



Development Tribunal – Decision Notice

Planning Act 2016, section 255

Appeal number:	23-016
Appellant:	Ryan Allen and Amy Sinclair
Respondent (Assessment manager):	John Dunn
Co-respondent (Concurrence agency):	Sunshine Coast Regional Council
Site address:	6 Maxwell Court, Coolum Beach Qld 4573 described as Lot 13 on RP 148147

Appeal

Appeal under section 229(1)(a)(i) and schedule 1, section 1, table 1, item 1(a) of the *Planning Act 2016* ('the PA') against the refusal by the assessment manager, at the direction of the referral agency, of a development application for a development permit for building work for a Three Storey Dwelling, Garages, Alfresco Area and Pool on the Land ('the application').

Date and time of hearing:	Friday 23 June 2023 at 10.30am
Place of hearing:	6 Maxwell Court, Coolum Beach (the Land)
Tribunal:	Kim Calio – Chair Catherine Baudet – Member
Present:	Ryan Allen – Owner and Appellant Tracey Douglas – Council representative Logan Talbot – Council representative Richard Jones – JDBA Certifiers

Decision:

The Development Tribunal (**Tribunal**) in accordance with section 254(2)(a) of the *Planning Act 2016*, confirms the decision of the assessment manager to refuse the development application for a development permit for building work for a Three Storey Dwelling, Garages, Alfresco Area and Pool on land located 6 Maxwell Court, Coolum Beach, described as Lot 13 on RP148147.

Background

1. The appellants proposed to remove the existing dwelling and garage and construct a new dwelling including a double garage and pool on the Land.

2. The development of a dwelling on the Land is subject to the relevant provisions of the Queensland Development Code (**QDC**) and the Sunshine Coast Planning Scheme 2014.
3. The Land is contained within the Low Density Residential zone of the Sunshine Coast Planning Scheme 2014. The Dwelling House code includes Acceptable Solution AO2.1 which states:

Where located on a lot in a residential zone, a garage, carport or shed:-

- (a) is setback at least 6 metres from any road frontage;*
- (b) does not exceed a height of 3.6 metres; and*
- (c) has a total floor area that does not exceed 56m².*

4. The Tribunal notes that Acceptable Outcome AO2.1(a) is an alternative provision to the QDC.
5. The QDC Part MP1.2 is the standard for the Design and Siting requirements applicable to Class 1 Dwellings and Class 10 structures on residential sites over 450m² in area. The provisions of the QDC apply to the extent that a local planning scheme does not opt to provide alternative provisions. In this instance the Dwelling House code AO2 provides some alternative siting provisions to the QDC A1(a), and therefore the 6m setback provisions (for a garage) of the Low Density Residential Zone code apply to the proposed development.
6. As the proposed dwelling did not meet AO2.1 of the Dwelling House code, an application was triggered for referral to Council as a concurrence agency pursuant to Schedule 9, Part 3, Division 2, Table 3 of the *Planning Regulation 2017 (Regulation)*.
7. The QDC Part MP1.2 A2(a) states the following with regard to side and rear boundaries:

- A2 (a) *the side and rear boundary clearance for a part of the building or structure is-*
- (i) where the height of that part is 4.5m or less – 1.5m*
 - (ii) where the height of that part is greater than 4.5m but not more than 7.5m – 2m; and*
 - (iii) where the height is greater than 7.5m – 2m plus 0.5m for every 3m or part exceeding 7.5m.*

8. As the proposed dwelling did not meet A2(a)(i) of the QDC, an application was triggered for referral to Council as a concurrence agency pursuant to Schedule 9, Part 3, Division 2, Table 3 of the *Planning Regulation 2017 (Regulation)*.
9. An application for a Referral Agency Response (**RAR**) was submitted to the Sunshine Coast Regional Council (**Council**) on or about 14 November 2022 by Danya Cook Town Planning. The Application Form noted areas of non-compliance, stating as follows:

A relaxation is sought to establish the proposed Dwelling House (Class 1a structure) within:

- 1.373m of the front boundary setback, which conflicts with Acceptable Outcome AO2.1(a) of the Dwelling House code.*
- 1.307m of the side boundary setback, which conflicts with Acceptable Solution A2(a)(i) of MP 1.2 of the QDC.*

10. The Planning report submitted with the RAR application noted that the proposed garage was to be located within 1.373m of the front boundary (in lieu of the required 6m) and in a similar position to the existing garage. The report also noted the proposed dwelling house was to be located within 1.307m of the side boundary setback (in lieu of the required 1.5m setback). It was stated in the report that the side boundary relaxation was *'required to accommodate the walk-in-pantry on the ground floor'*.
11. The Tribunal notes that the pantry was located on the western side of the dwelling and therefore the side boundary relaxation request referred to in the RAR application relates to the western boundary of the Land.
12. On 1 December 2022, Council issued a Concurrence Agency Information Request which noted:
 - (a) Council had no records of approval of the existing garage in the frontage of the property within the boundary setback;
 - (b) The RAR application does not demonstrate how the proposed garage, which is inconsistent with the setbacks of other buildings within the street, meets Dwelling House code Performance Outcome PO2;
 - (c) The RAR application does not demonstrate how the proposed garage with a wall on the eastern boundary which is 10.021 long, 3.591m to 5.010m in height and with a mean height greater than 3.5m, has addressed Performance Criteria P2 of QDC;
 - (d) Amended plans and or further information was requested on how PO2 and P2 can be achieved.
13. The Tribunal notes that the Information Request referred to a setback intrusion by the proposed garage on the eastern boundary of the Land, a relaxation not specifically requested in the Form or referred to in the Planning Report submitted with the RAR application. Further, no mention was made in the Information Request regarding the requested side boundary setback relaxation on the western side of the Land.
14. On 22 February 2023, Danya Cook Town Planning provided a response to the Concurrence Agency Information Request which included the following:
 - (a) Advice that the previous owners received approval for the current garage location 30 years ago and although they had no documentation were prepared to sign a statutory declaration;
 - (b) Advice that it was not practical to set the proposed garage further back from the street frontage and being located on the same setback as the existing garage would have the same streetscape outcomes in terms of setbacks the proposed garage;
 - (c) Advice that the design of the garage had been amended to setback the wall 0.2m from the eastern boundary of the Land and enable a creeper to be established on the wall to provide a green buffer and appropriate residential amenity;
 - (d) Amended plans dated 7 February 2023 which illustrated the 0.2m wall setback, an increase in the setback of the proposed garage from the road frontage from 1.373m to 1.512m and a reduction in the garage wall length from 10.021m to 9.882m.
15. The Tribunal notes that Danya Cook Town Planning did not make any mention of the western boundary setback reduction requested in the RAR application in the response to

Concurrence Agency Information Request or note that the eastern boundary setback reduction referred to by Council was not included in the RAR application.

16. By email on 15 March 2023 Danya Cook Town Planning provided amended plans dated 14 March 2023 and noted that laundry space had been sacrificed and the boundary wall would be planted out and was compliant with the QDC. The amended plans reduced the length of the wall setback 0.2m from the eastern boundary from 9.983m to 7.420m and provided a 0.812 setback for the additional 2.462m of wall along the eastern boundary of the Land.
17. By email on 20 March 2023 Council provided a response to Danya Cook Town Planning advising that the proposed garage side setback fails to meet P2(c) and 'as such it is recommended for a part approval'.
18. By email on 20 March 2023 Danya Cook Town Planning requested Council to advise exactly how the proposed design adversely impacted adjoining residential amenity and privacy, noting the adjoining residence is orientated away for the subject site and therefore has no impact at all on the adjoining property.
19. By email on 21 March 2023 Council provided a response to Danya Cook Town Planning which advised:

that the 4.84m tall wall with only a 0.2m setback or even 0.8m will impact specifically the amenity of the eastern neighbour. As it appears that the neighbours dwelling has windows and open space on this side of the dwelling resulting in significant impact with possible overshadowing on that dwelling. Therefore, the combination of height and little setback is considered excessive and will impact upon the amenity of the neighbouring dwelling as it will be a large blank wall facing the neighbouring dwelling. In order to meet compliance with the QDC we believe that a redesign will be needed.

20. By email on 21 March 2023 Suncoast Building Design provided a response to Council which:
 - (a) Included shadow modelling to demonstrate overshadowing will be minimal and only from 4pm onwards on western facing non-habitable windows;
 - (b) Advised the Land owners propose to plant a climbing ficus on the boundary wall (as illustrated in renders attached to that email);
 - (c) Advised the wall has been redesigned at the 4.84m highest point to provide a 1m setback in this area with 2 trees to be planted in this area;
 - (d) included amended plans dated 21 March 2023.
21. The Tribunal notes that only changes to the amended plans dated 21 March 2023 compared to the plans dated 14 March 2023 is the increased eastern side set back from 0.812m to 1.012m for a 2.462m length of the boundary wall with two trees illustrated in this set back area.
22. By email on 21 March 2023 Council responded to Suncoast Building Design advising:

the proposal may impact the amenity of the adjoining premises. With respect for the eastern neighbour it is difficult to provide evidence that it will not impact their amenity without their written support for such a high structure within the required boundary setback. In order to consider a full approval for this application council

require a near compliant side setback, a major reduction in height or neighbours support to ensure that the amenity of the eastern neighbour is preserved. If you believe the neighbours amenity is not impacted and wish to take advantage of the Appeal rights available, please advise and we will proceed with the decision.

23. By email on 21 March 2023, Danya Cook Town Planning made a request to Council to issue a part approval and part refusal.
24. On 28 March 2023, Council's delegate decided and issued a RAR¹. The RAR approved the front boundary setback for the proposed garage of 1.349m to 1.512m in lieu of the required 6m and directed the assessment manager to refuse part of the Application due to non-compliance with Performance Criteria P2(c) of the QDC, citing, amongst other things, the following reasons for refusal of the Application.

Performance Criteria P2(c) -

Do not adversely impact on the amenity and privacy of residents on adjoining lots.

1. *The large garage/laundry/storage wall having a maximum height of 4.840m for a length of 9.983m within the 1.5m required setback would have significant amenity impacts on the residents at the adjoining premises to the east. The proposed garage/laundry/storage will adversely impact on the amenity of residents on adjoining lots in conflict with the Queensland Development Code Performance Criteria P2(c).*
25. The Tribunal notes that the RAR did not refer to the requested side boundary setback relaxation on the western side of the Land of 1.307m in lieu of the required 1.5m and also did not notate the plan attached to the RAR to the effect that the setback on the western boundary was not part of the approval.
 26. The assessment manager issued a decision notice dated 6 April 2023, refusing the Application as required by section 62 of the *Planning Act 2016 (Act)*.
 27. The owners of the Land, Mr Ryan Allen and Amy Sinclair, lodged this Appeal on or about 14 April 2023 in response to the refusal of the Application at the direction of the concurrence agency.
 28. This appeal was dealt with by the Tribunal at the hearing held on 23 June 2023, which was conducted at the Land.

Jurisdiction

29. Section 229(1) of the Act identifies that schedule 1 states the matters that may be appealed to the Tribunal.
30. 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 pre-conditions stated in section 1(2) of schedule 1.
31. The Tribunal has jurisdiction to determine this appeal under section 229, schedule 1, section 1(2)(g) and schedule 1, section 1, table 1, item 1 of the Act.

¹ It is noted while Council's Assessment Report assessed Plans dated 14/3/2023, both the report Referenced Plan section and the RAR decision notice referred to the Ground Floor Plan dated 7/2/2023. The correct Plan – Ground Floor Plan dated 14/3/2023 was attached to the RAR decision notice.

Decision framework

32. The onus rests on the appellant to establish that the appeal should be upheld.²
33. 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.³
34. The Tribunal may nevertheless (but need not) consider other evidence presented by a party with leave of the Tribunal or any information provided under section 246 of the Act.
35. The Tribunal is required to decide the appeal in one of the ways mentioned in section 254(2) of the Act.

Material considered

36. The material considered by the Tribunal pursuant to section 253(4) and section 253(5) of the Act in arriving at this decision comprises:
 - (a) Danya Cook Town Planning Request for Concurrence Agency Response (Building Work) Form submitted to Sunshine Coast Regional Council for a Referral Agency Response (RAR) dated 14 November 2022.
 - (b) Danya Cook Town Planning Report dated 14 November 2022 submitted with the RAR.
 - (c) Proposal Plans prepared by Suncoast Building Design submitted with the RAR comprising 4 renders (two front and two rear views), Site Plan, Lower Floor Plan, Ground Floor Plan, First Floor Plan, Elevation 1 (Front), Elevation 2 (East), Elevation 3 (Rear), Elevation 4 (West) and a Section. All plans are undated.
 - (d) Council's RAR Information Request dated 1 December 2022.
 - (e) Email from Danya Cook Town Planning to Council 22 February 2023 which provided a response to the Concurrence Agency Information Request and included amended plans dated 7 February 2023.
 - (f) Email from Danya Cook Town Planning to Council 15 March 2023 which included amended plans dated 14 March 2023.
 - (g) Email from Council to Danya Cook Town Planning 20 March 2023 (10.46am).
 - (h) Email from Danya Cook Town Planning to Council 20 March 2023 (2.47pm).
 - (i) Email from Council to Danya Cook Town Planning 21 March 2023 (8.38am).
 - (j) Email from Suncoast Building Design to Council 21 March 2023 (12.23pm) which included amended plans dated 21 March 2023.
 - (k) Email from Council to Suncoast Building Design Town Planning 21 March 2023 (2.43pm).

² Section 253(2) of the Act.

³ Section 253(4) of the Act

- (l) Email from Danya Cook Town Planning to Council 21 March 2023 (5.06pm) requesting Council issue a part approval and part refusal.
- (m) Council's RAR Assessment Report.
- (n) Council's RAR decision notice (CAR22/0880) dated 28 March 2023, which approved the front boundary setback for the proposed garage and directed the assessment manager to refuse part of the Application related to the reduced eastern side boundary setback due to non-compliance with Performance Criteria P2(c) of the QDC. The RAR included the Ground Floor plan dated 21 March 2023 prepared by Suncoast Building Design with notations.
- (o) The decision notice dated 6 April 2023 issued by the assessment manager (JDBA Certifiers) refusing the Application for proposed building work for a Three Storey Dwelling, Garages, Alfresco Area and Pool Detached Dwelling.
- (p) Form 10 – Appeal Notice against the assessment manager's decision to refuse the Application for Building Works for a Three Storey Dwelling, Garages, Alfresco Area and Pool, grounds for appeal and correspondence accompanying the Appeal lodged with the Registrar on 14 April 2023.
- (q) Email from Council to the Registrar 23 June 2023 (4.15pm) providing further information as requested by the Tribunal at the Hearing 23 June 2023.
- (r) Email from JDBA Certifiers to Council 23 June 2023 (4.37pm) requesting Council to consider amended plans attached to the email with garage and boundary wall configuration.
- (s) Email from Council to the Registrar 21 July 2023 providing comments on the amended plans sent to Council 26 June 2023 from JDBA Certifiers and establishing natural ground level, as requested by the Registrar on behalf of the Tribunal 14 July 2023.
- (t) Email from JDBA Certifiers to the Registrar 21 July 2023 providing comment on Council's email of 21 July and requesting a stay of proceedings to allow time for further consideration of design options in light of Council's comments.
- (u) Email from JDBA Certifiers to the Registrar 26 July 2023 requesting the stay of proceedings be for a period of 6 weeks.
- (v) Email from JDBA Certifiers to the Registrar 4 August providing a cadastral surveyor contour survey plan and amended plans dated 4 August 2023.
- (w) Email from JDBA Certifiers to the Registrar 4 August 2023 (3.49pm) requesting if Council could consider side setbacks for the dwelling and boundary fences not previously assessed in the RAR prior to the Tribunal making a final decision.
- (x) Email from JDBA Certifiers to the Registrar 4 August 2023 (4.23pm) requesting if it is possible to make representations to Council regarding the non-complying dwelling boundary setbacks not included in the Council's RAR.
- (y) Email from the Registrar to JDBA Certifiers 10 August 2023 responding to the two emails of 4 August 2023 advising that the Tribunal believes it is confined to considering issues relevant to the decision under Appeal and does not propose to seek representations in relation to extraneous matters.

- (z) Email from Council to the Registrar 6 September 2023 providing further information and missing attachments as requested by the Registrar on behalf of the Tribunal 5 September 2023.
- (aa) Email from Council to the Registrar 16 October 2023 providing further information and missing attachments as requested by the Registrar on behalf of the Tribunal on 10 October 2023
- (bb) Sunshine Coast Planning Scheme 2014 - Dwelling House code.
- (cc) Queensland Development Code - MP1.2 Design and Siting Standards for Single Detached Housing – on Lots 450m² and Over
- (dd) *Planning Act 2016*.
- (ee) *Planning Regulation 2017*.

Findings of fact

The Tribunal makes the following findings of fact:

The Land and surrounding area

- 37. The Land is irregular in shape and approximately 692m² in area. It has a frontage of approximately 25m to Maxwell Court, which is a cul-de-sac.
- 38. The Land slopes steeply in a north westerly direction from the front to the rear of the Land.
- 39. Vehicle access to the Land is obtained via a paved driveway from Maxwell Court at the eastern end of the road frontage.
- 40. The Land contains a detached two storey dwelling and a separate single storey double garage.
- 41. The double garage is setback approximately 1.37m from the Maxwell Court frontage.
- 42. The property (8 Maxwell Court) adjoining the western boundary of the Land does not contain structures while the property (4 Maxwell Court) adjoining the eastern boundary of the Land is a substantial two storey dwelling with living and recreation areas orientated to the ocean views to the east and north of that property.

The Hearing

- 43. The Appellant and the Appellant's representative advised:
 - (a) The Appellants have lived in the dwelling for approximately 2 years and wish to demolish all the existing structures and build a new house.
 - (b) The Appellants have looked at alternatives but the steep slope of the Land is an issue.
 - (c) The height outcomes are a result of the slope of the Land and the length of the structure on the eastern boundary of the Land is a result of the laundry at the rear of the garage.

- (d) Amendments were made to the original proposal to reduce the height and length of the wall. The garage wall was also stepped in 0.2m from the side boundary wall and the laundry wall was stepped in 1m to allow for creepers and trees to be planted to soften the structure.
 - (e) The Appellants' representatives noted the neighbours are 2m away from the boundary and are orientated away from this common boundary towards the east and considered that there was no predominant character of the streetscape.
 - (f) The Appellant indicated a range of options had been considered and amendments made in consideration of the neighbour. Although an alternative design was unlikely to be suitable, the Appellant indicated this would be considered with his representatives.
 - (g) The Appellants' representatives agreed to provide elevations and shadow diagrams that illustrate their assertions with regard to the suitability of the proposal in meeting the performance criteria of the QDC.
44. During the hearing Council's representatives advised:
- (a) Council advised that they have no record of the previous approval of the existing garage built on a reduced front boundary setback but are prepared to accept the existing garage was approved. Council accepted the proposed garage being built to the same front boundary setback as the existing garage.
 - (b) Council considered an almost 5m wall built 1m from the side boundary to be an amenity concern and in conflict with the performance criteria of the QDC.
 - (c) With a 1m setback for the laundry and a garage wall 7.23m long setback 0.2m from the side boundary, Council considered the amenity of the residents on the adjoining property to the east would be adversely impacted.
 - (d) Council considered that buildings and structures with a 6m front boundary setback was the predominant streetscape character.
 - (e) Support for the proposal by the residents of the adjoining property to the east was not provided with the RAR application and Council has had comment from the neighbours raising concerns with the structure on the eastern boundary of the Land
45. During the Hearing discussions were held regarding the location and definition of natural ground level for the purposes of measuring the height of the walls. The Appellants' representative undertook to provide clarification of the location and measurements from natural ground.
46. The Tribunal noted the material submitted with the Notice of Appeal was limited and insufficient to enable the Tribunal to fully consider the proposal. Additional material requested included the RAR application and report submitted to Council, Council's RAR Information Request, the Appellants' representative's response to the RAR Information Request, Council's Assessment report and any other relevant correspondence between Council and the Appellants and their representatives.

Post Hearing

47. The information referred to in paragraphs 45 and 46 was provided to the Tribunal via the Registrar in a series of emails on 23 June 2023, 9 September 2023 and 16 October 2023.

48. JDBA Certifiers sent an email on 23 June 2023 (4.37pm) after the hearing, requesting Council's consideration of an alternate design for the garage and the laundry. Revised Plans were included with the email but the date on the plans remained 21 March 2023. The following amendments were stated in the email:

1. *The Height of the external wall to the laundry has been stepped down significantly so that it is a maximum of 3.521m at the highest point. This represents a reduction in height of 1.319m to address the height concerns that you have.*
2. *The laundry external wall has also been reduced from 2.462m to 2m in length.*
3. *The garage external wall has been lengthened slightly by about 462mm to simplify the design of the laundry roof. The garage external wall is now 7.882m long, and is slightly higher at 4.268m (a slight height increase of 132mm), with an approx. mean height of 3.75m.*

Note that all heights are measured above natural ground, as shown on Elevation 2.

49. By email dated 14 July 2023, to the Council, at the request of The Tribunal, the Registrar requested Council's comment on the amended plans including if Council was supportive of the indicated natural ground level as the basis to calculate the height of the walls.

50. By email dated 21 July 2023 (12.21pm) to the Registrar, Council provided the comments with regard to the amended plans and natural ground level:

Amended Plans:

While the height and length of the laundry wall has been reduced, the garage wall has increased in both length and height with a setback to the adjoining premises of only 0.2m. It is Council's view the amended plans do not demonstrate compliance with P2(c)

Natural Ground Level:

The Sunshine Coast Planning scheme provides the following definition:

Ground Level: The level of the natural ground, or, where the level of the natural ground has been changed, the level as lawfully changed.

Note—lawfully changed ground level is:

- (a) *the as constructed level of the ground in accordance with an operational works development permit;*
OR
- (b) *where a site has been filled to manage a flood hazard, a level no higher than:*
 - (i) *the level of the defined flood event (DFE) or the defined storm tide event (DSTE) for the site; or*
 - (ii) *if the DFE or DSTE have not been modelled for the area, the highest recorded flood level or storm tide inundation level for the site; or*
 - (iii) *the level determined by the Council, in all other circumstances.*

Council's consistent interpretation of 'lawfully changed' ground level is limited to the 'as constructed level of the ground in accordance with an operational works permit'.

Ground level is the level of the land at the time the original estate was subdivided and roads created as determined by a cadastral surveyor, or if this level is not known, the natural level of the ground or probable natural level of the ground as determined by a cadastral surveyor.

To try to determine if the levels shown on the plans are accurate, assessing officers referred the proposal plans to our 3D Project Officer in our Urban Design and Architecture Team. The team has access to the Council's Aerial Laser Survey. The following assessment is provided:

The levels shown on the applicant's plans are consistently out in that they are about 1.7 metres higher than any levels in Council's aerial laser surveys over the last nine years. The levels on the site plan nominate their datum as a nail in the kerb as having a level of 61.68 AHD, this and the contours generally are approximately 1.7m higher than any of the last 3 aerial surveys council has on record. Further, two other applications in the same street have levels which were not out by 1.7 metres. It cannot be determined why there is a discrepancy.

As such, to determine the natural ground level it is suggested a contour survey is required, certified by a registered cadastral surveyor. It is noted this will also ensure the dwelling house is not constructed over the height limit of 8.5m for the site (which would require an impact assessable application).

51. By email 21 July 2023 (2.15pm) to the Registrar, JDBA Certifiers:

- (a) Requested 'a stay of proceedings to allow time for further consider design options to be considered in light of Council's comments' but did not advise a timeframe.
- (b) Advised the Appellant 'is willing to change the garage wall design back to the previous revision (on the plans dated 21.03.23) which had the wall at a maximum height of 4.136m and a length of 7.42m. The Laundry space would remain at the reduced height shown on the plans dated 23.06.23.'
- (c) Advised that 'a Cadastral contour survey has been carried out, and the survey data has been superimposed on the architectural plans.' and further 'a copy of the actual Cadastral Surveyors plan to provide more clarity in regards to this.' will be provided.
- (d) Noted that:

given that we are assessing the Performance Criteria of the QDC MP1.2, the correct definition of 'natural ground surface' that should be used is that which is contained in MP1.2, not the definition in the Planning Scheme as Council contends. The definition in the QDC MP1.2 is:

- i. *Natural Ground Surface, for a lot, means –*
 - 1. *The ground level of the lot on the day the first plan of survey showing the lot was registered; or*
 - 2. *If the natural ground level on the day mentioned in paragraph (a) is not known, the natural ground surface as determined by the building certifier.*

- (e) *Advised agreement 'that the most suitable way to determine the natural ground surface is to rely on the contour survey that was certified by the registered cadastral surveyor. This information will be available shortly.'*
52. By email 26 July 2023 to the Registrar, JDBA Certifiers requested a stay of 6 weeks.
53. By email 26 July 2023 (3.54pm) to JDBA Certifiers, the Registrar advised that the Tribunal granted leave for the provision of the information and proposed revised design.
54. By email 4 August 2023 to the Registrar, JDBA Certifiers provided:
- (a) A Cadastral Surveyor Contour Survey plan, showing natural ground level;
 - (b) Amended architectural plans dated 4 August 2023 indicating:
 - i. the Surveyor's natural ground contour information.
 - ii. the height of the garage wall adjusted to match the heights shown on the original plans dated 21.03.23 the subject of the Appeal.
 - iii. the height of the laundry wall reduced to a maximum of 3.497m at the highest point.
 - iv. the length of the laundry wall reduced from 2.462m to 1.97m in length.
55. By email 4 August 2023 to the Registrar, JDBA Certifiers requested that prior to the Tribunal reaching a final decision, could Council consider proposed eastern and western side setbacks for the dwelling and setbacks for the boundary fences. The email states that 'the original Council Referral Agency Response (copy attached) did not make mention of the boundary setbacks to the dwelling and boundary fences. However, these setbacks have been part of the design since the Concurrence Agency Application was lodged with Council in March of this year.'
56. By email 4 August 2023 (4.23pm) to the Registrar, JDBA Certifiers noted that the garage is the subject of the Appeal however the main dwelling side boundary setbacks also do not comply and requested if it is possible to make representations to Council regarding the non-complying dwelling boundary setbacks not included in the Council's RAR.
57. By email 10 August 2023 to JDBA Certifiers, the Registrar responded to both JDBA Certifiers emails of 4 August as follows:
- The Tribunal believes that it is confined to considering issues relevant to the decision under appeal.*
- The Tribunal's understanding is that the dwelling side boundary setbacks are extraneous to the decision under appeal and on that basis does not propose to seek representations in relation to those matters.*
- The Tribunal will now proceed to finalise its decision based on the available information.*
58. By email 6 September 2023 to the Registrar, the Council provided further information and missing attachments as requested by the Registrar on behalf of the Tribunal 5 September 2023.
59. By email 16 October to the Registrar, the Council provided further information and missing attachments as requested by the Registrar on behalf of the Tribunal on 10 October 2023.

Reasons for the decision

60. The Tribunal accepts the Appellants' representative's interpretation that the relevant definition in relation natural ground level is the definition included in the QDC.
61. The Tribunal notes that multiple amended plans were proposed both prior to the RAR decision by Council and after the Hearing held 23 June 2023.
62. The final plan series upon which this decision is based were provided to the Registrar 4 August 2023 and were prepared by Suncoast Building Design, dated 4 August 2023 and comprised the following:
- 4 renders (two front and two rear views),
 - Site Plan,
 - Lower Floor Plan,
 - Ground Floor Plan,
 - First Floor Plan,
 - Elevation 1 (Front),
 - Elevation 2 (East),
 - Elevation 3 (Rear) and
 - Elevation 4 (West).
 - Section
63. This decision has been confined to the matters the subject of this Appeal namely the assessment manager's refusal of the reduced setback to the eastern side boundary of the Land for the garage and laundry walls.
64. The 4 August Plan series proposed the following with regard to the garage and laundry walls within the 1.5m setback stipulated in A2(a) of the QDC for walls less than 4.5m in height:
- Garage wall – 7.420m long (on the ground floor plan) or 7.521m (on Elevation 2), 0.2m setback from the eastern boundary of the land, height ranging from 3.145m to 4.136m.
 - Laundry and storage wall– 2.462m long, 1.012m setback from the eastern boundary of the Land, height ranging from 4.200m to 3.497m.
 - As there is a conflict between the length of the garage wall shown on the Ground Floor Plan and Elevation 2 the total length of wall within the 1.5m setback is either 9.983m or 9.882m.
65. Performance Criteria P2 of the QDC states as follows:
- P2 Buildings and Structures –*
- (a) provide adequate daylight and ventilation to habitable rooms; and*
 - (b) all adequate light and ventilation to habitable rooms of buildings on adjoining lots.*
 - (c) do not adversely impact on the amenity and privacy of residents on adjoining lots.*
66. The Tribunal is of the opinion that the combined length of proposed garage, laundry and storage wall in conjunction with the range of heights and the reduced eastern side boundary setbacks would adversely impact on the amenity of residents on the adjoining lot to the east of the Land.

67. The Tribunal finds that the proposed garage, laundry and storage would conflict with P2(c) of the QDC.
68. The Appellants have not discharged their onus.
69. The Tribunal upholds the decision of the assessment manager to refuse part of the Application.

Kim Calio
Development Tribunal Chair

Date: 27 November 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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Department of Energy and Public Works
GPO Box 2457
Brisbane Qld 4001

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