



Development Tribunal – Decision Notice

Planning Act 2016

Appeal Number:	22-002
Appellant:	The Boscarini Family Trust T/A Boscon Constructions Pty Ltd
Assessment Manager:	Harald Weber of All Construction Approvals
Concurrence Agency: (if applicable)	Cairns Regional Council
Site Address:	13 Benn St Brinsmead and described as Lot 134 on RP 860920 – the subject site

Appeal

Appeal under item 1(a) of table 1 of section 1 of schedule 1 of section 229 of the *Planning Act 2016* (PA) against the decision of the Assessment Manager, subject to a deemed refusal by the Concurrence Agency, to refuse a development permit for construction of a class 10a garage within the road boundary setback.

Date and time of hearing:	29 March 2022 at 11.00am
Place of hearing:	The subject site
Tribunal:	John Panaretos – Chair Glenn Chambers – Member
Present:	Kyne Boscarini of Boscon Constructions Pty Ltd – Appellant Dylan Thomas – Council representative Isabella Kennedy – Council representative Tanya Mittempergher – Landowner

Decision:

The Development Tribunal (Tribunal) in accordance with section 254(2)(a) of the *Planning Act 2016* (PA) refuses the application.

Background

1. The subject site, located at 13 Benn St, Brinsmead, and described as Lot 134 on RP 860920, has a site area greater than 450m².
2. An Application (the Subject Application) was lodged by the Appellant on behalf of the owner-resident on 7 December 2021, seeking a Development Permit for Building Works (Dwelling House - garage).
3. In the absence of a formal Referral Agency response, deemed refusal was invoked and Refusal Notice issued on 31 January 2022. The Appeal Notice was lodged on 8 February 2022.

4. The proposal is for the construction of a double garage, dimensions 6.4 metres x 5.8 metres, in front of the existing garage with a setback of 300mm from the front alignment.
5. The proposed garage is designed to extend the living space of the house to accommodate current family needs, while providing two secure parking spaces.
6. The front setback is prescribed by Acceptable Solution A1(a)(ii)(b) of the Queensland Development Code (QDC) – the assessment manager has calculated the prescribed setback at 5.5 metres – but is assessable against Performance Criteria P1 of the QDC.
7. At the hearing Council opposed the setback relaxation, and articulated reasons for its opposition:
 - Excessive bulk to the streetscape
 - Garage was oversized which contributed to the bulk
 - Sight lines for motorists and pedestrians would be affected
 - Safety concern of conflict with vehicles entering or exiting the opposite intersection (Da Silva Close)
 - The area has a consistent, compliant setback
 - It is non-compliant with both P1 and P8 of the QDC.
8. Subsequent to the hearing, at the request of the Tribunal the parties submitted further detail with respect to the proposed floor level and height of the garage and implications for the crossover and footpath grades.

Material Considered

The material considered in arriving at this decision comprises:

1. 'Form 10 – Appeal Notice', grounds for appeal and correspondence accompanying the appeal lodged with the Tribunals Registrar 8 February 2022.
2. *Planning Act 2016*.
3. Queensland Development Code MP1.2.
4. Presentations made at the hearing.

Findings of Fact

9. The Tribunal makes the following findings of fact:
 - The proposed structure is to be masonry with a metal roof, consistent with the building materials and design of the existing house and matching the floor level of the house.
 - The proposal is assessable against Performance Criteria P1 of the QDC.
 - The appellant and Council took conflicting positions with respect to the nature of existing approved structures in the area with reduced setbacks. The Tribunal generally found these to be open carports, not enclosed garages.
 - Council indicated that a neighbouring garage was likely approved prior to the introduction of current code requirements (although the Tribunal noted that it incorporated semi-transparent timber screening elements in side walls, not a fully masonry structure).

- The further information lodged indicates that the floor level of the proposed garage would be higher than the top of the kerb, contrary to the conclusion that can be drawn from the original plans lodged. Nevertheless, it is acknowledged that a cut is required in the footpath to accommodate the crossover, a consequence of the raised level of the footpath due to a nearby street tree.
- The height of the garage is proposed to be 2.6 metres.
- Council would favour an open carport in the proposed location.

Reasons for the Decision

10. The character of the streetscape is generally one of attractive front landscaping, street trees and, where reduced setbacks apply, open carports. Consequently, the proposal for an enclosed masonry structure is not consistent with the existing streetscape.
11. The dimensions of the proposed structure represent a bulky intrusion in a streetscape with generally consistent setbacks.
12. Although the street enjoys low pedestrian and vehicle traffic, and sight lines are interrupted by existing vegetation, safety should be preserved by protecting existing sight lines to and from a reversing vehicle where possible.
13. The Tribunal found that Performance Criteria P8 of the QDC is not relevant to this determination.

John Panaretos

Development Tribunal Chair
Date: 20 April 2022

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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