



Development Tribunal – Decision Notice

Planning Act 2016

Appeal Number:	50-17
Appellant:	Shaun Wegener (Property Owner) through his certifier Luke Neller (Noosa Building Certifiers)
Assessment Manager:	Luke Neller (Noosa Building Certifiers)
Concurrence Agency:	Sunshine Coast Regional Council
Site Address:	11 Ashburton Cres, Sippy Downs QLD 4556 and described as Lot 246 on SP 215558 – the subject site

Appeal

Appeal under section 229 and Schedule 1, Table 1, Item 1 of the *Planning Act 2016* (PA) against the decision of the Assessment Manager to refuse a Development Application for Building Work for the construction of a shed. Sunshine Coast Regional Council, as the Concurrence Agency, directed refusal because they determined that the location of the shed conflicted with the siting provisions of the Dwelling House Code of the Sunshine Coast Planning Scheme.

Date and time of hearing:	28 November 2017, 3pm
Place of hearing:	The subject site
Tribunal:	Geoff Mitchell – Chair Jenny Owen - Member
Present:	Luke Neller (Noosa Building Certifiers) – Appellant Shaun Wegener – Property owner Vince Whitburn - Council representative

Decision:

The Development Tribunal (Tribunal), in accordance with section 254 of the *Planning Act 2016* (PA) **sets aside** the decision of the Assessment Manager and **approves** the proposed shed subject to the following conditions and directions:

1. Approval is given for a shed, which is to be constructed in accordance with the Plans prepared by Southern Cross Sheds (attached as appendix A).
2. Comply with the conditions of the Assessment Manager (attached as Appendix B)

Please be advised that you may elect to lodge an appeal/declaration about this matter in the Planning and Environment Court (the Court). The Court appeal period starts again from the date you receive this Decision Notice which should be attached to the Court appeal lodgement documentation.

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>

Background

The Assessment Manager refused a Development Application for Building Works to construct a shed with a minimum road boundary clearance of 0.4m following receipt of a Concurrence Agency Response from the Council.

The Council, directing the refusal, considered that the proposed development did not comply with, and could not be conditioned to comply with Performance Criteria P02(b) and P02(d) of the Dwelling House Code of the Sunshine Coast Planning Scheme.

The Property Owner, dissatisfied with Council's decision, lodged an appeal through the Assessment Manager with the Committees Registry on the 12 October 2017.

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 Tribunals Registrar on 12 October 2017;
2. Letter dated 10 October 2017 from the property owner, Shaun Wegener, that the Assessment Manager will be representing him at the Appeal Hearing;
3. Plans - site plan, elevation;
4. Concurrence Agency Application lodged by Noosa Building Certifiers to Sunshine Coast Regional Council, dated 31 March 2017, including application form, letter and plans;
5. Information Request by Sunshine Coast Regional Council dated 11 April 2017;
6. Response to Information Request by Noosa Building Certifiers dated 21 September 2017, with amended plans (site plan and elevations);
7. Concurrence Agency Response by Sunshine Coast Regional Council dated 26 September 2017;
8. Assessment Manager Decision Notice, application number 2017-0297 dated 10 October 2017, with original plans (site plan and elevations);
9. Sunshine Coast Regional Council Dwelling House Code;
10. Verbal submissions at the hearing from Council, who made representations that:
 - the pattern of development in the street is paramount;
 - all other properties in the street present an open frontage;
 - no other sheds are located within the neighbourhood within the road boundary, and a precedent would be set if the shed were approved;
 - landscaping around the shed would not cause the shed to appear less dominant;
 - the form of the structure was not considered;
 - the volume of traffic in the street was not considered;
 - the location of the shed opposite a reserve (and not housing) was not considered relevant.
11. Verbal submissions at the hearing from the Appellant, who made representations that:
 - the site is unique, with the location at the end of a U-shaped street with minimal traffic and no houses opposite;
 - visual continuity is maintained as the setback matches the houses along the main street frontage;
 - landscaping can be used to improve the visual amenity of the shed;
 - no alternate siting is available;
12. Informal discussion with neighbour on site after hearing;
13. Response from Council regarding neighbour's comments.

Findings of Fact

The Committee makes the following findings of fact:

Subject Site

1. The subject site is a 646 m² allotment located at 11 Ashburton Cres, Sippy Downs (Lot 246 SP215558);
2. The allotment is generally rectangular in shape and bounded by Ashburton Cres on two frontages ;
3. The second frontage to Ashburton Cres (long side) is a connector loop road, bounding the subject allotment and No 13 Ashburton Cres, with no houses opposite. The land opposite is a reserve which serves also as a buffer to the Bruce Hwy;
4. The allotment is improved by a dwelling which is compliant with the setback provisions of the Sunshine Coast Planning Scheme;
5. The streetscape consists of residential dwellings, with setbacks generally compliant with the original subdivision Material Change of Use. Within the immediate neighbourhood, the Tribunal members observed a garage located in front of the dwelling at number 9 Ashburton Court, and a patio/gazebo located on the boundary at number 23 Ashburton Court.

Application process

1. The property owner engaged Southern Cross Sheds to design and construct a new shed to be located on the secondary road boundary of the subject site;
2. The builder lodged a Development Application for Building Work with a private certifier, Noosa Building Certifiers;
3. As the shed did not comply with the Acceptable Outcomes of the Sunshine Coast Planning Scheme Dwelling House Code, specifically P02/A02, Noosa Building Certifiers lodged a Concurrence Agency Referral Application to the Council on 31 March 2017, which included an application form, plans and a letter/report addressing the non-compliance;
4. The Council issued an Information Request on 11 April 2017, advising the Assessment Manager that Council considered that the shed doesn't comply with P02(b) and P02(d), and requested further information to help achieve compliance;
5. The Assessment Manager responded to the Council Information Request on 21 September 2017, proposing to reduce the shed size by 0.5m in width, which would allow for a greater road setback. Further justification for the shed was also provided;
6. The Council issued a Concurrence Agency Response on 26 September 2017 instructing the Assessment Manager to refuse the Application as it did not meet the performance criteria of the Sunshine Coast Planning Scheme Dwelling House Code Performance Outcomes P02(b) and (d). The Council's decision was based on the original plans, not the plans where the size of the shed had been reduced. Council's decision stated the reasons for refusal:

P02(b) do not dominate the streetscape

The streetscape consists of residential dwellings with a mixture of open fronted allotments or up to 1.8m high front and side boundary fences/walls with soft landscaping and with dwellings generally setback as required in the original MCU06/0172.

The proposed shed is 3.4m high and has a 1m road boundary setback. As such, the shed will have a dominating appearance when viewed from the street.

P02(d) maintain the visual continuity and patter of buildings and landscape elements within the street

As the proposed shed is set forward of the line of the buildings in the street, it will not maintain the visual continuity and pattern of the buildings within the street.

7. The Assessment Manager issued a Decision Notice on 10 October 2017 refusing the shed as directed by Council;
8. The owner, through the Assessment Manager lodged a Notice of Appeal (Form 10) with the Tribunal's Registrar on 12 October 2017.

Reasons for the Decision

The Tribunal is satisfied that the location of the proposed shed satisfies Parts (b) and (d) of Performance Outcome PO2 of the Dwelling House Code of the Sunshine Coast Planning Scheme.

P02 (b) do not dominate the streetscape.

The Tribunal does not agree with the observations of the concurrence agency and is satisfied that the shed will not dominate the streetscape as:

- When viewed towards the west from along the Ashburton Cres, the proposal will not be visible as it is set back behind the main building line.
- When viewed from directly in front of the subject site the proposal will depict the same visual appearance as all of the other premises in the street and in particular very similar to the adjoining property which has a colorbond clad shed beside the main dwelling.
- When viewed from either the northern or southern direction when using the connector loop section of the road, the shed will be visible, however it is considered the existing street trees and 1.8m high fencing will provide significant shielding to the shed and mitigate any dominance to this frontage.
- existing palm trees within the property provide further shielding of the shed;
- there are no properties along the western side of the loop section of Ashburton Cres to be affected by any views towards the east.

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

The Tribunal does not agree with the observations of the concurrence agency and is satisfied that the proposed siting of the shed meets the criteria of maintaining visual continuity and pattern of buildings and landscape elements as:

- the location is consistent with, and maintains the visual continuity along the primary road frontage
- the pattern of buildings and landscape elements along the street is maintained and in keeping with the pattern of the other properties along the street and of the adjoining property which has a similar structure in a similar location (No 9)
- there is no real established pattern along the loop connector section of the crescent as it presents to the side elevations of two properties only, however the pattern will not be incompatible with the pattern at No 23 Ashburton Cres where there is a structure directly up to and presenting to Condamine St.

Geoff Mitchell
Development Tribunal Chair
22 December 2017

Appeal Rights

Schedule 1, Table 2 (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.

Enquiries

All correspondence should be addressed to:

The Registrar of Development Tribunals
Department of Housing and Public Works
GPO Box 2457
Brisbane QLD 4001

Telephone (07) 1800 804 833 Facsimile (07) 3237 1248

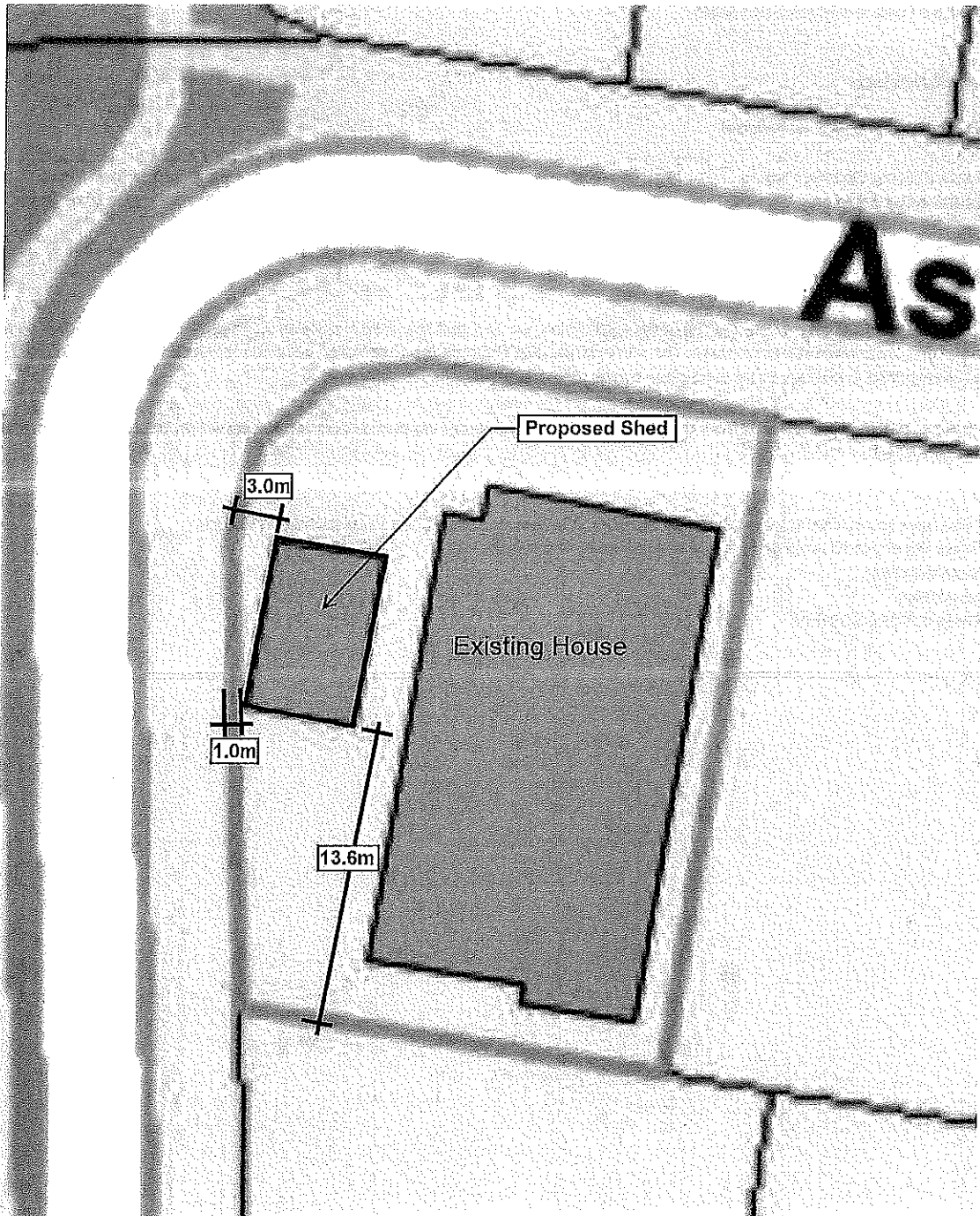
QBCC Licence No: 110 7409

SITE PLAN

SOUTHERN CROSS SHEDS

- **Address :** 11 Ashburton Cr, Buderim 4556
- **Lot/Plan :** 246SP215558
- **Shed Size :** 4.500 x 7.500 x 2.800

★ *Individually designed,
competitively priced*



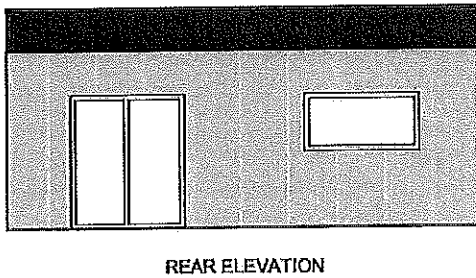
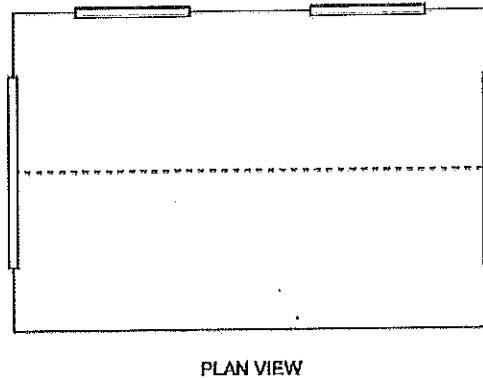
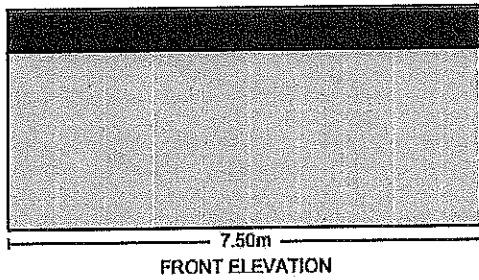
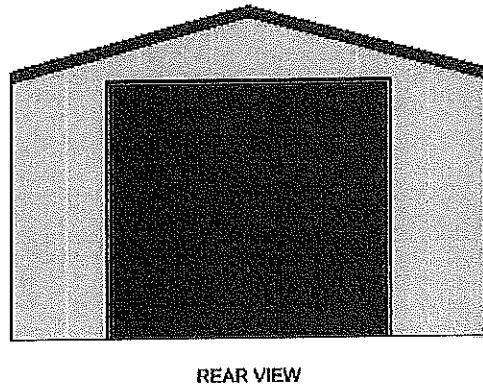
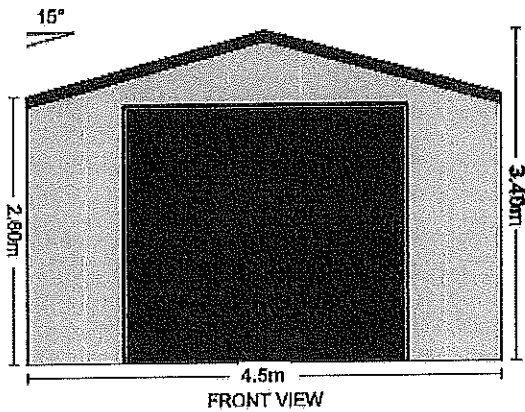
QBCC Licence No: 110 7409

ELEVATION

SOUTHERN CROSS SHEDS

- **Address :** 11 Ashburton Cr, Buderim 4556
- **Lot/Plan :** 246SP215558
- **Shed Size :** 4.500 x 7.500 x 2.800

*individually designed,
competitively priced*



Attachment 1.

Assessment Managers Recommended Conditions for use by Appeal Committee:

General

Pursuant to the provisions of the Sustainable Planning Act 2009 and the Building Act 1975 and made thereunder, permission to undertake the building work as outlined above is subject to the following conditions: -

1. All works subject to this approval are to be completed, inclusive of satisfactory final inspection and submission of all associated certificates and documentation, no later than 2 years after the date of approval or this approval will lapse.

Should this approval lapse, a new Development Approval for Building Works will be required prior to continuance of any assessable development or inspection and will be subject to compliance with legislative amendments that may have occurred in the interim period.

2. All conditions of this permit shall be complied with prior to the issue of a Form 21 - Final Inspection Certificate.
3. On completion, the building or structure may only be used for purposes pursuant to the abovementioned Classification as defined by the Building Code of Australia.
4. The builder must ensure a notice of inspection is given to Noosa Building Certifiers (Ph. 5455 6081) before proceeding past the following stages of construction.

Mandatory Inspection Type		Inspection to be undertaken by
Building General		
A.	Final, on completion of all works relating to this approval.	Noosa Building Certifiers
B.	As may be required by the Building Certifier.	Noosa Building Certifiers

Inspections will be undertaken in accordance with the Guidelines for the Inspections of Class 1 and 10 Buildings and Structures prepared by the Department of Local Government and Planning (Qld) effective 14 November 2003.

5. All building work shall comply with the provisions of the Building Act 1975 and shall be in accordance with the approval documents including any amendments or conditions shown in red.
6. Submission of a further application for approval of any proposed alteration or modification of any drawing or specifications pertaining to this building approval.
7. A certified legible copy of the approved drawings and specifications is to be on the building site, available for inspection by the Building Certifier at all times.
8. This Development Approval for Building Works does not incorporate the approval of any sanitary drainage or plumbing works. Separate approval from your Local Authority is required prior to commencing any such works.

Local Authority Infrastructure

9. All services that may be affected by this construction shall be accurately located for alignment and/or depth prior to commencement of works. Where sewer or stormwater access chambers are located within the property they are to remain uncovered and accessible during and after construction. Should difficulty arise in locating any service please contact Moreton Bay Regional Council Water & Sewerage.

Ensure any works within 3m of relevant infrastructure is completed in accordance with the acceptable solutions of QDC MP1.4.

10. This approval does not include water connection. In most instances a separate application will be required from Moreton Bay Regional Council Plumbing or the relevant service provider.

Stormwater

11. Gutters and downpipes are to be provided in accordance with Part 3.5.2 of the National Construction Code Series 2013.

Stormwater off roofed areas is to be collected and discharged to protect the building and other property (including neighbouring allotments) from adverse effects. The method of stormwater disposal shall be in accordance with your Local Authority requirements.

In general stormwater off roofed areas is to be collected and discharged as follows: -

- (i) To a system of interallotment or subdivision drainage.
- (ii) Where interallotment or subdivision drainage is not available the stormwater is to be discharged via an underground pipe to the street channel;
- (iii) Where grade does not permit the stormwater to be piped to a system of interallotment or subdivision drainage or the street channel, it is to be discharged via an underground pipe with bubbler outlet or stormwater rubble pit located at least 3.0 metres from the downstream side of building foundations and no closer than 3.0 metres from any property boundary in a manner so as to cause minimum inconvenience to adjoining property owners.

12. Surface water drainage is to be provided in accordance with Part 3.1.2 of the National Construction Code Series 2013.

Surface water drainage shall protect the building and other property (including neighbouring allotments) from adverse effects and shall not be channelled so as to direct concentrated flow across a property boundary.

In general: -

- (i) The site shall fall away from the structure at a minimum grade of 1:20 for a minimum distance of 1 metre from the perimeter of the building;

Building – General

13. Ceiling heights are to comply with Part 3.8.2 of the National Construction Code Series 2016.

14. A termite barrier is to be installed to protect the building in accordance with AS 3660.1-2014. The applicant shall forward a certificate, issued by the licensed termite barrier installer, verifying that the building has been treated for termites in accordance with the requirements of AS 3660.1-2014. The certificate must be lodged prior to the issue of a Form 21 – Final Inspection Certificate.
15. All glass installed in the building, including shower screens and glass pool fencing, shall be in accordance with Part 3.6 of the National Construction Code Series 2016.
16. The proposed structure is to be sited strictly in accordance with the boundary clearances, and separation distances shown on the approved plans. No part of, the structure, including footings, gutters, retaining walls etc, are to encroach beyond the boundaries of the prescribed allotment.

Building – Site Preparation and Earthworks

17. All excavation, earthwork and retaining walls shall comply with the Building Act 1975 and relevant planning provisions of the Moreton Bay Regional Council.

Retaining works that form critical elements of the structure are to be completed prior to occupation of the subject building.

Other non-essential retaining walls and embankments are to be completed prior to the issue of a Form 21 – Final Inspection Certificate.

Codes for Self Assessable Development

The following self-assessable codes apply to this application

- (1) Queensland Development Code
- (2) Building Code of Australia 2016
- (3) Sunshine Coast Planning Scheme – Dwelling House Code and applicable overlay and locality codes

Further Development Approvals Required:

Nil

Addition Documentation Required:

The following documents are required prior to commencement of works:

1. Structural details and Form 15 from an RPEQ.

End of Recommended Conditions