



Development Tribunal – Decision Notice

Planning Act 2016, Section 255

Appeal number:	23-051
Appellant:	RNL Constructions Pty Ltd (ACN 142 461 694)
Respondent (Assessment manager):	Luke Neller
Co-respondent (concurrence agency):	Sunshine Coast Regional Council
Site address:	16 Hillcrest Court Beerwah Qld 4519 described as Lot 38 on SP 203439 – the subject site

Appeal

Appeal under section 229 and schedule 1, section 1, table 1, item 1(a) of the *Planning Act 2016* (PA) against the decision of the Assessment Manager, as directed by the Concurrence Agency, for refusal of a Development Permit for Building Works for a Class 10a structure, being reconstruction of a shed, following fire damage. The decision followed the Concurrence Agency response by the Sunshine Coast Regional directing refusal of the application on the grounds that the proposal does not meet the Performance Outcome PO5 (a) or (b) of *Sunshine Coast Planning Scheme 2014*, 'Dwelling House Code'.

Date and time of hearing:	14 December 2023 at 10am
Place of hearing:	The subject site
Tribunal:	Christopher Robertson — Chair Catherine Baudet — Member
Present:	Roman Purnell – Appellant's representative Peter Bowman – Owner Luke Neller – Respondent Cian Corcoran – for the Respondent Courtney Lowrie and Zana Larikka – Council representatives

Decision:

The Development Tribunal (Tribunal), in accordance with section s254(2)(d) of the *Planning Act 2016* (PA), sets aside the decision of the Assessment Manager to refuse the application and orders the Assessment Manager to re-make the decision within 25 business days of the date of this Decision Notice, as if the Concurrence Agency had no requirements and if the Assessment Manager decides to approve the application, then with the following condition –

- (1) The wall parallel to the South-western boundary and currently set back 1.5m, is to be ameliorated by the installation of a suitable, sustainable climbing vine and associated trellis or structure (if required), or natural greenery in some other form, which covers at least 50% of the upper portion of the exposed wall.

Background

1. 16 Hillcrest Court runs in a north-west direction and fronts a cul-de sac. It is located within the Beerwah Local Plan. The total site area of the subject site is 2002m² and is zoned Rural Residential.
2. A fire occurred on site damaging three adjacent outbuildings (sheds). The sheds were replaced with the current structure and approval was then sought from the Sunshine Coast Regional Council as referral (concurrence) agency retrospectively.
3. The size of the current structure, for which approval is sought is, 19.10m in length, 6.36m in width and 4.5m in height at the edge, rising to 5m at the centre ridge. There is a distance of 1.5m to the south-western boundary from the structure. From a south-western perspective, the structure rises approximately 2m above the surrounding vegetation and fence, primarily along the fence line between the properties.
4. The Council assessed the structure under Performance Outcome P05 of 9.3.6 Dwelling House Code, Sunshine Coast Planning Scheme 2014:

Where located in the Rural zone, Rural residential zone or the Limited development (landscape residential) zone, the dwelling house is set back from side and rear boundaries so as to:-

 - (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 areas of neighbouring premises.*
5. On 27 July 2023, an Information request was made by the Council citing:

Amend the proposal plans to demonstrate compliance with Performance Outcome PO5 of the Dwelling House Code a. This should include the following:

 - a) *Increase the side setback between the proposed shed and the southwestern side boundary;*

OR

 - b) *Reduce the height of the proposed shed to 4 metres or less;*

OR

 - c) *Evidence that this structure will not affect the privacy and amenity of the neighbouring residents. Your consultation with the affected neighbours at 19 Hillcrest Court may assist in providing the necessary information**

(...)

...Submission of a neighbour's statement does not guarantee approval of your application.
6. By way of response to Council's information response, the appellant provided a letter of support for the proposal, including altered elevations, by the neighbour at 19 Hillcrest Court, dated 20 July 2023.
7. In its Referral Agency Response dated 15 August 2023, Council directed part-approval and part-refusal as follows:

Council recommends PART APPROVAL of CAR23/0501 to allow the following:

- *Shed located 2.75 metres (OMP) to the northern rear boundary.*

(...)

AND

Council directs PART REFUSAL of CAR23/0501 for:

- *Shed located 1.5 metres (OMP) to the south-western side boundary.*

8. This decision was based upon the proposal not meeting Performance Outcome PO5(a) and (b), as follows:

- The proposed shed location would be located in a very similar location to the existing shed location on the site. As such, no vegetation would need to be removed to accommodate the new shed. Given the long length of 19.1m along the boundary, the height and reduced setback, the boundary would not be dominated by natural elements rather than built structures. As such, the proposed shed would not comply with Performance Outcome PO5 (a).*
- The proposed shed would impact the amenity of the adjoining neighbour to the south-west when viewed from their land and dwelling, due to the reduced side boundary setback, as well as the significant height, scale and bulk of the structure. The proposed shed would be visually imposing on the neighbouring lot.*

The close proximity of the shed to the south-western boundary leaves no opportunity for the provision of any form of landscaping that would grow to a similar height to soften the visual impact of the structure. The limited space and aspect which would be mostly in shade would not provide ideal growing conditions.

The total length of the shed is 19.1 metres along the southwestern elevation, which presents a significant blank wall face to the neighbouring lot, with no articulation or space for sufficient and effective landscape screening. Further, the aspect of the shed, its height and close proximity to the adjoining premises would have unreasonable shadowing impacts occasioned upon the adjoining premises which would be more than that from a shed of a lesser height and a greater setback. Therefore, the shed would negatively impact the neighbouring residents' use and enjoyment of their backyard open space.

9. In the proceeding, the Respondent submitted:

- The footprint of the new structure is similar to the old sheds that occupied the site.
- The bulk and mass are not substantially different between the old and new structures.
- The immediately adjacent neighbour has provided a letter of support.
- A number of factors highlight the area on the adjacent property will not be impacted upon as: there are no structures nearby; the area near the shed is used for septic tank lines; the current fence and vegetation provide screening.
- The site is zoned rural residential and many of the sites are larger and are not uniform (up to 6000m²) and therefore there are varying outcomes regarding structures on different sites.
- Cost and other issues of moving/removing the structure.

- (g) Modifications to the structure, in particular removal of side cladding, might compromise the integrity of the structure.
- (h) The Queensland Development Code MP 1.2 Design and Siting Standard for Single Detached Housing - on Lots 450m sqm and Over, under the 'P2 Buildings and structures' provides for a side and rear boundary clearance of 1.425m for a height of 4.5m or less.

Jurisdiction

- 10. Section 229(1) of the Act identifies that schedule 1 states the matters that may be appealed to the Tribunal.
- 11. Table 1 of schedule 1 of the Act states the matters that may be appealed to the Planning and Environment Court or the Tribunal subject to (in the case of the Tribunal) the preconditions stated in section 1(2) of schedule 1.
- 12. The Tribunal has jurisdiction to determine this appeal under section 229(1)(a)(i), schedule 1, section 1, table 1, item 1(a), and schedule 1, section 1(2)(g) of the Act.

Decision framework

- 13. The Appellant as the recipient of the decision notice must establish that the appeal should be upheld (under section 253(2) of the PA).
- 14. The Tribunal is required to hear and decide the appeal by way of a reconsideration of the evidence that was before the person, who made the decision the subject of this appeal (under section 253(4) of the PA).
- 15. Section 249 of the PA provides the Tribunal with broad powers to inform itself in the way it considers appropriate when hearing a tribunal proceeding and the Tribunal may seek the views of any person.
- 16. The Tribunal is required to decide the appeal in one of the following relevant ways set out in section 254(2) of the PA:
 - (a) *confirming the decision; or*
 - (b) *changing the decision; or*
 - (c) *replacing the decision with another decision; or*
 - (d) *setting the decision aside and ordering the person who made the decision to remake the decision by a stated time...*

Material considered

- 17. The material considered in arriving at this decision was:
 - (a) Form 10 Notice of appeal, grounds for appeal and correspondence accompanying the appeal lodged with the Tribunals Registrar on 29 September 2023.
 - (b) Sunshine Coast Planning Scheme 2014.
 - (c) Planning Act 2016 (QLD).
 - (d) Submission from Sunshine Coast Council dated 15 December 2023.
 - (e) CAR23/0501 Sunshine Coast Assessment Report dated: 9 August 2023.
 - (f) '9.3.6 Dwelling House Code,' Sunshine Coast Planning Scheme 2014.
 - (g) '7.2.2 Beerwah Local Plan Code,' Sunshine Coast Planning Scheme 2014.

- (h) MP 1.2 Design and Siting Standards for Single Detached Housing on Lots 450M2 and over.' Queensland Development Code.
- (i) Respondent's submission dated 1 February 2024.

Findings of fact

- 18. The shed is currently erected and completed without Sunshine Coast Regional Council (Concurrence Agency) approval.
- 19. The shed is 19.1m in length and 5m in height (at the centre ridge), and 4.5m at the lower outer edge. The longest single unbroken side facing the south-western side (termed 'rear elevation' in the document titled 'Quotation' dated 13 February 2023), is set back 1.5m from the property boundary.
- 20. The shed comprises of three distinct sections: enclosed shed; carport which has, what is termed the 'front elevation', open; and a smaller enclosed room located as an addition to the front elevation.
- 21. As currently presented the shed does not comply with Acceptable Outcome AO5.1 of the 9.3.6 Dwelling House Code, *Sunshine Coast Planning Scheme 2014* in that it is situated on a lot of an area of less 2 hectares and is not set back at least 3 metres from the side boundary.
- 22. The Queensland Development Code (QDC) *MP 1.2 Design and Siting Standard for Single Detached Housing - on Lots 450m sqm and Over* under the 'P2 Buildings and structures' provides for a side and rear boundary clearance of 1.425m for a height of 4.5m or less but is not applicable in this instance.
- 23. The *Building Act 1975* permits planning schemes to specify alternative planning scheme provisions under section 33 of the *Building Act 1975*. This relates to alternative design solutions for boundary clearance and site cover provisions MP 1.1, 1.2 and 1.3 of the QDC.

Reasons for the decision

- 24. The Tribunal recognises that the *Sunshine Coast Planning Scheme 2014*, '9.3.6 Dwelling House Code' (Performance Outcome PO5) places great emphasis and balance upon properties zoned rural residential to provide an environment created by natural elements over the built environment and in part achieves this by stipulating minimum setbacks of structures from side boundaries (i.e. Acceptable Outcomes AO5.1). However, under the performance-based planning system other options can be considered to satisfactorily address the objectives of Performance Outcome PO5.
- 25. The Tribunal considered all provided material for this appeal including: evidence provided at the inspection and hearing; the limitations of size of the subject site and location of the shed; all material supplied by the Appellant, the Respondent and Council; Council's Information Request options in paragraph 5 (above), in conjunction with the neighbour's signed letter of support for the shed and Council acting in response to complaints by local residents; and material disclosing the extent of the shed both prior to and after replacement and any intrusions and impacts (visual or otherwise), from the street and adjacent property. The Tribunal found the structure, as currently presented, in particular the upper portion towards the outer roofline, dominates the south-western perspective from the adjacent property.
- 26. The Tribunal found that conditioning the approval (condition 1 in Decision) with the installation of a suitable, sustainable climbing vine and associated trellis or structure (if required), or natural greenery in some other form, which covers at least 50% of the

upper portion of the exposed wall, reduces the impact of the blank wall's bulk and scale and maintains a view of natural elements.

Dr Christopher Robertson
Development Tribunal Chair

Date: 22 March 2024

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.

The following link outlines the steps required to lodge an appeal with the Court.

<http://www.courts.qld.gov.au/courts/planning-and-environment-court/going-to-planning-and-environment-court/starting-proceedings-in-the-court>

Enquiries

All correspondence should be addressed to:

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Brisbane QLD 4001

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