



Development Tribunal – Decision Notice

Planning Act 2016

Appeal Number:	21-026
Appellants:	Mr Ryan Harmer and Ms Sarah Bourke
Respondent (Assessment Manager)	Peter Siebenhausen of Downs Building Approvals
Co-respondent (Concurrence Agency)	Southern Downs Regional Council
Site Address:	83 Pratten Street, Warwick, Lot 11 on W3088 – the subject site

Appeal

Appeal under section 229 and schedule 1, section 1, table 1, item 1(a) against the refusal of a development application for siting associated with building work for the construction of a shed. Southern Downs Regional Council as the concurrence agency directed the Assessment Manager to refuse the application stating the proposed shed was not desirable due to the presentation, outlook from neighbouring property and blocking of the footpath by vehicles.

Date and time of hearing:	27 October 2021 at 11.00am
Place of hearing:	The subject site
Tribunal:	Amelia Prokuda - Chair Tory Jones - Member
Present:	Ryan Harmer - Appellant Peter Siebenhausen - Appellant's representative Tonya Collier – Council representative Jill Yeaman - Council representative Scott Cobon - Council representative

Decision:

The Development Tribunal (Tribunal), in accordance with section 254(2)(c) of the *Planning Act 2016* (PA) replaces the Assessment Manager's decision, as directed by Council, with a decision approving the siting of the garage (with a road boundary setback of 0 metres and a side boundary setback of 0.5 metres with the following condition:

1. the proposed shed must be constructed generally in accordance with drawing nos. WSS211054-2 to 12 dated 9 April 2021 by Wide Span Sheds Pty Ltd.

Background

1. This is an appeal against the decision of Southern Downs Regional Council (**Council**) directing the Assessment Manager to refuse the Appellant's application for siting associated with building work for the construction of a shed.
2. The reason for Council's decision as set out in the referral agency response dated 25 March 2021 was that the construction of fully enclosed sheds are not desirable due to presentation, outlook from neighbouring property, and blocking of the footpath by vehicles.
3. Under the local planning scheme, the subject site is in the low density residential zone. It is a 647m² rectangular corner lot, with primary frontage to Pratten Street, and secondary frontage to Wantley Street. There is an existing driveway crossover to Wantley Street.
4. The proposed shed is a steel-framed, steel-clad gable structure, 12 metres long, 8 metres wide and 3.41 metres high set on a level concrete slab. The width of the shed is shown as being parallel to and on the boundary fronting Wantley Street, and setback 0.5m from the side boundary shared with the adjacent property (52 Wantley Street). The Appellant seeks siting concessions for the following reasons:
 - a. To preserve as much usable yard as possible within the site for children to play;
 - b. To eliminate unusable space that if set back from the road boundary fence would cause to the entrance of the shed; and
 - c. The footpath is 8 metres wide from the road to the boundary fence and there is ample vision of the footpath and intersection if the shed was to be located on the road boundary fence line.

Jurisdiction

5. The appeal to the Tribunal has been made under section 229 of the PA as a matter that may be appealed to a tribunal. In Schedule 1 of the PA, section 1(2) states table 1 may apply to a tribunal but only if the matter involves circumstances set out in paragraphs (a) to (l).
6. Paragraph (g) of section 1(2) states: '*a matter under this Act, to the extent the matter relates to the Building Act, 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 development application satisfies that requirement, being a development application for building works approval under section 33 of the *Building Act 1975* (Qld) (alternative provisions to QDC boundary clearance and site cover provisions for particular buildings).
8. The 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 for a development application, an appeal may be made to a tribunal against the refusal of all or part of the development application.

Decision Framework:

9. Section 246 of the PA provides:
 - (a) The Registrar may, at any time, ask a person to give the Registrar any information that the Registrar reasonably requires for the proceedings.
 - (ii) The person must give the information to the Registrar within 10 business days after the Registrar asks for the information.

10. Section 253(2), (4) and (5) of the PA sets out matters relevant to the conduct of this appeal. In summary:
- (a) generally, the Appellant must establish the appeal should be upheld (s253(2));
 - (b) the Tribunal must hear and decide the appeal by way of a reconsideration of the evidence that was before the person who made the decision appealed against (s253(4));
 - (c) however, the Tribunal may, but need not, consider –
 - a. Other evidence presented by a party to the appeal with leave of the Tribunal;
or
 - b. Any information provided under section 246, which is not relevant to this appeal (s253(5)).
11. Section 254 sets out how the appeal may be decided. Under s254(2) of the PA, the Tribunal must decide the appeal by:
- a. confirming the decision; or
 - b. changing the decision; or
 - c. replacing the decision with another decision; or
 - d. setting the decision aside, and ordering the person who made the decision to re-make the decision by a stated time.
12. The Tribunal must not make a change, other than a minor change to a development application (s254(3) of the PA).

Material Considered

13. The material considered in arriving at this decision comprises:
- a. 'Form 10 – Appeal Notice' and documents accompanying the appeal lodged with the Tribunals Registrar on 24 May 2021. The following documents accompanied the Form 10:
 - i. grounds for appeal;
 - ii. decision notice refusal signed by Mr Siebenhausen dated 24 May 2021;
 - iii. grounds for internal review;
 - iv. referral agency response issued by Council to the Appellants on 25 March 2021; and
 - v. email correspondence between the Appellants and Council dated 26 March 2021.
 - b. emails from Mr Harmer to the Tribunal dated 21 August 2021 in response to a request for information under section 246 of the PA attaching the following documents:
 - i. application for siting concession and attached grounds for review and aerial photograph dated 8 April 2021.
 - ii. application for internal review of decision on application for siting concession and grounds for internal review;
 - iii. email from Council to Mr Harmer attaching decision on application for internal review; and

- iv. aerial photographs of site showing proposed shed dimensions and setbacks;
- v. drawing nos. WSS211054-2 to 12 dated 9 April 2021 by Wide Span Sheds Pty Ltd;
- c. letter from Council to the Tribunal dated 3 September 2021 and exhibits A to F in response to a direction issued by the Tribunal on 27 August 2021;
- d. email from Mr Harmer to the Tribunal dated 7 September 2021 attaching a response to Council's grounds for refusal dated 7 September 2021 in response to a direction issued by the Development Tribunal on 27 August 2021; and
- e. Aerial photograph of the subject site and surrounding area prepared and tendered by Council at the hearing.
- f. the *Planning Act 2016* (**PA**).
- g. the *Planning Regulation 2017* (**PR**).
- h. the Development Application Rules.
- i. the *Building Act 1975* (**BA**).
- j. the *Building Regulation 2006* (**BR**).
- k. the Queensland Development Code (**QDC**).
- l. Part NP1.2 the Southern Downs Planning Scheme.
- m. the National Construction Code 2016.

Findings of Fact

The Tribunal makes the following findings of fact:

1. The subject site is a corner lot in a residential area comprised of mostly single traditional timber homes.
2. The site is generally flat with a low gradient slope down towards the north-western corner.
3. Wantley and Pratten Streets are straight bitumen roads with kerb and channel. The footpath between the kerb and the property boundary is grassed. The frequency of vehicle and foot traffic is low.
4. The siting concession application seeks approval to site a shed (which is a class 10 structure under the BCA) 0.5m from the side boundary (which adjoins another residential dwelling) and 0m from the road boundary, on the following grounds:
 - that the concession would preserve as much usable yard as possible;
 - that the concession would avoid dead unusable space that would otherwise exist at the entrance to the shed;
 - the proposed location of the shed will not obstruct vision of the footpath and intersection that would otherwise result without the concession.
5. The appellants engaged the Assessment Manager to provide the required development approval for building work for the proposed shed.

Referral agency assessment

- 6. On or about 12 March 2021, the Assessment Manager referred the application to Council for assessment against part MP 1.2 of the QDC on the basis that MP 1.2 of the QDC applied to the building work and under the part, the proposed building did not include an acceptable solution for a relevant performance criteria under the part (schedule 9, part 3, division 2, item 1 of the PR).
- 7. On 25 March 2021, Council issued its referral agency response directing the Assessment Manager to refuse the application for the following reason:
'The construction of fully enclosed sheds are not desirable due to presentation, outlook from neighbouring property, and blocking of the footpath by vehicles.'

Council's material

- 8. In support of Council's grounds for directing the Assessment Manager to refuse the application, Council provided a spreadsheet titled 'Spreadsheet of similar siting concession decisions since 2012'.
- 9. At the hearing, Council also tendered an aerial photograph of the subject site and surrounding properties amended to show road boundary setbacks.
- 10. These documents are useful for illustrating the potential impact on the amenity or aesthetics of the locality. However, the application should be assessed independently and on its merits.
- 11. Under schedule 9, part 3, division 2, item 4 of the PR, the concurrence agency's assessment must be against whether the building or structure will impact on the amenity or aesthetics of the locality, including for example, whether the building or structure complies with a matter stated in a local instrument that regulates impacts on amenity or aesthetics.

QDC

- 12. The QDC MP 1.2 is the standard for design and siting requirements applicable to class 1 dwellings and class 10 structures on residential sites over 450m² in area.
- 13. The provisions of the QDC apply to the extent that a local planning scheme does not opt to provide alternative provisions. In this case, the local planning scheme does not provide alternative provisions, so the provisions of the QDC apply.
- 14. The performance criteria in Element 1 - Design and Siting of Buildings and Structures are extracted below.

P1	The location of a <i>building</i> or <i>structure</i> facilitates an acceptable streetscape, appropriate for – (a) the bulk of the <i>building</i> or <i>structure</i> ; and (b) the <i>road</i> boundary <i>setbacks</i> of neighbouring <i>buildings</i> or <i>structures</i> ; and (c) the outlook and views of neighbouring residents; and (d) nuisance and safety to the public. <i>(Figures 1 to 4 and Table A1 not extracted).</i>
P2	<i>Buildings</i> and <i>structures</i> – (a) provide adequate daylight and ventilation to <i>habitable</i> rooms; and (b) allow adequate light and ventilation to <i>habitable</i> rooms of <i>buildings</i> on adjoining <i>lots</i> .

	(c) do not adversely impact on the amenity and privacy of residents on adjoining <i>lots</i> . (<i>Table A2 not extracted</i>).
P3	Adequate open space is provided for recreation, service facilities and landscaping.
P4	The <i>height</i> of a <i>building</i> is not to unduly – (a) overshadow adjoining houses; and (b) obstruct the outlook from adjoining <i>lots</i> .
P5	<i>Buildings</i> are sited and designed to provide adequate visual privacy for neighbours. (<i>Figure 5 not extracted</i>).
P6	The location of a <i>building</i> or <i>structure</i> facilitates normal <i>building</i> maintenance.
P7	The size and location of <i>structures</i> on corner sites provide for adequate site lines. (<i>Figure 6 not extracted</i>).

15. In this case, the proposed siting does not comply with the following acceptable solutions:

- a. A1(b)(i), as the proposed road setback is 0 metres; and
- b. A2(a)(i), as the proposed side boundary setback is 0.5m.

16. The assessment must therefore be considered against the performance criteria set out in P1 and P2 as the proposed siting does not satisfy the acceptable solutions A1 and A2.

Reasons for the Decision

17. The Tribunal finds that despite the fact the proposed setbacks do not comply with the acceptable solutions A1 and A2, the proposed shed can still satisfy the performance criteria P1 and P2.

18. With respect to P1, the location of the shed will result in an acceptable streetscape, appropriate for:

- a. the bulk of the shed;
- b. the road boundary setback of the neighbouring dwelling house;
- c. the outlooks and views of neighbouring residents; and
- d. nuisance and safety to the public.

19. This low density residential area has a general, open garden character with regular alignment of front building setbacks but the pattern is not entirely consistent. There are numerous tall fences and some houses and shop buildings that are sited close to street frontages. Within proximity of the subject site, there are several residential corner allotments with garages situated on or very close to the boundary of their secondary street frontage. Corner blocks typically warrant lesser setback requirements on their secondary street frontage, which in this case is Wantley Street.

20. Having regard to the frontage width and siting of the neighbouring house at 52 Wantley Street, the proposed shed will not unreasonably impact on the outlook and street view of neighbouring residents.

21. Given the main purpose of the shed is for vehicle storage, the risk of nuisance and safety problems occurring from parked vehicles blocking the footpath seems limited. In any event, Council has the ability to take appropriate action to ensure the footpath remains clear of parked vehicles.

22. With respect to P2, the side boundary setback of the residential dwelling on the neighbouring property is sufficient to allow a reduced setback of the proposed shed on the subject site. Despite the reduced setback, the shed being single-storey and situated south of the neighbouring residence will:
- a. provide adequate daylight and ventilation to habitable rooms; and
 - b. allow adequate light and ventilation to habitable rooms of building on adjoining lots; and
 - c. not adversely impact on the amenity and privacy of the residents on the neighbouring property.
23. The Tribunal finds that the proposed shed will therefore meet the requirements of performance criteria P1 and P2. The application for a siting concession should be approved.

Amelia Prokuda
Development Tribunal Chair
Date: 10 January 2022

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
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