



## Development Tribunal – Decision Notice

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### *Planning Act 2016, section 255*

<b>Appeal number:</b>	<b>24-006</b>
<b>Appellant:</b>	Richard Lawrence
<b>Assessment manager:</b>	Harald Weber
<b>Concurrence agency:</b>	Cairns Regional Council
<b>Site address:</b>	10 Montrose Avenue, Edge Hill Qld 4870 and described as Lot 36 on SP 740363 – the subject site

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### **Appeal**

Appeal under section 229 and item 1 of table 1 of schedule 1 (Appeals) of the *Planning Act 2016* ('PA') against the decision of the assessment manager to refuse, at the direction of the concurrence agency, the application for a development permit for building works for Dwelling Additions

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<b>Date and time of hearing:</b>	2 September 2024 at 1pm
<b>Place of hearing:</b>	The subject site
<b>Tribunal:</b>	John Eylander—Chair Glenn Chambers—Member George James—Members
<b>Present:</b>	Richard Lawrence—Appellant Harald Weber—Assessment Manager Jayne Proberts—Cairns Regional Council Gary Warner—Cairns Regional Council

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### **Decision:**

The Development Tribunal in accordance with section 254(2)(d) of the PA sets the decision aside and orders the person who made the decision to remake the decision for the amended development application within 25 business days subject to the agreed condition.

### **Background**

1. The subject property is located on a suburban street across from a community use park in an area undergoing gentrification and renewal. The existing home is lowset, with an open carport to be demolished for a driveway to join to a proposed weatherboard double garage that encroaches the setback provided for at A1(a)(i) of 'MP 1.2 – Design and Siting

Standard for Single Detached Housing – On Lots 450m<sup>2</sup> and Over’ of the Queensland Development Code.

2. The proposed weatherboard double garage is approximately 6m x 6m with a roof that originates under the eaves of the existing home and falls to the street at 2.4m height. The garage door does not face the street, but rather faces the west side boundary. The driveway curves from the west side of the front boundary at just over 6m in its shortest length. This driveway doubles as the footpath to the entrance of the home. There is no proposed front fence. The plans include vegetation between the front boundary line and the proposed double garage.
3. The subject property is 919m<sup>2</sup> with five sides with the front boundary having two sides of 10.566m and 15.063m. The shortest distance between the proposed double garage and the boundary is 1.6m extending to 2.7m.
4. Council’s reasons for directing refusal referred to failure to comply with QDC MP1.2 performance criteria P1(a) and (d), which provide:  
*(P1) The location of a building or structure facilitates an acceptable streetscape appropriate for—*
  - (a) the bulk of the building or structure;*
  - (...)*
  - (d) nuisance and safety to the public.*
5. The appellant’s submissions included photographs of properties in Edge Hill that include bulk construction within a 3m setback including on the boundary line. This includes houses, enclosed double garages and open carports.
6. The appellant submits in response to the reasons for the refusal of the application –
  - (a) Consideration that Montrose Avenue is 11m wide plus a road reserve of 4.5m on each side that reduces the effect of any bulk;
  - (b) The garage wall would not compromise the safety of vehicle movements as sight lines would be maintained;
  - (c) The garage is in fitting with many properties in Edge Hill considering bulk to boundary lines, garages and carports, and solid rendered masonry walls as fences up to 2m high.
7. The appellant supplemented this response to Council objections by submitting –
  - (a) It is a modest garage adjacent to the 10m boundary with the 15m front boundary remaining open;
  - (b) The appellant could lawfully build a 2m high fence to the entirety of the 25m front boundary that would create greater bulk;
  - (c) The garage door is deliberately positioned to avoid facing the street and to allow vegetation to screen the wall;
  - (d) The garage will be lightweight construction;
  - (e) The proposed driveway will improve the amenity of the street;
  - (f) The garage has a low roof height below the eaves line of the existing property;
  - (g) The sight lines from either street direction avoid sighting the garage;
  - (h) A greater bulk structure could be built to the side boundary that would adversely impact on the amenity of the street;
  - (i) The design materials meet the recommendations in the Cairns Style Guide (CRC 2010);
  - (j) By not needing a front fence, the casual surveillance of the street is maintained, in keeping with the Crime Prevention Through Environmental Design – Guidelines for Queensland.

## **Jurisdiction**

8. The Tribunal's jurisdiction has been enlivened pursuant to section 229 and item 1 of table 1 of schedule 1 (Appeals) of the Planning Act 2016 ('PA') arising from the decision by the assessment manager at the direction of the referral agency to refuse the proposed Dwelling Additions.

## **Decision framework**

9. The onus rests on the appellant to establish that the appeal should be upheld (s. 253(2) of the PA).
10. 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 appealed against (s. 253(4) of the PA).
11. The tribunal may nevertheless (but need not) consider other evidence presented by a party.
12. The tribunal is required to decide the appeal in one of the ways mentioned in s.254(2) of the PA.

## **Material considered**

13. The material considered in arriving at this decision comprises:
  - (a) 'Form 10 – Appeal Notice', grounds for appeal and correspondence accompanying the appeal lodged with the Tribunals Registrar on 7 February 2024.
  - (b) All Construction Approvals notice dated 23 January 2024.
  - (c) Cairns Regional Council decision notice dated 15 January 2024.
  - (d) Engagement of a Private Certifier dated 15 June 2023.
  - (e) DA Form 2 – Building Work.
  - (f) Appellant's 'Supporting Document to Planning Tribunal' ('submissions').

## **Findings of fact**

14. The two properties at the entrance of the street (three properties down) have bulk construction within 3m of the boundary. The western neighbouring property has an open double carport on the boundary line. The eastern neighbouring property is two storey construction with an elevated deck and roof within the setback being less than 3m from the front boundary.
15. This then requires consideration of A1(a)(ii) of MP 1.2 and its purpose therein as the proposed double garage does fall within the setback of the two neighbouring properties.
16. Frontage is defined as *'the road alignment of a lot'*.
17. Bulk is not defined in MP 1.2.
18. The proposed double garage would meet an 'acceptable solution' pursuant to A2 of MP 1.2 if it were on a side and rear boundary.
19. An open carport design would meet an 'acceptable solution' pursuant to A1(c) of MP 1.2 as communicated to the appellant by Council in its information request dated 11 September 2023.

20. The subject site's current driveway is to be removed pursuant to the development application. The parties agreed the positioning of the new driveway improved visibility for vehicles departing the property and to oncoming vehicles.
21. The Council's concern with the bulk was conceded should a window be included in the wall facing the street. The appellant agreed to this condition. This would be a minor change to the application.
22. The appellant agreed to amend the plans for the garage to include a window to the street frontage wall and submit the plans as a minor change to the development application.

#### **Reasons for the decision**

23. The Tribunal finds the proposed Dwelling Additions maintains the amenity of adjoining premises and the residential character of the area while achieving separation from neighbouring buildings and frontages. The minor change to the application with the installation of a window to the front wall of the addition addresses the Council's concern with the bulk of the addition.
24. The Tribunal in accordance with section 254(2)(d) of the PA sets the decision aside and orders the person who made the decision to remake the decision for the amended development application with agreed condition within 25 business days.

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**John Eylander**  
**Development Tribunal Chair**  
**Date: 15 October 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:

The Registrar of Development Tribunals  
Department of Housing, Local Government, Planning and Public Works  
GPO Box 2457  
Brisbane QLD 4001

**Telephone (07) 1800 804 833**

**Email [registrar@epw.qld.gov.au](mailto:registrar@epw.qld.gov.au)**