



Development Tribunal – Decision Notice

Planning Act 2016, section 255

Appeal Number: 19-007

Appellant: Shannon Fuller

**Respondent
(Assessment Manager):** Sunshine Coast Regional Council

Site Address: 42 Carrothool Place, Mooloolaba and described as Lot 137 on RP 178119
– the subject site

Appeal

Appeal under section 229 and item 1 of table 1 of section 1 of schedule 1 of the *Planning Act 2016* (PA) against the refusal of a development application for building work for construction of a boat shed adjacent to the eastern boundary. The Assessment Manager refused the application because it did not comply with the purpose (9.3.6.2(1)), overall outcome (9.3.6.2(2)(b)) and performance criteria PO2 of the Dwelling House Code under the Sunshine Coast Planning Scheme 2014 (planning scheme), the proposal did not comply with performance criteria P2 of the Queensland Development Code (QDC) MP 1.2 and the application could not be conditioned to comply.

Date and time of hearing: 17 June 2019 – 10.00am

Place of hearing: Sunshine Coast Regional Council's Maroochydore Service Centre, Level 4, 10 First Avenue, Maroochydore

Tribunal: Shane Adamson – Chair
Andrew Parker – Member
Joelie Clark – Member

Present: Terry Frey – Appellant's representative
Tracey Douglas - Council representative
Peter Chamberlain - Council representative

Decision:

The Development Tribunal (Tribunal), in accordance with section 254 of the PA confirms the decision of the assessment manager to refuse the application for a boat shed.

Background

The subject land is located at 42 Carrothool Place, Mooloolaba, formally described as Lot 137 on RP 178119.

The site has an area of 881m² and is included in the Low Density Residential Zone under the planning scheme.

A new dwelling is currently being constructed on the land with an existing concrete block retaining wall on the eastern boundary to a height of approximately 1.4m.

A separate driveway to access the proposed boat shed is provided close to the eastern boundary.

On the 1st February 2019, the Appellant lodged a development application for building work for a class 10a (boat shed).

The proposal plans provide for a boat shed with a skillion roof, having a floor area of 70.4m², a length of 15m adjacent to the eastern boundary and a height of 3.6m.

On 14th February 2019, the application was refused by the Assessment Manager for the following reasons:

- (a) *The proposal does not comply with Performance Outcome PO2 of the Dwelling House Code as the siting and scale of the shed does not preserve the amenity of the adjacent land and dwelling houses.*
- (b) *The proposal does not comply with the Purpose (9.3.6.2(1)) and Overall Outcomes (9.3.6.2 (2) (b)) of the Dwelling house code as the proposal does not maintain the amenity of neighbouring residential premises.*
- (c) *The proposal does not comply with the Performance Criteria P2 of the Queensland Development Code as it will limit light, ventilation and adversely impact on the amenity of residents on the adjoining lot.*
- (d) *The proposal cannot be conditioned to comply with the assessment benchmarks.*

On 21 February 2019, the appeal was lodged with the Registrar.

Jurisdiction

The Tribunal has jurisdiction to hear the appeal under section 229 and Schedule 1, Section 1, Table 1, Item 1(a), of the PA as the appeal is against the refusal of a development application.

Decision framework

Under section 253(2) of the PA, the appellant must establish the appeal should be upheld.

Under section 235(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. The Tribunal may nevertheless (but need not) consider other evidence presented by a party with leave of the Tribunal or any information provided under s.246 of the PA (pursuant to which the registrar may require information for tribunal proceedings).

The Tribunal is required to decide the appeal in one of the ways mentioned in s.254(2) of the PA, including in this case by:

- (a) confirming the decision; or
- (b) changing the decision; or
- (c) replacing the decision with another decision.

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 Tribunals Registrar on 21st February 2019.
2. The application material.
3. The Decision Notice issued by the Assessment Manager dated 14 February 2019.
4. Oral submissions provided by the Appellant's representative and the Assessment Manager's representatives at the hearing.
5. The *Planning Act* 2016 (PA).
6. The Dwelling House Code (DHC) under the planning scheme.

A further written submission was provided by the Respondent at the hearing. A copy of the submission was provided to the Appellant by the Registrar; however, the Appellant elected to provide no response to this submission.

Findings of Fact

The Tribunal makes the following findings of fact:

1. The site contains a two (2) storey dwelling house under construction with an attached garage.
2. The garage for the new dwelling is set back 6 metres from the front boundary.
3. The house is setback approximately 7.5m from the eastern boundary at the closest point.
4. The proposed boat shed is 15m long located adjacent to the eastern boundary having no setback and has a skillion roof.
5. The wall of the boat shed on the boundary is to be constructed of rendered block.
6. The mean height of the boat shed will be 3.6m.
7. The proposed front set back to the boat shed is about 19 metres and setback approximately 6m from canal.
8. A second crossover has been constructed to access the boat shed.
9. The dwelling at 44 Carrothool Place is single storey and setback approximately 1.5m to the western boundary and is below the level of the subject land which has been filled.
10. The Appellant has advised that relocating the proposed shed 1.5 metres from the eastern boundary is undesirable because it would reduce the area available for private open space and swimming pool.
11. Under the planning scheme Part 5.7 – Categories of development and categories of assessment – building work, building work is code assessable against the relevant use code (Dwelling House Code) where development does not meet the acceptable outcomes.

12. The application is to be assessed against the relevant assessment benchmarks which include part 9.3.6 of the planning scheme being the Dwelling House Code (DHC).
13. Under part 9.3.6.2(1) the purpose of the Dwelling House Code (DHC) is to ... *ensure dwelling houses achieve a high level of comfort and amenity for occupants, maintain the amenity and privacy of neighbouring residential premises and are compatible with the character and streetscape of the local area.*
14. Under part 9.3.6.2(2), the most relevant overall outcomes include (b) which states, ... *a dwelling house is sited and designed to protect the amenity and privacy of neighbouring residential premises.*
15. Under Table 9.3.6.3.1, the relevant performance outcome is PO2, which states: *Garages, carports and sheds:*
 - (a) preserve the amenity of adjacent land and dwelling houses;*
 - (b) do not dominate the streetscape;*
 - (c) maintain an adequate area suitable for landscapes adjacent to the road frontage; and*
 - (d) maintain the visual continuity and pattern of buildings and landscape elements within the street.*
16. The acceptable outcomes AO2.1 states:

Where located on a lot in a residential zone, garage, carport or shed:

 - (a) is setback at least 6 metres from any road frontage;*
 - (b) does not exceed a height of 3.6m; and*
 - (c) has a total floor area that does not exceed 56m².*
17. The application made is for building work assessable against the planning scheme therefore an assessment against the Queensland Development Code (QDC) is not applicable.
18. The development proposal will not dominate or have an unacceptable impact upon the streetscape.
19. The proposed boat shed will not affect the visual continuity and pattern of buildings within the street.
20. The proposed boat shed being an elongated building have a length of 15m, a height of 3.6m and an area of 70.4m² is a substantial structure located immediately on the side boundary.
21. The area of the proposed boat shed is excessive and substantially exceeds that reasonably expected which is 56m² under the DHC (AO2.1(c)).
22. The proposed boat shed is more elevated than the adjoining property to the east.
23. The bulk and scale of the proposed boat shed in this location will have an unacceptable impact upon the amenity of adjoining residential property to the east.

Reasons for Decision

The scale and bulk of the proposed boat shed substantially exceeds that reasonably expected within a residential zone. The location of the boat shed abutting the eastern boundary, the length of the boat shed and elevation above the adjoining property to the east, collectively will cause unacceptable amenity impacts. This is because the scale and bulk of the structure will dominate the property to the east. The proposed development will not preserve the amenity of adjacent land and dwelling house.

Shane Adamson
Development Tribunal Chair
Date: 5 September 2019

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 Housing and Public Works
GPO Box 2457
Brisbane QLD 4001

Telephone (07) 1800 804 833

Email: registrar@hpw.qld.gov.au