



Building and Development Dispute Resolution Committees—Decision

Sustainable Planning Act 2009

Appeal Number:	51 - 16
Applicant:	Coastal Building Certification P/L
Assessment Manager:	Coastal Building Certifications (Mr. Michael Bowcock)
Concurrence Agency: (if applicable)	Sunshine Coast Council (Council)
Site Address:	59 Pacific Boulevard, Buddina Qld 4575, Lot 8 B 9294 – the subject site

Appeal

Appeal under section 527 of *Sustainable Planning Act 2009* (SPA) against the Decision Notice of the Assessment Manager to refuse the facade feature wall and eave of a Class 10a Garage.

Sunshine Coast Council (Council) as the Concurrence Agency directed the Assessment Manager to refuse the building work 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:	12 December 2016 at 10:30 am
Place of hearing:	The subject site
Committee:	Mr. Richard Prout – Chair Mr. Andrew Parker – Member
Present:	Mr. Michael Bowcock – Applicant and Assessment Manager Mr. Alan Cameron – Builder Mr. Vince Whitburn – Council representative Mr. Peter Chamberlain – 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 facade feature wall and eave of the Class 10a Garage at the direction of Council, and approves them with the following conditions:

- The proposed facade feature wall and eave of the garage must be sited and built in accordance with the following drawings:

Chris Clout Design Drawing Number S1.0, dated 5/7/2016, Site Plan;
Chris Clout Design Drawing Number WD1.0, dated 5/7/2016, Ground Floor Plan;
Chris Clout Design Drawing Number WD2.0, dated 5/7/2016, Upper Floor Plan;
Chris Clout Design Drawing Number WD3.0, dated 5/7/2016, Elevations;
Chris Clout Design Drawing Number WD4.0, dated 5/7/2016, Elevations; and
Chris Clout Design Drawing Number WD5.0, dated 5/7/2016, Sections.

- The Applicant shall, prior to any building work commencing onsite, apply for and gain, a Development Approval for Building Work.
- The finished roof surface of the facade feature wall and eave of the garage located within the front 6.0 metre setback must not be of a highly reflective colour (white, silver, zinalume etc.) so as to limit the reflection of light towards the adjoining neighbouring property.

Background

The subject site is a 546 m² allotment located at 59 Pacific Boulevard, Buddina and is zoned Low Density Residential under the Sunshine Coast Planning Scheme 2014. The allotment is rectangular in shape with a street frontage of 18.105 m.

The original dwelling and swimming pool at the property were demolished in 2015 and a Development Approval for Building Work for a new Class 1a dwelling was approved in July 2016 with work commencing onsite soon afterwards.

The original buildings and structures on the site were complying with the requirements of the Sunshine Coast Planning Scheme 2014 and the Queensland Development Code MP1.2 (QDC MP1.2).

In early 2015 the property owner engaged Chris Clout Design (Designer) to design a new dwelling and swimming pool at the subject site. As part of their service, the Designer lodged a Development Application for Building Work with Coastal Building Certifications (Assessment Manager).

However the facade feature wall and eave of the proposed Class 10a garage 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 13 September 2016. The Council issued a Concurrence Agency Response on 27 October 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.

An application for appeal Form 10 was lodged with the Building and Development Dispute Resolution Committees Registrar by the Applicant on 28 November 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 28 November 2016;
2. IDAS Form 1 - Application Details, IDAS Form 2 - Building work requiring assessment against the *Building Act 1975*;
3. Form 18 Notice of Engagement as Private Building Certifier dated 13 September 2016;
4. Email dated 28 November 2016, from Assessment Manager to property owner requesting they provide authorisation to act on their behalf for the appeal process;

5. Email dated 28 November 2016, from property owner to the Assessment Manager authorising them to act on their behalf for the appeal process;
6. Letter/report dated 29 November 2016 from Assessment Manager to Committee providing justification for why the application should be approved and the background to the Appeal;
7. Assessment Manager Decision Notice, Permit No: 32841, dated 16 November 2016, refusing the garage façade feature and front eave as directed by Council;
8. The following drawings:
 - Chris Clout Design Drawing Number S1.0, dated 5/7/2016, Site Plan;
 - Chris Clout Design Drawing Number WD1.0, dated 5/7/2016, Ground Floor Plan;
 - Chris Clout Design Drawing Number WD2.0, dated 5/7/2016, Upper Floor Plan;
 - Chris Clout Design Drawing Number WD3.0, dated 5/7/2016, Elevations;
 - Chris Clout Design Drawing Number WD4.0, dated 5/7/2016, Elevations;
 - Chris Clout Design Drawing Number WD5.0, dated 5/7/2016, Sections;
 - Chris Clout Design Drawing Number WD14.0, dated 5/7/2016, External Colours; and
 - Chris Clout Design Drawing Number WD15.0, dated 5/7/2016, Landscape Plan.
9. Sunshine Coast Council Application Form – 2014/15 Planning and Environment Request for Referral Agency Response for Building Work, dated 13 September 2016, lodged by Coastal Building Certifications (Assessment Manager);
10. Letter dated 13 September 2016 from Assessment Manager to Council addressing the performance criteria of the Sunshine Coast Planning Scheme, Dwelling House Code 9.3.6, Table 9.3.6.3.1, Performance Outcomes P02 and providing a chronological history of the previous referrals lodged with Council;
11. Concurrence Agency Response from Council dated 27 October 2016 instructing Assessment Manager to refuse Development Application for Building Work;
12. Information Request from Council to Assessment Manager dated 28 September 2016;
13. Sunshine Coast Council Application Form – 2014/15 Planning and Environment Request for Referral Agency Response for Building Work, dated 23 March 2016, lodged by Coastal Building Certification (Assessment Manager) for a second storey eaves encroachment and 1.2m high swimming pool located within the front road boundary setback;
14. Concurrence Agency Response from Council dated 6 April 2016 conditionally approving the side boundary eaves encroachment and swimming pool within the front road boundary setback;
15. Letter dated 6 June 2016, from Assessment Manager to Council requesting to amend the Council Concurrence Agency Response dated 6 April 2016;
16. Amended Concurrence Agency Response from Council dated 14 June 2016 deleting swimming pool within the front road boundary setback from original decision notice of 6 April 2016;

17. Letter date 11 October 2016, from Council to the property owner detailing the concurrence agency response process and building application process for the development at the subject site;
18. Verbal submissions at the hearing from all parties to the appeal;
19. The Sunshine Coast Planning Scheme 2014;
20. The Queensland Development Code MP 1.2 (QDC MP 1.2);
21. The *Sustainable Planning Act 2009* (SPA);
22. The *Building Act 1975* (BA).

Findings of Fact

The Committee makes the following findings of fact:

Subject Site

1. The subject site is a 546 m² allotment located at 59 Pacific Boulevard, Buddina and is zoned Low Density Residential under the Sunshine Coast Planning Scheme 2014. The allotment is rectangular in shape with a street frontage of 18.105 m;
2. The original dwelling and swimming pool at the property was demolished in 2015 and a Development Approval for Building Work for a new Class 1a dwelling was approved in July 2016 with work commencing onsite in May 2016. The new dwelling was still under construction at the time of the Hearing;
3. The original buildings and structures on the site were complying with the requirements of the Sunshine Coast Planning Scheme 2014 and the Queensland Development Code MP1.2 (QDC MP1.2);
4. The new dwelling has complying 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.*
5. The site is not affected by any Council or Unitywater infrastructure;
6. The site is not affected by any easements;
7. The streetscape in Pacific Boulevard and the surrounding area 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 landscaping and with buildings generally setback between 4.5m and 6 m from the front road boundaries.

Application Process

1. In early 2015 the property owner engaged Chris Clout Design (Designer) to design a new dwelling and swimming pool at the subject site. As part of their service the Designer lodged a Development Application for Building Work with Coastal Building Certifications (Assessment Manager);
2. The proposed development did not comply with the requirements of the Queensland Development Code MP 1.2 (QDC MP1.2) in the following areas:
 - The eaves of the proposed dwelling on the northern side of the building did not comply with Acceptable Measure A2(a)(ii) of the QDC MP 1.2 which states the following:

A2 (a) The side and rear boundary clearance for a part of the building or structure is –
(i) where the height of that part is 4.5m or less - 1.5m; and
(ii) where the height of that part is greater than 4.5m but not more than 7.5m - 2m;

- The proposed swimming pool within the front road boundary did not comply with Acceptable Measure A1(d)(i) of the QDC MP 1.2 which states the following:

(d) For structures the minimum road setbacks are as for A1(a),(b), and (c) except for –
(i) swimming pools, where the minimum distance from the water to the road frontage is –
(A) where the vertical distance to the coping above the finished ground level is not more than 1.2m – 1.5m; or
(B) where a solid wall or fence at least 1.8m high above finished ground level is constructed between the water and the road frontage and the top of the wall or fence is at least 1.0m above the top of the coping of the pool – no requirement;

3. The facade feature wall and front eave of the proposed Class 10a garage 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. 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;
5. The Assessment Manager lodged a request for referral agency response for building work with the Council on 1 March 2016 along with a full set of plans that detailed the whole development. However the application form lodged with Council did not make any reference to the front road boundary encroachment of the garage facade feature wall and eave even though it was clearly detailed on the drawings;
6. The Council issued a Concurrence Agency Response on 6 April 2016 conditionally approving the swimming pool, front boundary wall and dwelling eaves encroachment on the northern side of the building. No reference was made in the response to the front road boundary encroachment of the garage facade feature wall and eave;
7. The Assessment Manager lodged a request to amend the Concurrence Agency Response of the 6 April 2016 with the Council on 6 June 2016, the changes applied for were:
 - *The pool has been removed from being out of the ground in the front setback to ground level therefore not requiring any variation; and*
 - *Proposed additional roof overhang and setback of 1.4m to the side northern boundary to the rear half of the second storey of the dwelling.*

No reference was made in the request to the front road boundary encroachment of the garage facade feature wall and eave;

8. The Council issued an amended Concurrence Agency Response on 14 April 2016 deleting all reference to the pool and the front road boundary wall and approving the dwelling eaves

encroachment on the northern side of the building. No reference was made in the response to the front road boundary encroachment of the garage facade feature wall and eave;

9. Sometime after building work onsite had commenced the Council received a complaint from the adjoining property owner regarding the garage feature wall and eave, claiming the encroachment was affecting the view from the lower storey and upper storey of their dwelling;
10. After some discussions with Council officers the Assessment Manager lodged a request for referral agency response for building work with the Council on 13 September 2016 for the front road boundary encroachment of the garage facade feature wall and eave. The Application also made reference to the fact that this encroachment was clearly detailed on the two previous referrals to Council;
11. The Council issued an Information Request on 28 September 2016 to the Assessment Manager stating:

This application has been assessed and Council considers that the garage setback 5.2m does not comply with the Sunshine Coast Planning Scheme 2014 Dwelling House Code Performance Outcomes P02 (a).

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 changing the design to achieve a compliant outcome.

12. The Assessment Manager emailed the Council on 20 October 2016 responding to the Information Request, requesting Council complete the assessment of the referral;
13. The Council issued a Concurrence Agency Response on the 27 October 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, namely:

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

The garage front surround does not comply with and cannot be conditioned to comply with the Sunshine Coast Planning Scheme 2014, Performance Outcome P02: Garages, Carports and Sheds.

(a) Preserve the amenity of adjacent land and dwelling houses;

14. The Assessment Manager issued a Decision Notice on the 16 November 2016, refusing the front road boundary encroachment of the garage facade feature wall and eave as directed by Council;
15. The Committee received the application for appeal, Form 10 from the applicant on the 28 November 2016.

Reasons for the Decision

The Committee conditionally sets aside the decision of the Assessment Manager to refuse the front road boundary encroachment of the garage facade feature wall and eave at the direction of Council for the following reasons:

The Committee is of the opinion that the development is complying with the Performance Outcome P02 (a) of the Sunshine Coast Planning Scheme 2014, Dwelling House Code 9.3.6, Table 9.3.6.3.1 as:

- *P02 (a) preserve the amenity of adjacent land dwelling houses*

The streetscape in Pacific boulevard 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 with buildings setback between 4.5m and 6 m from the front road boundary.

The proposed redevelopment of the subject site is consistent with the surrounding streetscape. It should be noted that the main wall of the garage is setback 6 m from the front road boundary in accordance with the requirements of the Acceptable Outcomes of the Sunshine Coast Planning Scheme 2014 Dwelling House Code.

The encroachment of the garage facade feature wall and eave is very minor in nature, only 800mm. The Committee is of the opinion that the eave and facade feature wall help soften the visual impact of the garage wall and door when viewed from the street and surrounding properties.

The Committee also notes that as per Acceptable Outcome A03 of the Sunshine Coast Planning Scheme 2014 Dwelling House Code, it is an as of right in this location to build a lower storey of a Class 1a dwelling with a 4.5m front road boundary setback and 1.5 m side boundary setback.

The Committee is of the opinion that the proposed 800 mm encroachment has a lesser impact than a habitable room with a 1.5 m encroachment in the same location would have on the amenity of the adjoining dwelling house and land.

Further the Committee is of the opinion that the development has no impact on the upper storey of the adjoining allotment and only a very minor impact on the view from the lower storey.

Richard Prout
Building and Development Committee Chair
Date: 13 December 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