



Development Tribunal – Decision Notice

Planning Act 2016

Appeal Number:	52 – 17
Appellant:	Andelys Thrush
Assessment Manager:	AAA Building Consultants
Concurrence Agency: (if applicable)	Toowoomba Regional Council
Site Address:	30 Hamblin Court, Mount Rascal (Lot 9 on SP215194)

Appeal

Appeal under section 230 of the *Planning Act 2016* (PA) against a Decision Notice of an Assessment Manager to refuse an application for a shed, a building Class 10. Council, as the Referral Agency, directed the Assessment Manager to refuse the application for streetscape reasons.

Date and time of hearing:	12 December 2017 10.00am
Place of hearing:	Toowoomba City Library Meeting Room
Tribunal:	Steve Craven – Chair Lynette Prince-Large – Referee
Present:	Andelys Thrush – Appellant David Kruminis – Toowoomba Regional Council

Decision:

The Building and Development Dispute Resolution Committee (Committee), in accordance with section 254 of the Planning Act, **sets aside** the decision of the Assessment Manager on 29 September 2017 to refuse the application for a proposed shed and approves the application for a Development Permit for Building Work in accordance with the plans submitted by the Applicant to the A/Registrar on 18 October 2017. Approval is subject to –

- (a) Conditions as per Development Permit for building works 00015880 issued by AAA Building Consultants dated 29 September 2016.
- (b) The site development being undertaken as shown on the following drawings:
 - 2016-041 A00.01 Cover Sheet
 - 2016-041 A1.01 Site Plan (as amended in August 2017 to show a 4.6 metre front boundary setback)

- 2016-041 A2.01 Floor Plans
- 2016-041 A2.02 Roof Plan
- 2016-041 A2.03 Bracing Plans
- 2016-041 A4.01 Elevations
- 2016-041 A5.01 Sections
- 2016-041 A9.01 Construction Details

(c) Landscape plan –

- The applicant is to landscape a section of the property comprising the 15.476 metre x 4.6 metre area between the subject shed, the road alignment and the side boundary and wrapping around to the south-west to include a 2 metre x 2 metre section between the shed and the side boundary.
- Plants are to be a combination of fast growing and slower growing native shrubs that will reach a height of at least 4 metres at maturity and which are intended, in combination, to screen the majority of the shed when viewed from the western approach on Hamblin Court and from houses on the opposite side of Hamblin Court.
- All planting is to be carried out within 6 months of the date of this approval and maintained thereafter to the Council's satisfaction.

Background

1. The subject site is a 5317m² allotment at 30 Hamblin Court, Mt Rascal, an outer suburb of Toowoomba. The subject application proposes a sizeable, timber-clad and single-gabled / peaked-roofed shed in the north-west corner of the property, close to the street.
2. An earlier application, approved by the assessment manager on 29 September 2016, sited the shed either 6 or 12 metres from the front boundary (2 plans were approved, each with a different setback).
3. The shed is understood to have been built later that year.
4. Toowoomba Regional Council, acting on a complaint, issued a Show Cause Notice to the applicants alleging that the shed had been built 4.6 metres from the boundary, not the 6 or 12 metres as approved.
5. The applicants did not – and do not – dispute the allegation. They lodged the current application, seeking fresh approval of the shed, in, as we understand it, August 2017. It was referred to Toowoomba Regional Council, as a referral agency, on 22 August 2017, with the assessment manager requesting a siting variation.
6. By referral agency response dated 18 September 2017, the Council directed refusal of the application on the following grounds –

The reason for the Council's refusal is that the proposal is deemed to be inconsistent with Performance Provisions P1 of the Queensland Development Code, Mandatory Part 1.2, namely:

P1 The location of a building or structure does not facilitate an acceptable streetscape as it;

- (a) provides unjustifiable bulk to the street and neighbouring properties; and*
- (b) is incompatible with the road boundary setbacks of neighbouring buildings or structures; and*
- (c) restricts/affects the expected outlook and views of neighbouring residents.*

7. The applicant made an appeal to the Development Tribunals on 18 October 2017.

Material Considered

The material considered in arriving at this decision comprises:

8. Development application decision notice dated 29 September 2017 (the first building works approval).
9. The following drawings:
 - 2016-041 A00.01 Cover Sheet
 - 2016-041 A1.01 Site Plan
 - 2016-041 A2.01 Floor Plans
 - 2016-041 A2.02 Roof Plan
 - 2016-041 A2.03 Bracing Plans
 - 2016-041 A4.01 Elevations
 - 2016-041 A5.01 Sections
 - 2016-041 A9.01 Construction Details
10. Referral agency response from Toowoomba Regional Council (**TRC**) to the Assessment Manager dated 18 September 2017 instructing the Assessment Manager to refuse the Development Application for Building Work on the basis of streetscape provisions in the Qld Development Code.
11. Form 10 – Appeal Notice, grounds for appeal and correspondence accompanying the appeal lodged with the Committee’s Registrar on 18 October 2017.
12. Letters/emails (4) solicited by the applicant from neighbours in Hamblin Court supporting the shed in its as-constructed form.
13. The Planning Act 2016 (PA);
14. The Building Act 1975 (BA1975).
15. The Building Regulation 2006 (BR2006)

Findings of Fact

The Tribunal makes the following findings of fact:

A. Subject Site

16. The site is a 5317m² allotment at 30 Hamblin Court, Mt Rascal. The subject application proposes a sizeable shed in its north-west corner, close to the street.
17. The site is one of 4 allotments at the cul-de-sac head of the street.
18. The site accommodates a single dwelling and the shed subject of this appeal. In the vicinity of the shed, it falls moderately to steeply from the street toward a gully running roughly parallel to the street. In detail the gradient comprises –
 - A steep batter at the road alignment, created by the applicant to accommodate a benched platform that supports the shed and a water tank.
 - That platform, which is an approximately 200m² level area that sits about 1.5-2.5 metres below street level, the variation being between its eastern and western end respectively.
 - From the edge of the platform, a steep slope to the aforementioned gully.
19. Hamblin Court's streetscape is largely typical of a rural residential street. It is a cul-de-sac characterised by a relatively narrow carriageway, large setbacks to houses, few front fences, a substantial number of large trees, a significant crossfall from north to south and the prominent gully. The combination creates an open, semi-rural character.
20. In the immediate vicinity of the subject site, this open character is affected by –
 - A pumphouse, a single-storey brick and peaked-roofed structure measuring about 6 metres x 6 metres, which is on the footpath at the eastern edge of the subject property, 30 metres east of the shed.
 - The cul-de-sac head, which, because it provides access to a cluster of 4 houses, has the effect of creating a visual concentration of buildings, such that the streetscape here differs somewhat from the rest of the street.
 - 2 combined sheds at 15 Hamblin Court, 140 metres west of the subject site, which are built to the road alignment.

B. The Application

21. The 2016 building approval remains current, but for the purposes of this appeal, it has no effect other than as a reference point for conditions.
22. An application for a 133m² shed was made to the Assessment Manager in August 2017.
23. It was referred to TRC, as a referral agency, on 22 August 2017, with the assessment manager requesting a siting variation.
24. The accompanying site plan shows a change from the approved 12 metre setback to one labelled "As constructed location 4.6m from frontage boundary".
25. Council directed refusal of the application on 18 September 2017 on streetscape grounds, citing Performance Provisions P1 of the Queensland Development Code (QDC).

C. The Hearing and the submissions:

26. The hearing was undertaken in a Toowoomba City Library meeting room on 12 December 2017. The applicants, a Council representative and the committee members attended. The applicant did not pay for a site inspection, but the Committee members nevertheless conducted a site inspection beforehand.

27. The applicants and the Council presented written submissions and spoke to same, with discussions covering –

- The relevance of the 2016 building approval.
- The grounds of appeal, summarised as unjustifiable bulk, incompatibility with road boundary setbacks and restriction of views and outlook.
- The relevance of extenuating circumstances that may justify a variation from the QDC provisions, including the pumphouse, topography, the sunken building platform level, neighbours' support and the aforementioned neighbouring shed.
- The extent to which the shed location could compromise views and outlooks from neighbouring properties.
- Prospects of relocating the shed.
- Qualities of the shed.

28. All parties agreed that the 2016 building approval had no bearing on the outcome of this appeal. Regardless of the approved setback being 6 metres or 12 metres, it was agreed that a siting variation would not be required if the setback was 12 metres.

29. All parties agreed that by shed standards, the subject one was visually appealing, though large.

30. With respect to the grounds of appeal, the applicants relied on –

- The pumphouse (which they described as an eyesore) and the neighbouring shed as examples of existing setback variations that created a precedent for a variation in this case.
- Unforeseen difficulties in building at the approved setback, which meant building over a steep slope and incurring high-cost engineering solutions.
- Topographical challenges that limited on-site shed locations to those that were acceptably cost-effective, accessible by normal vehicle and away from septic transpiration and irrigation areas.
- The shed platform being substantially below road level, such that much of the shed's bulk is obscured.
- The shed having no discernible impact on any views or outlooks from neighbouring properties.
- Written expressions of support by neighbours. The applicant indicated a willingness to speak to one of the neighbours who did not provide such support.

31. Council's representative maintained that –

- The shed is large – similar to a typical house – so too bulky to justify a setback variation.

- Setbacks to structures on all but 15 Hamblin Court are large, most at 25 metres. The structures on no. 15 precede the Hamblin Court subdivision, so were not approved by the Council in the context of the current environment.
- Topographical challenges are less testing than the applicant maintains, evidenced by there being sufficient space between the shed and the steep slope beyond it for a water tank.
- The pumphouse is not a large building and is built on the road reserve, so does not constitute a setback variation per se.
- Although the shed may not compromise neighbouring outlook and views, it is nevertheless highly visible and approving of it may create a precedent for other structures that may create such compromises.
- The Council's approach to similar applications has been to agree to a setback variation where local circumstances – specifically reduced setbacks on the street on which the property is located – show a significant influence on streetscape. That is not the case here.

Reasons for the Decision

32. The Committee is satisfied that the proposal set out in the drawings (and as built) will not -

- provide unjustifiable bulk to the street and neighbouring properties; and
- be incompatible with road boundary setbacks of neighbouring buildings and structures; and
- restrict or affect the expected outlook and views of neighbouring residents.

33. **Bulk** – The shed is bulky, but the reduced setback is justifiable in the circumstances because -

- The shed's visual bulk is significantly reduced by its being an attractive building – perhaps better described as a barn – that reflects the surrounding rural residential area in its design and is on a slab that is set down lower than the footpath.
- The adjoining pumphouse and the sheds at 15 Hamblin Court have no effective road boundary setback and are significant visual intrusions into the otherwise semi-rural landscape.
- Visual impressions of bulk are different in this cul-de-sac head end of Hamblin Court because of the relative clustering of houses and structures.
- Impressions of bulk would not be significantly reduced by increasing the setback from 4.6 metres to 6 metres.
- A landscaping condition imposed by this Committee will assist in managing visual impressions of bulk without compromising traffic sightlines.

34. **Setbacks** – Most structures on Hamblin Court are well set back from the street, but the sheds at no. 15 and the adjoining pumphouse have no setback at all, such that both are significant intrusions into the local streetscape. The pumphouse warrants particular mention because it is an unattractive building that catches the eye immediately because it is so close to the road. That the pumphouse is on the road reserve and the sheds at no. 15 were built before Hamblin Court existed does not take away from the fact that both are incompatible, visually, with other setbacks in the street.

35. **Outlook/views** – Consideration was given to whether the shed interrupted any person's views in the neighbourhood and it is considered that this is not the case. More concern was over whether the shed intruded on the outlook of the neighbouring residents. In particular, it was deliberated whether it would make any significant difference if the shed was any further away from the boundary. Currently, the setback sits at 4.6 metres whereas the QDC requires that it should not be any closer than 6 metres. It was determined that the 1.4 metre variation would not make a significant difference to outlook; the shed would be as imposing at 6 metres as at 4.6 metres.
36. **Other** – That 4 neighbours supplied written expressions of support was partly encouraging to the Committee, but ultimately not determinative.

Steve Craven
Development Tribunal Chair
Date: 3 January 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.

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 Facsimile (07) 3237 1248