



Building and Development Tribunals – Decision

Integrated Planning Act 1997

Appeal Number:	03-09-066
Applicant:	Trevor Gerhardt
Assessment Manager:	Sunshine Coast Regional Council (Council)
Concurrence Agency (if applicable):	N/A
Site Address:	10 Seamount Quay, Noosaville and described as Lot 85 on RP 842151 – the subject site

Appeal

Appeal under section 4.2.9 of the *Integrated Planning Act 1997* (IPA) against the decision, dated 20 August 2009, by Council as the assessment manager to refuse a building development application relating to a new building structure, namely a roofed patio, which has been constructed within 1.5m side boundary clearance.

Date of hearing:	10.00 am – Monday, 14 September 2009.
Place of hearing:	Sunshine Coast Regional Council offices, 9 Pelican Street, Tewantin
Tribunal:	Georgina J Rogers – Chairperson
Present:	Trevor Gerhardt – Applicant Gerard Leddin – Council’s representative

Decision:

The Tribunal, in accordance with Section 4.2.34 of IPA **changes** the decision appealed against and **directs** the Council to approve the siting of the roofed patio (so far as it relates to the subject of the appeal), subject to compliance with the following conditions:

1. The existing building structure (roofed patio) is not to be enclosed at any stage beyond that shown on the current building application plans.
2. The roofed patio is not to be increased in length adjacent to the adjoining side boundary within the allowable side boundary setback being nominally 1.5m.
3. The decision held in this application is separate to any other applications which may be made over the property.

Background

The Tribunal conducted an off-site hearing at the Council chambers. After the hearing the opportunity was taken to view the development and character of the neighbourhood. Access to the property was approved and obtained by the building certifier. All parties were invited to attend, however only the building certifier and referee took the opportunity.

The neighbourhood has low traffic volume and is well established with minimal vegetation. The character of the immediate neighbourhood is well-established residential.

The new building structure (roofed patio) and unroofed deck extension, subject to the appeal, have been fully constructed to the rear of the site. The roof of the patio is located approximately 300mm from the right side boundary alignment to its outermost projection.

The building structure (roofed patio) is shown as 3.55 metres wide and parallel to the northern side boundary. The roofed patio has been constructed to match the existing dwelling with roof pitch and materials and the columns have been rendered to match the dwelling. By appearance every effort has been made to integrate the patio so that it looks part of the overall building structure and appearance. This has been successfully achieved.

The plans do not show any intention to enclose the roofed patio structure.

The following correspondence and documentation was reviewed and taken into consideration:-

- 20 August 2009 – Council Decision Notice Refusal.
- IDAS forms – Part A (common details); Part E (building &/or operational works assessable against a planning scheme); and IDAS Assessment checklist.
- 14 October 2008 – Max Watterson & Associates – consulting surveyor & development consultants – application for minor building works (boundary relaxation) to SCRC.
- Plans – 1107S (1-9) 3/12/2007.

Based on the above information provided it was determined that the building structure (roofed patio) was properly lodged with the Private Certifier for approval. A concurrence agency application was made to the Council, which was subsequently refused in the Decision Notice issued on 20 August 2009.

The applicant appealed the decision of the Council to the Building and Development Tribunals on 24 August 2009.

Material Considered

The material considered in arriving at this decision comprises:

- 'Form 10 – Notice of Appeal' and Grounds for Appeal contained in letter dated 20 August 2009.
- Decision notice from Sunshine Coast Regional Council advising of the refusal of the development application, dated 20 August 2009.
- Various written correspondence between Council and the applicant.
- Site plan, plans and elevations of the building structure (roofed patio).
- Verbal submission by the Applicant and reasons for provision of building structure (roofed patio) to be located within the required 1.5 metre setback to the side boundary setback.
- Verbal submission by the Council and reasons for provision of building structure (roofed patio) to be located within the required 1.5 metre setback to the side boundary setback.
- Verbal submissions by Council's representative at the hearing outlining Council's assessment of the application.
- Photographs of subject and surround neighbourhood.

- The IPA.
- The *Building Regulation 2006*.
- The Queensland Development Code (QDC).
- Relevant sections of the former Caloundra City Council's planning scheme.

Findings of Fact

The Tribunal makes the following findings of fact:

- Council wrote to the applicant on 20 August 2009, (Reference: 2008/1796) refusing the application for the building structure (roofed patio) to be located within the required 1.5 metre setback to the side boundary.
- An on site visit was undertaken by the tribunal with the building certifier after the meeting (Council despite invitation did not attend). Plans provided showing the location of the building structure (roofed patio) to be located within the required 1.5 metre side boundary setback. The following was able to be determined:-
 - The site is rectangular in shape and has the rear boundary as determined by an existing revetment wall within an existing canal.
 - The dominant aspect of the site overlooks the canal and is consistent with the construction within the area.
- Vehicle access is via the subject street, and the property has a frontage of 20.0 metres. The subject site consists of one lot and existing dwelling.
- The plans indicate that the proposed building structure (roofed patio) is setback 200 mm from the side boundary for the subject site.
- The neighbourhood is well established with newer dwellings.
- The roofed patio in its current form and location benefits the use of the external recreation area by providing shading. It does not visually intrude upon the neighbourhood nor create a space which would provide any further nuisance to the neighbourhood as the space would be utilized for recreational activities with or without the structure in place.

Reasons for the Decision

MP1.2 of the QDC sets out Performance Criteria (P2) in relation to siting requirements which a local government must consider and be satisfied that the application meets the intent of each criterion for that application, and that the development does not unduly conflict with the intent of each of the Performance Criteria.: ***P2 Building and Structures –***

(a) *Provide adequate daylight and ventilation to habitable rooms*

From the plans provided and on site inspection, the building structure (roofed patio) is located within the required side boundary setback for the subject site. It is adjacent to an existing 1.8 m high closed panel fence and does not affect the provision of adequate daylight and ventilation to the habitable rooms of the existing dwelling.

(b) *Allow adequate light and ventilation to habitable rooms of buildings on adjoining lots*

The building structure (roofed patio) is located within the required side boundary setback for the subject site. It is adjacent to an existing 1.8 m high closed panel fence and does not affect the provision of adequate daylight and ventilation to the habitable rooms of the adjoining dwellings.

Therefore the structure will have no impact on the light and ventilation of habitable rooms on adjoining lots.

(c) *Do not adversely impact on the amenity and privacy of residents on adjoining lots*

The building structure (roofed patio) is located within the required side boundary setback for the subject site. It is adjacent to an existing 1.8 m high closed panel fence. It does not affect the amenity and privacy of residents on the adjoining or adjacent lots.

A2 Building and Structures

(d) Side and rear boundary clearances – Height in metres

The building structure (roofed patio) is located within the required side boundary setback for the subject site. It is adjacent to an existing 1.8 m high closed panel fence. The overall height is less than 3.5m at the boundary and less than 9.0m in length. The roof is consistent with the roof of the existing dwelling and its lowest point is approximately 2.8m in height at 200mm away from the side boundary.

The overall impact of the structure is considered to have minimal affect on the neighbourhood. Therefore, the impact of the structure in its proposed location is minimal and within reasonable location of the setback requirements.

Based on the above facts it is considered the appeal is upheld.

The decision held in this application is separate to any other applications which may be made over the property at this time or in the future.

1. QDC provides Performance Criteria and some Acceptable Solutions. The Acceptable Solutions are to provide reasonable and achievable outcomes. The local government is in a position to vary the Acceptable Solutions in relation to an application for siting requirements and to assess the application based on its merits.
2. In assessing the criteria from this part of the Code in relation to the building structure (roofed patio) located within the required 1.5 metre setback to the side boundary setback. The Tribunal found that there were grounds to allow for the building structure (roofed patio) in the location shown.
3. The extent of non-compliance with the QDC Acceptable Solution is minimal and does not, in the Tribunal's opinion, detract from the achievement of the relevant Performance Criteria. In addition, the purpose of the QDC is to provide good residential and neighbourhood design and acceptable amenity to resident is not compromised.

Georgina Rogers
Building and Development Tribunal Chair
Date: 24 December 2009

Appeal Rights

Section 4.1.37 of the *Integrated Planning Act 1997* provides that a party to a proceeding decided by a Tribunal may appeal to the Planning and Environment Court against the Tribunal's decision, but only on the ground:

- (a) of error or mistake in law on the part of the Tribunal or
- (b) that the Tribunal had no jurisdiction to make the decision or exceeded its jurisdiction in making the decision.

The appeal must be started within 20 business days after the day notice of the Tribunal's decision is given to the party.

Enquiries

All correspondence should be addressed to:

The Registrar of Building and Development Tribunals
Building Codes Queensland
Department of Infrastructure and Planning
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