



Development Tribunal – Decision Notice

Planning Act 2016, section 255

Appeal number:	26-033
Appellant:	Cameron and Sonia Fermor
Respondent (Assessment manager)	Barrie Titheradge
Co-respondent (Concurrence agency)	Gympie Regional Council
Site address:	16 Tingira Close, Rainbow Beach Qld 4581 and described as Lot 5 on RB 96929—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 refusal of a preliminary approval, being a development application for retrospective approval of building works. The application pertained to an existing class 10a storage shed ancillary to, and separate from, a dwelling.

This appeal follows the Gympie Regional Council's referral agency response directing the assessment manager to refuse the application because the size and siting of the existing storage shed does not comply with and cannot be conditioned to comply with Gympie Regional Council's adopted Amenity and Aesthetics Resolution.

Date and time of hearing:	10.00am, Monday 27 July 2026
Place of hearing:	The subject site
Tribunal:	Debbie Johnson—Chair Marie-Anne Ammons—Member Andy Rowley—Member
Present:	Cameron Fermor—Appellant Luke Neller—Appellant's Agent Maddison Weller—Assessment Manager Representative Andrew Parker—Council Representative Paul Hay—Council Representative Stephen Delisser—Council Representative Robert Kane—Rear Adjoining Property Owner Mr Kane was invited to address the parties to the appeal, as the hearing commenced. Mr Kane was then asked to take his leave, so that the hearing could continue.

Decision

The Development Tribunal (Tribunal), in accordance with section 254(2)(a) of the *Planning Act 2016*, confirms the decision of the assessment manager and maintains the refusal applicable to the existing Class 10a storage shed.

Background

1. Tingira Close and the wider Rainbow Beach area, was largely established in the 1970-80s as a holiday and/or retirement destination. This is further evidenced by the fact that there are several vacant sites in the immediate vicinity, despite the length of time since the land was developed for sale. Many of the dwellings within Tingira Close and the immediate locality generally reflect this period of development, as does the subject site.
2. The subject site occupies an elevated position relative to its road frontage. The property is located halfway along the straight portion of Tingira Close, as it rises from Kurrawa Drive in the west, towards Ewinga Lane to the east of the property. The immediate location comprises low density residential developments with an even distribution of single and two storey homes. The streetscape exhibits a tidy and open character, as the minimal use of front fencing allows gardens to form the primary interface with the street. This provides an open and welcoming neighbourhood environment.
3. The appellant's property is rectangular in shape (20m x 33m), having a site area of 660sq/m. Neighbouring allotments in the street appear to be identical in size and shape, save properties that are positioned on the corners. While the land parcels are equivalent in size, some dwellings appear more prominent than others due to the sloping topography.
4. For the subject site, the established ground level falls diagonally from the south-eastern rear corner to the driveway crossover at the north-western corner, where it meets Tingira Close. There are low concrete block retaining walls along the side and rear boundaries to address the slope and provide a reasonably level rear garden area. The rear southern and the western side boundaries are fenced in colorbond steel panels, positioned atop the retainment walls. The eastern side and front boundaries remain open.
5. The existing home is an elevated, but low rise, single storey dwelling with an enclosed sub floor. The light coloured external walls of the home are rendered and the hipped roof finished in a similar tone colorbond metal roof. The street facing elevation incorporates a roller door aligned with the driveway indicating a single car garage.
6. The original driveway has been replaced at some stage and widened to provide vehicular access along the northern side of the dwelling. The driveway leads to a free-standing colorbond metal shed positioned in the southwestern, rear corner of the property. This garage structure is the subject of the appeal.
7. The appellants purchased the property just over 10 years ago. On 13 January 2019, they were granted a building approval to erect a free-standing garage shed in the rear corner of their property. The building permit application was subject to a concurrence agency referral to the Gympie Regional Council for an Amenity and Aesthetics assessment. The tribunal understands that this structure was built in the same location as the current shed, to provide security and cover for the appellant's boat. The appellants subsequently purchased a larger boat and realised that they required a larger shed to suit.

8. On 12 September 2022, the assessment manager issued a building permit for a Class 10a Shed to Condamine Sheds and Garages who had been contracted by the appellants to have this new shed built. The tribunal understands that the original shed was removed and the current shed built following the issue of this building permit.
9. In 2025, Council received a complaint and upon investigating found that no concurrence agency referral had been sought or provided, prior to the respondent's issuing of the building permit on 12 September 2022. Council considered that a concurrence referral had been required and that the issuing of the building permit had been unlawful.
10. On 12 May 2025, according to the appeal submission document, Council issued a letter to the assessment manager requesting that in order to resolve the matter, the respondent apply for retrospective determination from Council as a missed concurrence referral. The referral was required due to the building's overall size (maximum class 10a floor area and height above ground level) and the reduced building setbacks to the side and rear property boundaries. These matters needed to be assessed by Council against the relevant performance criteria provisions as set out in both Council's adopted Amenity and Aesthetics Resolution (A&A) and the Queensland Development Code (QDC) MP1.2.
11. On 9 September 2025, Council received a concurrence agency referral for a preliminary building permit, from Building Surveying and Certification Professionals. The referral requested an assessment of the as-built Class 10a shed, against the relevant provisions of the A&A and the QDC.
12. On 23 September 2025, Council issued a concurrence agency referral response to the respondent stating in part:

Gympie Regional Council, acting as a concurrence agency, has finalised the assessment of your development application in accordance with the Development Assessment Rules, and directs that the application be refused in accordance with section 62 of the Planning Act 2016, directing a refusal of the permit.
13. On 3 December 2025 Council prepared and then sent on 7 December 2025 a Show Cause Notice to the appellants for carrying out assessable development without a valid development approval for building works, and failure to refer building work to Council as a concurrence agency. Council invited a written response on or before 14 November 2025, stating that any written submission must provide reasons to Council as to why an Enforcement Notice should not be issued. The tribunal understands that this date was a typographical error, given the date on the Show Cause Notice.
14. On 16 December 2025, the appellant's agent, Luke Neller of Project BA provided a detailed written submission to Council in response to the Show Cause notice. Council's subsequent response included an acknowledged receipt of this submission as being 14 January 2025.
15. On 21 April 2026, Council wrote to the appellant's agent stating in their summary:

Having considered the owner's representations in full, Council confirms that- All matters raised in the submission have been duly considered; The concurrence agency's refusal response made 18 September 2025 remains in effect and has not been withdrawn or amended; and The Building Certifier, as assessment manager, is legally obliged to refuse the application in accordance with the Planning Act 2016.
16. On 9 June the assessment manager issued a decision notice being a preliminary approval for building work, refusal.

17. On 1 July 2026, the appellant's agent stated the grounds for appeal, completed and submitted the Form 10 – Notice of Appeal to the Registrar. Payment was receipted on 6 July 2026.
18. On 20 July 2026, prior to the hearing date, Council contacted the registrar and advised that the property owner of 11 Bombala Crescent, being the site located adjoining the appellant's property to the rear, was seeking permission to attend the hearing to provide a submission regarding the impacts of the development.

Jurisdiction

19. This appeal has been made under section 229 of the PA, as a matter that may be appealed to a tribunal.
20. Schedule 1 of PA, section 1(2) states table 1 may apply to a tribunal only if the matter involves one of the circumstances set out in paragraphs (a) to (l) of that section. Paragraph (g) of section 1(2) states: 'a matter under this Act, to the extent the matter relates to the Building Act, other than a matter under the Act that may or must be decided by the Queensland Building and Construction Commission'.
21. The tribunal is satisfied that the application lodged with the assessment manager and the referral of the development application to Council is a matter that satisfies this requirement. The appeal concerns a development application for approval of building works which was required to be referred to Council for assessment of specific local matters contained within Council's planning scheme, which form part of the Building Assessment Provisions. Relevantly, section 32 of the *Building Act 1975* allows a local government to make or amend—
 - (a) *a local planning instrument that designates, for the BCA or QDC, matters prescribed under a regulation; or*
 - (b) *a provision of a local law or planning scheme or a resolution about an aspect of, or matter related or incidental to, building work prescribed under a regulation; or*
 - (c) *alternative provisions under section 33.*
22. That application was refused by the assessment manager as directed by Council, who are the referral agency. Table 1 item 1(a) in schedule 1 of the PA sets out that for a development application an appeal may be made to a tribunal against the refusal of all or part of a development application.
23. The refusal by the assessment manager as directed by Council has enlivened the jurisdiction of the Tribunal.

Decision framework

24. Section 246 of the PA provides as follows (omitting the examples contained in the section):
 - The registrar may, at any time, ask a person to give the registrar any information that the registrar reasonably requires for the proceedings.
 - The person must give the information to the registrar within 10 business days after the registrar asks for the information.
25. Section 253 of the PA sets out matters relevant to the conduct of this appeal. Subsections (2), (4) and (5) of that section are as follows:
 - (2) *Generally, the appellant must establish the appeal should be upheld.*

- (4) *The tribunal must hear and decide the appeal by way of a reconsideration of the evidence that was before the person who made the decision appealed against.*
 - (5) *However, the tribunal may, but need not, consider— other evidence presented by a party to the appeal with leave of the tribunal; or any information provided under section 246.*
26. Section 254 of the PA deals with how an appeal such as this may be decided and the first three subsections of that section (omitting section 254(2)(e), as it relates to a deemed refusal (not relevant here), are as follows:
- 1. *This section applies to an appeal to a tribunal against a decision.*
 - 2. *The tribunal must decide the appeal by-*
 - (a) *confirming the decision; or*
 - (b) *changing the decision; or*
 - (c) *replacing the decision with another decision; or*
 - (d) *setting the decision aside, and ordering the person who made the decision to remake the decision by a stated time; or ...*
 - 3. *However, the tribunal must not make a change, other than a minor change, to a development application.*

Material considered

27. 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 1 July 2026- that included copies of-
 - (b) Appellant's representative's written Grounds for Appeal.
 - (c) Condamine Sheds and Garage's completed DA Form 2 for the original building permit application made to the assessment manager, received 29 August 2022.
 - (d) The assessment manager's original decision notice for Building Permit BA220271 dated and approved plans prepared by Fair Dinkum Sheds, dated 12 September 2022.
 - (e) Concurrence Agency Referral application material identified as CRM 261452, AAP-TME 04122- Your Ref 220271 16 Tingira Close, prepared by the assessment manager and lodged with Gympie Regional Council by email, 9 September 2025.
 - (f) Gympie Regional Council's Concurrence Agency Advice, dated 23 September 2025, to the assessment manager.
 - (g) Show Cause Notice issued by Gympie Regional Council dated 3 December 2025, and date stamped envelope 7 December 2025, to the appellants.
 - (h) Appellant's representative's written submission dated 16 December 2025 sent to the Gympie Regional Council in response to the Show Cause Notice.
 - (i) Gympie Regional Council's written response to the appellant's agent, dated 21 April 2026.

- (j) The assessment manager's decision notice refusing the Building Development Application Preliminary No 220271 dated 9 June 2026.
- (k) *The Planning Act 2016* (PA).
- (l) The Planning Regulation 2017 (PR).
- (m) The Development Application Rules.
- (n) *The Building Act 1975* (BA).
- (o) The Building Regulation 2021 (BR).
- (p) The Queensland Development Code (QDC) Part MP 1.2.
- (q) Gympie Regional Council Adopted Amenity and Aesthetics Resolution 2023.
- (r) Gympie Regional Council Planning Scheme 2013
- (s) The National Construction Code 2022 (NCC).
- (t) The verbal submissions made by the adjoining property owner and parties at the hearing and during the site inspection.
- (u) Google Maps and Streetview.
- (v) RP Property Data.
- (w) Site inspection and street walk during the hearing.
- (x) Written submission via the Registrar, from adjoining property owner Mr Robert Kane, received prior to the hearing. The correspondence contained photographs of the Class10a structure as viewed from his property. Mr Kane also included a survey of his rear boundary and the Class 10a shed on the appellant's property along with correspondence between himself and Council dating back to 3 April 2025.
- (y) Council submission via email dated 28 July 2026, to the Registrar post hearing, that contained a previous Concurrence Agency Response dated 19 December 2018 being for the original Class10a Shed erected at the appellant's property. The email also provided the Development Application Form 6 Decision Notice dated 13 January 2019, prepared by South West Building Certification for the original Class 10a shed. Approved and stamped plans were also provided, these had been prepared by Don Ironside and Fair Dinkum Sheds. The email also contained the Form 21 dated 5 February 2020, as prepared by South West Building Certification

Findings of fact

28. The tribunal makes the following findings of fact:

- (a) The hearing for the appeal was held at the appellant's home, the subject site, on 27 July 2026. As the Class10a shed has already been constructed, this afforded parties the opportunity to view the structure in context with the immediate surroundings. This is in contrast with an appealed matter that involves consideration for proposed works.
- (b) In accordance with the plans prepared by Fair Dinkum Sheds, the existing gable roofed storage shed has a width of 8m inside the rear southern boundary and a length of 9m inside the western side boundary. The peak of the roof at the ridge line has a height of 5.178m and the height at the pitching point along the side walls is 4.4m. Both measurements are taken from the finished slab level.

- (c) Building height (by definition MP1.2) is measured from the natural ground level. The survey provided to the tribunal by the neighbouring property owner, shows the ridge is 5.39m above natural ground and the side wall 4.92m when measured across the rear (southern) wall of the shed. The survey indicates that the setback from the common boundary to the rear allotment is 80-90mm measured to the downpipe that runs diagonally across the width of the rear wall to link side wall guttering to a rainwater tank adjacent to the shed.
- (d) The survey also indicates the setback from the western side boundary is 150mm, taken to the face of the guttering. A building line setback is measured to the outermost projection. Outermost projection is defined in QDC MP1.2 and means *the outermost projection of any part of a building or structure including, in the case of a roof, the outside face of the fascia, or the roof structure where there is no fascia, or attached sunhoods or the like, but does not include retractable blinds, fixed screens, rainwater fittings, or ornamental attachments*. Therefore, the building setbacks by definition are greater than those stipulated on the survey, and likely to be, 100mm along the rear wall and 150mm along the side wall boundary.
- (e) The tribunal notes that it has been provided with numerous letters from adjoining neighbours in support of the appellants' shed, as built. These statements state in part and almost in unison, *"the shed does not reduce my amenity or invade on my privacy"*. The tribunal also notes that one neighbour has made submissions against the shed as built, stating *"the steel shed has had a material negative impact on the amenity aesthetics and values of lot 58 MCH4930"*.
- (f) At the hearing there was discussion with respect to the original Class 10a shed that the current shed has replaced. Council provided the documents associated with the previous approval, post hearing to all parties via the registrar. South West Building Certification approved the building permit for the appellants on 13 January 2019. The approval followed a concurrence agency A&A assessment by the Gympie Regional Council and approval provided by them on 19 December 2018.
- (g) The appellant's original shed, was approved with a rear length of 8m, set 100mm inside their southern / rear boundary. The approval states that the wall had a nominal height of 3m above the finished slab level, while the side gable wall peaked at 3.778m above the finished slab level.
- (h) The tribunal observed that the current shed sits on the same concrete slab provided for the original shed, save for a 1.5m extra length being added at the end of the driveway, given the current shed is 9m deep while the original shed was 7.5m deep.
- (i) The tribunal was informed at the hearing, that when constructed, the roof on the original shed was rotated and therefore varied from what had been approved. The ridge line of the gable structure ran north/ south rather than east/ west as indicated on the approval. This change meant that the nominal heights respective to boundaries changed. The nominal 3m wall height ran along the side western boundary and the gable roof with a nominal height peaking at 3.778m sat inside the southern boundary.
- (j) While the two sheds differ in floor area, 60sq/m versus 72sq/m and peak roof height 3.778m versus 5.39m, the orientation of the roof lines were the same as built. Both had/ have the gable side facing the street and rear boundaries. The length of the shed along the southern boundary is unchanged, the length along the western

boundary increased from 7.5m to 9.0m and the height of that wall increased from 3.0m to 4.92m (measured in the south-west corner of the appellant's property).

- (k) Council stated in writing that the proposed development for the storage shed does not comply with the QDC MP 1.2 P2(c) and Performance Criteria (PC) 5 and PC 6, Table 3- Assessment Criteria of the Gympie Regional Council *Adopted Amenity and Aesthetics Resolution*, adopted on 22 February 2023.

The Adopted Amenity and Aesthetics Resolution

- (l) The resolution states:

In order to achieve regulatory efficiency and streamline processes, dwellinghouses (which include outbuildings) are exempt development in the Residential Living zone.... The Amenity and Aesthetics Resolution has been adopted to ensure that, in line with community expectations, Council retains regulatory control over building work which may have an extremely adverse effect on the amenity, or likely amenity of the locality, or is in extreme conflict with the character of the locality in which it is proposed.

and further that:

This resolution is made in accordance with Schedule 9 Division 2 Table 1 of the Planning Regulation 2017 (PR) where building work for a building or structure may:

- (i) have an extremely adverse effect on the amenity, or likely amenity, of the locality; or*
- (ii) be in extreme conflict with the character of the locality.*

and further that:

The intent of this resolution is to ensure an aesthetically pleasing environment is maintained in cases where development, including a dwelling house (Class 1) or a domestic building or structure (Class 10), is exempt under the planning scheme and may have an adverse effect on the amenity or future amenity of the neighbourhood in which the proposed building is to be erected.

- (m) Table 2 - Class 10 in the Adopted Amenity and Aesthetics Resolution sets out specifications for Class 10 structures, and relevantly for the structure that is subject of this appeal, for an allotment having a 600-1000 sq/m lot size, they are:
- side and rear setbacks in the QDC (QDC MP1.2 in this instance),
 - the maximum area of the structure at 54sq/m; and
 - height of 4m above ground level.
- (n) Where the maximum floor area or height is exceeded or the setbacks not achieved, a Building Certifier must not issue a building approval, without referral to the Gympie Regional Council as the Concurrence Agency. Council must then consider the relevant performance criteria relating to the setback being sought, to determine compliance and provide advice to the assessment manager.
- (o) In its concurrence agency referral response dated 23 September 2025, Council identified, as the relevant performance criteria, the following:
- Queensland Development Code QDC MP 1.2 P2(c)—
- ...[Buildings and structures ...] do not adversely impact on the amenity and privacy of residents on adjoining lots; and -*

Amenity and Aesthetics Resolution PC5 and PC6—

PC5 Buildings or structures are of a size, bulk and form that is in keeping with the character of the area.

PC6 The location of the building or structure provides for an acceptable streetscape and does not adversely impact upon the amenity of neighbouring properties.

- (p) In the concurrence agency referral response provided to the assessment manager, Council concluded:

The constructed shed is in direct conflict with relevant Performance Criteria P2 of the QDC MP1.2, PC5 and PC6 of the Adopted Amenity and Aesthetics Resolution, and it is considered that insufficient justification has been provided to warrant approval in this instance.

The Queensland Development Code (QDC)

- (q) QDC MP 1.2 applies to new building work for single detached dwellings, Class 1 and associated Class 10 buildings and structures on lots 450m² and over in area.
- (r) QDC Acceptable Solution A2 outlines the required building line setbacks from the side and rear boundary lines, as set out below.

A2(a) The side and rear boundary clearance for a part of the building or structure is

- (i) where the height of that part is 4.5m or less - 1.5m; and*
- (ii) where the height of that part is greater than 4.5m but not more than 7.5m - 2m; and*
- (iii) where the height is greater than 7.5m - 2m plus 0.5m for every 3m or part exceeding 7.5m.*

- (s) Where this acceptable solution is not met, Council appears to have concluded that assessment against performance criteria of QDC MP 1.2 (P2 in this instance) must be considered.

P2 Buildings and structures –

- (a) provide adequate daylight and ventilation to habitable rooms; and*
 - (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.*
- (t) It is the responsibility of the tribunal to determine if the refusal of the development application for building works, as it relates to the existing class 10a storage shed, should be confirmed, changed, replaced or set aside. While the parties have provided supporting documentation already outlined in this decision, the only matters that the tribunal may lawfully take into consideration are those that address the relevant legislation.

Reasons for the decision

29. The tribunal finds that pursuant to (4)(d) of the Gympie Regional Council's Adopted Amenity and Aesthetics Resolution dated February 2023, the assessment criteria PC5 and PC6 are relevant to the consideration with respect to floor area and building height.

30. The tribunal finds that the QDC MP1.2 provides siting requirements for the boundary setbacks. The tribunal notes Council's conclusion that P2(c) of the QDC MP 1.2 is the relevant assessment benchmark for this development in the event of noncompliance with A2 of QDC MP 1.2. The tribunal notes that the requirements of P2(c) of QDC MP 1.2 and PC6 of the A&A Resolution are equivalent.
31. The tribunal finds that the assessment manager was unable to issue a decision notice approving the proposed storage shed in 2022, without Council's endorsement for the siting and location of the structure.
32. The tribunal finds that the appellant sought appropriate approvals to enable the construction of their storage shed and were unaware of the referral requirement until Council contacted them in 2025.
33. The tribunal finds that buildings in the immediate location in and around Tingira Close are all similar in size and there are several vacant lots. Those properties that are developed, feature open gardens areas with a balanced proportion of single and two storey dwellings. Several of the homes have large structures to provide for the storage of cars, boats or caravans. With minimal exception, these existing storage structures are lawfully constructed within the required parameters of the QDC and Adopted Amenity and Aesthetic Resolution.
34. The tribunal finds that despite the shed's siting in the rear of the appellant's property, and the presence of a few large sheds in this neighbourhood, in this instance, the combination of the increased floor area and height together with the reduced setbacks to the side and rear boundary provide an outcome that is not in keeping with the character of the area. The existing side and rear setbacks at 150mm or less, afford no opportunity for landscaping or other aesthetical elements to be introduced to address the loss of amenity to neighbouring allotments.
35. The tribunal finds that the size and the siting of the existing storage shed could not be supported.

Debbie Johnson
Development Tribunal Chair

Date: 11 September 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:

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