



Building and Development Tribunals—Decision

Integrated Planning Act 1997

Appeal Number:	3—09—046
Applicant / Appellant:	Luke Anthony Jager, on behalf of Garage World.
Assessment Manager / Respondent:	All Construction Approvals, (building certifier).
Concurrence Agency / Co-respondent:	Cairns Regional Council (Council).
Site Address:	61 Dungarvan Drive, Brinsmead, Cairns and described as Lot 25 on SP 192169 — the subject site.

Appeal

Appeal under section 4.2.9 (1) (a) of the *Integrated Planning Act 1997*(IPA), against the refusal by the assessment manager (the building certifier for All Construction Approvals) of a development application for construction of a shed on the subject site.

The refusal was based on a decision by Cairns Regional Council (the concurrence agency) to refuse an application for approval of the proposed siting for the shed, under the performance requirements of MP 1.2, of the Queensland Development Code (QDC).

Date of hearing:	9 July 2009, commencing at 10.00 am.
Place of hearing:	The office of the Cairns Regional Council 119-145 Spence Street, Cairns.
Tribunal:	Nigel Rees Daniels, Chair
Present:	Reuben Thomas of All Construction Approvals, on behalf of the Applicant. Mr Laurie Phipps of Cairns Regional Council. Ms Jayne Formby of Cairns Regional Council. Mr Scott Shanks, Owner.

Decision:

The Tribunal, in accordance with section 4.2.34 (1) (a) of the IPA, **confirms** the decision appealed against.

The appeal is dismissed and the decision made by the assessment manager, based on the decision of the Council as concurrence agency, to refuse the application for a development permit, stands.

Background

The shed is proposed to be constructed between the existing dwelling on the subject site (61 Dungarven St) and the common boundary with the adjacent site at 63 Dungarven St. When viewed from the street, No 61 is located on the left and No 63 on the right. Both sites are reasonably level although elevated slightly above the street. In the vicinity of the proposed shed, the ground at No 63 is elevated above the ground at No 61 by 600 mm.

It is proposed to construct the shed at 200 mm from the common boundary. The shed will be 10.654 metres in length, parallel with the common boundary. The shed will have an eaves height of 3.4 metres above the floor of the shed, measured to the angle of the steel frame (approximately 3.5 metres above ground level); this eaves height will be approximately 2.9 metres above ground level on the adjacent site, being 400mm to 500mm above the eaves of the existing dwelling on the adjacent site.

There is a habitable room in the dwelling on the subject site at 1.9 metres from the proposed shed and also a habitable room in the dwelling on the adjacent site at 2.1 metres from the common boundary.

Material Considered

The material considered in arriving at this decision comprises:

1. 'Form 10 – Appeal Notice', grounds for appeal and correspondence accompanying the appeal lodged with the Registrar on 4th June 2009.
2. Written submission from the applicant.
3. Written submission from Cairns Regional Council.
4. Verbal submissions from both parties to the appeal.
5. IPA.
6. *Building Act 1975*.
7. *Building Regulation 2006*.
8. QDC – MP1.2 – Design and siting standard for single detached housing – on lots 450m² and over.

Findings of Fact

The Tribunal makes the following findings of fact:

1. The siting relationship between the dwellings on the subject and adjacent sites and the heights are as described in the "Background" section of this decision notice.
2. The height and location of the proposed shed will have an adverse effect on a habitable room in the dwelling on the subject site.
3. The height and location of the proposed shed will have an adverse effect on a habitable room in the dwelling on the adjacent site.
4. The height and location of the proposed shed will have an adverse effect on amenity of residents on the adjacent site.
5. There is sufficient accessible space available on the site for construction of the shed without imposing any adverse effect upon habitable rooms in the dwellings on the subject site and on the adjacent site.

Reasons for the Decision

The Tribunal agrees with the decision made by the Council as concurrence agency.

The proposed siting of the shed does not comply with QDC MP1.2 Design and Siting Standard for Single Detached Housing on Lots 450 m² and over, performance requirements P2 (a), (b) and (c), as follows:

P2 (a) Provide adequate daylight and ventilation to habitable rooms.

The proposed siting places the shed at 1.9 metres from the window of a habitable room in the dwelling on the subject site and at a height of the shed exceeding one metre above the eaves of the dwelling on the subject site. This will have an adverse effect on the daylight and ventilation to that habitable room.

P2 (b) Allow adequate light and ventilation to habitable rooms of buildings on adjoining sites.

The proposed siting places the shed at 2.3 metres from the window of a habitable room in the dwelling on the adjacent site and at a height of the shed at 400mm to 500mm above the eaves of the dwelling on the adjacent site. This will have an adverse effect on the daylight and ventilation to that habitable room.

P2 (c) Do not adversely impact on the amenity and privacy or residents on adjoining sites.

The proposed siting places the shed at 2.3 metres from a window of a habitable room in the dwelling on the adjacent site and at a height of the shed at 400mm to 500mm above the eaves of the dwelling on the adjacent site and overshadows the outdoor space on the adjacent site. This will have an adverse effect on the amenity of residents on the adjacent site.

The argument that the acceptable solution applicable to narrow sites could be applied as sufficient to provide light, ventilation and amenity to a wider site was not accepted by the Tribunal for the reason that the owner of a wider site can reasonably expect the higher standard anticipated by the QDC in MP1.2.

Nigel Daniels
Building and Development Tribunal Chair
Date: 14 August 2009

Appeal Rights

Section 4.1.37 of the *Integrated Planning Act 1997* provides that a party to a proceeding decided by a Tribunal may appeal to the Planning and Environment Court against the Tribunal's decision, but only on the ground:

- (a) of error or mistake in law on the part of the Tribunal or
- (b) that the Tribunal had no jurisdiction to make the decision or exceeded its jurisdiction in making the decision.

The appeal must be started within 20 business days after the day notice of the Tribunal's decision is given to the party.

Enquiries

All correspondence should be addressed to:

The Registrar of Building and Development Tribunals
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Department of Infrastructure and Planning
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