Development Tribunal – Decision Notice

Planning Act 2016

Appeal Number:	**29- 18**
Appellant:	Daniel Constructions Qld
Assessment Manager:	Burnett Country Certifiers Pty Ltd
Concurrence Agency:	Bundaberg Regional Council
Site Address:	53 Croft Street, Bargara and described as Lot 177 on RP 148631 ─ the subject site

Appeal

Appeal under section 229 and Schedule 1, Table 1, Item 1 of the *Planning Act 2016* against a decision of the Assessment Manager, Burnett Country Certifiers Pty Ltd, to refuse a development permit for building work for a Class 10a structure, being a shed. Bundaberg Regional Council as the Concurrence Agency directed the Assessment Manager to refuse the application on the basis that it did not meet and could not be conditioned to meet with the Bundaberg Regional Council *Amenity & Aesthetics, and Building Work Involving Removal or Rebuilding Policy* performance outcomes, and further that conditions could not reasonably be imposed to reduce impacts due to the design and siting of the proposed structure in terms of the standards of the *Queensland Development Code*.

Date and time of hearing:	Wednesday 3 October 2018 at 10:00am
Place of hearing:	The subject site at 53 Croft Street, Bargara
Tribunal:	Russell Schuler – Chair David Job – Member
Present:	Nathan Daniel (Daniel Constructions Qld) – Appellant Richard Jenner – Bundaberg Regional Council Katrina Peardon – Bundaberg Regional Council

Decision:

The Development Tribunal (tribunal), in accordance with section 254 of the *Planning Act 2016* (PA) **confirms** the decision of the Assessment Manager on 29 June 2018 to refuse the application for a Class10a shed on the subject site.

Background

1. This appeal to a tribunal has been made under section 229 of the PA, as a matter that may be appealed to a tribunal. In Schedule 1 of the PA, section 1(2) outlines that Table 1 applies to a tribunal only if the matter involves certain matters set out in paragraphs (a) to (l). Paragraph (g) of section 1(2) says: *"(g) a matter under this Act, to the extent the matter relates to the Building Act, other than a matter under that Act that may or must be decided*

by the Queensland Building and Construction Commission." The development application originally made to the Assessment Manager satisfies that requirement, being a development application for building works approval under the *Building Act 1975* (BA). That application was subsequently refused by the Assessment Manager at the direction of the Concurrence Agency, the Bundaberg Regional Council (Council). Table 1 in Schedule 1 of the PA states that for a development application an appeal may be made to a tribunal against the refusal of all or part of the development application (Schedule 1 Table 1 Item 1(a) of the PA).

2. Tribunal appeals are conducted in accordance with section 253 of the PA. Under this framework, the tribunal must hear and decide the application by way of a reconsideration of the evidence that was before the person who made the decision appealed against (s253(4) of the PA). In hearing the appeal, the tribunal may also consider other evidence about the matter (s253(5) of the PA), and it falls to the appellant to establish that the appeal should be upheld (s253(2) of the PA).
3. The subject site is a 787m2 allotment located at 53 Croft Street, Bargara. It is zoned Low density residential under the Council's Planning Scheme 2015 (the planning scheme). The subject site contains a single storey residential dwelling, to the rear of which is attached a large garage/shed structure, also single storey in height. Over recent times the subject site has been undergoing significant maintenance/renovation, with a number of projects altering its appearance from that shown in the images which were used by the Appellant in this application. None of these building works are the subject of this appeal.
4. The subject site is essentially a flat allotment, with a slight downward slope from the rear towards the Croft Street frontage. A sewerage main traverses the rear of the subject site, some 2.09 metres (m) inside the north-west back corner property peg going to 5.55m inside the south-west back corner property peg. The sewer main is under the existing garage/shed structure, and would be also under the proposed shed structure. It is not protected by an easement as it traverses the subject site. As the sewer main is not located within an easement the provisions of the Queensland Development Code MP1.4 – *Building over or near relevant infrastructure* (QDC MP1.4) provides for Acceptable Solutions for a development application. There does not appear to be any other public infrastructure on the subject site.
5. On or about 13 March 2018 the Appellant lodged a development application for building works for a Class 10a shed with the Assessment Manager. The plans accompanying the application showed the proposed structure to be a steel framed and cladded shed with dimensions of 4m wide by 11m long, with a height of 3.6m at the eave and 4.136m at the ridgeline. The proposed shed was to be sited towards the rear of the subject site, approximately 0.5m from the side (Northern) property boundary and approximately 1.1m from the rear (Western) property boundary, with the long dimension being parallel with the side boundary. It was proposed to be constructed over an existing concrete driveway that gave access to the existing shed, and be positioned up against the eave of the existing shed. It was to be completely enclosed on the rear and outermost long side elevation, with a roller door positioned in the front elevation. The other long side closest to the existing shed was to remain open, with the supporting posts positioned to allow access through the new shed to the existing shed, and to allow ingress/egress through the tilt doors on that side of the existing shed.
6. On 16 March 2018 the Assessment Manager issued a Confirmation Notice to the Appellant which included advice that the application required referral by the Appellant to the Council as a Concurrence Agency for both Amenity and Aesthetics, and Design and Siting requirements. The Confirmation Notice also noted that the application involved building over local authority infrastructure (the sewer main), however the Notice did not require the Appellant to refer the application to the Council for this matter. Referral would only be required if the building work does not comply with the Acceptable Solutions in accordance with the *Planning Regulations 2017* (PR) Schedule 9 Part 3 Division 3 Table 7 Item 1, and the Assessment Manager in this case decided it did not require referral.

7. In accordance with Schedule 9 Part 3 Division 2 Table 1 Item 1 of the PR the referral to the local government for amenity and aesthetics matters relates to *"Whether the building or structure will impact on the amenity and aesthetics of the locality, including, for example, whether the building or structure complies with a matter stated in a local instrument that regulates impacts on amenity and aesthetics."* In this case the local instrument is Council's *Amenity and Aesthetics, and Building Work involving Removal or Rebuilding Policy (November) 2017* (Amenity & Aesthetics Policy). Similarly, Schedule 9 Part 3 Division 2 Table 3 Item 1 of the PR also calls up referral to the local government for design and siting matters for a development application for building works that is assessable development if *"the Queensland Development Code, part 1.1, 1.2 or 1.3 applies to the building work and, under the part, the proposed building or structure does not include an acceptable solution for a relevant performance criteria under the part;"*. In this case the relevant part is the *Queensland Development Code MP1.2 – Design and Siting Standard for Single Detached Housing – on Lots 450m2 and Over* (QDC MP1.2)

8. The Confirmation Notice also contained advice to the Appellant that it was his (the Appellant's) responsibility to identify any referral agency for the application, and give each referral agency a copy of –

   - The application (including the application forms and supporting material)
   - The confirmation notice, and
   - Any required application fee.

9. In spite of this statement it is apparent that the Assessment Manager assumed the role of being the applicant for the application, and lodged the required Concurrence Agency application on behalf of the Appellant on 16 March 2018 and when the fees were paid on 19 March 2018 the Council commenced assessing the application.

10. The Council issued an Information Request to the Appellant on 27 March 2018, advising that the Council had determined that additional information was needed to assess the application. In particular Council advised that: -

    "The proposal submitted fails to address and meet with Queensland Development Code (QDC)MP1.2 in relation to the following –
    a. The height of the proposed structure exceeds the mean height stated in A2(d)(i);
    b. The length of the proposed structure exceeds the total length stated in A2(d)(ii);
    c. The proposed site cover exceeds the maximum 50% stated in A3."
    And
    "The proposal submitted fails to address and meet with Council's Amenity & Aesthetics Policy in relation to the following –
    a. The proposed combined gross floor area of 154m2 exceeds the maximum stated in AO1.3(3)."

11. On 9 April 2018 the Assessment Manager once again assumed the role of applicant for the application, and provided a response to the Information Request on behalf of the Appellant. The submission contained a Table which listed the relevant Performance Criteria and Acceptable Solution for the nominated clauses of the QDC, and also an accompanying statement from the Assessment Manager outlining the suggested compliance with the Performance Criteria. A similar Table was included for the nominated clause of the Council's Amenity & Aesthetics Policy, also listing the relevant Performance Outcome, Acceptable Outcome and suggested compliance with the Performance Outcomes of the Policy. The submission also included a number of Google Images of the subject site (recorded prior to most of the recent maintenance/renovation work being undertaken on the subject site). The submission concluded that the proposed shed could be approved. It stated that the QDC MP1.2 was addressed as follows: -
    - it did not adversely impact on habitable rooms of buildings on the site,
    - it did not impact on the daylight and ventilation to habitable rooms on adjoining lots,
    - it improved the privacy of 55 Croft Street and had no impact on other neighbours,

- amenity is subjective and a colorbond shed wall could not be regarded as having a negative impact otherwise no shed in a neighbouring property would comply with the performance criteria,
- a number of other lots in the area have a site coverage of 50% and if these achieve adequate open space it is reasonable to assume this site does,

and the Amenity & Aesthetics Policy was addressed as follows: -

- only a small part of the combined existing and proposed sheds are visible from the front of the property which could not be regarded as industrial in scale,
- the images show that the new shed's location has no impact on the neighbour's solar access, outlook and amenity,
- walls of domestic sheds in the rear of residential properties are a common sight,
- the images show the existing buildings are in accordance with the intended character of the locality,
- the major part of the existing Class 10a was approved under a previous planning scheme and appears to be an extension to the existing dwelling,
- as such the current policy should be directed towards the new shed and a 11m by 4m shed is subservient in scale and bulk to the existing structures on the site.

12. On 24 April 2018 the Council issued its Referral Agency Response to both the Assessment Manager and Appellant. This response directed the Assessment Manager to refuse the application, with the grounds for refusal being that the proposal would have an adverse impact on the amenity of the locality due to site coverage, and siting and design, and that no conditions could be reasonably imposed to adequately reduce those impacts.
13. On 29 June 2018 the Assessment Manager issued the relevant Decision Notice refusing the application, citing that the Assessment Manager was directed to refuse the application by the Concurrence Agency, and the refusal was solely because of that direction.
14. On 9 July 2018 the Appellant lodged the appeal with the Registrar of the Development Tribunals. A tribunal was subsequently established, and in preparation for the hearing the tribunal members noted that neither the Concurrence Agency Response Notice nor the Assessment Manager Decision Notice were provided within the statutory timeframes as set out in the *Development Assessment Rules 2017* (Schedule 2(1)(b) and section 22.1(a) respectively) (DA Rules). A request was sent through the Registrar for the Assessment Manager and the Concurrence Agency to each provide a submission in relation to the timelines to the tribunal at the hearing. The responses are set out later in this decision notice. The hearing was conducted on the subject site commencing at 10:00am on 3 October 2018.
15. The Assessment Manager was notified of the hearing, but was not present at the hearing. Nevertheless, following discussion with the Appellant in which he indicated his desire to proceed with the hearing, the tribunal members did not consider this to be a deterrent to the continuation of the hearing.
16. At the commencement of the hearing the tribunal brought on discussion on the matter of compliance with statutory timeframes. Council provided a written memo which outlined the timeframes and Council actions from receipt of the Concurrence Agency Assessment Application through to providing the Referral Agency Response Notice. All up, and accounting for the days while the Information Request itself was being addressed, the Council calculated it had taken 17 business days to complete the Referral Agency Assessment. However, a later review of the Council's records (PDOnline) showed that the memo was in error in stating that a Confirmation Notice was not issued for the Referral Agency application when in fact one was. Nonetheless, even taking this into account, the Council still did not comply with the requirements of Schedule 2(1)(b) of the DA Rules with regard to giving notice of its referral agency decision within the required time period.
17. Comment was also sought from Council as to the difference in 'language' between the Information Request, which specifically listed the outcomes the Council believed the application had failed to address, and the Referral Notice, which was more generally

worded. Council advised that the wording of the Information Request was to draw the Appellant's attention to the issues which needed attending to, and the Referral Notice tried to spell out the reasons for refusal in everyday language.

18. In the absence of the Assessment Manager, the Appellant made comment on the timeframe issue. He verbally advised that from the time of the receipt of the referral agency notice there were a number of discussions held between himself, the Assessment Manager, and the owners of the subject site, who are the Appellant's clients in this case. Although no written agreement was provided, the appellant assured the tribunal that both he and his clients were comfortable that a Decision Notice had not been produced earlier than it was. Regardless, this action has resulted in the Assessment Manager also not complying with the relevant section of the DA Rules (s22.1(a)).

19. The Appellant was also given the opportunity to comment on the stated Grounds for Appeal, as contained in Form 10. The Appellant stated that although the site coverage issues could not be overcome, given that the existing shed was not practically visible from the street, and that the proposed shed was not industrial but domestic in appearance from the streetscape view, and that the shed was not overly obtrusive to neighbours, and that a 1.8m high fence was proposed to be erected on the side boundary from the proposed shed forward to the front street boundary, an approval could nevertheless be considered.

20. Council also tabled a set of plans from their Building Approval records (John Gately Building Designs Drawing No's 7757-01 to 7757-10) which were the approved plans for the renovation works being undertaken to the structures on the subject site. Council advised that these drawings were used to estimate the site coverage and gross floor area of buildings on the subject site, as these plans best showed the current situation of the subject site.

21. All present at the hearing inspected the area of the subject site where the proposed shed was intended to be sited, and viewed the plans and other material that had been lodged as part of the initial development application. The intended use of the proposed shed was for the storage and protection and security of a caravan, which was parked on the concrete apron at the front of the existing shed on the subject site. The Appellant explained it was not possible to manoeuvre the caravan into the existing shed. To provide a space large enough to house the caravan and allow for maintenance activities but still give access to the existing shed, the proposed shed was encroaching into the statutory boundary clearances on both the rear and side boundary of the subject site. While this would put the proposed shed in clear view from an existing patio/outdoor area on the neighbouring property (55 Croft St), the Appellant was of the view that this would not overly impact on amenity, as bringing the boundary clearances into compliance would only gain an additional one (1) metre separation, and the proposed shed would still be in view. In terms of amenity the Appellant also suggested that the proposed boundary fence would also assist with privacy issues for the neighbouring property.

22. During the site inspection, both the Appellant and the Council agreed that they were aware that part of the existing Class 10a shed on the subject site, and part of the proposed shed, would be constructed over a local government infrastructure (sewer main). Plans held by Council provide details of size, depth etc of the sewer main, and also showed that the house connection to the sewer main for the neighbouring property (55 Croft St), was situated very close to the property boundaries of 53 and 55 Croft Street. By taking measurements and attempting to "set out" the proposed shed on the subject site, it was quite apparent to the tribunal members that a shed constructed as proposed by this building development application would have difficulty meeting the Acceptable Solutions of QDC MP1.4 for building over or near sewer infrastructure.

23. QDC MP1.4 Acceptable Solution A2.2 - Acceptable solution for a light weight Class 10 - states at A2.2(2)(c): "the *light-weight class 10* provides a *clear zone* for the *connection*, having the following dimensions—
    (i) a horizontal base extending 1m clear of all parts of the *connection* at finished surface level; and

(ii) a height of 2.4m from the finished surface level.
Example—
(i) See **Figure 15**."

24. QDC MP1.4 Chapter 2 Part 7 - Definitions – states: "*connection*, for *relevant infrastructure*, means the pipes and fittings of the infrastructure between the junction of the main pipe and a property service, up to and including the *connection point*." With the shed proposed to be sited 0.5m from the property boundary and the plans held by Council indicating the *connection* point to be under the property boundary, a shed in this location most likely would not comply with the acceptable outcomes of A2.2(2)(c) of MP1.4.
25. As the Assessment Manager and Appellant did not refer the application for building over or near relevant infrastructure, and the Council did not make any reference to the issue in its referral Notice, the tribunal registered its concern during the inspection as to whether this had been properly dealt with as part of the application.
26. Similarly, the "set out" measuring also raised concerns as to compliance with fire separation standards as contained in *Building Code of Australia* (BCA)*,* which must be dealt with as part of the building certification assessment of the proposed shed. The BCA, Volume 2 Part 3.7.1.6 Class 10a buildings at (a) states: "Where a Class 10a building is located between a Class 1 building and the allotment boundary, other than the boundary adjoining a road alignment or other public space, the Class 1 building must be protected by one of the following methods shown in **Figure 3.7.1.4**.".
27. **Figure 3.7.1.4 method a** demonstrates that **Not less than 900mm** (0.9m) separation is required between the allotment boundary and the wall of the Class 10a building when the Class 10a building is abutted to the Class 1a building. In this case the proposed Class 10a building was abutted to the existing Class 10a building which was contiguous to the Class 1a building. As the shed was proposed to be sited 0.5m from the property boundary, a separation of 0.9m between the allotment boundary and the wall of the Class 10 shed is not achieved. Therefore, compliance with this part of the BCA is not possible based on the plans that were lodged as part of the building development application. There was general discussion on this matter during the site inspection.
28. At the end of the hearing Council's representatives offered that they would be prepared to discuss with the Appellant and his clients any alternative designs for the proposed shed that they may consider. This may alleviate some of the issues for any future proposal in terms of siting, compliance with the QDC and amenity, and potentially the additional building compliance issues that were identified through the inspection of the property at the hearing.

Material Considered

The material considered in arriving at this decision comprises:

1. 'Form 10 – Appeal Notice', grounds for appeal and correspondence and plans and photographs accompanying the appeal lodged with the Tribunals Registrar on 9 July 2018.
2. Verbal representations made by the Appellant and the Council at the hearing.
3. The on-site inspection of the subject site at the hearing.
4. The written memo from the Council dated 3 October 2018 giving an outline of timeframes and actions for the Concurrence Agency Assessment provided at the hearing.
5. Drawing No's 7757-01 to 7757-10 provided by Council at the hearing, and used for site cover and gross floor area calculations.
6. Response to Referral Agency Information Request emailed to Council by the Assessment Manager on behalf of the Appellant on 9 April 2018 (which was included in the material accompanying the appeal lodged with the Tribunals Registrar on 9 July 2018).
7. Referral Agency Notice directing refusal of the application dated 24 April 2018.

8. Decision Notice Refusal Notice issued by the Assessment Manager on 29 June 2018 (which was included in the material accompanying the appeal lodged with the Tribunals Registrar on 9 July 2018).
9. The *Planning Act 2016.*
10. The *Planning Regulation 2017.*
11. The *Development Assessment Rules 2017.*
12. QDC MP1.2.
13. Council's Amenity & Aesthetics Policy.
14. Mapping sourced from Council showing sewer mains in the area and on the subject site.
15. QDC MP1.4

Findings of Fact

The Tribunal makes the following findings of fact:

1. the development application originally made to the Assessment Manager was a development application for building works under the BA*;*
2. the application sought approval for the construction of a Class 10a shed on the subject site, with the plans showing that the shed would be positioned within the statutory boundary clearances distances cited in QDC MP1.2;
3. the proposed shed was intended to provide storage, protection and security for the subject site owner's caravan;
4. it would not be possible to store the caravan in the existing Class10a shed due to height constraints and manoeuvrability issues for access into the shed;
5. the dimensions of and siting of and design of the proposed shed were affected by the above issues, plus the need to ensure that access was still available to the existing shed;
6. the development application was subject to referral to the Council on siting and design issues under QDC MP1.2, and amenity and aesthetic issues under Council's Amenity & Aesthetics Policy;
7. Council issued the Referral Agency Response Notice, which directed the Assessment Manager to refuse the application. The notice was not provided before the end of the period stated in Schedule 2 of the DA Rules however, and no extension to this period had been sought (s28 of the DA Rules);
8. therefore, Council did not comply with s56(4) of the PA about the giving of the notice to the applicant and Assessment Manager. Under s58 of the PA, the effect of not complying with s56(4) of the PA is, for a development application for building works, prescribed under regulation (see s58(2)(c) of the PA). s24 of the PR is the relevant regulation;
9. s24 of the PR provides that should a local government not comply with s56(4) of the PA, and be assessing a matter other than the amenity and aesthetics impact of a building or other structure, then for s58(2)(c) of the PA "the local government is taken to have directed the assessment manager to refuse the development application." (s24(2) of the PR);
10. Council did provide a Referral Agency Response Notice however it was given some 3-4 days after the end of the required period (Schedule 2 of the DA Rules). This effectively meant the Council was taken to direct the Assessment Manager to refuse the application, but that for amenity and aesthetics impacts it had no requirements (see s24 of the PR);
11. although the Assessment Manager had available the direction under s24 of the PR, no Decision Notice was issued. However, as explained by the Appellant at the hearing, on receipt of the Council's Referral Notice a number of discussions took place between the Appellant, his clients and the Assessment Manager as to how to progress the matter

based on that notice. The Appellant advised that after these discussions, the Assessment Manager issued a Decision Notice, which referenced that it was a decision notice (refusal), under s63(2) of the PA;

12. the Decision Notice was not provided before the end of the decision period as set out in s22.1(a) of the DA Rules, but the Appellant had advised the hearing that agreement had been reached between himself (as applicant) and the Assessment Manager to extend the period;
13. the Decision Notice given by the Assessment Manager was a Refusal Notice, and stated that “the assessment manager was directed to refuse the application by Bundaberg Regional Council in accordance with their referral agency role. The refusal is solely because of the direction of the referral agency.”;
14. the tribunal considers that the Decision Notice issued by the Assessment Manager should have referenced that it was provided as a result of the directions set out in s24 of the PR for dealing with no response by a referral agency, rather than the refusal being at the direction of a referral agency. In either circumstance however, the Decision Notice is still a refusal notice, with the Assessment Manager being directed to refuse the application, either by the requirements of s24(2) of the PR, or by the direction of the referral agency;
15. the location of the proposed shed is within the side and rear boundary clearances for buildings and structures as set out in the QDC MP1.2. The proposed shed has a greater *mean height* and a greater length along one boundary than allowed in the relevant Acceptable Solution in the QDC MP1.2 (A2(d)(i) and A2(d)(ii));
16. the addition of the proposed shed with an area of 44m2 in combination with all other buildings and structures roofed with impervious materials on the subject site will result in the maximum area covered being greater than allowed in the relevant Acceptable Solution in the QDC MP1.2 (A3);
17. the addition of the proposed shed with a floor area of 44m2 in combination with the floor areas of existing Class 10a structures on the subject site will result in a combined floor area greater than allowed in the relevant Acceptable Outcomes in Council’s Amenity & Aesthetics policy;
18. the location of the proposed shed is very close to sewer infrastructure on the adjoining property, and the tribunal considers a shed in this location would have difficulty in complying with the Acceptable Solutions of A2.2(2)(c)(i) of QDC MP1.4. Schedule 9 Part 3 Division 3 Table 7 Item 1 Column 2 Paragraph (c) of the PR requires referral if “the work does not comply with an acceptable solution for a relevant performance criteria stated in the part;”. Referral did not happen in this case and the parties to the Appeal at the hearing did not raise this as an issue which had not been properly addressed;
19. the location of the proposed shed would not comply with the BCA Volume 2 Part 3.7.1.6 Class 10a *Deemed-to-Satisfy Solution* for fire separation, as the separation between the property boundary on the Class 10a shed would be less than 900mm. A building certifier would have to assess whether the shed could meet the requirements of the BCA by other compliance means available under the BA for it to be sited as proposed.

Reasons for the Decision

The location of the proposed shed is within the side and rear boundary clearances for buildings and structures, as set out in the QDC MP1.2. It has a *mean height* on both elevations of greater than 3.5m, and the total length along one boundary is greater than 9m, which does not meet the Acceptable Outcomes of the QDC MP1.2. The tribunal considers that the shed so located would adversely impact on the amenity and the privacy of the entertaining/outdoor area of the adjoining property on that side boundary.

The proposed development would result in an increase in the maximum area covered by all buildings and structures on the subject site, above the maximum percentage called up in the

QDC MP1.2. However, the tribunal does not consider that the minimal exceedance in this instance would infringe on the amount of adequate open space available on the site for recreation, service facilities and landscaping.

The proposed development would result in an increase in floor area of Class10a structures on the subject site, above the maximum floor area called up in Council's Amenity & Aesthetics Policy. While the existing Class 10a shed is relatively unobtrusive from the street, with the addition of the proposed shed in the location as shown on the building application plans, P01 of Table 5.2 of that Policy is not met. The tribunal considers that due to the scale and appearance of the domestic outbuildings, the impact on the privacy, outlook and amenity of the adjoining property, and the existing dwelling on the subject site being subservient in scale if not in bulk to the Class 10a structures on the land, it is not appropriate to increase the floor area of Class 10a structures by an additional 44m2.

The tribunal is also not satisfied that an approval for the proposed shed in the position as shown on the site plans would result in approving a development application which would be compliant with QDC MP1.4 for building a structure near relevant infrastructure on an adjoining lot, or compliant with the BCA for fire separation of structures. The tribunal should not contemplate making a decision which would result in non-compliance with a Queensland Development Code, or the *Building Code of Australia.*

It is for these reasons the tribunal has confirmed the decision under appeal.

While there may be some matters of conjecture surrounding the timing of the issue of certain Notices, the tribunal is comfortable that the appeal could still be heard on the basis of the Notices given. As s253(4) of PA states, *"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".* This has been done.

The tribunal was also of the opinion that it could not change the development application as permitted under section 254(3) of the PA as that section only allows for minor changes to be made to a development application. The tribunal noted the clauses of Part 4 of Schedule 1of the DA Rules when considering this position. There are several matters that need to be addressed by the Appellant and the Assessment Manager which would lead to significant changes to the siting and design of the proposed structure before an application would again be ready to be properly made.

Given that in this case the Assessment Manager acted on behalf of the applicant/appellant in the referral process, the tribunal is of the view that the Assessment Manager should not have made the referral to the Concurrence Agency when the Class 10a shed could not be constructed in accordance with the proposed plans without infringing on the requirements of the QDC MP1.4 and the fire separation requirements of the BCA. When receiving the initial development application for building works, the Assessment Manager should have, in the tribunal's view, sent the plans back to the applicant for clarification and compliance with other building assessment provisions before the application was lodged with the referral agency.

The tribunal noted the offer by the Council representatives to the Appellant of a willingness to discuss alternative designs which may reduce the need to address several of the points of referral that the current proposal had to address.

Russell Schuler
Development Tribunal Chair
Date: 19 November 2018

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
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