



Development Tribunal – Decision Notice

Planning Act 2016, section 255

Appeal number:	24-019
Appellant:	Mrs Dulcie Bird
Assessment manager:	Harald Weber
Co-respondent (Concurrence agency):	Cairns Regional Council
Site address:	4 Melaleuca Street, Manunda Qld 4870 and described as Lot 21 on RP 727323 – 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 decision of the Assessment Manager, as directed by the Concurrence Agency, the Cairns Regional Council (CRC), to refuse a Development Permit for Building Works for construction of a new (3 bay) garage. The decision followed the Concurrence Agency's assessment that the proposal does not comply with the Performance Criteria P1(a) and (b) of MP1.2 of the Queensland Development Code (QDC).

Date and time of hearing:	26 August 2024 at 11.00am
Place of hearing:	The subject site
Tribunal:	Dr Christopher Robertson—Chair Ms Tania Denis —Member Mr Heath Bussell—Member
Present:	Mrs Dulcie Bird —Appellant Mr Harald Weber —Respondent Miss Hannah Dayes—Council representative Mrs Jayne Proberts—Council representative

Decision:

The Development Tribunal (Tribunal), in accordance with section s254(2)(d) of the PA, sets aside the decision of the Assessment Manager to refuse the application and orders the Assessment Manager to re-make the decision within 25 business days of the date of this Decision Notice, as if the Concurrence Agency had no requirements and if the Assessment Manager decides to approve the application, then with the following conditions –

1. Primary Street Frontage – the 5.0m wide proposed Garage side walls from the front boundary, require a minimum 4.5m permeable section of louvres, screens or battens to create an open, lightweight appearance so that the location, length and or height of the proposed garage wall(s) will not result in a significant impact on the amenity of existing dwellings on nearby allotments.
2. The articulation zone to the 3.0m wide proposed Garage is to be set back 3.0m from the front property boundary so it is consistent with a building envelope, if one has been approved under a planning permit and or specified in an agreement.
3. The location, length and or height of the proposed Garage walls will be appropriate considering the prevailing location, length and or height of boundary walls of existing buildings on nearby allotments (refer to Diagram A below).



4. A minimum distance of 0.3m between the Eastern side boundary and the edge of the driveway must incorporate a planting strip to soften the impact of the garage and neighbouring fence on the street.
5. The fence is not to exceed 2.0m in height and ensure that the fence height, setback and design are consistent with any relevant neighbourhood character objective, policy or statement set out in the relevant planning scheme. Where a 2.0m fence is required, the fence should have high transparency to ensure it does not detract from the streetscape.
6. Design the garage structure with a low roof profile to avoid obscuring the view of the house from the street and use of lightweight materials consistent with the existing house are encouraged.

Background

1. The subject site is 810sqm in size and is situated in a short section of Melaleuca Street, comprising of a cluster of approximately 11 dwellings, which are mostly fenced and are sited in an East-West direction. The street then turns and heads in a Northerly direction, obscuring this area of the streetscape. The dwelling on the subject site is of two storeys and has a lower story dominated by a three (3) garage (consisting of a 1x double and 1x door) facade.
2. The proposal is for a Class 10a enclosed garage (consisting of one double and single panelled door) located 300mm from the frontage boundary, with the North-Eastern single door recessed 800mm, with skillion roof behind a flat parapet facade of some 3.7m in height. Further, a proposed panelled fence (at 2.1m height is shown on plans), with pedestrian gate, is to completely enclose the street frontage from the proposed garage to the Western boundary.
3. In a notification dated 5 April 2024 the CRC as Concurrence Agency instructed the Assessment Manager to refuse the proposal, assessing it against MP.1.2 of the QDC. The refusal was based upon the following grounds:

'The proposed development is considered significantly inconsistent with the existing bulk and character of the streetscape which is characterised by:

 - a. Structures that have a compliant front setback (6 metres); or*
 - b. Structures that are within the front boundary setback which are unenclosed; or*
 - c. Enclosed structures which are setback no less than 4.5 metres from the front boundary.*

The proposed Garage is therefore considered to compromise the achievement of the performance criteria of the Queensland Development Code MP1.2, with specific reference to P1(a) and (b).'
4. In response to this refusal the Appellant lodged an appeal with the Development Tribunal citing the following responses to the CRC refusal:
 - a) Both occupants of the subject site are disabled and the proposed changes will aid their security, access and enjoyment of the residence.
 - b) The proposed structure follows the recommendations of security of the Neighbourhood Watch in prevention of crime and vehicle theft by affording greater lockable security.
 - c) The QDC, MP1.2, provides a performance solution only and does not define what is bulk of a building and structure.
 - d) The Applicant notes that the Council's interpretation of setback presenting an 'unacceptable bulk' to the streetscape is a subjective measure, adding; 'It should be noted that Melaleuca Street is 11m wide and has a road reserve of 4.5m to each side. It is considerably wider than roads in new estates.' The street also has low road traffic flow.
 - e) The term 'streetscape' is broad and may include all and any examples from surrounding streets.
 - f) The QDC criteria are not about being 'consistent with the character of the streetscape,' they are about facilitating an 'acceptable streetscape, appropriate for the bulk of the building or structure'.
 - g) The Appellant has support (in the form of a petition) from neighbours in the street.

Jurisdiction

5. Section 229(1) of the Act identifies that schedule 1 states the matters that may be appealed to the Tribunal.

6. Table 1 of schedule 1 of the Act states the matters that may be appealed to the Planning and Environment Court or the Tribunal subject to (in the case of the Tribunal) the preconditions stated in section 1(2) of schedule 1.
7. The Tribunal has jurisdiction to determine this appeal under section 229(1)(a)(i), schedule 1, section 1, table 1, item 1(a), and schedule 1, section 1(2)(g) of the Act.

Decision framework

8. The Appellant as the recipient of the decision notice must establish that the appeal should be upheld (under section 253(2) of the PA).
9. The Tribunal is required to hear and decide the appeal by way of a reconsideration of the evidence that was before the person, who made the decision the subject of this appeal (under section 253(4) of the PA).
10. Section 249 of the PA provides the Tribunal with broad powers to inform itself in the way it considers appropriate when hearing a tribunal proceeding and the Tribunal may seek the views of any person.
11. The Tribunal is required to decide the appeal in one of the following relevant ways set out in section 254(2) of the PA:
 - (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.*

...

Material considered

12. 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 22 April 2024.
 - (b) Planning Act 2016 (QLD).
 - (c) Cairns Plan 2016. Cairns Regional Council.
 - (d) MP 1.2 Design and Sitting Standards for Single Detached Housing on Lots 450M2 and over.' Queensland Development Code.

Findings of fact

13. The Tribunal makes the following findings of fact:
 - (a) The proposal as presented is in direct conflict with the Performance Criteria and Acceptable Solutions of P1 (a) and (b) of MP 1.2 QDC the QDC.
 - (b) The proposal, if constructed as initially presented, will dominate the streetscape, with its bulk, width, depth and height.

Reasons for the decision

14. The Tribunal considers the conditioned changes to the proposed garage provides compliance with the Performance Criteria P1 (a) and (b) of MP 1.2 QDC.

15. The Tribunal notes that effective landscaping referred to under the conditions provides and maintains privacy and amenity along the fence lines, once growth occurs, and does not detract from the streetscape (refer to <https://www.cairns.qld.gov.au/community-environment/trees>).
16. The Tribunal recognises that a proposed garage is integral to the future installation of a lift (not part of this approval) for disabled persons that will aid the safe, adaptable use of the dwelling, required to meet the current and future needs of the occupants. The conditioned changes will not conflict with the anticipated objectives of the owner, noted in the sentence above.

Dr Christopher Robertson
Development Tribunal Chair

Date: 19 September 2024

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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