



Development Tribunal – Decision Notice

Planning Act 2016, section 255

Appeal number:	26-021
Appellant:	Matthew Edwards
Respondent:	Brisbane City Council
Site Address:	85 Bundah Street, Camp Hill, Qld 4152, described as Lot 50 on RP55857 (the property).

Appeal

Appeal pursuant to Schedule 1, Table 1, Item 2 of the *Planning Act 2016* (PA) regarding a decision of the Brisbane City Council to refuse the application for a minor change to Building Development Approval issued pursuant to section 56 of the *Building Act 1975* (BA) (refusal decision).

Date and time of hearing:	Wednesday 10 June 2026 at 1 pm
Place of hearing:	On site and Carindale Library
Tribunal:	Ross Williams —Chair Catherine Baudet —Member Sera Rohan —Member

Decision:

The Development Tribunal (Tribunal), in accordance with section 254 of the PA sets aside the decision of the Brisbane City Council (the Council) to refuse the application for a minor change to Building Development Approval BP25/1000, specifically in relation to the amended siting relaxation sought under Queensland Development Code MP 1.2.

For the reasons set out in paragraphs 24 to 38, the appeal is upheld.

Background

1. This appeal concerns a refusal of a minor change to Building Development Approval BP25/1000 for a New Dwelling at the Property issued under section 56 of the BA by the Council to the appellant on 14 April 2026 (refusal decision).
2. By their notice of appeal, the appellant argues that:
 - (a) the amended proposal has not been properly distinguished from both the previously endorsed siting outcome and the reasons for refusal;

- (b) the refusal decision overstates the actual impacts of the amendment, as it is based on an exaggerated characterisation of the southern boundary condition. In particular, the amended proposal does not result in the creation of a new continuous enclosed wall located 350mm from the boundary;
 - (c) when properly assessed, the amendment does not give rise to the level of impact asserted in the refusal reasons and complies with the criteria in Queensland Development Code (QDC) MP1.2 Performance Criteria P2(b) and P2(c); and
 - (d) no Information Request was issued by the Council prior to the refusal decision, meaning no opportunity was provided to supply further information or clarification.
3. By way of issuing the refusal decision notice, the Council alleges that:
- (a) the proposed siting variation would result in an excessive and unreasonable reduction in the southern side boundary setback, which would unduly limit access to natural light and negatively impact the amenity of adjoining residents;
 - (b) the combined garage, laundry and carport are set back 350mm from the southern side boundary in lieu of the 1200mm setback, for a substantial and continuous length of development. As such, the extent and continuous nature of the encroachment are disproportionate to the size of the lot and are inconsistent with Performance Criteria P2 of the QDC;
 - (c) the impacts of the reduced setback are exacerbated by the northward orientation of the proposed dwelling relative to the adjoining southern dwelling and the difference in flood levels between the subject site and adjoining southern dwelling;
 - (d) the proposed garage wall would directly interface with upper-level windows of the adjoining dwelling and obscure lower-level windows, thereby significantly restricting access to natural light and creating a visually dominant and overbearing built form when viewed from habitable rooms of the neighbouring property;
 - (e) the proposal results in an unreasonable concentration of built form along the southern boundary and fails to demonstrate an appropriately balanced distribution of development across the site;
 - (f) the reduced southern side setback is insufficient to maintain reasonable access to daylight or an acceptable outlook for adjoining residents. The scale, length, and proximity of the development along the boundary would create a perception of visual dominance over adjacent habitable rooms, adversely affecting amenity; and
 - (g) these identified impacts are not minor and have not been adequately mitigated through appropriate design responses having regard to the site's specific constraints. Accordingly, the proposal fails to satisfy Performance Criteria P2(b) and (c) of QDC MP 1.2.

Jurisdiction

- 4. The appeal is within the jurisdiction of the Tribunal.
- 5. The refusal decision the subject of this proceeding was issued under section 56 of the PA..
- 6. Section (1)(2)(g) of Schedule 1 of the PA states that a relevant matter includes a matter relating to the BA, other than a matter that may be decided by the Queensland Building and Construction Commission (QBCC). Here, the refusal decision relates to a matter under the BA.

7. Accordingly, Schedule 1, Table 1, Item 2 of the PA applies, and the Tribunal has jurisdiction to hear an appeal against the decision to refuse the application for a minor change to the building development approval, given the appeal relates to a matter identified in Schedule 1 (such as material change of use for a classified building or certain operational works) and is not otherwise excluded (such as by the requirement for impact assessment with properly made submissions).

Decision framework

8. Generally, the appellant bears the onus of proof to establish the appeal should be upheld.
9. 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 pursuant to section 253(4) of the PA.
10. The Tribunal may nevertheless (but need not) consider other evidence presented by a party with leave of the Tribunal or any information provided under section 246 of the PA (pursuant to which the registrar may require information for tribunal proceedings).
11. The Tribunal is required to decide the appeal in one of the ways mentioned in section 254(2) of the PA, however, must not make a change, other than a minor change, to a development application pursuant to section 254(3) of the PA.

Material considered

12. The material considered in arriving at this decision was:
 - (a) Appeal documents received 23 April 2026;
 - (b) Further submissions from the appellant received 6 May 2026, including shadow diagrams;
 - (c) Assessment Report prepared by the Council received 13 May 2026;
 - (d) Council submissions received 13 May 2026;
 - (e) Further shadow diagrams provided by the appellant on 14 May 2026;
 - (f) Appellant's response to Council submissions dated 19 May 2026;
 - (g) Oral submissions provided by both parties on 10 June 2026;
 - (h) Site visit undertaken on 10 June 2026;
 - (i) Approved plans by Elevate Design Studio, including:
 - (i) Proposed Site Plan 050 Revision L dated 10 March 2026;
 - (ii) Ground Floor Plan 100 Revision L dated 10 March 2026;
 - (iii) First Floor Plan 101 Revision L dated 10 March 2026;
 - (iv) Elevations 200 & 201 Revision L dated 10 March 2026;
 - (v) Sections 300 & 301 Revision L dated 10 March 2026;
 - (j) *The Planning Act 2016*;
 - (k) *The Planning and Environment Court Act 2016*;
 - (l) The National Construction Code; and
 - (m) *The Building Act 1975*.

13. The appellant and Council have provided fulsome submissions.
14. On 7 May 2026, the Tribunal contacted the parties to confirm that a site inspection would take place on 10 June 2026 and invited the parties to file any further submissions by 13 May 2026.

Findings of fact

The Tribunal makes the following findings of fact:

15. There is an existing approval for the balance of the dwelling (setbacks of 1250mm to southern boundary and 1460mm to northern boundary) which was approved by the original siting variation (A006956740 issued 24 March 2026).
16. The garage wall is compliant with QDC MP1.2 A2(d) and therefore does not require assessment by Council. The carport (as approved) also complies with QDC MP1.2 A2(a) where the setback is 1200mm.
17. The carport is proposed to be setback 350mm from the southern boundary and the existing patio is setback 350mm from the boundary. The carport is within the front 8m setback, and the pergola is located approximately 21.5m from the rear boundary. There are no existing structures on the adjoining property within 1.5m of the proposed structures (carport/pergola).
18. The garage/laundry are approved and partly constructed at 350mm from the boundary.
19. There is an existing fenceline (between 1.2m and 1.8m) for the full length of the shared boundary, with landscaping above this particularly along the front setback of 6m and within the rear boundary. There is also a level change particularly at the rear, which results in the subject site being lower (by up to 1.5m below the adjoining site). The proposal is to cut into the site such that the height of the carport structure would be 3m above natural ground or 1m above a compliant fence.
20. The adjoining dwelling is setback 1.55m from the common boundary within the section adjoining the approved garage and does not have any structures within the front 6m of the northern side boundary within the common boundary adjoining the proposed carport. Similarly, there are no structures within 1.5m of the rear pergola.
21. There is an existing wall, retaining wall and landscaping along the boundary in the location directly adjoining the proposed structures, up to 2.5m in both locations.
22. Council accepts (as stated in their reasons for refusal) that the garage wall interfaces directly with the upper-level wall of the adjoining dwelling and results in an undue restriction on access to natural light and visually dominant and overbearing built form when viewed from habitable rooms. However, that is an approved structure not subject of this application.
23. Shadow diagrams provided by the appellant confirms that the proposed carport does not exacerbate or create any additional impacts to the adjoining dwelling, particularly when compared to a 'compliant' solution (i.e. previously approved).

Reasons for the decision

24. The Tribunal has determined that it has jurisdiction to hear the appeal.
25. The Council's assessment places weight on the cumulative effect of built form along the southern boundary and the potential impact on neighbouring amenity, including access to light, ventilation, and outlook. It also involves a re-assessment of the garage built to boundary wall on the basis that it became a Class 1(a) (in lieu of Class 10(a) that is

permitted to be built to boundary) by the inclusion of the laundry along that wall, however, consider this immaterial to this application given the wall was approved.

26. The Council accepts that the impact is primarily from the approved dwelling and laundry/garage structure, but submits that the additional impact of the carport, from 1200mm to 350mm exacerbates the southern boundary interface and would detrimentally affect neighbouring amenity, including shading.
27. The appellant submits that the dwelling is lawfully approved and that the only issue for determination is the relocation of the carport.
28. For the reasons that follow, the Tribunal accepts the appellant's position. The Tribunal orders that the appeal be upheld, subject to the following conditions.
29. While consideration of the existing and approved built form is relevant, the proper question is whether the proposed works subject to this application create or exacerbate impacts on the adjoining dwelling having regard to Performance Outcome P2 of QDC MP1.2. This does not require a re-assessment of the approved built-to-boundary wall or the two-storey dwelling, particularly where the extent of non-compliance is relatively minor (less than 150mm).
30. The adjoining dwelling is set back 1.55m from the common boundary adjacent to the approved garage, with no structures within the front 6m of the shared boundary adjoining the proposed carport, and none within 1.5m of the rear pergola. There is an existing wall, retaining wall, and landscaping along the boundary adjoining the proposed structures, up to 2.5m in height.
31. An assessment of the carport and pergola at a 350mm setback (rather than 1200mm) indicates that no additional or exacerbated impacts arise:

(a) **P2(a): Adequate daylight and ventilation to habitable rooms**

There are no habitable rooms in proximity to the carport or pergola. These areas are already influenced by vegetation, fencing, retaining structures, and level differences. Consequently, the reduced setback will not result in any additional material impact on light or ventilation, as confirmed by the shadow diagrams.

(b) **P2(b): Adequate light and ventilation to adjoining habitable rooms**

There are no habitable rooms or buildings directly adjoining the reduced setback areas. Relevant habitable rooms are set back 1.5m from the boundary and located beyond the carport extent. Accordingly, there is no additional material impact on light or ventilation.

(c) **P2(c): Amenity and privacy of adjoining residents**

While there is some general amenity impact, it is limited. The carport is an open structure adjoining an existing fence with vegetation that largely obscures views, with only the parapet and roofline visible, softened by the proposed roof garden. It does not adjoin private open space or habitable areas and has historically been used for car parking. The pergola is located below the adjoining land level and adjacent to fencing and landscaping beyond private open space areas. Given its modest height, level difference, and existing screening, impacts on amenity and privacy are minimal.

32. Alternative siting of the carport was considered but discounted due to constraints, including the presence of a street tree, the location of the driveway crossover, an existing

- fire hydrant, and adjoining driveway arrangements. Relocation would also necessitate two crossovers given the approved garage position.
33. Overall, the existing vegetation, fencing, established crossovers, historical car parking use, separation from adjoining habitable areas, and the open design of the carport support the reduced setback.
34. The Council's concern relates to the cumulative effect of built form along the southern boundary. However:
- (a) the existing covered rear area is unchanged and forms part of the established built environment, contributing no additional impact.
 - (b) the approved garage wall remains unchanged externally; internal modifications do not affect bulk, height, or relationship to the adjoining property.
 - (c) the only change is the relocation of the open carport 850mm closer to the boundary.
35. Accordingly, the proposal does not result in a material increase in adverse amenity impacts and does not support a conclusion that the cumulative effect of the built form along the southern boundary would be unreasonable or unacceptable.
36. While Council's concerns regarding cumulative impacts are acknowledged and reasonably raised, the Tribunal considers that, in circumstances where the dwelling has been lawfully approved and may be constructed in accordance with that approval, the determinative issue is confined to the effect of the proposed relocation and associated relaxation for the carport.
37. On that basis, the assessment is properly limited to the additional impact arising from the carport in its proposed location. When compared with the originally approved position, that additional impact is negligible and not excessive.
38. In reaching this conclusion, the Tribunal has had regard to the Council's decision, the written and oral submissions of the parties, and the before-and-after shadow diagrams, together with the approved and proposed plans and elevations.

Ross Williams
Development Tribunal Chair

Date: 25 June 2026

Appeal rights

Schedule 1, Table 2, item 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 Housing and Public Works
GPO Box 2457
Brisbane QLD 4001

Telephone 1800 804 833

Email: registrar@hpw.qld.gov.au