



## Development Tribunal – Decision Notice

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### *Planning Act 2016, section 255*

<b>Appeal number:</b>	<b>22-052</b>
<b>Appellant:</b>	Lisa Dillon
<b>Assessment manager:</b>	Beau Thornton
<b>Concurrence agency:</b>	Cairns Regional Council
<b>Site address:</b>	3 Amethyst Street, Bayview Heights and described as Lot 60 on RP 725353 – the subject site

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### **Appeal**

Appeal under section 229 and item 1 of table 1 of schedule 1 (Appeals) of the *Planning Act 2016* ("PA") against the decision of the assessment manager at the direction of the referral agency to refuse the proposed Dwelling.

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### **Date and time of hearing:**

<b>Place of hearing:</b>	The subject site
<b>Tribunal:</b>	John Eylander– Chair Elisa Knowlman - Member
<b>Present:</b>	Lisa Dillon – Appellant Hannah Dayes - Council representative Beau Thornton – Assessment manager Glen Chambers – Emergent Building Approvals

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### **Decision:**

The Development Tribunal (Tribunal), in accordance with section 254(2)(c) of the PA replaces the decision of the assessment manager with another decision, namely, that the development application for the proposed Dwelling be approved.

### **Background**

1. The subject site is a rectangular block that adjoins a triangular corner block on Amethyst and Agate Streets, Bayview Heights in Cairns. There is an existing brick low-set home on the subject site with a carport extending along the boundary with the neighbours. The home was likely constructed in the 1970s.

2. The approximately 11m carport was constructed with the home, with the roof extending over it. There are brick pillars supporting the roof. One section of the carport has been infilled with breeze blocks. The other two sections have steel bars for security. There is a roller door installed that isolates the rear of the carport from the front of the home. This section is used for entertaining.
3. The carport is sited 0.5m from the side boundary. The roof overhang and gutter almost meets the boundary line. There is a concrete path between the carport and fence.
4. The existing 1.8m high timber fence is being replaced with a 1.8m colorbond fence (ironstone) by agreement with the neighbour.
5. The neighbour is in the process of constructing an addition to their home. The addition keeps a small triangular lawned area adjacent to the fence with the subject site. The addition has a solid wall facing the home on the subject site.
6. The proposed building work is an addition to the subject dwelling to enclose the carport for a bedroom, WIR and ensuite. The boundary-facing wall will be rendered block. Ventilation and light would be met by windows at both ends. The roofline will be cut back to the wall to achieve the necessary fire rating. This would remove approximately 0.5m of roof.
7. The proposed Dwelling does not meet the “acceptable solution” for QDC MP 1.2 A2(a)(i) for side boundary clearance of 1.5m.

### **Jurisdiction**

8. The Tribunal’s jurisdiction has been enlivened pursuant to section 229 and item 1 of table 1 of schedule 1 (Appeals) and section 1(2)(g) of schedule 1 of the *Planning Act 2016* (“PA”) arising from the decision of the referral agency to direct refusal of the proposed Dwelling Additions.

### **Decision framework**

9. The onus rests on the appellant to establish that the appeal should be upheld (section 253(2) of the PA).
10. 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 (section 253(4) of the PA)
11. The tribunal may nevertheless (but need not) consider other evidence presented by a party.
12. The tribunal is required to decide the appeal in one of the ways mentioned in section 254(2) of the PA.

### **Material considered**

13. The material considered in arriving at this decision comprises:
  - a. ‘Form 10 – Appeal Notice’, grounds for appeal and correspondence accompanying the appeal lodged with the Tribunals Registrar.
  - b. Decision Notice dated 15 September 2022.

- c. Cairns Regional Council Referral Agency Response dated 6 September 2022
- d. PD Designs W1-W3.
- e. Email exchange between Hannah Dayes and Beau Thornton 3 August 2022 to 17 August 2022.

### **Findings of fact**

- 14. The existing home has been constructed with a boundary clearance of 0.5m from the neighbouring property. The roof overhang and gutter ends at the boundary line, so that the current outermost-projection boundary clearance is effectively nil.
- 15. The existing carport is part of the structure of the home. It has been partially infilled, and the owner can infill the wall without triggering assessment provisions.
- 16. The carport can be seen by the neighbour with sound and light.
- 17. The proposed Dwelling is for a bedroom, WIR and ensuite. This would improve the amenity for the neighbour, that is the proposed Dwelling does not adversely impact on the amenity and privacy of residents on the adjoining lot.
- 18. The proposed Dwelling would open 0.5m from the 1.8m fence to the wall. The distance from the top of the fence to the roof is approximately 1.6m. The adjoining home and addition does not have windows to the subject site.
- 19. The proposed Dwelling does not impact the light and ventilation to habitable rooms on the adjoining lot.
- 20. The proposed Dwelling meets the requirements for daylight and ventilation to habitable rooms on the subject site.

### **Reasons for the decision**

- 21. The Tribunal finds the proposed Dwelling meets the performance criteria P2 for QDC MP1.2.
- 22. In accordance with section 254 of the PA replaces the decision of the assessment manager with another decision, namely, that the development application for the proposed Dwelling Additions be approved.

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**John Eylander**

**Development Tribunal Chair**

**Date: 30 January 2023**

## **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**

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