



Development Tribunal – Decision Notice

Planning Act 2016, section 255

Appeal Number:	23-037
Appellant:	Lachlan and Shannyn Crutchfield
Assessment Manager:	DG Certifiers Pty Ltd
Concurrence Agency: (if applicable)	Brisbane City Council
Site Address:	7 Hayes Street, Wakerley QLD 4154 and described as Lot 2 on SP224172 – the subject site

Appeal

Appeal under section 229 and schedule 1, table 1, item 1(a) of the *Planning Act 2016* (PA) against the assessment manager's decision at the direction of the referral agency to refuse a development application for construction of a deck on residential premises.

Date and time of hearing:	15 September 2023 at 1.30pm
Place of hearing:	The meeting was held on-line.
Tribunal:	John O'Dwyer – Chair Lisa Lambie – Member
Present:	Lachlan and Shannyn Crutchfield – Appellant Ken Burmeister – Appellant's Agent and Planner Ann-Marie Kyranis – Brisbane City Council representative

Decision:

The Development Tribunal (Tribunal), in accordance with section 254 of the *Planning Act 2016* (PA) replaces the decision of the assessment manager with another decision, namely, that the development application be approved subject to the following conditions:

- a) The amenity of adjoining properties is to be protected by a screen. The type of screen is to be either a solid translucent screens, perforated or slatted panels that have a maximum of 25% openings, with a maximum opening dimension of 50mm, that is permanently fixed and durable.
- b) The location of the screen being:
 - On the side boundary with 5 Hayes St, for a length of 2.8m (as shown on the proposed plans) with a minimum height of 1.8m;
 - On the rear boundary for the length of 9.0m extending from the common corner with 5 Hayes St, with a minimum height of 1.6m.

- c) The following Abode Building Design Plans all Revision F dated 12 September 2023 certified by Ken Burmeister as a true copy of the plans submitted to the Tribunal at the hearing are approved:
- Site Plan Revision F dated 12 September 2023
 - Proposed Deck Plans Revision F dated 12 September 2023
 - Elevations A-North and East Revision F dated 12 September 2023
 - Elevations South and West Revision F dated 12 September 2023
 - Timber Floor and Footings Plan Revision F dated 12 September 2023
 - Deck Detail Revision F dated 12 September 2023
- d) Any other conditions imposed by the Assessment Manager to address relevant provisions of the *Building Act 1975*.

Background

- 1 The original development application for Building Work involved adding 3 decks to the dwelling at the subject site. Deck 1 is located at the front of the dwelling and is not assessable development. Deck 2 was separately assessed and accepted by Brisbane City Council (Council) as the Referral Agency, and a separate approval was issued for this deck. Deck 3 at the rear of the dwelling is built to boundary and Council directed the Assessment Manager to refuse the application on the following grounds that:
 - a) the rear deck (Deck 3) does not achieve the purpose of the Queensland Development Code MP1.2 (QDC) in that it does not achieve an acceptable amenity to adjoining residents and
 - b) that the proposal was contrary to the performance of criteria (P2) of the QDC relating to the bulk and scale of the deck, the overlooking of adjacent properties and
 - c) the deck presents an undercroft to 30 Lachlan Drive with no ability to access and maintain the undercroft area.
- 2 Subsequent to the lodgement of the appeal, the Appellants and Council held a “without prejudice” meeting at which an agreed outcome was achieved.
- 3 The Appellant requested that an appeal hearing be held to consider the proposed agreement which was reached between the parties.
- 4 The Tribunal agreed to this request and the hearing proceeded.

Jurisdiction

- 5 This appeal has been made under section 229 of the PA, as a matter that may be appealed to a tribunal.
- 6 Schedule 1 of PA, section 1(2) however states table 1 may apply to a tribunal only if the matter involves one of the circumstances set out in paragraphs (a) to (l) of that section. Paragraph (g) of section 1(2) states: “a matter under this Act, to the extent the matter relates to the *Building Act 1975*, other than a matter under the Act that may or must be decided by the Queensland Building and Construction Commission”.
- 7 The Tribunal is satisfied that the application lodged with the Assessment Manager and the referral of the development application to Council satisfies that requirement being, a development application for approval of building works under section 33 of the *Building Act 1975*, which allows alternative provisions to QDC boundary clearance provisions for particular buildings.
- 8 That application was subsequently refused by the Assessment Manager, as directed by Council as the referral agency. Table 1 item 1(a) in Schedule 1 of the PA states that for a development application an appeal may be made to a tribunal against the refusal of all or part of the development application.
- 9 For these reasons the Tribunal had determined that it had the jurisdiction to hear the appeal.

- 10 Prior to the hearing, the Appellants advised the Registry that an agreement had been reached with Council that identified a solution acceptable to the parties, and that they wanted the appeal hearing to proceed so that the agreed conditions could be approved by the Tribunal. On consideration of the request by the Appellants and of the details of the proposed agreement, the Tribunal determined it had the power to continue the hearing of the Appeal and to consider the terms of the agreement.
- 11 In addition, the Tribunal determined that if the parties were in agreement, the hearing would be held as an online Teams meeting arranged by the Registry to avoid the need for the parties to travel to the site for what the Tribunal considered would be a short hearing as there was sufficient information before the Tribunal for it to assess the matter. The parties agreed to this process and so the Hearing was held on line.

Decision framework

- 12 In this appeal, the Tribunal determined to proceed on the basis that it would consider whether the agreement would meet the requirements of the QDC and satisfactorily address the grounds of refusal.
- 13 The Tribunal also determined that it would be prepared to adopt the proposed conditions as the conditions for approval if the Appeal was upheld, provided that the Tribunal considered the conditions were reasonable and relevant to the application.

Material Considered

- 14 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 10 July 2023 and the other lodgement material accompanying the Form 10
 - b) Email dated 13 September 2023 from Ken Burmeister to the Registry providing a briefing on the agreement reached between the parties including the wording proposed as conditions for the decision and drawings showing the agreed screening and other minor changes to the original drawings that were not relevant to the appeal.
 - c) Queensland Development Code MP 1.2 (QDC).
 - d) The *Planning Act 2016*.
 - e) The *Building Act 1975*.

Findings of Fact

- 15 The new screens as proposed by the agreed conditions will meet the requirements of the QDC.
- 16 The evidence provided by the response to the reasons for refusal contained in the Appeal lodgement documents, being a letter from Bplanned and Surveyed Pty Ltd dated 10 July 2023 (Ref: 002127-T) satisfactorily addressed the Council's grounds of refusal paragraph c.
- 17 The agreed conditions set out in the same letter are reasonable and relevant to the proposed deck and will protect the amenity of surrounding residents while also providing amenity benefits to the Appellants.

Reasons for the Decision

- 18 At the hearing, the Tribunal ascertained from the Appellants and Council as the Referral Agency that they were agreeable to the conditions as provided by Ken Burmeister in the email dated 13 September 2023 to the Tribunal Registry.
- 19 At the hearing, Council confirmed that it sought the screening to protect the amenity and privacy of surrounding residents.

- 20 At the hearing, the Tribunal sought confirmation from the Appellants that they were satisfied with the proposed screening conditions. The appellants advised that the screens would have the benefit of protecting their privacy.
- 21 On the basis of the lodgement documents, the letter from Bplanned and Surveyed Pty Ltd on 13 September 2023 and the confirmation of the parties of the benefits of the screening to protect surrounding residents and also to provide better privacy for the Appellants the Tribunal determined that it should uphold the appeal and attach to the decision, the conditions contained in the agreement between the parties.
- 22 The following Abode Building Design Plans certified by the Appellants advisor as being a true copy of the plans submitted to the Tribunal were provided to the Tribunal following a direction issued after the hearing when it was realised that there were two sets of plans with the same date and revision numbers showing different details. These plans all shown as Revision F and dated 12 September 2023 are approved.
- Site Plan Revision F dated 12 September 2023
 - Proposed Deck Plans Revision F dated 12 September 2023
 - Elevations A-North and East Revision F dated 12 September 2023
 - Elevations South and West Revision F dated 12 September 2023
 - Timber Floor and Footings Plan Revision F dated 12 September 2023
 - Deck Detail Revision F dated 12 September 2023
- 23 The Tribunal also determined that the new screening and other minor changes to the drawings submitted in the letter from Bplanned and Surveyed Pty Ltd on 13 September 2023 are a minor change to the development application because:
- a) The changes do not result in a substantially different development;
 - b) The application including the change would not cause:
 - i. The inclusion of prohibited development;
 - ii. Referral to an additional referral agency;
 - iii. Require the referral agency to assess the application against material not assessed in the original application;
 - iv. And would not require public notification of the application

John O'Dwyer
Development Tribunal Chair

Date: 24 October 2023

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:

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