



## Development Tribunal – Decision Notice

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### **Planning Act 2016, section 255**

**Appeal number:** 24-057

**Appellant:** Kimberley and Adam Hayes

**Respondent/Assessment manager:** Jacob Monaghan

**Co-respondent/  
Concurrence agency:** Townsville City Council

**Site address:** 30 New Meadow Circuit, Shaw Qld 4818 and described as Lot 8068 on SP 340651 — the subject site

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### **Appeal**

Appeal under section 229 and schedule 1, section 1, table 1, item 1(a) of the *Planning Act 2016* (PA) against the decision of the Assessment Manager, as directed by the Concurrence Agency, for refusal of a Development Permit for Building Works for a Class 10a structure, being a shed. The decision followed the Concurrence Agency response by the Townsville City Council directing refusal of the application on the grounds that the proposal does not meet the Performance Criteria P1 (a), (b) and (c) of the Queensland Development Code MP1.2 (QDC).

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**Date and time of hearing:** 16 January, 2025.

**Place of hearing:** The subject site.

**Tribunal:** Dr Christopher Robertson—Chair  
Ms Tania Dennis—Member  
Ms Angela Hanson—Member

**Present:**

Mrs Kimberly Hayes —Appellant  
Mr Adam Hayes—Appellant  
Mr Jacob Monaghan—Respondent, Building Certifier, Rapid Building Approvals  
Mrs Cassie James—Council representative  
Mr Jake Kidner—Council representative  
Mr Paul Johnston—Council representative

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**Decision:**

The Development Tribunal (Tribunal), in accordance with section s254(2)(a) of the PA, confirms the decision of the Assessment Manager, as directed by the Concurrence Agency in regard to the proposed works on site.

**Background**

1. The subject site is located at 30 New Meadow Circuit, Shaw and is 673 sqm in size. The area comprises and is dominated by recent, ongoing, residential (urban) development.
2. The subject site is of a broad wedge shape, with two sides (western and northern) fronting New Meadow Circuit as the street curves around the allotment. The western frontage of the subject site (where the proposed shed is to be located) has a street frontage of approximately 27.535m in length. The southern boundary of the site is approximately 18m in width. The northern boundary of the site provides for the main entry to the dwelling. The side from the dwelling main entry frontage (northern frontage to New Meadow Circuit, approximately 29,250m in length) of the subject site has a 1.9m fence surrounding most of the site, with the area of the proposed shed, having gates (x2) of the same height facing the street frontages of north and west.
3. On 20 August 2024, the Council, as Concurrence Agency, acknowledged referral from the Assessment Manager, on behalf of the Appellants, for a proposed class 10A structure being, a 'Shed within Road Frontage Setbacks' on the subject site.
4. The proposal encompasses a shed (proposed to store a caravan) located on the western side of the subject site, between the dwelling and the New Market Circuit frontage. The proposed shed dimensions are approximately 7m x 4m x 3.5m (to the eaves) and an additional roof hip height of .507m. The siting of the shed is to be approximately 1m from the western street frontage and 5.6m from the northern street frontage. Large entry doors are located at the northern and southern ends of the proposed shed.
5. Rapid Building Approvals supplied notes for the appeal of the timeline of events and they highlight the following regarding the Information request:

*29 August 2024*

*The Council issued an Information Request*

*Request Item 1 – Relocation of Proposed Shed. The applicant is requested to relocate the proposed shed to a suitable location on the site that would have less*

*impact. Reason To demonstrate compliance with P1 of MP1.2 of the Queensland Development Code\_ Advice The proposed shed in its current form presents a significant amenity and visual impact due to its bulk and scale, it detracts from the streetscape character and is not well integrated with the proposed dwelling. Relocation of the structure will inhibit these impacts and prevent the establishment of unacceptable precedent in the secondary front boundary, considering that the area is a new estate.*

6. On 18 October, 2024 the Council as Concurrence Agency directed the Assessment Manager to refuse the application for the following reasons:

*The proposed front boundary encroachment on the site is considered to be unacceptable as per Performance Criteria P1 (a) and (b) [and (c)] of the Queensland Development Code MP1.2.*

As per each item:

- a) The bulk of the building or structure. (...) Council considers that the structure, being quite tall and enclosed within the primary and secondary road frontage setback on a lot, the shape of which will make such a structure quite prominent, will present bulk that inconsistent with the established and desired streetscape and thus will not facilitate an appropriate outcome. (...)*
- b) The road boundary setbacks of neighbouring buildings or structure (...) ...there are no existing approved structures along New Meadow Circuit that feature a similar setback encroachment as the proposal, that the structure is not consistent with the neighbouring setbacks (...).*
- c) The outlook and views of neighbouring residents (...) ... this structure will be forward of all other structures on 30 New Meadow Circuit and the adjoining 18 New Meadow Circuit, due to the shape of the lot, the structure will significantly impede outlook and views of neighbouring residents and that the proposal cannot comply with P1(c). Any attempt to screen the structure will not remove the impediment upon outlook and views due to the shape of the lot.*

7. In response, in the grounds of appeal, the Appellant submitted:

- (a) Council's decision of directing refusal is "inconsistent" with other neighbouring streetscapes developed within the last 25 years. A list of examples in other locations was provided.
- (b) The proposed shed has support from the developer
- (c) Relocation of the proposed shed would inhibit secure monitoring and movement of children and pets, cast shadow over the neighbour's yard, restrict airflow, and be disruptive to neighbours visually; the shape and size of the allotment does not easily facilitate location of the shed; the shed would provide a means of screening the master bedroom from the sun, and the suggested area of relocation is not suitable to use, as a swimming pool could possibly be located there.
- (d) The Appellants are willing to do a screening foliage on the side of the proposed shed and modify colours of the shed

8. At the hearing both parties indicated their desire to negotiate an outcome. The Tribunal offered 50 days for the parties to reach a negotiated outcome advising they could potentially resolve the compliance issues with the assessment benchmarks in dispute and these include:
- Shed roof style – Replacement of the proposed gable roof with a skillion roof type, with the highest angle of the sloping the roof (house side) to the lowest point (street side).
  - Positioning of the shed on the allotment – Articulate the proposed shed footprint to ensure no building work within the truncation setbacks.
  - Shed height – Reduce the proximity to the boundary and bulk of the structure to the streetscape, and better integrate the proposed shed and dwelling, by ensuring the maximum height of the proposed structure (within the boundary setback above) is not over 3.5m.
  - The proposed shed should complement the colour and materials of the dwelling.
9. On 12 March 2025, the Council advised the appellant's agent as follows:

*The Tribunal recommended the following amendments to the shed design to address QDC.*

- *Shed roof style – skillion design – met;*
- *Location of shed – it has been demonstrated that no building works will be located within the truncation setback - met;*
- *Shed height – while the maximum height of the shed is below 3.5m, Council maintains its position that the bulk of the structure within the road frontage setback is not consistent with QDC. (...)*
- *Colours and materials of the dwelling – while the colour of the shed will be consistent with the dwelling and your email notes that the shed will be provided with cladding, it is not clear from the amended plans that the materials are consistent with the dwelling. The ShedEx specifications also note that Colorbond sheeting will be used for the wall cladding. This is not consistent with dwelling materials. Furthermore, the dwelling has horizontal cladding rather than vertical cladding as shown on the amended plans. Further information/details would be required to demonstrate this item.*

10. On 7 April 2025, the Appellants advised the Tribunal 'Unfortunately, we have not been able to reach a settlement'.

## **Jurisdiction**

11. Section 229(1) of the Act identifies that schedule 1 states the matters that may be appealed to the Tribunal.
12. Table 1 of schedule 1 of the Act states the matters that may be appealed to the Planning and Environment Court or the Tribunal subject to (in the case of the Tribunal) the preconditions stated in section 1(2) of schedule 1.
13. The Tribunal has jurisdiction to determine this appeal under section 229(1)(a)(i), schedule 1, section 1, table 1, item 1(a), and schedule 1, section 1(2)(g) of the Act.

## **Decision framework**

14. The Appellant as the recipient of the decision notice must establish that the appeal should be upheld (under section 253(2) of the PA).
15. 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 the subject of this appeal (under section 253(4) of the PA).
16. Section 249 of the PA provides the Tribunal with broad powers to inform itself in the way it considers appropriate when hearing a tribunal proceeding and the Tribunal may seek the views of any person.
17. The Tribunal is required to decide the appeal in one of the following relevant ways set out in section 254(2) of the PA:
  - (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 remake the decision by a stated time.

## **Material considered**

18. The following material was considered in arriving at this decision:
  - (a) Form 10 Notice of appeal, grounds for appeal and correspondence accompanying the appeal lodged with the Tribunals registrar on 17 October 2024
  - (b) Queensland Development Code. MP 1.2 Design and Siting Standard for Single Detached Housing – Lots 450m<sup>2</sup> and Over.
  - (c) *Townsville City Plan*.
  - (d) Communications with parties and Tribunal: 28 January; 12 March, and 3 and 7 April 2025.

## **Findings of fact**

19. The Tribunal makes the following findings of fact:
  - (a) The initial proposal, in parts, is in conflict with Performance Criteria P1 (a), (b) and (c) of QDC MP 1.2.
  - (b) The subject site, the available area for a proposed shed, shed type, and proximity to the streetscape, necessitate compliance with Performance Criteria P1 (a), (b), and (c) of the QDC MP1.2.
  - (c) The parties were unable to reach an agreement for solutions that would satisfy the stipulated criteria under P1.

## **Reasons for the decision**

20. The proposed shed, in particular its proximity and exposure to the streetscape on the western frontage, the available space for siting, the selected shed type and size, (including materials and colour) presents a number of challenges to finding solutions that avoid conflict with P1 (a), (b) and (c) of the MP 1.2 QDC. While a number of the performance criteria were addressed to the satisfaction of the assessment manager through negotiation, the proposed setback of the shed and presentation (matching residential materials and colour), in relation to the dimensions of the shed, does not sufficiently reduce the impact (in particular the bulk and scale) of the proposed shed on the streetscape in the context of this particular urban locality.

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**Dr Christopher Robertson**  
**Development Tribunal Chair**  
**Date: 7 May 2025**

## **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 and Public Works  
GPO Box 2457  
Brisbane Qld 4001

Telephone 1800 804 833

**Email:** [registrar@epw.qld.gov.au](mailto:registrar@epw.qld.gov.au)