



Development Tribunal – Decision Notice

Planning Act 2016, section 255

Appeal number:	22-055
Appellant:	Alex Gammie
Respondent (Assessment manager):	Harald Weber of All Construction Approvals
Co-respondent (Concurrence agency):	Cairns Regional Council (Council)
Site address:	6 Ellibank Close, Edmonton Qld 4869 and described as Lot 60 on SP201541 – the subject site

Appeal

Appeal under section 229 and schedule 1, section 1, table 1, item 1(a) of the Planning Act 2016 (PA) against the assessment manager's decision to refuse the appellant's development application, as directed by the concurrence agency for the construction of a Class 10a shed.

Date and time of hearing:	11.00 am 25 January 2023
Place of hearing:	The subject site
Tribunal:	Markus Pye – Chair Heath Bussell – Member
Present:	Alex Gammie – Appellant Harald Weber – Assessment Manager Dylan Thomas - Council representative Jedd Siviour - Council representative

Decision:

The Development Tribunal (Tribunal), in accordance with section 254(2)(c) of the Planning Act 2016 (PA) replaces the decision with another decision, that is to approve the proposal with the condition that the 'open bay' sections on the western end of the shed measuring 4100mm+1800mm x 4300mm (23.5m²), be deleted from the proposal.

Background

1. The subject site is located at the head of a narrow T-cul-de-sac and is set back approximately 20m from the primary roadway section of Ellibank Close. The subject site is a 653m² level allotment that is almost rectangular in shape, with the exception

being the south-east corner which is truncated to create a short road-frontage boundary approximately 13.5m in length, facing and running parallel to Ellibank Close.

2. The subject site is currently improved by a Class 1a single detached dwelling house and is located within a Low Density Residential Zone under the CairnsPlan 2016 Version 3.1 (CairnsPlan), being the applicable and current planning scheme for the subject site. With regard to siting and boundary clearances, it is noted that the alternative provisions to the Queensland Development Code (QDC) outlined in the CairnsPlan section 1.6 do not alter the standard provisions of the QDC for the subject site (being zoned Low Density Residential), and therefore the QDC MP1.2 is the applicable siting standard.
3. The appellant proposes to construct a new Class 10a shed being 12m in length and 5.9m in width (approximately 70.8m²), with eave and peak heights (excluding concrete slab thickness) of approximately 3.2m and 4.0m respectively. The shed is to be clad in Colorbond metal sheeting and includes both a fully enclosed section with roller door access (approximately 31.8m²) and open sections located along one full northern side, and to the western end of the shed (totalling approximately 39.0m²).
4. The proposed location of the shed is to the southern area of the subject site with the outermost projections in relation to applicable boundaries (relative to the appeal) as follows:
 - a. the 5.9m wide front of the shed to be within a minimum of 0.4m from the road-frontage boundary; and
 - b. the 12.0m long side of the shed to be varies from 0.4m to a minimum of 0.2m from the southern-side boundary.
5. The application was subject to a concurrency agency referral by the Assessment Manager due to the following non-compliances with the Queensland Development Code (QDC) MP1.2:
 - a. Acceptable Solution A1(a)(i) – The minimum road setback is to be 6.0m (current proposal 0.4m minimum);
 - b. Acceptable Solution A2(b)(i) – The minimum side boundary clearance is to be 1.5m (current proposal 0.2m minimum); and
 - c. Acceptable Solution A2 (d)(ii) – Class 10a buildings may be sited within the nominated side boundary clearance (1.5m) where (amongst other things) the total length of the building is not more than 9.0m along any one boundary (current proposal 12.0m).
6. On 10 October 2022, Council, as a concurrence agency, assessed the proposal and issued a 'Referral Agency Response' directing the Assessment Manager to refuse the development application.
7. The development application was subsequently refused by the Assessment Manager on 11 October 2022 and the appeal lodged with the Tribunal on 19 October 2022.

Jurisdiction

8. The tribunal has jurisdiction for this appeal under the PA section 229(1)(a)(i) and schedule 1, sections 1(1), 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

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); however, 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 and the tribunal's decision takes the place of the decision appealed against (section 254(4) of the PA).

Material considered

12. 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 on 19 October 2022.
 - b. 'Development Application Decision Notice' – Development Permit for Building Works refusal (new construction of Class 10a shed) dated 11 October 2022.
 - c. Cairns Regional Council 'Referral Agency Response' – Application refusal in relation to the siting provisions of the QDC MP1.2 dated 10 October 2022.
 - d. 'Building Certifiers Request for Referral Agency Response (Building Work)' Form dated 12 September 2022, including accompanying 'Assessment Responses for Referral Agency Assessment (Building Work)' Form and Assessment Manager's 'Report to Regulatory Services' information package addressing a siting dispensation request for non-compliance with the siting provisions of the QDC MP1.2 (in relation to the proposed new construction of the Class 10a shed at the subject site).
 - e. Proposed Shed Plans including Site Plan, Floor Plan, Elevations, Sections and Working Drawings / Details prepared by Cardinal Metal Roofing Pty Ltd / Fair Dinkum Sheds Cairns dated 9 September 2022.
 - f. The Planning Act 2016.
 - g. The Planning Regulation 2017.
 - h. The Cairns Plan 2016 Version 3.1.
 - i. The Queensland Development Code MP1.2 – Design and Siting Standard for Single Detached Housing – On Lots 450m² and over.
 - j. Verbal representations at the Tribunal hearing on 25 January 2023.

Findings of fact

13. The proposed development was assessed by Council against the relevant sections of the QDC MP1.2, the purpose of the QDC being:

To provide good residential design that promotes the efficient use of a lot, an acceptable amenity to residents, and to facilitate off street parking.

14. Council found that in their opinion the proposal did not fully satisfy the Design and Siting Standards Performance Criteria of the QDC MP1.2 with specific reference to P1(a), (b) and (c) and P2 (b) and (c), that being:

(P1) - The location of a building or structure facilitates an acceptable streetscape appropriate for –

(a) the bulk of the building or structure; and

(b) the road boundary setbacks of neighbouring buildings or structures; and

(c) the outlook and views of neighbouring residents.

(P2) Buildings and structures –

(b) allow adequate light and ventilation to habitable rooms of buildings on adjoining lots.

(c) do not adversely impact on the amenity and privacy of residents on adjoining lots.

15. Regarding QDC MP1.2: P1, Council noted in summary:

The proposed Shed does not comply with A1(a)(i) and A1(b)(i) for minimum road setbacks, being 6m. The proposed setback for the Shed to the road frontage is 0.4m, representing a 5.6m departure from the Acceptable Solution of the Queensland Development Code MP1.2. The proposal is considered to present an unacceptable bulk within the front setback that is considered to compromise the streetscape character and amenity.

16. Regarding QDC MP1.2 P2, Council noted in summary:

The proposed setback for the Shed from the side boundary of between 0.2m and 0.5m represents a maximum 1.3m departure from Acceptable Solution A2 of the Queensland Development Code MP 1.2. The proposed Shed would present as a 12-metre-long wall with no articulation of the built form facing the neighbouring premises. The combination of the length of the wall, lack of articulation and proximity to the eastern (sic) side boundary are not considered to provide an acceptable level of amenity for neighbouring residents.

Further, the proximity of the building to the side boundary limits opportunities for landscaping with screening qualities to act as visual buffer and soften the appearance of the built form.

17. Regarding this point of landscaping, it was agreed at the hearing by all parties that any proposed landscaping was impracticable given the proposed siting constraints.

Reasons for the decision

18. In considering the purpose of the QDC with regard to P1, the Tribunal considered that given the unique configuration of the lot, it satisfied the performance criteria for the following reasons:

- a. In regard to the QDC, proposed reduced setbacks typically relate to 'face on' obstructions, such as a garage, carport, or shed as in this case, within the typical 6m boundary setback that directly front streets. When viewing the subject block from the street, whether it be from the main portion of the road, or within the short cul-de-sac portion of the street, where the subject site fronts, the general view is

of a portion of the house to the right hand side garage area 'face on'. The peripheral view of the subject site is also dominated by a shed within the side and rear boundary setback on the left hand side lot adjoining, and is located in front of a portion of the subject site. The Tribunal considered that if the shed remained as proposed, being in line with the aforementioned shed on the adjoining lot, it would appear somewhat ambiguous as to which block it was situated on, given that the facade of the proposed shed is near perpendicular to the subject house. This context is not typical of reduced setback conditions as the QDC is primarily concerned with setbacks to standard lots and corner lot configurations, not this unique situation. It is made more unique, given the boundary setback varies as the shed façade is not parallel to the front boundary. In reality, due to the façade being angled away from the road, and not facing the road, only a portion of the measured façade face would be recognised due to vanishing perspective.

- b. In reality, the Tribunal considered that the public's visual amenity is not particularly compromised due to the site being a cul-de-sac, and apart from the subject sites residents, few would actually traverse on that portion of the street, as it primarily provides access only to the subject site, having no end turning circle. In this regard it may be considered a battle axe block with the road as the handle. Therefore the subject site is typically viewed from a greater distance than the QDC takes into consideration, lessening impacts.
- c. The Tribunal also considered that the location of the proposed shed benefited by equalising the impacts on the subject and the adjoining lot with the existing large shed and the proposed being positioned together, shielded from view by the other. To relocate the proposal from the front boundary setback would cause increased impacts on the adjoining lot as well as the subject lot. With regard to one primary purpose of the QDC, the shed located in its proposed location is logically *the efficient use of a lot*.

Therefore in regard to P1, the Tribunal considers that the proposal does satisfy *an acceptable streetscape* for (a), (b) and (c).

19. In regard to P2 the Tribunal supports the Council's assessment with regard to (b) and (c), with the weight of the support to (c) (*do not adversely impact on the amenity and privacy of residents on adjoining lots*), the reason being that at 12m long, 3.2+m eaves height at the boundary edge it constitutes a considerable visual impact to the adjoining lot's rear primary private open space. This was quite apart from the audible impacts of the proposed 'recreational use' open area that remained unaddressed.
20. The associated Acceptable Outcome for P2 in part states that Structures may be exempted from adhering to side boundary setbacks: *A2(a) and (b) where – (i) the structure is not a deck, patio, pergola & (ii) the structure is not used for entertainment, recreational purposes or the like*. This condition is primarily to counter any imposed audible impacts on adjoining lots as part captured in P2(c). However, the Appellant stated and confirmed on site that the rear portion of the proposal was in fact an entertaining area, and of a considerable size, and open sided in nature without any ameliorating allowances for impacts on the adjoining lot. Therefore it did not satisfy the Performance Criteria of P2.
21. For that reason, a reasonable and relevant condition would be that the proposal deletes the rear open entertaining area for the benefit of the adjoining lot in regard to both visual and audible amenity to their rear primary private open space. The length of

the proposal would now be in the order of 7850mm long from the proposed front setback and considered an acceptable amenity impact.

In its assessment the Tribunal was not satisfied that the Appellant had established that the appeal should be fully upheld. Further, the Tribunal considered that the proposal, if proceeding, must be made to comply with the removal of the Open Area as part of the approval, as otherwise it did not or could not satisfy the purpose of the QDC as it relates to design and siting for the subject site.

Markus Pye

Development Tribunal Chair

Date: 17 February 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:

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