



## Building and Development Tribunals—Decision

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### *Integrated Planning Act 1997*

<b>Appeal Number:</b>	<b>3—09—051</b>
<b>Applicant / Appellant:</b>	Brian and Jody Williams
<b>Assessment Manager / Respondent:</b>	Rockhampton Building Approvals
<b>Concurrence Agency:</b> (if applicable)	Rockhampton Regional Council
<b>Site Address:</b>	1 Corella Court, Norman Gardens and described as Lot 13 on RP620799 — the subject site

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### **Appeal**

Appeal under section 4.2.24 of the *Integrated Planning Act 1997* (IPA) against the decision of the assessment manager, Rockhampton Building Approvals, dated 27 May 2009, to refuse a development application for a proposed structure (new pool room and store addition) constructed within the required secondary frontage boundary setback for the subject site. This refusal was based on a concurrence agency response from Council issued on 15 April 2009.

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<b>Date of hearing:</b>	11:00am – Monday, 3 July 2009
<b>Place of hearing:</b>	The subject site
<b>Tribunal:</b>	Bruce Shephard – Chair
<b>Present:</b>	Brian Williams – Applicant / appellant and owner Jody Williams – Applicant / appellant and owner Bruce Krenske – Building Certifier for the assessment manager

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### **Decision:**

The Tribunal, in accordance with section 4.2.34 of the IPA **sets aside** the decision appealed against to refuse the development application for building works, namely a new pool room and basement store addition proposed to be constructed in the secondary frontage set back and **directs** the assessment manager to approve the building development application subject to the following conditions:

1. All other relevant building assessment provisions applicable to the building development application are to be complied with.
2. The external finishes of the proposed pool room and basement store are to match the existing dwelling.
3. The existing garage is to be painted in matching colours to the existing dwelling.

4. Existing fencing and vegetation to Kingfisher Parade is to remain.

**NOTE:** The decision held in this application is separate to any other applications which may be made over the property.

## **Background**

The Tribunal conducted an on-site hearing and the opportunity was taken to view the development and character of the neighbourhood.

The neighbourhood is a low density residential area, well established with low traffic volume and generally minimal vegetation. In the neighbourhood there are many examples of class 10 buildings and structures within both the front and side setbacks.

The subject site is a corner lot with the main frontage to Corella Court and secondary frontage to Kingfisher Parade. On the subject site there is a two storey rendered brick veneer detached dwelling, an existing garage in the corner fronting Kingfisher parade set back approximately 300 to 500mm and a pool constructed behind the garage.

The proposed pool room and basement store are proposed to be of the same finish as the existing dwelling, with the existing shed to be painted similar colours. The proposed location is to be at the secondary frontage of Kingfisher Parade with a setback of 1700mm to the outer most projection and 2000mm to the wall as shown in the plans on sheet 4 of 6.

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

- 15 April 2009 - Rockhampton Regional Council's application for local government decision on a building matter.
- 22 April 2009 - Rockhampton Regional Council's approval to build in the influence of the sewer main.
- Undated IDAS forms part A and B.
- 27 May 2009 - Rockhampton Building Approvals Decision Notice (refusal) of the building application.
- 11 May 2009 - Plans of the proposed building referred to as Job No. 09.12, sheets one to six.
- 22 June 2009 - Building and Development Tribunals appeal notice 10 and accompanying letter and photos.
- 21 July 2009 - Letter from Rockhampton Regional Council claiming the appeal was lodged outside of the allowable time.

Based on the above information provided it was determined that the proposed building was lodged for a concurrency agency response with the Rockhampton Regional Council for the encroachment into the secondary setback. The application was refused with what the Council called a "Local Government decision on a building matter.

The building development application was subsequently properly made with Rockhampton Building Approvals as the assessment manager who then proceeded to refuse the application based on the concurrency agency advice.

The appellant appealed the decision of the assessment manager to the Building and Development Tribunals on 22 June 2009.

## **Material Considered**

The material considered in arriving at this decision comprises:

1. "Form 10 – Notice of appeal" and attached letter and photos.
2. Decision notice from the assessment manager advising of the refusal of the building development application.
3. Plans for the proposed structure Job No. 09.12 sheets one to six.
4. Correspondence from Council as the concurrence agency, dated 15 April 2009, refusing approval for the siting of the proposed building.
5. Correspondence from Council dated 21 July 2008, stating the appeal has not been lodged within the allowed 20 day period.
6. Inspection of the site on 3 August 2009.
7. Verbal submissions by the applicant and reasons for provision of the proposed building to be located within the required six metre secondary frontage setback fronting Kingfisher Parade.
8. Verbal submissions by the assessment manager and reasons for provision of the proposed building to be located within the required six metre secondary frontage setback fronting Kingfisher Parade.
9. *Building Act 1975*.
10. *Building Regulation 2006*.
11. IPA.
12. *Integrated Planning Regulation 1998*.
13. Queensland Development code Mandatory Part 1.2;

### **Findings of Fact**

The Tribunal makes the following findings of fact:

1. The current planning scheme for the area (Rockhampton City Plan) contains no siting provisions for Class 1 or 10 buildings and therefore the QDC M.P. 1.2 was applicable to the proposal.
2. The council's "Application for local government decision on a building matter" is in fact a Concurrence Agency response.
3. The existing buildings on the allotment have different setbacks from the Kingfisher Parade, Dwelling approximately six metres and the garage approximately 300 to 500 mm;

### **Reasons for the Decision**

The appeal was lodged within 20 day period of the date of Rockhampton Building Approvals Decision Notice, as the assessment manager's dated being 27 May 2009. The Council is a concurrence agency for siting issues as per schedule 2 of *Integrated Planning Regulation 1998*.

Although, Council submitted in writing to the Tribunal that it did not have jurisdiction to hear the matter, the Tribunal respectfully disagrees with Council. In the opinion of the Tribunal it is the date of the assessment manager's decision (in reliance upon the concurrence agency advice of Council) which triggers the appeal rights and subsequent period to appeal.

Although Council, as the concurrence agency, was sent notification by the Registrar that they may elect to be a co-respondent to the appeal the notification was not received within the prescribed timeframe. Instead, Council submitted that the Tribunal did not have jurisdiction and only after notification from the Registry that the matter would be put to the Tribunal did Council seek to complete the Notice of Election out of time.

The Tribunal is also of the opinion that the subject site is within a locality that is of a mixed built form, from which the subject proposal will not detract and the proposal will have minimal if any visual impact on

neighbours.

For the above reason, the Tribunal considers that the proposal satisfies the Performance Criteria of the QDC MP 1.2, P1 to P7 and has decided to set aside the decision of Council acting as concurrence agency.

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**Bruce Shephard**  
**Building and Development Tribunal Chair**  
**Date: 19 August 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  
PO Box 15009  
CITY EAST QLD 4002  
**Telephone (07) 3237 0403 Facsimile (07) 3237 1248**