



Building and Development Dispute Resolution Committees—Decision

Sustainable Planning Act 2009

Appeal Number:	12-15
Applicant:	Toby Zaremba & Christine Zaremba
Assessment Manager:	Coastal Building Certifications-Michael Bowcock, Building Certifier A2365
Concurrence Agency: (if applicable)	Sunshine Coast Council (Council)
Site Address:	9 Adelong Crescent, Buddina, and described as Lot 710 B92926 – 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 Garage. 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 requirements of the Sunshine Coast Planning Scheme Performance Outcome PO2 for Garages, Carports and Sheds.

Date and time of hearing:	23 March 2015 at 11.00am
Place of hearing:	The subject site
Committee:	Richard Prout – Chair Gina Rogers - Member
Present:	Toby Zaremba – Applicant Damian Collins – Buderim Design Studio James Brownsworth – Innovation Planning Solutions Sam Cunningham – Urban Design/Architect – I.P.S Steven Tucker – Sunshine Coast 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 garage at the direction of Council, and approves the building with the following conditions:

- The proposed garage shall be sited in accordance with the following endorsed drawings:
 - Sync Landscaping Design, Drawing Number SYNC-127, Dated 25/3/15;
 - Buderim Design Studio, Site Plan, Project Number 140601, A01 Rev D, dated 30/5/14;
 - Buderim Design Studio, Elevations, Project Number 140601, SD02 Rev D, dated 30/5/14;

- Buderim Design Studio, Elevations, Project Number 140601, SD03 Rev D, dated 30/5/14;
- The site shall be landscaped in accordance with the above endorsed landscape plan within 40 business days from the date the occupation of the proposed garage commences;
- The proposed landscaping shall be retained and maintained for the life of the building in order to soften the visual impact of the building when viewed from the street;
- The existing second driveway crossover at the northern end of the street frontage shall be removed and the area landscaped within 40 business days from the date the occupation of the proposed garage commences;
- The Council road reserve in the location of the second crossover shall be re-established immediately after its removal;
- The proposed bin enclosure and fence shall be relocated clear of the 6 m front road boundary setback;
- With the exception of the two side boundary fences the area between the front road boundary and the dwelling/garage shall remain open and not incorporate any structures i.e. screens/fences/boundary wall etc.;
- The proposed garage shall be sited and built in accordance with the requirements of Queensland Development Code MP 1.4 (Building over or near relevant infrastructure);
- The Applicant shall, prior to any building work commencing onsite, apply for and gain, a Development Approval for Building Work.

Background

The subject site is a 759 m² allotment located at 9 Adelong Crescent, Buddina and is zoned Low Density Residential under the Sunshine Coast Planning Scheme 2014. The allotment is wedge shaped with Myuna Canal to the east/rear of the allotment (11m frontage approximately) and Adelong Crescent street frontage to the west/front of the allotment (24.5m frontage approximately).

The existing four bed room dwelling on the site was built in 1994 and includes a large double garage. The existing dwelling is complying with the setback provisions of the planning scheme and the Queensland Development Code MP 1.2 (QDC MP1.2).

The Applicants are proposing a major renovation of the dwelling and as part of this work are proposing to convert the exiting garage to an annexed unit. In order to provide covered off street parking the Applicants are proposing a new double garage to the front of the dwelling with a maximum front road boundary setback of 2.220m.

As such the Applicants lodged a Development Application for Building Work with Coastal Building Certification (Assessment Manager) in November 2014 for the proposed renovations to the dwelling including a garage with a 2.220m front road boundary setback from Adelong Crescent.

The garage did not comply with the Acceptable Solution AO2.1 Garages, Carports and Sheds of the Dwelling House Code 9.3.6 of the Sunshine Coast Council Planning Scheme 2014.

The Assessment Manager lodged a request for referral agency response for building work with the Council on the 7 November 2014. The Council issued a Concurrence Agency Response on the 22 January 2015 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 Assessment Manager issued a Decision Notice dated 6 March 2015 refusing the Application in accordance with the Concurrence Agency response.

The Applicants lodged a Form 10 – Application for appeal/declaration, against the Assessment Manager’s Decision Notice, with the Building and Development Committees Registrar on the 6 March 2015.

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 6 March 2015;
2. IDAS Form 1 - Application Details, IDAS Form 2 - Building work requiring assessment against the *Building Act 1975*;
3. Notice of Engagement as Private Building Certifier – Coastal Building Certification dated 3 November 2014;
4. Sunshine Coast Council Application Form – 2014/15 Regional Strategy and Planning, Request for Referral Agency Response for Building Work, dated 7 November 2014;
5. Sunshine Coast Council, Information Request – *Sustainable Planning Act 2009* dated 21 November 2014;
6. Sunshine Coast Council, Concurrence Agency Response – Building Development Application for Building Work (Design & Siting) dated 22 January 2015;
7. Decision Notice issued by Coastal Building Certification dated 6 March 2015;
8. The following drawings:
 - Buderim Design Studio, Overall Layout, Project Number 140601, SD00 Rev D, dated 30/5/14;
 - Buderim Design Studio, Site Plan, Project Number 140601, A01 Rev D, dated 30/5/14;
 - Buderim Design Studio, Proposed Layout, Project Number 140601, SD01 Rev D, dated 30/5/14;
 - Buderim Design Studio, Elevations, Project Number 140601, SD02 Rev D, dated 30/5/14;
 - Buderim Design Studio, Elevations, Project Number 140601, SD03 Rev D, dated 30/5/14;
 - Buderim Design Studio, Existing Demolition, Project Number 140601, SD04 Rev D, dated 30/5/14;
 - Buderim Design Studio, 3D Views, Project Number 140601, SD05 Rev D, dated 30/5/14;
 - Buderim Design Studio, Sections, Project Number 140601, SD06 Rev D, dated 30/5/14;

- Buderim Design Studio, Landscaping Detail, Project Number 140601, SD07 Rev E, dated 30/5/14;
 - Buderim Design Studio, Landscaping Views, Project Number 140601, SD08 Rev E, dated 30/5/14;
 - Buderim Design Studio, Landscaping Views, Project Number 140601, SD09 Rev E, dated 30/5/14;
 - Sync Landscaping Design, Drawing Number SYNC-127, Dated 25/3/15.
9. Survey Plan B929.26, dated 15/9/72;
 10. Verbal submissions at the hearing from all parties to the appeal;
 11. Letter of support from the owner of 7 Adelong Crescent, Buddina, dated 4 December 2014;
 12. Sunshine Coast Council Planning Scheme 2014;
 13. Sunshine Coast Council Planning Scheme 2014 - Dwelling House Code 9.3.6;
 14. The *Sustainable Planning Act 2009* (SPA);
 15. The *Building Act 1975* (BA).

Findings of Fact

The Committee makes the following findings of fact:

Subject Site

1. The subject site is a 759 m² allotment located at 9 Adelong Crescent, Buddina and is zoned Low Density Residential under the Sunshine Coast Planning Scheme 2014;
2. The allotment was created on the 15 September 1972;
3. The following buildings and structure were noted onsite:
 - A dwelling and garage approved by Caloundra City Council on the 25 October 1994; and
 - An in ground swimming pool located to the rear of the dwelling approved by Caloundra City Council on the 10 October 1994; and
 - A roofed veranda located to the rear of the garage along the northern side of the dwelling. Council has advised they have no record of a building approval having been issued for the veranda.
4. The allotment has a second driveway/crossover located close to the northern side boundary. Council has advised that they have no records of an Operational Works Approval for a second driveway at the site;
5. The site has a Unitywater sewer main running at an angle to the front road boundary;
6. The dwelling on the southern side of the subject site has recently been renovated and as part of the renovation a Class 10a garage has been built within 500mm of the side boundary in a similar location to the Applicants proposal;
7. The streetscape in Adelong Crescent consists of residential dwellings with 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.

Application Process

1. The Applicants lodged a Development Application for Building Work with the Assessment Manager in November 2014 for a Class 10a garage located 2.220m from the front road boundary with Adelong Crescent and 65mm from the a side southern boundary;
2. The garage did not comply with Acceptable Solution AO2.1 Garages, Carports and Sheds of the Dwelling House Code 9.3.6 of the Sunshine Coast Council Planning Scheme 2014;
3. The Assessment Manager lodged a request for referral agency response for building work with the Council on the 7 November 2014, against Performance Outcome PO2, Garages, Carports and Sheds of the Sunshine Coast Planning Scheme 2014, Dwelling House Code 9.3.6;
4. Section 33 (Alternative provisions to QDC boundary clearance and site cover provisions for particular buildings) of the *Building Act 1975* 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. Acceptable Outcome AO2.1 of the Dwelling House Code 9.3.6 of the Sunshine Coast Council Planning Scheme 2014 clearly states AO2.1 is an alternative provision to QDC
5. The Council, issued an Information Request on 21 November 2014, advising the Assessment Manager that the Application was being considered for refusal namely:

This application is being considered for refusal as the garage is assessed as not being compliant with the relevant Sunshine Coast Planning Scheme 2014 Dwelling House Code DHC Performance Outcomes PO2

- *The streetscape is regarded as having an open and clear area in the 6.0m setback area of the street with no other garages constructed near the road boundary.*
- *This garage would not be maintaining the present residential amenity and streetscape character.*

You are invited to discuss this and maybe a solution is able to be found that Council considers compliant.

6. The Council issued a Concurrence Agency Response on 22 January 2015 against the provisions of Performance Outcome PO2, Garages, Carports and Sheds of the Sunshine Coast Planning Scheme 2014, Dwelling House Code 9.3.6 directing the Assessment Manager to refuse the garage for the following reasons:

The proposed development does not comply with and cannot be conditioned to comply with the following performance criteria:

The garage does not comply and cannot be condition to comply with the Sunshine Coast Planning Scheme 2014 Performance Outcome PO2 for Garages, Carports and Sheds.

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

7. The Assessment Manager issued a Decision Notice on the 6 March 2015 refusing the garage as directed by the Concurrence Agency;
8. The Applicants lodged a Form 10 -Application for appeal/declaration on the 6 March 2015 with the Committees Registrar.

Reasons for the Decision

The Committee conditionally sets aside the decision of the Assessment Manager to refuse the garage at the direction of Council for the following reasons:

- At the hearing, the appeal parties discussed the option of increasing the landscape screening along the front of the allotment and the removal of the bin enclosure from within the front road boundary setback;
- The hearing was suspended to allow the Applicants the opportunity to develop a revised landscape plan for Council to consider;
- The Applicant submitted an amended landscape plan to Council and the Committee on the 26 March 2015;
- The Council advised the Committee on the 27 March 2015 that they were satisfied with the amended landscape plan;
- At the hearing, the Applicant and the Applicant's representatives placed considerable emphasis on the fact the proposed development did not incorporate boundary walls or fencing within the front boundary setback (i.e. 6 m setback), and that this open look from the street in combination with the proposed landscape buffers would achieve Performance Outcome PO2 (d), of the Council Dwelling House Code 9.3.6;
- The second driveway at the property was discussed at the hearing and Council subsequently confirmed that the crossover did not have an Operation Works Approval;
- The Committee is of the opinion that the removal of the second driveway/crossover and additional landscaping within the allotment boundary in its place is required to ensure compliance with Performance Outcome PO2 (d).

Richard Prout
Building and Development Committee Chair
Date: 13 April 2015

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