



Development Tribunal – Decision Notice

Planning Act 2016, section 255

Appeal Number:	22-043
Appellant:	Mr Riley Coppo
Assessment Manager:	Longreach Regional Council (RC)
Concurrence Agency:	N/A
Site Address:	108 Crane Street Longreach and described as Lot 37 on L3576 – the subject site

Appeal

Appeal under section 229 and item 1(a) of table 1 of section 1 of schedule 1 of the Planning Act 2016 (PA) against the decision to refuse part of a development permit for construction of a Class 10a shed.

Date and time of hearing:	9.06 am 28 November 2022
Place of hearing:	Teams Meeting
Tribunal:	Markus Pye – Chair Bruce Shephard – Member
Present:	Riley Coppo – Appellant Kellie Doyle - Council representative Jason Burger - Council representative

Decision

The Development Tribunal (Tribunal), in accordance with section 254(2)(a) of the Planning Act 2016 (PA) **confirms** the decision of the Assessment Manager to refuse a development application for building works within the road boundary setback.

Background

1. The subject site is a 1214m² regular shaped allotment with a two street frontage to Crane Street and Pidgeon Lane. The Crane Street frontage appears to have a regular width road reserve. The Pigeon Lane frontage, as with other lanes, has a reduced width reserve, which appears indistinguishable in parts throughout the town. Strips of vegetation appear to often separate trafficable areas and site boundary fencing as the reserve.

2. The Appellant proposed a development of a shed (also known as a garage for the purpose of assessment) of 159.2m² that was to be set 2m from side boundaries and 1.5m from the road reverse to Pigeon Lane. The dimensions and volume were considerably above that outlined in the planning scheme.
3. An Exemption Certificate was granted on the 25 July 2022 by the Longreach RC for a shed (garage) of 159.2m² overriding a maximum size 90m² as nominated in the planning scheme for this Medium Density site.
4. The Appellant submitted a Referral Agency Assessment Application - Alternative Siting Assessment form to Longreach RC dated 21/June 2022 for a reduced road boundary clearance of 1.5m to the proposed shed.
5. A Decision Notice (Application for Alternative Siting Notice) refusing the reduced boundary setback of 1.5m was issued dated 25 July 2022. A reduced boundary clearance of 4.5m was to be applied.
6. The Appellant appealed the alternative siting assessment decision dated 17 August 2022.

Jurisdiction

1. The tribunal has jurisdiction for this appeal under *Planning Act 2016* (PA), Section 229(1)(a)(i) and Schedule 1, sections 1(1) and 1(2)(g) and Table 1, Item 1(a) being an appeal by the Appellant against the refusal of the development application by the Assessment Manager.

Decision framework

1. The onus rests on the appellant to establish that the appeal should be upheld (s. 253(2) of the PA).
2. 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 appealed against (s. 253(4) of the PA).
3. The tribunal may nevertheless (but need not) consider other evidence presented by a party with leave of the tribunal or any information provided under s.246 of the PA (pursuant to which the registrar may require information for tribunal proceedings).
4. The tribunal is required to decide the appeal in one of the ways in s.254(2) of the PA.

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 Tribunal's Registrar on 17 August 2022.
2. Referral Agency Assessment Application – Alternative Siting Assessment dated 21 June 2022
3. Alternative Site Plan as recommended by Building Certifier lodged with the Tribunals Registrar on 28 September 2022

4. Longreach Regional Council Planning Scheme 2015
5. Planning Regulation (PR) 2017
6. Qld Development Code mp1.2 Design & Siting Standard
7. Google Maps of Longreach c 2022
8. Verbal representations at the Tribunal hearing on 28 November 2022.
9. Exemption Certificate for shed lodged with the Tribunals Registrar on 29 November 2022

Findings of fact

1. The matter of road boundary setback in relation to a Class 10 building may be varied by a Planning Scheme subject to the provisions of Section 33 of the Building Act 1975. Longreach RC has reduced the road boundary setback to 4.5m from 6m as outlined in the QDC MP 1.2.
2. The development requires design and siting assessment by Council as the assessment manager for building work under Schedule 9, Part 3, Division 2, Table 3 of the PR.
3. The appeal submission photos, and Google Maps, indicate that over time sheds and garages have been built with not only reduced road reserve setbacks and built to boundary setback, but also with substantial road reserves in instances.
4. The Queensland Development Code sets the state wide design and siting requirements. MP1.2 applies to new building work for single detached dwellings (Class 1) and associated Class 10 buildings and structures on lots 450m² and over in area.

Reasons for the decision

1. The proposed development was assessed by Longreach RC who found that in their opinion the proposal did not fully satisfy the criteria of the Assessment Sheet and in summary considered that parking in front of the shed would obstruct Pigeon Lane and thereby considered the development could cause nuisance and safety risk to the public.
2. Also noted is that many of the buildings built within the road reserve setback are not directly accessible from the street or lane by vehicle, and several buildings, upon further scrutiny, would appear to have been approved on merit in relation to their context of time and place. It has not been confirmed as to whether all of these are lawful structures or would have been approved under the current planning scheme, particularly in relation to the Council's own duty of care against the lifespan of the building.
3. In regard to the appeal submissions the Tribunal finds that applying precedence as a model for new work is untenable. The merit of each proposal is the basis of assessment.
4. In its decision the Tribunal (as with the Council stated at the hearing) assessed the development against the standards set out in the QDC MP1.2 'Acceptable Outcome' A1(c)(ii) and it concluded that it was not requiring a higher order of development assessment as there was an alternative on-site location for a garage that: complies with A(i)(a); and (B) will allow vehicular access having a minimum width of 2.5m; and (C) has a maximum gradient of 1 in 5.

5. Therefore the Tribunal was not satisfied that the Appellant has established that the appeal should be upheld and that the proposal if proceeding is to comply with the 4.5m setback as approved by Longreach RC.

Markus Pye

Development Tribunal Chair
Date: 7 December 2022

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.

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:

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

Telephone 1800 804 833 Facsimile (07) 3237 1248
Email: registrar@hpw.qld.gov.au