



Development Tribunal – Decision Notice

Planning Act 2016

Appeal Number:	44-17
Appellant:	Matt & Zemma Butler
Assessment Manager:	Zane Russell, Suncoast Building Approvals
Concurrence Agency:	Sunshine Coast Regional Council
Site Address:	124 Radbourne Road Tanawha described as Lot 4 on RP212364 – the subject site

Appeal

Appeal under section 229 of the *Planning Act 2016* against the decision of the Assessment Manager to refuse the retrospective Approval of a Development Application for Building Work for an existing Farm Shed the location of which conflicts with the Acceptable Outcomes of the assessment benchmarks at the direction of the Concurrence Agency.

Date and time of hearing:	10.00am, Friday 17th November 2017
Place of hearing:	The subject site
Tribunal:	Mr Don Grehan – Chair Mr Graham Osborne – Member
Present:	MR Matt Butler – Appellant Mr Zane Russell – Assessment Manager Mr Steve Rosenius – Council representative Mr Peter Chamberlain – Council representative

Decision:

The Development Tribunal, in accordance with section 254 (2)(d) of the *Planning Act 2016* **sets aside** the decision to refuse the application and orders the Assessment Manager to **remake** the decision, no later than the 30th of March 2018, subject to the following Conditions as if they were the Conditions imposed by the Concurrence Agency.

Conditions:

1. The existing Farm Shed may only be used for purposes of a private garage pursuant to the Class 10A Classification as defined by the National Construction Code.
2. All works must be completed, inclusive of satisfactory final inspection and compliance with all Conditions, no later than 6 months from the date of Approval of the Development Application for Building Work.

3. A landscaped buffer is to be provided between the existing Farm Shed and the north eastern property boundary and must extend continuously along that boundary from the existing northwest property entrance to a minimum distance of 20 metres past the rear southeast corner of the Farm Shed.
4. The depth, plant species, layering and spacing details of the landscape buffer must be designed and specified by a Landscape Architect registered with the Australian Institute of Landscape Architects in order to facilitate screening to visually obscure the entire building, on a year-round basis, when viewed the far side of the adjacent Bruce Highway.
5. Plans and specification detailing the design and planting schedules for the landscape buffer are to be submitted to the Senior Building Certifier, Building and Plumbing Services, Sunshine Coast Regional Council no later than 30 days from the date of Approval of the Development Application for Building Work.
6. The landscape buffer must be completed in its entirety no later than 6 months from the date of Approval of the Development Application for Building Work **or** prior to the issue of a Form 21 Final Inspection Certificate for the building work whichever is sooner.
7. The landscape buffer must be maintained in perpetuity noting that the Conditions of the Development Approval attach to the premises and bind the owner, the owner's successors in title and any occupier of the land and that Council will retain details of this Concurrence Agency Advice on the property record.

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 for the retrospective Approval of an existing Farm Shed the siting of which is contrary to the road boundary setbacks identified as Acceptable Outcomes of the assessment benchmarks following receipt of a Concurrence Agency Response from the Council.

The Council, directing the refusal, considered that development did not comply with, and could not be conditioned to comply with the Performance Outcome PO4 of the Dwelling House Code of the Sunshine Coast Planning Scheme.

The Appellant, dissatisfied with the refusal, lodged an appeal with the Development Tribunal Committees Registry against the Decision of the Assessment Manager.

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 Development Tribunals Registrar.
2. Sunshine Coast Regional Council's Enforcement Notice, Reference Number ENF COM16/1343, dated 22 March 2017.

3. Plans and Specification of the existing Farm Shed as submitted to the Assessment Manager.
4. Sunshine Coast Regional Council's Referral Agency Response, Reference Number CAR17/2074 dated 09 August 2017.
5. Suncoast Building Approval's Decision Notice Refusal, Reference Number SBA 2016-2784, dated 07 June 2017.
6. The *Planning Act 2016*. (PA)
7. The *Building Act 1975*. (BA)
8. Sunshine Coast Planning Scheme 2014 Dwelling House Code.
9. Verbal submissions from the Appellant at the hearing.
10. Verbal submissions from Council representatives at the hearing

Findings of Fact

The Tribunal makes the following findings of fact:

- The subject site is a 31160m² (3.116 hectare) allotment situated to the west of the north bound lanes of the Bruce Highway.
- A 672m² Farm Shed is located on the subject site, the Farm Shed was constructed prior to the issue of a Development Approval for Building Works and the Development Application lodged with the Assessment Manger for retrospective approval was as a result of Council's Enforcement action.
- The Farm Shed is located approximately 7.2m from the north eastern property boundary which is a boundary of the allotment adjacent to the north bound lanes of the Bruce Highway.
- The subject site is zoned Rural under the Sunshine Coast Planning Scheme 2014.
- The Bruce Highway is a State Controlled Road.
- The road boundary setback to the Farm Shed is contrary to Acceptable Outcomes of the specified assessment benchmarks being AO 4.1 of the Dwelling House Code of the Sunshine Coast Planning Scheme, which states:

Acceptable Outcome AO4:

Where located on a lot in the Rural zone, and the lot has an area of more than 2 hectares, the dwelling house (including any associated garage, carport or shed) is set back at least:-

(a) 40 metres from a State controlled road or an extractive industry transport route;

- On the 31st of July 2017, the Assessment Manager submitted a request to Council for Referral Agency Response for the siting of the building to be assessment against the relevant aspects of the specified assessment benchmarks.
- On the 9th of August 2017, the Appellant confirmed via an email submitted to Council by the Assessment Manager, that the Farm Shed was for private personal use only as a Class 10A Building.

- On the 9th of August 2017 Council issued a Concurrence Agency Response (Ref. No. CAR17/2074) directing the Assessment Manager to refuse the application.
- In relation to the jurisdiction of the Concurrence Agency, the relevant aspect of the specified assessment benchmark is:
(1) Performance Outcome PO4 of the Dwelling House Code of the Sunshine Coast Planning Scheme
- In deciding the Referral Agency Response, Council considered that the development did not comply with and could not be conditioned to comply with the following aspects Sunshine Coast Planning Scheme 2014:

Performance Outcome PO4:

Where located in the Rural zone, the dwelling house is set well back from any road frontage so as to:-

(a) maintain an open visual landscape dominated by natural elements (rather than built structures).

- On the 18th of September 2017, the Assessment Manager issued a Decision Notice refusing the Development Application for Building Work solely at the direction of the Concurrence Agency.
- The site appraisal elevation undertaken by the Tribunal at the time of the hearing confirms that the Farm Shed is visible from the state-controlled road and is only intermittently screen by a relatively narrow strip of native remnant vegetation.

Reasons for the Decision

- With reference to the Conditions directed to be imposed as part of an appurtenant Development Approval for Building Work, the Tribunal is satisfied that a properly designed landscape buffer will screen the existing building sufficiently to ensure the development maintains an open visual landscape dominated by natural elements (rather than built structures).

Don Grehan
Development Tribunal Chair
Date: 20 February 2018

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