



Development Tribunal – Decision Notice

Planning Act 2016, section 255

Appeal number:	24-007
Appellant:	Anton Salentijn (Property Owner)
Respondent: (Assessment manager)	Rick Drew (Burnett Country Certifiers)
Co-Respondent: (Concurrence agency)	Bundaberg Regional Council (Referral Agency)
Site Address:	1 Cottonwood Street, Woodgate Qld 4660, described as Lot 55 on Plan CK2806 – the subject site

Appeal

Appeal under section 229(1)(a)(i) and schedule 1, table 1, item 1(a) of the *Planning Act 2016* against the assessment manager's refusal, at the direction of the concurrence agency, of a development application for a development permit for building work for alterations and extension to an existing shed (Reference Development Application DA 7346/23, Bundaberg Regional Council Application Number 532.2023.2506.1)

Date and time of hearing:	Friday 14 June 2024 at 1.00pm
Place of hearing:	The subject site
Tribunal:	Derek Kemp – Chair John Bright – Member
Present:	Anton Salentijn (Appellant, Property Owner) Cherrie Salentijn (Property Owner) Richard Jenner (Bundaberg Regional Council, Co-respondent) Renee Dewhurst (Bundaberg Regional Council, Co-respondent)

Decision

The Development Tribunal, in accordance with section 254(2)(a) of the *Planning Act 2016* **confirms** the decision of the assessment manager to refuse the application.

Background

The subject site

1. The subject site is a rectangular shaped block of 792m² developed with a single storey residence. The subject site is a corner allotment. Its primary frontage (Fourth Avenue) is SE in aspect and approx 39m in length. Its secondary frontage (Cottonwood Street) is NE

in aspect and approx 22m in length (excluding corner truncations). Road verge widths between the carriageways of Fourth Avenue and Cottonwood Street and adjacent site frontages are approx 12.5m and 5.5m, respectively. The site topography is generally flat. Established residential properties adjoin the subject site along its NW and SW side boundaries.

2. Existing development on the subject site includes a centrally located, single storey residence (Class 1a) and swimming pool, a 3.0W x 6.0D freestanding roofed structure (Class 10a) in the NE site corner (accessed from Cottonwood Street) and a 9.0W x 9.0D enclosed shed (Class 10a) in the NW site corner (accessible from Fourth Avenue) and sited 1.5m and 1.0m respectively off the NW and SW side boundaries. The unapproved enclosure of a subsequent 9.0W x 6.0D extension to this building is the subject of this appeal.

The proposal

3. The proposal is for the enclosure of the recently approved and built extension to the existing shed located between the existing residence and the western property boundary fronting Fourth Avenue.
4. The application is to clad and provide roller doors to an existing approved carport.
5. This carport is an extension to the front of an existing large shed, which had the appearance of a double garage at the side of the subject property.
6. The dimensions of the existing approved carport to be clad in this application are: width 9m (fronting fourth Avenue), depth 6m (where it abuts the existing outbuilding), height 3.6m (at the front of the carport) and 4.85m (to the highest part of the eaves).
7. The ridge line of this carport to be clad extends above the ridge line of the shed at the rear to which it is attached.

Assessment of the application

8. On 30 November 2023, the Bundaberg Regional Council advised the owners that the proposal is not supported by Council and directed the assessment manager to refuse the application.
9. Council's stated reasons for refusal were:
 - Non-compliance with Performance Outcome PO1 of Table 5.2 – Domestic Outbuildings of the Bundaberg Regional Council *'Amenity and Aesthetics and Building Works Involving Removal or Rebuilding Policy'* November 2017, and
 - Failure to comply with the Queensland Development Code (QDC) MP 1.2, Performance Criteria. P1 (a), (b), (c), (d) and P2 (c).
10. The Tribunal was advised by Council at the Hearing that a shed 9m wide by 9m long was approved on the subject site in 1999. On the 23 August 2022, an open carport measuring 6m by 9m was approved by Council attached to the front of this existing shed fronting Fourth Avenue. On the 30 June 2023, this carport was certified by a private certifier as being constructed generally in accordance with that approval. The subject application is for the enclosure of this existing approved carport, which has been built and now partly enclosed. The enclosure of the existing approved carport attached to the existing approved shed was subsequently refused as a result of the above decision of Council. At the Hearing the appellant agreed with these statements. The Tribunal notes that the

enclosure of this carport creates an extension to the existing shed resulting in the now partly enclosed carport being defined as a '*Domestic Outbuilding*'.

Jurisdiction

11. Section 229(1) of the PA provides that schedule 1 ('the schedule') of the PA states the matters that may be appealed to a tribunal.
12. Section 1(1)(b) of the schedule provides that the matters stated in table 1 of the schedule ('Table 1') are the matters that may be appealed to a tribunal. However, subsection 1(2) of the schedule provides that table 1 only applies to a tribunal if the matter involves one of the matters set out in section 1(2).
13. Section 1(2)(g) provides that table 1 applies to a tribunal if the matter involves a matter under the PA, to the extent the matter relates to the Building Act 1975, other than a matter under that Act that may or must be decided by the Queensland Building and Construction Commission.
14. Table 1 thus applies to the tribunal in this appeal. Accordingly, the tribunal is satisfied that it has jurisdiction to hear and decide this appeal.

Decision framework

15. Generally, the onus rests on an appellant to establish that an appeal should be upheld (section 253(2) of the PA).
16. The tribunal is required to hear and decide an appeal by way of a reconsideration of the evidence that was before the person who made the decision appealed against (section 253(4) of PA); however, the tribunal may nevertheless (but need not) consider other evidence presented by a party with leave of the tribunal, or any information provided under section 246 of PA.
17. The tribunal is required to decide an appeal in one of the ways mentioned in section 254(2) of the PA, and the tribunal's decision takes the place of the decision appealed against (section 254(4)).
18. The tribunal must not make a change, other than a minor change, to a development application (section 254(3)).

Material considered

19. The material considered in arriving at this decision was:
 - a. 'Form 10 – Notice of Appeal', grounds for appeal and accompanying correspondence lodged with the Tribunal Registrar on 08 February 2024
 - b. 'Development Application – Refusal' issued by the Assessment Manager (Rick Drew of Burnett Country Certifiers), dated 24 January 2024.
 - c. 'Referral Agency Response – Refusal' issued by Bundaberg Regional Council, dated 30 November 2023
 - d. 'Form 16 – Inspection Certificate' and 'Form 21 – Final Inspection Certificate' issued by Building Certifier (Leonard Williams of Rum City Certifiers), both dated 1 March 2023.
 - e. 'Extensions to Existing Shed – Dwg's 22836/01A and 02A' prepared by John Gately Building Designs, dated 19 February 2022, as amended on 10 June 2022 to remove 'closed in section'
 - f. Site inspection and verbal representations at the tribunal hearing on 14 June 2024.

- g. Direction Notice, dated 17 June 2024, issued to all parties by Tribunal Registrar directing appellant (property owner) to submit any additional material for consideration within 28 days (subsequently extended to 4.00pm Friday 26 July 2024).
- h. Appellant's email, dated 22 July 2024, attaching a quotation for work to render and paint the existing house
- i. Planning Act 2016
- j. Bundaberg Regional Council Planning Scheme 2015
- k. Bundaberg Regional Council *'Amenity and Aesthetics and Building Works Involving Removal or Rebuilding Policy (November) 2017'*.
- l. The Queensland Development Code (QDC) MP 1.2.

Findings of fact

20. The tribunal makes the following findings of fact:

Findings concerning the proposed development

- 21. The existing approved carport has been already been clad with Colourbond cladding, with the exception of part of the front which has been left open without any doors.
- 22. This cladding and the provision of doors to the existing approved carport is the subject of this application. The cladding has already taken place on three sides, including part of the front of the existing approved carport. By cladding the existing approved carport, the structure becomes a *'domestic outbuilding'* and falls under the provisions of the Bundaberg Regional Council *'Amenity and Aesthetics and Building Works Involving Removal or Rebuilding Policy'* November 2017.
- 23. The Tribunal finds the maximum height of the roof of the existing approved carport is 4.85m above existing ground level. This exceeds the Acceptable Outcome AO1.3(2) of 4.8m maximum building height for 'domestic outbuildings' in this zone in the Bundaberg Regional Council *'Amenity and Aesthetics and Building Works Involving Removal or Rebuilding Policy'* November 2017.
- 24. The Tribunal concurs with Council's advice during the Hearing that the site cover of the existing and proposed sheds combined with the existing carport fronting Cotton Street exceeded by 56.7% (63m²) the 90m² in the 'Acceptable Outcome' in Table 5.2A of the Bundaberg Regional Council *'Amenity and Aesthetics and Building Works Involving Removal or Rebuilding Policy'* November 2017, at the time the application was made.

Relationship of the proposed development to the adjacent property

- 25. The Tribunal finds the only adjoining property to be potentially negatively impacted by the proposed enclosed shed to be 116 Acacia Street which fronts Fourth Avenue and has a common side property boundary with the subject property. The existing approved shed and carport are located immediately adjacent to this common side property boundary.
- 26. The Tribunal noted that Council wrongly refers to this potentially adversely affected property as Lot 55 on CK2806 (which is the RPD of the subject site). Council agreed during the Hearing that the only potentially adversely affected property was 116 Acacia Street (identified as Lot 47 on CK2806).
- 27. A side boundary fence lies between the subject shed and the adjacent property to the west on Fourth Avenue (identified as 116 Acacia Street.).

28. The Tribunal finds the side boundary clearance of the now Colourbond-clad, existing approved carport to this 1.8m high Colourbond common side boundary fence to the west to be 950mm. This is less than the 1m side boundary clearance approved for the existing shed and the approved existing carport. (The Tribunal noted that the proposed enclosed carport would result in a '*domestic outbuilding*' 15m in length to the side property boundary. The Tribunal noted that '*domestic outbuildings*' greater than 12m in length are normally required to be located no closer than 1.5m from the side property boundary).

Relevant findings concerning the adjacent property

29. The Tribunal finds the existing outbuilding on the subject site and the proposed outbuilding on this part of the subject site will be 15m long and vary from 3.6m to 4.85m in height within 1m of the common side property boundary to the adjacent property at 116 Acacia Street.
30. The Tribunal noted during the site inspection that the dwelling at 116 Acacia Street is set back approximately 3.5m from the subject side property boundary and has a small sliding door fronting the side property boundary partly aligned with the original existing shed. The Tribunal noted that the existing 1.8m high Colourbond fence set upon a low 330mm high brick wall obscures the view of the proposed structure from this door (the only opening on this side elevation of the adjacent property).
31. The Tribunal noted during the site inspection that the dwelling at 116 Acacia Street is set back approximately 8.5m from the Fourth Avenue front property boundary and a carport has been built in front of this dwelling that is close to the subject property, being located 2.84m from the common side property boundary. This carport on the adjacent property extends approximately 370mm closer to the front property boundary than the subject shed on the subject site. A shade cloth has been installed for the full length of the side of the carport at 116 Acacia Street facing the subject property and the subject shed.
32. The Tribunal noted that the 1.8m high Colourbond common boundary fence between the two properties, set above the low brick wall, extends approximately 70mm towards the Fourth Avenue beyond the subject shed's front wall.
33. The Tribunal noted that a double sliding door exists from the front of the dwelling into the carport at 116 Acacia Street. This is the only opening on the front elevation at 116 Acacia Street that has any view of the subject shed and this view is substantially obscured, by the 1.8m high common side boundary fence set above its low 330mm high brick wall and the shade cloth installed along the full width of the side of the carport at 116 Acacia Street adjacent to the subject shed.

Relevant findings concerning the streetscape

34. Fourth Avenue has very wide verges, 12.5m wide on the northern side between the sealed road pavement and the front property boundary of the subject site, and 12.5m wide on the southern side from the sealed road pavement to the front property boundary opposite the subject site. These take the form of grass verges without any trees or other landscape elements, except for the large dense trees running along the full length of the subject property up to the driveway into the subject sheds.
35. The subject shed is only visible from the Fourth Avenue block it fronts.
36. Apart from looking at the shed from immediately in front of the shed, it is not visible from the northern side of the street that it faces. This is because of the landscaping, carport and side boundary fence at 116 Acacia Street and the tall dense trees close to the property boundary in front of the subject site.

37. The Tribunal finds the clad shed is only visible from the opposite side of Fourth Avenue and from the subject property side of Fourth Avenue, when viewed from immediately in front of the shed.
38. The Tribunal noted that the top of the shed is visible above the roof line of the dwelling on the subject property and above the roof line of the adjacent single storey dwelling at 116 Acacia Street.
39. On the southern side of Fourth Avenue there is a low set timber dwelling (identified as 114 Acacia Street) with a side elevation and carport set well back from Fourth Avenue.
40. A single property occupies much of the length of the southern side of Fourth Avenue. The part of this property opposite the subject site presently comprises mainly vacant land. There is a large shed and attached carport towards the west property boundary. This shed is of a similar scale to the subject shed being three bays wide and an estimated 4.5m height to its ridge line. This shed is set back approximately 10m behind the front property boundary.

Reasons for the decision

41. The key aspects of concern are:
 - a. the scale, height, set back and site cover of the shed extension.
 - b. the impact on the privacy, amenity and outlook of the adjoining premises
 - c. the impact on the Fourth Avenue streetscape.
 - d. the impact on the intended low density residential character and domestic scale of outbuildings intended for low density residential areas.
42. With regard to the Bundaberg Regional Council '*Amenity and Aesthetics and Building Works Involving Removal or Rebuilding Policy*' November 2017' the Tribunal formed the opinion with respect to PO1 that the proposed outbuilding:
 - a. appears to be industrial in scale and appearance
 - b. adversely impacts on solar access of the adjoining premises having regard to the morning and winter sun and the length of shadows and shade created by a building of this height and length
 - c. adversely impacts the outlook of the adjoining property given the solid wall of the proposed and existing outbuildings would be 15m long and vary from 3.6m to 4.85m in height within 1m of the property boundary
 - d. dominates, and is not subservient in scale and bulk to, the single storey dwelling on the same lot.
43. Having regard to the Queensland Development Code (QDC) MP 1.2, Performance Criteria P1(a), (b), (c), (d) and P2(c), the Tribunal formed the opinion that the proposed outbuilding:
 - a. will not facilitate an acceptable streetscape given the bulk of the proposed building and its road boundary setback and the setbacks of neighbouring buildings.
 - b. will adversely impact on the amenity of residents on the adjoining lot.

Derek Craven Kemp
Development Tribunal Chair

Date: 6 August 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