



Development Tribunal – Decision Notice

Planning Act 2016, section 255

Appeal number: 26-014

Appellant: GXC Build Pty Ltd- ACN 644 821 652

Assessment manager: Kenton Byrne, Northern Building Approvals

**Co-respondent
(concurrence agency) (if
applicable):** Tablelands Regional Council

Site Address: 14 Lillypilly Lane, Yungaburra, Qld 4884 and described as
Lot 6 on SP 179198 the subject site

Appeal

Appeal under section 229 and item 1 of Table 1 (Appeals) of the *Planning Act 2016* (PA) against the assessment manager's decision dated 9 March 2026 to refuse the development approval for a shed at the subject site.

Date and time of hearing: 11:00am on Wednesday 6 May 2026

Place of hearing: The subject site (if held on site or another address if held off site)

Tribunal: John Eylander—Chair
Glenn Chambers —Member
George James – Member

Present: GXC Build Pty Ltd —Degasper Curcio- Appellant
Paul and Caroline Stanke – Homeowners
Peter Boyd—Council representative
Laura Vidot – Builders wife

Decision:

The Development Tribunal (Tribunal), in accordance with section 254(2)(d) of the PA and sets the decision aside and orders the assessment manager to remake the decision by 4:00pm on the date 28 days after the date of this decision.

Background

1. On 2 March 2026, the Tableland Regional Council (TRC) made the decision to refuse the development application for a class 10a shed because the works required siting dispensation for front road and side boundary setback and building over/adjacent to sewer. The grounds for refusal were –
 1. *Non-compliance with QDC MP 1.2*
 - A. *The proposed structure is sited approximately 2.4m from the road boundary (1.8m to eaves), which represents a substantial forward projection compared to the established road boundary setbacks of neighbouring buildings in the street.*
 - B. *Having regard to the performance outcome of QDC MP 1.2 requiring that the location of a building facilitate an acceptable streetscape appropriate to the bulk of the building and the road boundary setbacks of neighbouring buildings, the proposal results in:*
 - a. *A pronounced forward projection of built form relative to adjoining dwellings;*
 - b. *A disruption to the established setback alignment within the street; and*
 - c. *Increased visual prominence of the structure within the front setback area.*
 - C. *The structure obstructs a habitable room window of the existing dwelling on the lot and reduces access to natural light and ventilation and does not achieve, and is inconsistent with, the performance outcomes of QDC MP 1.2 relating to adequate daylight and ventilation to habitable rooms.*
 2. *Non-compliance with QDC MP 1.4 – Building Near Relevant Infrastructure*
 - A. *The structure is located approximately 1.2m from a sewer main understood to be approximately 1.8m deep and may fall within the zone of influence of relevant infrastructure.*
 - B. *Insufficient information has been provided to demonstrate structural protection of the sewer infrastructure, appropriate footing design or any required service authority approval.*
 - C. *Engineering certification submitted appears to have been amended or backdated, and supporting photographs do not adequately verify setbacks, structural design or infrastructure clearances.*
 - D. *The proposed development does not achieve, and is inconsistent with, the performance requirements of Queensland Development Code Mandatory Part MP 1.4 – Building over or near relevant infrastructure.*
2. There are EDR Building Design plans identified as JOB No. – 25047 dated 16 January 2026 together with “As Constructed” design for the build over infrastructure. The Form 15 Compliance Certificate dated 12 March 2026 was completed by Charles Gianarakis of CMG Consulting Engineers.
3. The footing plan was endorsed by Charles Gianarakis on 12 March 2026 that provides for 3 piers with a depth of 1 meter at the front of the slab. The closest pier to the sewer is 1.5 meters and the other 2 piers at 1.8 meters.
4. The certifier was Kenton Byrne (QBCC Lic. 1107628) of Northern Building Approvals who did not participate in the appeal. Their decision of 9 March 2026 refused the development application for the reasons of the TRC refusal.

5. The Appellant appealed the decision on 13 March 2026 and relevantly submitted in the appeal –

Non-compliance with QDC MP 1.2

- *The proposed setback is comparable to the setback of neighbouring properties and within the street, indicating that variations in building setbacks already exist and that the proposal does not represent an inconsistent or unusual projection within the streetscape.*
- *The structure has been designed to integrate seamlessly with the existing dwelling. The carport matches the house in rendered finishes, roof form and colours so that it presents as part of the overall dwelling. The client deliberately invested additional funds to ensure the design improved the overall street presentation and maintained a high level of street appeal.*
- *The location of the structure in relation to the existing office window was undertaken at the request of the client. The client specifically requested the installation of a door in front of the existing office window to provide direct access from the office into the carport so that occupants could maintain visual contact and interaction between the two spaces.*
- *The carport has been designed with multiple openings to maintain adequate light and ventilation. These include two windows, an access door to the office, a full-width panel door to the front of the structure and a rear roller door. When open, these openings allow for significant airflow through the structure.*
- *While the client's preference is not to install a skylight above the affected office window, a vented skylight could be installed if required to further supplement natural light and ventilation to the office space.*
- *Accordingly, the design was developed with the client's functional requirements in mind while still providing multiple opportunities for airflow and light within the structure.*
- *The client requested that the carport include multiple openings to allow for natural airflow and ventilation. However, the client also requested that all doors and windows be capable of being securely locked due to the increased levels of theft reported in the area.*
- *In addition, the client works for a local fire service and undertakes both day and night shift work. As a result, the ability to secure the structure and the property when away from the home for extended periods was an important consideration in the design.*
- *The design of the carport therefore balances the need for natural ventilation with the client's requirement for security and safety.*

Non-compliance with MP 1.4

- *QDC MP 1.4 (Building Near Relevant Infrastructure)*
- *Engineering documentation addressing the requirements of Queensland Development Code MP 1.4 was provided as part of the submitted plans.*
- *Specifically, C.M.G Consulting Engineers prepared, signed, stamped and dated the engineering drawings addressing the proximity of the structure to the sewer infrastructure. The relevant details are shown on sheet S-04/E, which forms part of the approved engineering documentation.*
- *The engineering documentation demonstrates that the structure has been designed with consideration to the nearby sewer infrastructure and includes the necessary structural design information in accordance with the requirements of Queensland Development Code MP 1.4.*
- *Accordingly, it is submitted that engineering certification addressing the relevant infrastructure was provided and should be taken into consideration as part of the assessment.*
- *Should Council require any clarification regarding the engineering documentation, confirmation can be obtained from C.M.G Consulting Engineers to verify the design intent*

and certification provided on the submitted plans.

6. The appellant's submission provided addresses in the area that have structures within the boundary setbacks.
7. The parties attended the on-site hearing where the as constructed shed was observed and discussed.

Jurisdiction

8. Section 229(1) of the PA provides that schedule 1 of the PA states the matters that may be appealed to a tribunal. Section 1(1)(b) of the schedule provides that the matters stated in table 1 of the schedule ('table 1') are the matters that may be appealed to a tribunal. However, section 1(2) of the schedule provides that table 1 only applies to a tribunal if the matter involves one of the matters set out in section 1(2).
9. Section 1(2)(g) provides that table 1 applies to a tribunal if the matter involves a matter under the PA, to the extent the matter relates to the *Building Act 1975*, other than a matter under that Act that may or must be decided by the Queensland Building and Construction Commission
10. Accordingly, the Tribunal's jurisdiction has been enlivened pursuant to section 229 and item 1 of table 1 of schedule 1 (Appeals) of the PA arising from the decision of the referral agency to refuse the proposed shed.

Decision framework

11. The onus rests on the appellant to establish that the appeal should be upheld (section 253(2) of the PA).
12. 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).
13. 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),
14. The tribunal is required to decide the appeal in one of the ways mentioned in section 254(2) of the PA.

Material considered

15. The material considered in arriving at this decision was:
 - (a) Form 10 Notice of appeal, grounds for appeal and correspondence accompanying the appeal lodged with the Tribunals registrar on 13 March 2026;
 - (b) Written Appeal submissions from the Appellant;
 - (c) Northern Building Approvals Development Application Decision Notice dated 9 March 2026;
 - (d) DA Form 2 – Building Works Details;
 - (e) TRC decision dated 2 March 2026;
 - (f) EDR Building Designs for proposed shed Drawings 25047 Sheets 1-23;
 - (g) Form 15 Compliance Certificate from Charles Gianarakis of CMG Engineers dated 12 March 2026;

- (h) Form 12 Aspect Inspection Certificate from Charles Gianarakis of CMG Engineers dated 8 May 2026 for the construction of underpinning bored pier adjacent to Council sewer main.

Findings of fact

16. The Tribunal makes the following findings of fact:

- (a) The constructed shed is sited approximately 2.4 m from the road boundary with the eaves approximately 1.8m.
- (b) The direct neighbour side boundary has a mature lillypilly hedge that screens the shed.
- (c) There is a tree in front of the shed between the structure and the boundary.
- (d) The existing dwelling is low set with a Dutch-gable roof and the colour scheme and building materials are followed in the shed.
- (e) The shed is rendered block with a colorbond roof.
- (f) The existing dwellings 4th bedroom/study has a window facing the shed.
- (g) The dwelling has a second access cross-over that is not part of the TRC decision but was identified as advisory note. The Tribunal noted the neighbour has a second crossover with these sympathetic to the existing amenity of the street.
- (h) The drawings and certification by CMG Engineers provide the piers to the slab of the shed are positioned as follows -
 - i. The west pier is 1.8 m from the sewer line
 - ii. The centre pier is 1.8m from the sewer line;
 - iii. The east pier is 1.5m from the sewer line.
- (i) The surrounding dwellings in the neighbourhood have structures within the boundary setback.
- (j) The owners engaged a designer, builder and building certifier who attended to the steps to construct the shed. Dates of the engagement of the Building Certifier to undertake his assessment of the plans was not provided to the tribunal.
- (k) The DA Form 2 says the builder is GXC Build Pty Ltd trading as APEX Building & Consulting Solutions with the contract price \$123,304.14 and the Queensland Home Warranty Scheme Insurance paid on 15 July 2025.
- (l) The constructed shed was completed before making a concurrence agency referral to Council for the boundary encroachment and proximity to Councils sewer main. No Decision Notice for a Building Development Approval was issued prior to the commencement of work on-site.
- (m) During construction the sewer line was exposed and a TRC plumbing inspector attended the site. CMG Engineering was contacted and subsequently engaged to prepare engineering design and to certify the underpinning bored pier design to support the shed above. works.
- (n) The builder continued to construct the shed until it was complete without referral agency response from TRC or Building Development Approval for the work.

Reasons for the decision

17. The homeowners' grievance with the TRC does not fall within the Development Tribunal jurisdiction.
18. MP 1.2 provides for buildings and structures to facilitate an acceptable streetscape, appropriate for the bulk, adjoining setbacks of neighbouring buildings, outlook and views of neighbouring residents and nuisance and safety to the public.
 - (a) Despite the setbacks the bulk of the shed is reduced by the roof form of Dutch Gable which is of similar scale of other Class10a sheds along Lillypilly Lane. 600mm of the encroachment relates to an eave which matches the existing dwelling and reduces the height of the external walls.
 - (b) The road setbacks along Lillypilly Lane vary with other similar road boundary encroachments for sheds and open patios and garages on the dwelling adjoining on No.16.
 - (c) The predominate views to the north from No.12 is not significantly affected due to hedge of established shrubs / trees along adjoining boundary
 - (d) The second driveway is adequately separated from adjoining driveway along the existing driveway and is unlikely to cause a nuisance or danger to either pedestrian or vehicles accessing the property.
19. Based on the above reasons, the Tribunal orders the assessment manager to remake the decision in favour of the appellant.
20. MP 1.4 provides that A building or structure—
 - (a) does not adversely affect the operation of relevant infrastructure; and
 - (b) does not place a load on the infrastructure that adversely affects its structure; and
 - (c) is constructed and located so its integrity is unlikely to be affected as a result of the infrastructure—
 - i. being maintained or replaced; or
 - ii. failing to function properly.
21. Based on the Form 15 Design certificate supplied by an RPEQ and his subsequent Form 12 Aspect Certificate certifying the underpinning bored piers it indicates the engineer's acceptance the structure will not have adverse effect nor surcharge any load onto council's infrastructure.
22. Based on the above reasons the tribunal orders the Assessment Manager to remake the decision in favour of the appellant subject to the appellant paying costs for Council to undertake camera inspection of the sewer to inspect it for its integrity.
23. The Development Tribunal (Tribunal), in accordance with section 254(2)(d) of the PA and sets the decision aside and orders the Assessment Manager to remake the decision by 4:00pm 28 days after the date of this decision.

John Eylander
Development Tribunal Chair

Date: 19 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
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