



Building and Development Tribunals—Decision

Integrated Planning Act 1997

Appeal Number:	3—08—050
Applicant:	<i>Withdrawn</i>
Assessment Manager:	Australian Building Codes Certification
Concurrence Agency: (if applicable)	Brisbane City Council
Site Address:	<i>Withdrawn</i> – the subject site

Appeal

Appeal under section 4.2.7(2)(b) of the *Integrated Planning Act 1997* (IPA) and section 9(a) of the Integrated Planning Regulation 2006 against the decision of Australian Building Codes Certification based on the concurrence agency response issued by Brisbane City Council to refuse a Development Application for building works in regard to the siting of a garage.

Date of hearing:	9am, Thursday 24 July 2008
Place of hearing:	The subject site
Tribunal:	Mr John Panaretos – Chair Ms Gillian Adams – General Referee
Present:	<i>Withdrawn</i> – Applicant <i>Withdrawn</i> – Applicant's Partner <i>Withdrawn</i> – Tenant Kevin McLeish – Brisbane City Council Representative Stephen Cuthbert – Brisbane City Council Representative

Decision:

The Tribunal, in accordance with section 4.2.34(2)(a) of the IPA, **confirms** Brisbane City Council's concurrence agency response to direct the refusal of a Building Development Application for a shed less than 3 m from a secondary street frontage, and the appeal is dismissed.

Background

This application is for construction of a steel Class 10A building, 6 m by 10 m, on a corner allotment. The building is proposed to be sited with a setback of 1.5 m from the secondary street frontage and 1.45 m from the side of the house. The proposal is for a structure with 2.7 m high walls, pitched roof and dutch gable at front, coloured a light brown to match the existing garage door of the house.

Subject to the Queensland Development Code (QDC) MP1.2, Acceptable Solution A1 (d) and (b), the minimum setback to a road alignment is normally 6 m. In this case, Council approved a blanket alternative solution – 3 m street setback - for the area based on “Proposed Building Envelopes” plan no. Q919-1797 drawn by Quinn & Trent, adopted 25 March 1998.

An application was originally sought for alternative solutions for both street setback and site cover. However, a recalculation of site cover by relevant parties has revealed that it complies with the QDC Acceptable Solution and is no longer in dispute.

Application material described the building as a “garage” but the Applicant firmly established at the hearing that the building would only be used as a storage shed and no driveway was proposed.

Various modifications were discussed at the hearing with a view to minimising the aesthetic impact of the building in the streetscape, some of which were either acceptable to, or proposed by, the Applicant:

- Reduction in wall height from 2.7 m to 2.4 m to match that of the house;
- Repositioning of the shed approximately 0.5 m closer to the house to increase the street setback to 2 m;
- Alternatively, repositioning the building to abut the house would result in a compliant situation;
- Landscaping along sides and rear;
- A reduction in the plan dimensions of the shed;
- Alternative, construction material such as face brick on the street façade of the building to match the character of the area.

Material Considered

The material considered in arriving at this decision comprises:

- The application, including ‘Form 10 – Notice of Appeal’, supporting plans and documentation, including “Proposed Building Envelopes Stage 3” plan Q919-1797;
- Council’s Concurrence Agency Response dated 23 June 2008;
- Verbal submissions from all the parties at the hearing;
- Site plan and building details forwarded to the tribunal;
- Petition in support of the application signed by neighbours dated 17 July, 2008;
- The QDC – Part MP1.2; and
- The *Integrated Planning Act 1997*.

Findings of Fact

The Tribunal makes the following findings of fact:

- The proposed shed encroaches 1.5 m into the previously approved setback;
- The Applicant wishes to retain a pathway of at least 1 m between the house and shed;
- The streetscape in the area is generally characterised by discrete brick or rendered masonry buildings with consistent setbacks;
- All abutting neighbours support the proposal.

Reasons for the Decision

- The shed, in its original form, will have an intrusive and undesirable impact on the streetscape as a result of its bulk, height, materials and form;
- The compromises proposed would not sufficiently mitigate that impact to justify approval;
- An alternative solution has been adopted for the area, allowing a reduction from 6 m to 3 m and the area has a consistent and coherent character;

- Further changes in the materials, size and detailing of the shed may mitigate unacceptable impacts but are not within the scope of the current application.

John Panaretos
Building and Development Tribunal Chair
Date: 31 July 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:

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