



APPEAL
Integrated Planning Act 1997

File No. 3-07-082

BUILDING AND DEVELOPMENT TRIBUNAL - DECISION

Assessment Manager: The Certification Professionals

Concurrence Agency: Pine Rivers Shire Council

Site Address: *withheld*—"the subject site"

Applicant: *withheld*

Nature of Appeal

Appeal under Section 4.2.7(2)(b) of the *Integrated Planning Act 1997* against the decision of The Certification Professionals, based on a concurrence agency response from Pine Rivers Shire Council, pursuant to Section 9(a), Schedule 2, Table 1 of the *Integrated Planning Regulation 1998*, to refuse an application for a street alignment setback relaxation to the road frontage to the subject site, for the purposes of erecting a shed.

Date and Place of Hearing: 10.30 am on Monday 21 January 2008 at the offices of Pine Rivers Shire Council, 220 Gympie Road, Strathpine.

Tribunal: Dennis Leadbetter Chairperson
Ernie Harvey General Referee

Present: Applicant
John Reeve The Certification Professionals
Grant Cotterill Pine Rivers Shire Council Representative

Decision

The Tribunal **confirms** the appeal by the applicant and **sets aside** the decision of The Certification Professionals, dated 8 January 2008, to refuse the building development application and replaces it with the following decision:-

The building development application is approved subject to:-

1. The proposed class 1 building, as indicated on revised drawing numbered 28109, sheet 1 of 1, as prepared by Northside Design and Drafting, dated March 2008, and received by the Tribunal on 14 March 2008, may be erected in the location indicated on that drawing with minimum boundary clearances to the road boundaries of 3m, measured to the outermost projection, and

the class 10 vehicle accommodation to the eastern end of the dwelling, which may be built to within 2.3m of the *withheld* alignment and to comply with the Queensland Development Code Part 12 in relation to side alignment setbacks.

2. The Appellant shall obtain all necessary approvals as appropriate before proceeding with the construction of the proposed class 1 building, including but not limited to building approval, sewerage approval.

Background

The existing dwelling on the site is inadequate to provide adequate accommodation for the applicant's family; they require additional habitable space to provide additional study and bedroom space.

Council's planning scheme allows for a road alignment setback of 3m, and the limited available space on the site together with the layout of the existing dwelling provide limited alternative positions.

The applicant's original submission was to construct a class 10 building closer to the alignment to maintain an existing single vehicle accommodation.

After considerable discussion at the hearing, and explaining the appropriate legislation to the applicant, the Tribunal decided to adjourn the hearing and allow the appellant to submit revised drawings for the Tribunal to reconsider his proposals, and gave the appellant a period of six weeks from the date of the hearing.

Material Considered

1. 'Form 10 – Notice of Appeal' and grounds of appeal contained therein;
2. 'Form 18 – Notice of Election' provided to the Registrar 16 January 2008 from Pine Rivers Shire Council;
3. Drawings and photographs submitted with the application;
4. Letters of support from adjoining neighbours;
5. Concurrence agency response from Pine Rivers Shire Council dated 29 November 2007, not to grant the siting variation;
6. Decision Notice from The Certification Professionals dated 8 January 2008, refusing the siting variation;
7. Verbal submissions from the applicant at the hearing;
8. Verbal submissions from Council's representatives at the hearing;
9. The *Integrated Planning Act 1997*;
10. The *Integrated Planning Regulation 1998*;
11. The Queensland Development Code (QDC) Part 12; and
12. Further drawings submitted by the applicant.

Findings of Fact

The Tribunal makes the following findings of fact:

- The existing single story dwelling was located closer than 3m to the *withheld* alignment and 4.7m to the *withheld* alignment, measured to the outer most projection at the nearest point to the respective alignment;
- The land had a gentle slope to the south;
- The site was an irregular truncated triangular shaped site, being bounded on the north, west and southern sides by roads;
- Because of the site shape and being bounded by roads on three sides there were limited siting positions for any extensions;
- The proposed development meets the requirements of the Pine Rivers Planning Scheme in terms of road alignment setbacks.

There is no further concurrence agency requirements.

Reason for the Decision

Part 12 of the QDC provides **Performance Criteria** and an **Acceptable Solution**, but allows the local government to vary the application of siting requirements to take account of alternative solutions.

In assessing the criteria from this part of the Code the Tribunal considered the nature and use of the proposed structure and its siting on this allotment, and also the developments existing and possible on adjoining sites.

The Tribunal considers the reduced road alignment setback being sought would have had a substantial impact on the locality, because of the structure's size and close proximity to a very visible streetscape. The Tribunal also considered that a suitable structure could be developed on the site, which would be in sympathy with the existing dwelling, and not be detrimental to the streetscape.

The Tribunal found there were no reasonable grounds to vary the street alignment setback of 3m provided in Council's planning scheme and asked the applicant to submit further drawings for a building, providing the required accommodation and meeting those setbacks.

The revised drawing numbered 28109, submitted on 14 March 2008, provides setbacks in excess of the minimum required under Council's planning scheme, and the Tribunal approved the application.

Dennis Leadbetter

Dip. Arch. QUT; Grad. Dip. Proj. Man QUT; METM UQ.

Building and Development Tribunal Chairperson

Date: 2 April 2008

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
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