



Development Tribunal – Decision Notice

Planning Act 2016, section 255

Appeal Number:	20-019
Appellant:	Robert Crossett
Respondent (Assessment Manager):	Rick Drew of Burnett Country Certifiers Pty Ltd
Co-Respondent (Referral Agency):	Bundaberg Regional Council
Site Address:	175 Bargara Road, Kalkie QLD 4670 and described as Lot 2, RP 52324 – the subject site

Appeal

Appeal under section 229 and item 1 of table 1 of section 1 of schedule 1 of the *Planning Act 2016* (PA) against the refusal of a development application for construction of a Class 10a Shed on residential premises.

The Assessment Manager (Rick Drew of Burnett Country Certifiers Pty Ltd) was directed by Bundaberg Regional Council as the referral agency, to refuse the application for building development approval.

The local government's response was that the proposed development did not meet and could not be conditioned to meet the acceptable outcomes of their Amenity & Aesthetics Policy or the acceptable solutions of the Queensland Development Code MP 1.2.

Date and time of hearing:	Wednesday 11 November 2020 at 10.00am
Place of hearing:	The subject site
Tribunal:	Gregory Schonfelder – Chair David Job - Member
Present:	Robert Crossett – Appellant Rick Drew – Respondent (Assessment Manager) Richard Jenner - Council representative Scott Irwin – Council representative

Decision

The Development Tribunal (Tribunal), in accordance with section 254(2)(d) of the *Planning Act 2016* (PA) sets aside the decision of the Assessment manager to refuse the application for a Class 10a Shed and orders the Assessment Manager to remake the decision by a new Decision Notice, within 21 business days of the date of this Decision Notice as if the referral agency had

no requirements, and directs that should the Assessment Manager decide to approve the application, the following conditions be included

- (a) The site is developed and maintained generally in accordance with plan dated 17.11.2020 from Warren Family Homes (attached).
- (b) The walls, roof, doors and associated fittings of the shed is clad in a light coloured precoated steel.
- (c) Landscaping is established and maintained along part of the eastern boundary as shown on the site plan.
- (d) Landscaping is established and maintained along part of the western boundary for the 1.5m set back area.
- (e) Maximum floor area shall be 186sqm.
- (f) The roof pitch shall be maximum of 7.5 degrees.
- (g) The maximum height of the Class 10a building shall be 4.20m on the high side and 3.15m on the low side.
- (h) The lean to building on the northern end of the Class 10a building can be enclosed with a similar material to the main shed if required.

Background

1. The subject site is a long rectangular shaped 4048m² shaped lot at 175 Bargara Road, Kalkie.
2. The site is generally surrounded by detached dwellings on either side and currently a vacant lot at the rear. This rear lot has the potential for future residential subdivision.
3. There is a detached dwelling currently under construction on the subject site which is setback 87m from the road boundary.
4. An application was made to the assessment manager for a building development approval for a large steel framed/clad shed adjacent to the western boundary at the rear of the dwelling under construction.
5. An application was made by the Assessment Manager (Building Certifier) to the local government for a referral agency response on the application due to the non-compliance with the Queensland Development Code MP 2.1 and the Bundaberg Regional Council's Amenity and Aesthetics Policy. (refer to findings of fact for details).
6. Considerable negotiations were held between the applicant and the local government regarding this application, however the local government on 07.08.2020 issued their response, reference 532.2020.915.1 which directed the Assessment Manager (Building Certifier) to refuse the building development application.
7. On 12.08.2020, the Assessment Manager (Building Certifier) in his Decision Notice, reference DP 3620/20, refused the construction of the new Class 10a shed.
8. This decision of the Assessment Manager (Building Certifier) forms the basis for this appeal.
9. The Development Tribunal received the application for an appeal (Form 10) from the applicant on or about 17 August 2020.
10. The hearing was held on 11.11.2020 at the subject site.
11. The applicant, assessment manager, local government representatives and tribunal members discussed the existing proposal as submitted to the local government at length

and explored options for changes to the design and siting of the Class 10a shed along the western boundary of the subject land.

12. It was agreed at the end of the hearing that the applicant would provide revised plans of the proposal reflecting the discussions held, to the Registrar Development Tribunal.
13. The revised plans were received by the Registrar on 20.11.2020.
14. The local government was invited to comment on the revised plans and its comments were received by the Register on 27.11.2020.
15. The applicant submitted further revised plans and these plans were received on 07.12.2020.
16. The local government was again invited to comment on these further revised plans and its comments were received by the Registrar on 08.12.2020.

Jurisdiction

17. As the Appeal is under section 229 and item 1 of table 1 of section 1 of schedule 1 of the *Planning Act 2016* (PA) against the refusal of a development application for the construction of a Class 10a shed on residential premises. The precondition for the application of table 1 contained in schedule 1, section 1(2) is met as paragraph (g) of that section is satisfied. the Tribunal has jurisdiction to hear the appeal.

Decision framework

18. It is noted that:

- the onus rests on the appellant to establish that the appeal should be upheld (s. 253(2) of the PA);
- 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);
- the tribunal may nevertheless (but need not) consider other evidence presented by a party with leave of the tribunal or any information provided under s.246 of the PA (pursuant to which the registrar may require information for tribunal proceedings); and
- the tribunal is required to decide the appeal in one of the ways mentioned in s.254(2) of the PA.

Leave was given for the applicant to provide revised plans for the building proposal at the hearing and that further revised plans be provided for the Tribunal to consider.

Material Considered

The material considered in arriving at this decision comprises:

19. 2020.08.17 - 'Form 10 – Appeal Notice', grounds for appeal and correspondence accompanying the appeal lodged with the Tribunals Registrar on or about 17 August 2020 including:
 - 2020.08.07 – Ref 532.2020.915.1 - Bundaberg Regional Council – Referral Notice.
 - DA Form 2 – Ref DA 3620/20 - Building work details.
 - 2020.08.20 – Ref DP 3620/20 - Burnett Country Certifiers – Decision Notice (refusal).
 - Extract Planning Act 2016 – Part 1 Appeal rights, s229 Appeals to tribunal or P&E Court.

- Ref 30051810494407 - Warren Family Homes– Architectural Drawings (Floor Plan and Elevations).
 - 2020.05.25 – Ref 3033 – Site Plan.
20. 2020.10.16 – Email from Applicant – Site coverage details for proposed dwelling.
 21. 2020.11.20 – Email from Building Certifier – Revised site and shed dimensions plan (Ref 2020.11.17 – Warren Family Homes).
 22. 2020.11.27 – Email from Bundaberg Regional Council – Commenting on Revised siting and floor plans and proposed conditions which the Council would consider would be appropriate.
 23. 2020.12.07 – Email from Building Certifier – Architectural Drawings – Further revised plans (Ref 30111917210627 (3 sheets) - McHugh Steel).
 24. 2020.12.08 – Email from Bundaberg Regional Council – Commenting on the further revised plans.
 25. 2020.12.18 – Email from Building Certifier – Providing further clarification (altered dimensions).
 26. Bundaberg Regional Council, Amenity and Aesthetics, and Building Work involving removal or rebuilding Policy (November 2017).
 27. Queensland Development Code MP 1.2 Design and siting standards for single detached housing on lots 450m² and over.

Findings of Fact

28. The tribunal makes the following finding of fact:

1. Subject Site

- 1.1 The subject site is a 4048m² lot at 175 Bargara Road, Kalkie.
- 1.2 The lot is a long narrow rectangle in shape with a road frontage of 27.48m to Bargara Road and a depth of 147.295m.
- 1.3 There is a Class 1a dwelling currently under construction on the lot which is setback 87.001m from the road frontage and is approximately located centrally on the lot 4.146m from the NE side boundary and 4.024m from the NW side boundary.
- 1.4 The proposed shed is proposed to be located at the rear of the dwelling adjacent to the NW side boundary.
- 1.5 The proposed shed is required to comply with the Council's Amenity & Aesthetics Policy and the acceptable solutions of the Queensland Development Code MP 1.2.
- 1.5 The Council advised that the adjacent land at the rear of the property which is currently vacant had a development approval for a subdivision in multiple lots.

2. Verbal Submissions at hearing

Applicant

- 2.1 The neighbour on the western boundary will not be able to see any of the buildings on the lot as there are substantial number of trees which provide a landscaped barrier between the two properties.
- 2.2 There will a 2.0m high fence along the western boundary so that only 1.0m of the proposed building will project above the fence line.
- 2.3 This screening by the boundary fence would be the same as for sheds in the surrounding area.
- 2.4 There will also be a 2.0m high fence along the eastern boundary and any view of the proposed building would be restricted by the location of the dwelling and the alfresco area in front of the building.
- 2.5 It is proposed that the area along the east boundary be landscaped.

- 2.6 The scale of the proposed building is not considered industrial in relation to the size of the lot and the surrounding lots.
- 2.7 It is not considered appropriate to have multiple buildings for the purpose proposed.
- 2.8 Cover from the weather is important and if multiple buildings are proposed additional hard stand area (paving) would be required creating more runoff from rainfall.
- 2.9 As the shed is setback more than 100m from Bargara Road at the rear of the dwelling the proposed building would have minimum impact on the streetscape.
- 2.10 The purpose of the proposed building (Shed) is to provide storage for private vehicles plus a private workshop area.
- 2.11 The items to be stored include vehicles, boat, trailer, mobile home, trailer, golf cart, quad bike, ride on mower and tools.

3. Verbal Submissions at hearing

Council

Amenity & Aesthetics Policy

The proposal will have an extremely adverse effect on the amenity, likely amenity, and conflicts with the character of the locality as:

- 3.1 The size of the shed with a blank wall for a length of 20m, nil setback and overall floor area of 195.5m² is considered industrial in scale and appearance.
- 3.2 The combined floor area of all domestic outbuildings on the premises is not in keeping with the size of other domestic outbuildings in the locality.
- 3.3 The overall size of the shed particularly the length and setback are considered to impact on and in contrast to the prevailing and intended character of the locality.
- 3.4 The proposal is of a scale that is consistent with the surrounding built environment.
- 3.5 The shed would impact on the amenity of the adjoining premises being sited on the boundary without any buffering being contained on the subject site.
- 3.6 The subject lot and adjoining lots being low density residential have provisions to be subdivided into 600m² lots in the future. The proposed shed would significantly impact on any future subdivision and the intended character and use of the site and adjoining properties.

Queensland Development Code (QDC) MP 1.2

The proposal fails to comply with the QDC MP 1.2 on the following grounds:

- 3.7 The proposed development has a length that is 2.5 times longer than the permitted accepted solution for a Class 10a building located within the 1.5m setback.
- 3.8 There are no similar examples of reduced setbacks in the immediate vicinity.
- 3.9 The proposed shed would impact on the amenity of the adjoining premises being sited on the boundary without any buffering being contained on the subject site.
- 3.10 It is considered that the reduced setback is not appropriate for the bulk of the building within the low-density residential zone.
- 3.11 The land is a large low-density residential lot that is unconstrained. Ample room is available to appropriately setback the proposed shed from adjoining property boundaries.

4. Discussion at hearing

Tribunal

- 4.1 The tribunal discussed different options with both the applicant and the Council.

Reasons for the Decision

The Tribunal is of the view that the revised option (as set out under the heading 'Decision' at the beginning of this decision notice) is an appropriate response to the site constraints, surrounding area, future potential redevelopment of the subject site and can be justified as meeting the Local Government's Amenity and Aesthetics Policy and the Queensland Development Code MP 1.2.

The applicant has provided two sets of revised options which respond in varying degrees to the matters raised and discussed at the hearing on site on 11.11.2020.

The first option for the Class 10 shed (as attached) which forms the basis of this decision provides for the:

- length of the wall building along the western boundary (originally 20m) to be reduced to 9m.
- wall adjacent to the boundary to be less than the maximum length allowed under the QDC MP 2.1 (12.0m).
- bulk of the wall adjacent to the boundary to be greatly reduced.
- balance of the length of the building to be now setback 1.5m from the boundary.
- lean to section part of the building (northern end) to be now incorporated into the main building.
- maximum floor area to be reduced.
- location of the shed to be moved 3.0m further north to allow more space between the Class 1a dwelling and the building.

The Decision by the Tribunal to amend the design as proposed would:

- lessen the industrial scale and appearance of the building with the floor area reduced.
- be screened by the landscaping proposed on the eastern boundary and partially screened by the partial setback and landscaping to the western boundary.
- not significantly impact future subdivision of the subject site as the Class 1a dwelling has also been constructed to the rear of the site and any subdivision now could reasonably only occur between the dwelling and the road boundary.
- not have a marked impact on the surrounding area, because of the nature of the size and shape of the subject land, the location of the proposed Class 10a Shed and especially now with the construction of the appurtenant Class 1a dwelling.
- still allow its use which is associated with domestic purposes, storage of vehicles and equipment.

In making their decision the Tribunal is also of the view that the change to the design of the building is only a minor change pursuant to the *Planning Act 2016* s254(3) and an application to the local government as a referral agency was not required. The local government (Bundaberg Regional Council) have been consulted about the minor change.

Gregory Schonfelder

Development Tribunal Chair
Date: 18 March 2021

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.

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

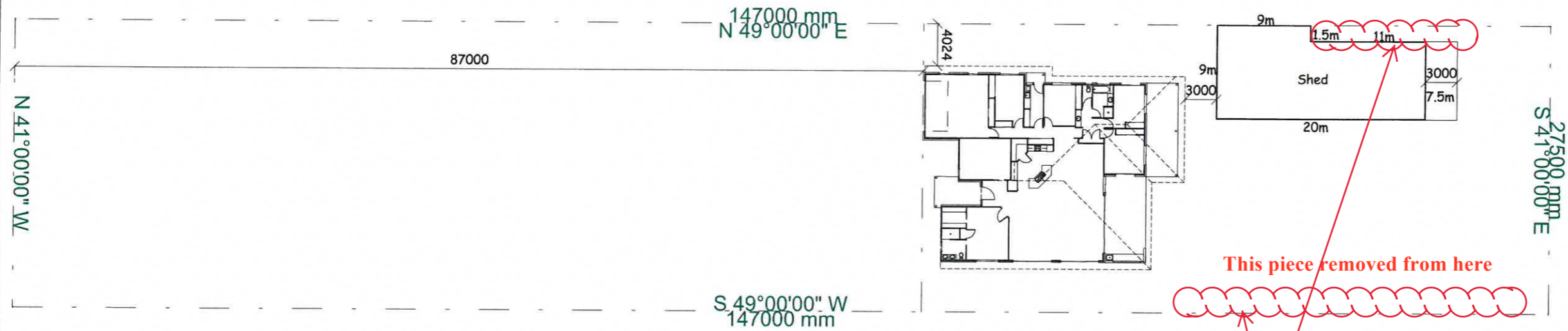
All correspondence should be addressed to:

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

Telephone (07) 1800 804 833

Email: registrar@hpw.qld.gov.au

New proposal to what was agreed to on site



GENERAL NOTES



No.	REVISION/ISSUE	DATE

Areas	Area
Living:	310.4
Patio:	12.7
Alfresco:	58.9
Total:	382.0

ALL DRAWINGS ARE THE PROPERTY OF AND THEY ARE NOT TO BE REPRODUCED IN WHOLE OR IN PART WITHOUT THE WRITTEN CONSENT
 CONTRACTOR TO CHECK AND VERIFY ALL DIMENSIONS BEFORE COMMENCING WORK AND TO REPORT ANY DISCREPANCIES TO

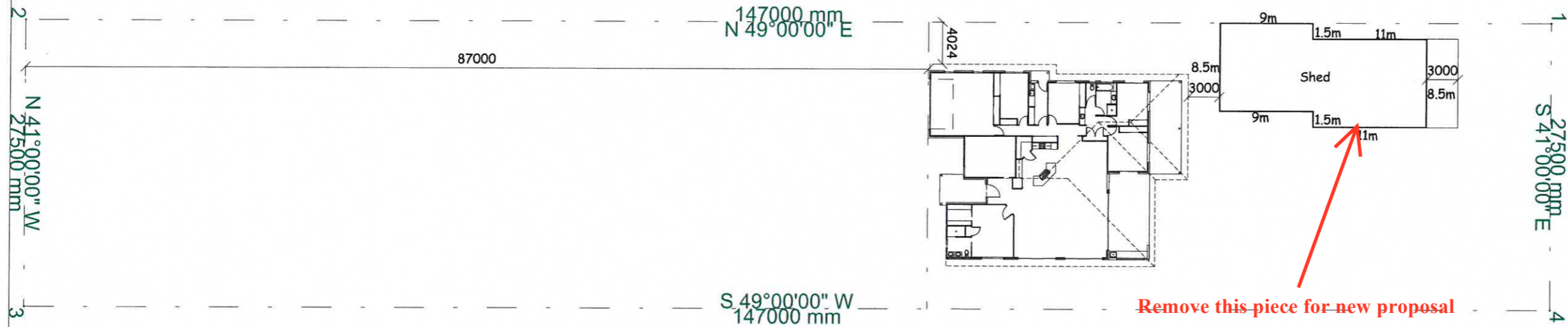
CLIENT:
CROSSETT

DRAWING:

SCALE: 1:500 DATE: 17/11/2020

DRAWN BY: Natalie Curtis	SHEET:
CHECKED BY: Brad Warren	
APPROVED BY: WFH	

What was agreed to on site



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