



Development Tribunal – Decision Notice

Planning Act 2016, section 255

Appeal number:	22-051
Appellant:	Craig and Anise Cygler
Assessment manager:	Clayton Baker
Concurrency agency:	Cairns Regional Council
Site address:	17-19 Copeman Close, Redlynch and described as Lot 9 on RP 744155 – the subject site

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 Additions.

Date and time of hearing:

Place of hearing: The subject site

Tribunal: John Eylander – Chair
Elisa Knowlman - Member
Patrick Clifton - Member

Present: Craig and Anise Cygler – Appellant
Clayton Baker – Assessment Manager
Damon Bryant - Builder
Michelle Henderson - Council representative
Ali Davey – Council representative

Decision:

The Development Tribunal (Tribunal), 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.

Background

1. The subject site is a single lot with an area of 8,005m² and with frontage to Copeman Close of in the order of 60 metres. It is within a rural residential zone in the western environs of Cairns, Far North Queensland. The site is at the upper cul de sac of Copeman Close, that rises in elevation from its intersection with Harvey Road to the

north east to the cul-de-sac head in the east. The streetscape is characterised by a number of large (including 2 storey) homes that are clearly visible on the streetscape and which take in views to the east over Cairns City.

2. The acreage site is an irregular wedge shape heptagon, with the street frontage having three sides. The existing home on the subject site is single level, connected by a long driveway from the eastern end of the site frontage to Copeman Close. The topography of the site and its relationship with the street results in the floor level of the house being some 1.2-1.5 metres below the ground level of the road.
3. The existing home and external structures are white, with a pool and pool house, and a tennis court and court amenities building. The house is located towards the site frontage with the garage of the house having a side wall to the street.
4. The majority of homes on the street are also located towards the site frontages and also include pools, with the neighbour to the east also having a tennis court. Two of the homes at the end of the cul de sac are 2-storey, and dominate the visual amenity.
5. The proposed development is an extension to the existing home being a bedroom and ensuite leading onto a living area. The extension is on the same level as the existing house and would lead into the existing living area and kitchen. The owners indicated the extension was for elderly parents.
6. The extension at its closest proximity to the street frontage is 2.8 metres. The plans indicated up to 2230mm from the boundary, however the survey of the setout resulted in the outermost corner of the construction to be 2.8m from the boundary. The majority of the structure is more than 3 metres from the street. The structure sits below street level, with the roofline, being a hipped roof, sloping away from the street.
7. There are existing palm trees and shrubbery inside the site between the dwelling and the fence, which it is understood would be retained as part of the development. The proposal maintains palm trees and shrubbery above the roofline.
8. There is a 1.8m high breeze block fence along the street boundary with a pedestrian entrance gate

Jurisdiction

9. 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

10. The onus rests on the appellant to establish that the appeal should be upheld (section 253(2) of the PA).
11. 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)
12. The tribunal may nevertheless (but need not) consider other evidence presented by a party.

13. The tribunal is required to decide the appeal in one of the ways mentioned in section 254(2) of the PA.

Material considered

14. 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) Baker Building Certification Building Permit dated 23 September 2022
 - (c) Cairns Regional Council "Referral Agency Response" dated 20 September 2022
 - (d) Development Proposal Report prepared by "Studio Mango" dated August 2022
 - (e) Studio Mango Drawings A01–A24
 - (f) Studio Mango Structural Drawings S01–S06
 - (g) Studio Mango "Site Plan Proposed"
 - (h) LA3 "Frontage Landscape Treatment" (Sheet 14)
 - (i) Google Earth Aerial View (3 pages)
 - (j) Email by Clayton Baker to Michelle Henderson enclosing further information including Google Map street view and DA Form 2 – Building work details.

Findings of fact

15. The proposed Dwelling Additions are proposed to be constructed up to 2800mm from the street front boundary. This is in conflict with the quantifiable standard for front boundary setbacks in the Rural Residential Zone.
16. Table 1.6.b CairnsPlan v3.1 establishes alternative provisions to the QDC boundary clearance provisions for a single detached class 1 building within the rural residential zone. The assessment benchmarks provide –

Qualitative statement – Where within the Rural residential zone, the setback of buildings:

- (a) Maintains the amenity of adjoining premises and the rural residential character of the area and zone the site is located in;*
- (b) Achieves separation from neighbouring buildings and frontages.*

Quantifiable standard – Where within the Rural residential zone, buildings are set back not less than:

- (a) 10 metres from the frontage to a State controlled road, Major rural road or Sub-arterial road;*
- (b) 6 metres from the frontage to any other road;*
- (c) 3 metres from the side and rear boundaries of the site.*

17. On driving to the site, numerous Class 1 and Class 10 buildings were observed to have been developed within 3 metres of the front boundary to the access roads.
18. The area is characterised by large dwellings that are up to two storeys in height and which are visually dominant on the streetscape. This built form is part of the amenity and character of the area.
19. The proposed Dwelling Additions achieve the qualitative statement of table 1.6.b of the CairnsPlan relating to the setback of buildings in the Rural Residential Zone for the reasons:

- (a) The proposed development would not result in a built form that is inconsistent with the character and amenity of the area;
- (b) The proposed additions would not result in a visually dominant development that would adversely affect the visual amenity of the streetscape;
- (c) The development would have the same finished floor level as the existing house, which is 1.2-1.5 metres below the existing street level and screened from view by a 1.8 metre boundary fence, and would not result in a built form with a greater visual impact than the existing development;
- (d) In the context of the character and amenity of the area the proposed additions would achieve a satisfactory separation from the road frontage and would maintain the character of the area;
- (e) The proposed additions would not result in a built form that is closer to any adjoining development than the existing development and would not create opportunities for overlooking or overshadowing of adjacent properties;
- (f) The proposed development would not affect the amenity of the adjoining premises and would maintain the existing separation from neighbouring buildings;
- (g) The proposed works are more than 6 metres from the cul de sac bitumen;
- (h) There is a grass verge, a 1.8m high block fence, and an established garden (with mature palm trees) between the block fence and proposed Dwelling Additions;
- (i) The proposed Dwelling Additions are below the cul de sac street height;
- (j) The proposed Dwelling Additions are more than 10m (closer to 30m) from the front gate that provides access onto Copeman Close (front boundary);
- (k) The proposed Dwelling additions are akin to the side boundary when considering the wedge heptagon shaped block;
- (l) The proposed Dwelling Additions do not impact on neighbouring properties' amenity including views;
- (m) The proposed Dwelling Additions being a bedroom with ensuite and living area do not impact on the neighbours' amenity when considering noise.

Reasons for the decision

- 20. The Tribunal finds the proposed Dwelling Additions maintains the amenity of adjoining premises and the rural residential character of the area while achieving separation from neighbouring buildings and frontages.
- 21. The Tribunal 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.

John Eylander

Development Tribunal Chair
Date: 23 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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