hearing:	17 January 2017 at 10:30 am
Place of hearing:	The subject site - 21 Sovereign Circuit, Pelican Waters, Qld 4551, Lot 431 SP166662
Committee:	Mr. Richard Prout – Chair Ms. Debbie Johnson – Member
Present:	Mr. Peter Bartlett – Property owner and Applicant Mrs. Marlene Bartlett – Property owner Mr. Vince Whitburn – Council representative

Decision:

The Building and Development Dispute Resolution Committee (Committee), in accordance with section 564 of the SPA **confirms** the decision of the Assessment Manager to refuse the Class 10a shed.

Background

The subject site is a 762m² allotment located at 21 Sovereign Circuit, Pelican Waters and is zoned Low Density Residential under the Sunshine Coast Planning Scheme 2014. The allotment is a corner allotment with Sovereign Circuit to the north and Tilney Street to west.

The existing dwelling on the site was built in 2007 and includes a large double garage facing Tilney Street. 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).

In August 2016 the property owner engaged Sunshine Sheds and Garages (Builder) a company specialising in prefabricated sheds/garages, carports and the like, to design and construct a new

shed to be located in front of the existing dwelling with a front road boundary setback of 2 m from Sovereign Circuit.

As part of their service the Builder lodged a Development Application for Building Work with Suncoast Building Approvals (Assessment Manager).

However the proposed shed did not comply with Acceptable Outcome A02.1 (a) 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:
(a) is setback at least 6 metres from any road frontage;

As such the Assessment Manager lodged a request for referral agency response for building work with Council on 30 September 2016. The Council issued a Concurrence Agency Response on 6 December 2016 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 PO2 for Garages, Carports and Sheds.

The Building and Development Dispute Resolution Committees (the Committee) received application for appeal Form 10 from the Applicant on 15 December 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 15 December 2016;
2. Letter from the Applicant dated 7 December 2016, to the Committee, providing justification as to why the shed should be approved;
3. Assessment Manager Decision Notice, Permit No: SBA2016-2429, dated 6 December 2016, refusing the shed as directed by Council;
4. The following drawing:
 - Site Plan, undated and no author's details;
 - Floor Plan & Elevation, Drawing Number Clou01-0958, Page 1/1, by Ranbuild;
 - Pad Footing Plan, Drawing Number PFP-0958, Page 1/1, by Ranbuild; and
 - RC Slab Plan, Drawing Number RSP-0958, Page 1/1, by Ranbuild.
5. IDAS Form 1 - Application Details, IDAS Form 2 - Building work requiring assessment against the *Building Act 1975*;
6. Sunshine Coast Council Application Form – 2016/2017 Planning and Environment Request for Referral Agency Response for Building Work, dated 30 September 2016, lodged by Suncoast Building Approvals (Assessment Manager);
7. Letter from Assessment Manager dated 30 September 2016, to the Council addressing performance criteria of the Sunshine Coast Planning Scheme, Dwelling House Code 9.3.6, Table 9.3.6.3.1, Performance Outcomes P02;
8. Concurrence Agency Response from Council dated 6 December 2016 instructing Assessment Manager to refuse Development Application for Building Work;
9. Email from Council dated 6 December 2016 to Assessment Manager with attached copy of Concurrence Agency Response confirming refusal;

10. Information Request from Council to Assessment Manager dated 19 October 2016;
11. Email from Assessment Manager dated 20 October 2016 to Council with attached floor plans and elevation views of proposed shed;
12. Email from Council dated 25 October 2016 to Assessment Manager requesting additional information;
13. Email from Assessment Manager dated 4 November 2016 to Council with amended plans and letters of consent from neighbouring properties;
14. Email from Council dated 17 November 2016 to Assessment Manager advising that the proposed shed does not meet the Performance Outcomes of the Sunshine Coast Planning Scheme 2014;
15. Email from Assessment Manager dated 18 November 2016 to Council requesting they complete assessment of Concurrence Agency Response;
16. Email from Assessment Manager dated 22 November 2016 to Council requesting reconsideration and providing additional information in support of request;
17. Email from Council dated 22 November 2016 to Assessment Manager confirming decision to refuse proposal;
18. Email from Assessment Manager dated 2 December 2016 to Council requesting Council to issue a formal decision;
19. Photographs of the subject site provided by Applicant;
20. Verbal submissions at the hearing from all parties to the appeal;
21. The Sunshine Coast Planning Scheme 2014;
22. The Queensland Development Code MP 1.2 (QDC MP1.2);
23. The *Sustainable Planning Act 2009* (SPA);
24. The *Building Act 1975* (BA).

Findings of Fact

The Committee makes the following findings of fact:

Subject Site

1. The subject site is a 762 m² allotment located at 21 Sovereign Circuit, Pelican Waters and is zoned Low Density Residential under the Sunshine Coast Planning Scheme 2014;
2. The allotment is a corner allotment with Sovereign Circuit to the north and Tilney Street to west. The existing dwelling on the site was built in 2007 and includes a large double garage facing Tilney Street. The existing dwelling is compliant with the setback provisions of the Sunshine Coast Planning Scheme 2014 and the Queensland Development Code MP1.2;
3. The allotment was created on 13 April 2004;
4. The following buildings were noted onsite at the Hearing:
 - A dwelling with a double lockup garage approved by Council in 2007; and
 - An open carport located on the Southern side of the existing garage, facing Tilney Street built in 2016.

5. There is a Unitywater sewer main running parallel with the front road boundary of Sovereign Circuit street frontage i.e. northern side of the allotment 1.5 m inside the property boundary;
6. The streetscape in Sovereign Circuit and the surrounding area consists of residential dwellings with a mixture of open fronted allotments or 1.8 m high front boundary fences/walls with soft landscaping and buildings setback 6 m from the front road boundary;
7. 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.*
8. There is sufficient area between the existing dwelling and the eastern side boundary for another garage or shed to be located without encroaching on boundary setback requirements.

Application Process

1. In August 2016 the property owner engaged Sunshine Sheds and Garages (Builder) a company specialising in prefabricated sheds/garages and carports etc. to design and construct a new shed to be located in front of their existing dwelling with a front road boundary setback of 2 m from Sovereign Circuit;
2. As part of their service the Builder lodged a Development Application for Building Work with a Private Building Certifier, Suncoast Building Approvals (Assessment Manager).
3. However the proposed shed did not comply with Acceptable Outcome A02.1 (a) 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:
 (a) *is setback at least 6 metres from any road frontage;*
4. The Assessment Manager lodged a request for referral agency response for building work with the Council on 30 September 2016 along with a site plan detailing the location 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 Outcomes A02.1(a) is an alternative provision to the QDC;
6. The Council issued an Information Request on 19 October 2016, to the Assessment Manager stating:

This application is being evaluated but before it can be fully assessed, the following information is required:

The floor plan and elevation views of the shed. Only the site plan has been submitted.
7. The Assessment Manager responded to the Council Information Request on the 20 October 2016 providing a floor plan and elevation views of the proposed shed;
8. The Council emailed the Assessment Manager on 21 October 2016 advising the following:

This application has been assessed and Council considers that the shed does not comply with the Sunshine Coast Planning Scheme 2014 Dwelling House Code Performance Outcome P02(a),(b) and)c).

The application does not provide sufficient information demonstrating how the proposal complies with the Performance Criteria or is shown to be at least equivalent to the relevant acceptable solution.

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

9. The Assessment Manager contacted Council on 4 November 2016 advising the following:

Please find attached amended plan now showing height of 2.4m and neighbours consent letter to support the RAB application. Please advise if you require any further information, thank you.

10. The Council emailed the Assessment Manager on 17 November 2016 advising the following:

Council considers that the shed does not comply with the Sunshine Coast Planning Scheme 2014 dwelling House Code Performance Outcome P02 (b) and (d).

P02 (b) do not dominate the streetscape

The streetscape in Sovereign Cct consists of residential dwellings with a mixture of open fronted allotments or up to 1.8 m high front and side boundary fences/walls with soft landscape and with buildings generally setback 6m from the road boundaries.

The proposed shed set forward of the line of the dwelling with a minimum 2 m front road boundary setback, As such the shed will have a dominating appearance when viewed from the street.

P02(b) maintain the visual continuity and pattern of buildings and landscape elements within the street.

As previously stated the streetscape consists of residential dwellings with a mixture of open fronted allotments or up to 1.8 m high front and side boundary fences/walls with soft landscape and with buildings generally setback 6m from the road boundaries.

As such the proposed shed is set forward of the line of the dwelling with a minimum 2 m front road boundary setback, it will not maintain the visual continuity and pattern of the buildings within the streetscape.

11. The Assessment Manager responded to Council on 18 November 2016 advising the following:

Please be advised our client has informed SBR that he cannot amend the siting of the proposed domestic building further than what has been presented.

Could you please proceed with your formal decision of this application RAB 16/0678.

12. The Assessment Manager contacted Council again on 22 November 2016 advising the following:

As discussed this morning could you please review this RAB application.

At this stage I don't believe a decision has been made by Council.

- *The proposed shed is located behind a 1800mm high block wall;*
- *The 2.0m setback between the wall and fence will be provided with a vegetation screen;*
- *No access will be required or constructed from Sovereign Circuit;*

- *The shed will be used to store a classic car not a caravan as shown in the photo. The maximum height to the ridge line of the shed will be 2771mm;*
- *The colour of the shed will be in keeping with the same colour as the fence;*
- *Neighbour's consent letters have been supplied.*

13. The Council responded to the Assessment Manager on 22 November 2016 advising that there was no change to the Council position;

14. The Assessment Manager contacted Council on 2 December 2016 advising the following:

Can you please proceed with the formal decision on this one. The owners would like to keep their design without making any further changes.

15. The Council issued a Concurrence Agency Response on the 6 December 2016 directing 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 PO2 for Garages, Carports and Sheds, namely:

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

The proposed carport does not comply with and cannot be conditioned to comply with the Sunshine Coast Planning Scheme 2014, Performance Outcome P02 item (d) for Garages, Carports and Sheds item (b) and (d).

(b) do not dominate the streetscape;

(d) maintain the visual continuity and pattern of buildings and landscape elements within the street.

P02 (b) do not dominate the streetscape

The streetscape consists of residential dwellings with a mixture of open fronted allotments or up to 1.8 m high front and side boundary fences/walls with soft landscape and with buildings generally setback 6m or greater from the road boundaries.

The proposed shed has an apex of 2.771 m above the slab and 2 m front road boundary setback. The height will be increased further due to the slab. This height will make the shed obvious from the street. As such the shed will have a dominating appearance when viewed from the street.

P02(b) maintain the visual continuity and pattern of buildings and landscape elements within the street.

The proposed shed is set forward of the line of the buildings on the same side of the street. It is also set forward of most of the buildings on the opposite side of the street. Therefore it will not maintain the visual continuity and pattern of the buildings within the streetscape.

16. The Assessment Manager issued a Decision Notice on the 8 September 2016, refusing the Class 10a shed as directed by Council;

17. The Committee received the application for appeal, Form 10 from the applicant on the 15 December 2016.

Reasons for the Decision

The Committee confirms the decision of the Assessment Manager to refuse the Class 10a shed for the following reasons:

The Committee is of the opinion the development is not compliant with the Performance Outcome P02 (b) and (d) of the Sunshine Coast Planning Scheme 2014, Dwelling House Code 9.3.6, Table 9.3.6.3.1 as:

- *P02 (b) do not dominate the streetscape.*

The streetscape in Sovereign Circuit and the surrounding area consists of residential dwellings with a mixture of open fronted allotments or 1.8 m high front boundary fences/walls with soft landscaping and buildings setback 6 m from the front road boundary.

The shed is 6 m wide and is set forward of the line of the dwelling with only a 2 m front road boundary setback. As such the shed would have a dominating appearance when viewed from the street.

- *P02 (d) maintain the visual continuity and pattern of buildings and landscape elements within the street.*

As previously stated, the streetscape in Sovereign Circuit and the surrounding area consists of residential dwellings with a mixture of open fronted allotments or 1.8 m high front boundary fences/walls with soft landscaping and buildings setback 6 m from the front road boundary.

As the shed is set forward of the line of the dwelling with only a 2 m front road boundary setback the shed would not maintain the visual continuity and patterns of the buildings and landscape within the streetscape.

Richard Prout
Building and Development Committee Chair
Date: 19 January 2017

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