



## Development Tribunal – Decision Notice

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### Planning Act 2016

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| <b>Appeal Number:</b>                         | 45-17  |
| <b>Appellant:</b>                             | Rhys McPhee and Jayme Allen  |
| <b>Assessment Manager:</b>                    | Fluri Certification  |
| <b>Concurrence Agency:</b><br>(if applicable) | Ipswich City Council   |
| <b>Site Address:</b>                          | 61 - 63 Melbourne Street, Karalee (L38 RP211666) and described as Lot 38 on RP 211666 – the subject site |

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### Appeal

Appeal under section 230 of the *Planning Act 2009 (PA)* against the Decision of the Assessment Manager to refuse a development application for building works for a class 10a building, as directed to do so by the Ipswich City Council (Council) in the role of concurrence agency, for reasons related to impacts on amenity and aesthetics.

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| <b>Date and time of hearing:</b> | 15 January 2018 at 10:30am   |
| <b>Place of hearing:</b>         | The subject site   |
| <b>Tribunal:</b>                 | Chris Harris – Chair<br>Neal Charlton – Member   |
| <b>Present:</b>                  | Rhys McPhee – Appellant<br>Jayme Allen – Appellant<br>Luigi Fourier – Assessment Manager and appellant representative<br>Vanessa Hicks – Council representative<br>Michael Bond – Council Representative |

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### Decision:

The Development Tribunal (Tribunal), in accordance with section 254 of the *Planning Act 2016 (PA)* **sets aside** the decision of the Assessment Manager to refuse the Class 10a building at the direction of Council, and directs the assessment manager to remake the decision, no later than 30 March 2018, **approving** the development application subject to the following conditions:

- 1) The Class 10a building must be sited and maintained in accordance with the following drawings:
  - a. 'Site Plan', 17FLUR-102SP-AC1, drawn by Nspire Planning and Design, dated 00.00.12 (sic) drawn by Nspire Planning and Design.

- b. 'Elevations', 17FLUR-201EL-AC1, drawn by Nspire Planning and Design, dated 04.05.17.

## Background

1. The subject site (61-63 Melbourne Street, Karalee) is a regularly shaped allotment of 5001 square metres with frontage to Melbourne Street of approximately 40.52m and contains a single story residential dwelling. The site is located within the Large Lot Residential zone under the Ipswich City Council's Planning Scheme. The surrounding locality is made up primarily of similar large lot residential development (i.e. acreage homes) containing similar single-story dwellings with ancillary outbuildings. As can be expected, residents of the area seek to take advantage of the spacious character of the locality.
2. The appellants have carried out construction work within the property for a shed comprising the following characteristics:
  - Area 189 sqm
  - Length 21m
  - Width 9m
  - Wall height 4.295m
  - Overall height (apex) 5m
3. The shed is located 7m from the rear (southern) boundary of the lot, and 2m from its nearest side (western) boundary. The shed also incorporates two roller type doors within its forward (northern) elevation and a single roller type door within its side (eastern) elevation. It is constructed primarily of colour bond type wall cladding with metal roofing and contains a mezzanine floor to the rear of approximately 22.5sqm in area accessed via internal stairs. Associated with the mezzanine is a sliding style window located within the rear (southern) elevation.
4. These works were undertaken pursuant to a building approval issued on or about 26 June 2016 (the 2016 BA). For reasons that are immaterial to this appeal, the 2016 BA was *not* referred to the Council (the local government as a concurrence agency) as was required at the time pursuant to Schedule 7, Table 1, item 17 of the Sustainable Planning Regulation 2009 for amenity and aesthetic impacts. Following construction of the shed and in an attempt to remedy this oversight, a retrospective concurrence application was made for the 'as constructed' shed and properly referred to the Council.
5. It should also be noted that a retaining wall with a height of less than 1m (approximately 800mm) has also been constructed along the southern boundary of the site. However, the tribunal was advised (and considers it to be true) that the wall was constructed approximately 2 years prior to the construction of the subject shed and therefore not subject to the tribunal's consideration.
6. Council assessed the impacts of the as constructed shed and on 1 August 2017 directed the assessment manager to refuse the application for several reasons. For sake of brevity, the reasons for refusal are not reproduced in their entirety here. Rather, the reasons of refusal are summarised as follows:
  - 1) *Due to the height and bulk form of the proposed building, it is not consistent with other Class 10a buildings within the residential neighbourhood and is considered industrial/commercial in nature... [And] it is considered the current "As Constructed" shed will be in extreme conflict with the character and amenity of the locality.*
  - 2) *The proposed overall height of 5m and width of 9m and length of 21m is considered to reduce the visual outlook of properties to the south in Perth Street and would not present*

*pleasant, agreeable or acceptable features in this location now and in the future. The resulting loss of views and overshadowing is considered to have an extremely adverse effect on the amenity of these properties.*

- 3) *The proposed height incorporates a Class 10 storage area and proposed office on a mezzanine floor which presents an unacceptable height that is incompatible to the area and other surrounding buildings and adversely impacts on the amenity and expected privacy of residents on the adjoining lot. Buildings within the vicinity are generally single storey dwellings and outbuildings with an average wall height of 3 metres and maximum wall height of 4 metres.*
- 4) *The scale of the "As Constructed" shed 189m<sup>2</sup> (L 21m, W 9m, H 4.295m, Apex 5m) with proposed storage/ office mezzanine is considered to be of industrial/ commercial proportion and not in keeping with a residential neighbourhood. A proposed building of this scale is considered to have an extreme adverse effect on the amenity of the locality and be in extreme conflict with the character of the locality.*
- 5) *... the 'Grounds for Consideration' do not support a building of this extreme nature. The reasoning for such a large scale shed based on the primary use for storage of two (2) vehicles and a boat would allow the shed to be significantly reduced in size and height. An onsite inspection confirmed that the current items could be stored in a building of reduced size and height.*
- 6) *The "As Constructed" shed is positioned approximately 50m from the existing dwelling on site meaning the shed will have little or no impact on the existing dwelling, however the "As Constructed" shed is positioned 13m from the dwelling on the southern side of the property and 16m from the dwelling on the western side of the property. It is considered that in the existing location the "As Constructed" shed will have an extremely adverse effect on the amenity, or likely amenity, of the locality; and will be in extreme conflict with the character of the locality in respect of these dwellings.*

## **Material Considered**

The material considered in arriving at this decision comprises:

7. 'Form 10 – Appeal Notice', grounds for appeal and correspondence accompanying the appeal lodged with the Tribunals Registrar on 26 September 2017.
8. Verbal representations at the hearing.
9. Written submission (email of 10 January 2017) of the owner of 54 Perth Street, Karalee (southern adjoining owner) which raises issues concerning flooding nuisance, proximity (bulk and scale) and overlooking from the south facing mezzanine window.
10. The appellant's response (email of 10 January 2017) to the written submission from the owner of 54 Perth Street, Karalee.
11. Written submissions provided by Ipswich City Council after the hearing containing Ipswich City Council's internal "Amenity and Aesthetic / Siting Assessment Sheet" completed 31 January 2017 by Peter Conway containing assessment information. The submission included site photos, assessment notes and a review of existing class 10 buildings located within 500m radius of the subject site.
12. Assessment Manager's "Decision Notice"

13. The Council's "Referral Agency Response (Conditions Apply)" dated 1 August 2017 directing the assessment manager to refuse the development application for building works.
14. Assessment Manager's "Response to Council's Information Request" prepared by Ian Darnell (Nspire Planning and Design) on behalf of L Fluri, dated 10 May 2017.
15. The Ipswich City Council Fact Sheet B0023 V4 "Amenity and Aesthetic Referral Provisions"
16. The Ipswich City Council Fact Sheet B0035 V6 "Carports, Sheds, Garages and the Like"
17. The Ipswich City Council "General Building Guidelines for Single Residential Properties" dated 15 August 2017 Version 2.1.
18. The following drawings:
  - a. 'Site Plan', 17FLUR-102SP-AC1, drawn by Nspire Planning and Design, dated 00.00.12 (sic) drawn by Nspire Planning and Design.
  - b. 'Elevations', 17FLUR-201EL-AC1, drawn by Nspire Planning and Design, dated 04.05.17.
19. *Planning Act 2009 (PA)*
20. *Planning Regulations 2009 (PR)*
21. *Building Act 1975(BA)*
22. *Building Regulations 2006 (BR)*
23. *National Construction Code Series, Building Code of Australia, Volume 2, 2016 (BCA)*

## **Findings of Fact**

The Tribunal makes the following findings of fact:

24. The Council advises that Council first adopted "Amenity and Aesthetics Considerations under the Building Act" at the Council Ordinary Meeting held on 7 June 2000. The Council's current Amenity and Aesthetics Referral Provisions were adopted at the Council Ordinary Meeting held on 29 July 2014.
25. The recommendation adopted by Council on 7 June 2000, to the extent relevant to this appeal, was as follows (as reproduced within The Ipswich City Council Fact Sheet B0023 V4 "Amenity and Aesthetic Referral Provisions"):
  - A. *That applications for building work associated with any of the following categories require assessment by Council for amenity and aesthetics under Section 50 of the Standard Building Regulation:*

...

    4. *Any class 10 building which exceeds any of the following criteria:*
      - *Is more than 1 storey in height; or*
      - *Has any wall height of more than 3.6m (measured along the pitching line);*
      - *Has a roof/plan area exceeding 80m<sup>2</sup> on a parcel of land less than 2,000m<sup>2</sup> in area; or*
      - *Has a roof/plan area exceeding 100m<sup>2</sup> on a parcel of land between 2,000m<sup>2</sup> and 1.5ha in area; or*
      - *Is erected on vacant land (not containing a dwelling).*

26. The as constructed Shed is accurately depicted on the following plans:
- a. 'Site Plan', 17FLUR-102SP-AC1, drawn by Nspire Planning and Design, dated 00.00.12 (sic) drawn by Nspire Planning and Design.
  - b. 'Elevations', 17FLUR-201EL-AC1, drawn by Nspire Planning and Design, dated 04.05.17.
27. The site is not subject to a Building Location Envelope.
28. The Council advises that the assessment criteria against which the amenity and aesthetic impacts are to be assessed are contained within the Council's internal document titles Amenity and Aesthetic / Siting Assessment Sheet. It contains a suite of criteria that can best be described as 'performance outcomes' as they do not contain measurable or quantitative criteria.

### **Reasons for the Decision**

29. In considering the amenity and aesthetic impacts of the shed, the tribunal first considered the concerns raised by the rear neighbour (54 Perth Street, Karalee) via written submission of 10<sup>th</sup> January 2018, which claimed the shed has caused flooding nuisance to their property. In particular, the rear neighbour has asserted that "a small wooden retaining wall on the right hand side of the shed has effectively directed excess floodwaters that used to flow across [the applicant's] property". In considering the written submission of the neighbour, the tribunal notes that a retaining wall has been constructed prior to the construction of the subject shed and is less than 1m in height. Accordingly, the matter of the retaining wall does not fall within the tribunal's jurisdiction or the amenity and aesthetics assessment. It is otherwise noted, that the Council has approved a drainage plan for the site and the requirements of that approval are to be completed following the outcome of this appeal and as advised by the applicant.
30. In considering the amenity and aesthetic impacts of the as constructed shed, the tribunal has the unusual benefit of a virtual full-scale model of the proposal given that the shed is already constructed in its intended final location. The amenity and aesthetic impacts of the shed are therefore more easily able to be determined than had the shed not been constructed.
31. In assessing the shed, the tribunal has notionally compared the as constructed shed with that of a hypothetical shed with a wall height of no more than 3.6m and a plan area not exceeding 100 sqm that could be constructed on the side and rear boundary (at 0 metres boundary setback) without requiring referral to the Council. Doing so permits the impacts of the as constructed shed to be compared against the impacts of a notional 'baseline' level of impact, which the Council is not concerned with. Subsequently, whether the difference is "extreme" (as per the wording of the referral trigger) can then be considered.
32. In determining the extent to which the development realises the outcomes set by the criteria for consideration under the relevant code and criteria for Amenity and Aesthetics there are a number of key considerations:
- a. The extent to which local characteristics affect the capacity for development on the site to achieve a scale and relationship that recognises the importance of accounting for the impacts of topography and landscape. In this case the site is flat, some minor non-assessable earthworks have been undertaken to provide a sound slab for the shed. The location of the shed is established in a previously cleared/vegetated area and has not altered the site's landscape to any noticeable extent. The siting of the structure is

compliant with siting requirements in that the structure has been located away from side and rear boundaries, thus accounting for the structure's scale. Generally, sheds can be built to boundary. This constructed shed has provided space around the building, which offsets the scale of the structure from adjoining properties. In this regard the proposal achieves suitable compliance with the amenity criteria for maintaining space, access to light and ventilation to habitable rooms on adjoining properties. Whilst the scale of the structure is acknowledged to be greater than examples in the locality, its offset from boundaries and location within the context of a large rural character lot does not compromise on site open space or recreation opportunities.

- b. Whether the additional building height of the structure would substantially alter the capacity of the proposal to achieve consistency with the form and character of the local area has been assessed at the one to one scale. In this regard, the shed is considered appropriate given the greater setbacks than the minimum criteria for class 10a buildings, a consistent design of the construction in comparison with other class 10a structures in the locality, sympathetic colour scheme so as to not be overly noticeable within the residential setting and location at the rear of the subject site. Thus contextually, the shed is assessed to be in keeping with the visual character of the area, and not an overbearing or dominant structure when viewed from the public perspective.
- c. The primary conflict is thus the scale of the structure and not its siting or character. Whilst the shed is 189m<sup>2</sup> or 89% larger than the applicable provision and wall height exceeds the compliance criteria by 19%, this does not warrant refusal in itself and must be considered in the context of the other key considerations of the relevant code. The proposed structure is designed and constructed in a manner, which does not cause a nuisance or disturbance to the occupiers or users of nearby land nor result in a risk or hazard to persons or property. Other than being a new structure, visible to neighbours, in an area that was once open space, the structure does not present impacts external to the site that can be determined to be an extreme amenity and aesthetic outcome as there is no resulting nuisance on or off site. Setbacks mitigate potential overbearing or overshadowing impacts and a condition has been imposed to screen one upper level, rear boundary-facing window, which will prevent overlooking.
- d. The height of the as constructed shed is not considered to result in overbearing development on surrounding properties, in particular the southern and western adjoining properties, compared to a notional shed that could be constructed without referral to the Council. The overshadowing brought about by the increased height on the western adjoining property (which is a similarly large property in comparison to the subject site) to that of a notional 3.6m high shed build to boundary is minimal and with regards to the southern adjoining property, the 7m setback negates all overshadowing impacts in comparison to a notional 3.6m high shed build to boundary. The portions of the as constructed shed that exceed 3.6m in height are also not considered to result in overbearing development. Despite the increased height, the as-constructed shed is not considered to be a dominant feature in the locality and maintains the appearance of a single story structure ancillary to the larger dwelling located on the property as well as other single and two-story dwellings found generally in the locality.
- e. Any perceived overlooking of the southern neighbour as a result of the rear (southern) facing sliding window located at the mezzanine level can be negated by the provision of screening as shown on the 'Elevations' plan and conditioned accordingly.

Overall, while it is true to say the as-constructed shed is larger than most sheds found in the locality, it is not so large as to become a dominant feature or be considered an extreme or adverse impact on amenity and aesthetics.

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**Chris Harris**

**Development Tribunal Chair**  
**Date: 1 March 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**