



Building and Development Tribunals—Decision

Integrated Planning Act 1997

Appeal Number:	3—09-037
Applicant:	Boyd Hall
Assessment Manager:	Rockhampton Building Approvals
Concurrence Agency:	Rockhampton Regional Council
Site Address:	241 Kason Street, Koongal, and described as Lot 60 on RP 607315 — the subject site

Appeal

Appeal under section 4.2.9 of the *Integrated Planning Act 1997* (IPA) against the decision, dated 29 April 2009, by the assessment manager Rockhampton Building Approvals on instruction from the concurrence agency Rockhampton Regional Council to refuse an application relating to a proposed building structure (new deck) constructed within the required front boundary setback for the subject site.

Date of hearing:	12.30 am — Thursday, 28 May 2009
Place of hearing:	The subject site
Tribunal:	Georgina J Rogers – Chair Bruce Shephard - Member
Present:	Boyd Hall – Applicant Bruce Krenske – Building Certifier, Rockhampton Building Approvals Wayne Sapwell - Rockhampton Regional Council representative

Decision:

The Tribunal, in accordance with section 4.2.34 (2)(c) of IPA **sets aside** the decision appealed against to refuse the development application for building works, namely a new deck to the front of the existing dwelling and **directs** the assessment manager to re-assess the development application with the reduced front set back of 3.0mm to outermost projection subject to the following conditions:-

1. The proposed building structure (deck) is not to be enclosed at any stage beyond that shown on the current building application plans.
2. Visual screening is to be provided on the western side of the proposed building structure (deck) to adequately screen from neighbouring views.
3. No building or structure over 2m high is to be built within a 9m by 9m truncation at the corner of the 2 road frontages.
4. The decision held in this application is separate to any other applications which may be made over the

property.

Background

During the on-site hearing, the Tribunal observed that the neighbourhood has low traffic volume and is a well-established residential area with minimal vegetation. Dwellings in the neighbourhood appear to have varying setbacks due to extensions, some of which have not been approved by Council.

The site is a corner lot fronting Mason and Shepherd Streets. It is also a narrow lot having a frontage of 14.665m to Mason Street and 37.981m to Shepherd Street, with a corner truncation. Mason Street in this case would appear to be the secondary street fronting the site.

The Mason Street frontage overlooks existing low lying outdoor playing fields used by the public. Onsite car parking is accessed via Mason Street. It does not appear this will be affected by the proposed new deck which will be built over the driveway.

The proposed new building structure (deck), subject to the appeal, is to be constructed fronting the road boundary alignment of Mason Street. It is shown on plans to be 7.55m long fronting Mason Street and 3.60m wide fronting Shepherd Street. The height is consistent with the height of the existing dwelling. The roof pitch is also shown to correspond with that of the existing dwelling.

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

- **5 May 2009** – Bell Thomasson Builders (the applicant acting as representative) – Appeal to the Building and Development Tribunals.
- **29 April 2009** – Rockhampton Building Approvals – Decision Notice (refusal).
- **12 February 2009** – Rockhampton Regional Council – Refusal advice to B. Hall.
- **16 January 2009** - Form 1 Development Application – Parts A & B lodged by B. Hall.

As a result of the assessment manager's refusal of the building development application (based on concurrence agency advice), the applicant choose to appeal the decision to the Building and Development Tribunals by Notice of Appeal, received 5 May 2009.

Material considered

The material considered in arriving at this decision comprises:

1. Form 10 – Notice of Appeal' and Grounds for Appeal received 5 May 2009.
2. Decision notice from the assessment manager advising that the concurrence agency directed refusal of the development application, dated 29 April 2009.
3. Site plan, plans and elevations of the building structure (deck).
4. Verbal submissions from the applicant and reasons for provision of building structure (deck) to be located within the required 6.0m setback to the secondary road boundary setback fronting Mason Street.
5. Verbal submissions from the assessment manager, including reasons why the building structure (deck) should be located within the required 6.0m setback to the secondary road boundary setback fronting Mason Street.
6. Verbal submissions from Council's representative (as concurrence agency) at the hearing outlining Council's assessment of the application and reasons for not locating the deck within the required road boundary setback to Mason Street.
7. IPA.

8. *Building Act 1975 (BA)*
9. *The Building Regulation 2006.*
10. The Queensland Development Code (QDC).

Findings of Fact

The Tribunal makes the following findings of fact:

1. It was agreed by all parties that the current plan scheme for the area (Rockhampton City Plan) contains no siting provisions and therefore the QDC M.P. 1.2 was applicable to the proposal.
2. The Council referred to Council Policy 643 regarding the siting. Point 2 of this policy however, does not prevent front road boundary setbacks less than 4.5m. Section 33(5) of the BA provides that alternative provisions altering the assessment provisions of the QDC boundary clearances can not be made other than under a planning scheme, although the Tribunal recognises that the policy is still relevant for Council's considerations as a concurrence agency in this matter.
3. The proposed structure is of a type and form common to the area.
4. The visual screen to the western side, cut back front overhang and reduced deck width will ensure the proposed structure complies with the performance provision of P1 and P2 of the QDC M.P. 1.2
5. The proposed structure is consistent with other similar structures within the neighbourhood which have received Council approval on lots with similar size, shape and outlook.
6. Based on the above information provided it was determined that the building structure (deck) was properly lodged for approval.

Reasons for the Decision

1. QDC MP1.2 (Design and siting standard for single detached housing – on lots 450m2 and over)

MP1.2 of the QDC sets out Performance Criteria (P1 & 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. In addition, the development must not unduly conflict with the intent of each of the Performance Criteria:-

P1 – Design and Siting of Buildings and Structures

(a) The bulk of the building

From the plans and photographs provided and on-site inspection, the building structure (deck) will not significantly increase the bulk of the existing dwelling.

The proposed extension will be located within the required 6.0m setback for the road boundary fronting Mason Street, which is the narrow street frontage of the site. On the opposite side of the site in Mason Street are public sports fields. Therefore the extension would have minimal impact on the existing bulk of the building.

(b) Road boundary setbacks of neighbouring buildings or structures

The road boundary setbacks of neighbouring buildings and structures within the area appear to vary within the required road boundary setback of 6.0m. The reduced setback would not appear to be out of character with those within the immediate neighbourhood.

(c) The outlook and views of neighbouring residents

The site is located on the corner of Mason and Shepherd Streets and overlooks public sporting fields. Therefore the outlook and views of the neighbouring residents would appear not to be significantly affected by the proposed deck extension.

(d) Nuisance and safety to public

The building structure (deck) in its proposed location will have no impact on the safety of the public nor provide any potential nuisance to the neighbourhood.

P2 Building and Structures

(a) Provide adequate daylight and ventilation to habitable rooms

From the plans provided and on-site inspection, the proposed building structure (deck) will be located within the required 6.0m setback to the road boundary. It will be attached to the existing dwelling on site and does not affect the provision of adequate daylight and ventilation to the habitable rooms of this dwelling.

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

The building structure (deck) in its proposed location will not affect the provision of adequate daylight and ventilation to the habitable rooms of the existing 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 (deck) when constructed to the setback of 3.0m to the Mason Street road boundary alignment would have minimal impact on the privacy of residents on the adjoining or adjacent lots.

2. 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.
3. The 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.
4. In assessing the criteria from this part of the Code in relation to the building structure (deck) being located within the suggested relaxation for 6.0m setback to the road boundary the Tribunal found that there were grounds to allow for the existing structure to proceed in the proposed location with a reduced setback to 3.0m from the road boundary fronting Mason Street.
5. The extent of non-compliance with the QDC Acceptable Solution is greater than acceptable and an alternate solution for the setback to be minimum 3.0m would in the Tribunal's opinion, satisfactorily achieve a solution to the relevant Performance Criteria. In addition, the purpose of the QDC is to provide good residential and neighbourhood design while acceptable amenity to residents is not compromised.

Georgina Rogers
Building and Development Tribunal Chair
Date: 1 July 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:

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