



Building and Development Tribunals

Queensland Government

Department of **Local Government and Planning**

APPEAL
Integrated Planning Act 1997

File No. 3-07-043

BUILDING AND DEVELOPMENT TRIBUNAL - DECISION

Assessment Manager: Toowoomba City Council

Site Address: *withheld* – “the subject site”

Applicant: *withheld*

Nature of Appeal

Appeal under Section 4.2.7 of the *Integrated Planning Act 1997* against the decision of the Toowoomba City Council to issue an enforcement notice requiring the removal of a covered barbecue area and garden shed, erected within the 6m street setback on “the subject site”.

Date and Place of Hearing: 11.00am Wednesday 22nd August 2007
at “the subject site”

Tribunal: Debbie Johnson – Chairperson
Peter Matthews – General Referee

Present: Applicant / Owner
Bob Orr – Toowoomba City Council Representative

Decision

The decision by Toowoomba City Council to issue an enforcement notice to request the removal of structures being a covered barbecue area and garden shed, as built within the 6m setback from *withheld*, as contained in its written notice dated 25th July 2007 is **upheld**.

Background

The applicants purchased their home located at the intersection of *withheld* and *withheld* approximately two years ago.

The house was built by others who erected both a covered barbecue area and garden shed on the “subject site” within the required 6m setback to *withheld*, at an undetermined time, prior to the applicants purchase.

The Toowoomba City Council’s representative, Bob Orr, served an Enforcement Notice dated 25th July 2007 to the applicant as the covered barbecue area and garden shed have been erected without a development permit and located in an area of the “subject site” that contravenes the provisions of Part 12 of the Queensland Development Code.

Material Considered

- ‘Form 10 – Notice of Appeal’ lodged with the Building and Development Tribunals on 2nd August 2007;
- Toowoomba City Council’s Enforcement Notice, dated 25th July, 2007;
- The applicants, in their grounds of appeal submitted with their application, outlined the need for the barbecue *structure* and argued against Toowoomba City Council’s reasons for requesting its removal;
- Bob Orr, Toowoomba City Council representative, provided further information to the Tribunal outlining their concerns relating to the application and the reasons for refusal;
- Verbal submissions made the applicant at the hearing;
- The *Integrated Planning Act 1997*;
- The *Building Act 1975*;
- The *Building Regulation 2006*; and
- Part 12 of the Queensland Development Code (QDC).

Findings of Fact

The site is a corner allotment but essentially rectangular in shape. It has a wide frontage to *withheld* to the West and a secondary frontage along *withheld* to the South.

The existing residence fronts *withheld*, with both the main entry to the dwelling and the driveway accessed from this side of the site.

There is no fence along the property boundary adjacent to *withheld*, however, there is a solid rendered masonry fence approximately 1800mm high along most of the *withheld* frontage.

The masonry fencing stops short of the South Western corner of the site and as there are no structures in this area. There is a vehicular approach from either street and affords a clear line of sight to the intersection. There is a gentle site slope through the allotment, falling from the eastern side to *withheld*.

The covered barbecue area, which is approximately 3m x 3m in size, adjoins the masonry fence halfway along the *withheld* site boundary. This structure is visible from *withheld* as it sits approximately 600mm higher than the fence line. The barbecue area is complete with electrical light fittings and is built predominately in exposed timber sections with a sheet roof cover.

The garden shed appears to be a prefabricated steel structure and is located in the South Eastern corner of the site, a few metres from the barbecue area. The garden shed is not as high as the barbecue area and is therefore less obtrusive when viewed from *withheld*.

The existing residence is setback 6m from the *withheld* frontage and is approximately 3m from the covered barbecue area. At the hearing, Bob Orr indicated that council would give favourable consideration to any subsequent application for a siting variation, relating to a covered outdoor area attached to the existing residence, providing it was designed appropriately to suit the building elements of the existing residence and achieves a 3m setback to the *withheld* boundary.

Siting for Class 10 buildings and structures is determined by Part 12 of the QDC, to the extent that the planning scheme does not identify or state alternative provisions for boundary clearances.

Legislative definitions and requirements that are applicable to this structure are:

“Road boundary clearance for a building or structure on a lot means the shortest distance measured horizontally from the outermost projection of the building or structure to the vertical of the boundary of the lot adjacent to the road’.” (QDC, Part 12-Design & Siting Standard for Single Detached Housing, p4)

“Setback means for a building or structure other than a swimming pool, the shortest distance measured horizontally from the outermost projection of the building or structure to the vertical projection of the boundary or the lot’.” (QDC, Part 12-Design & Siting Standard for Single Detached Housing, p4)

“Structure includes a wall or fence and anything fixed to, or projecting from, a building, wall, fence or other structure.” (Building Act 1975, Reprint 5c 7/12/2006, schedule 2, p179)

“For a dwelling, garage or a carport the minimum **road setback** is 6.0m;” (QDC, Part 12-Design & Siting Standard for Single Detached Housing, A1 (a), p6)

“For a **corner lot**, the minimum **road setbacks** are as for A1 (a) (i); (QDC, Part 12-Design & Siting Standard for Single Detached Housing, A1 (b), p7)

“For **structures** the **minimum road setbacks** are as for A1 (a) (b) and (c) except for screens / fences not more than 2.0m high.” (QDC, Part 12-Design & Siting Standard for Single Detached Housing, A1 (d), p8)

The **Performance Criteria** of buildings and structures under the QDC Part 12 P1 is as follows:

“The location of a building or structure facilitates an acceptable streetscape, appropriate for –

- the bulk of the building or structure; and
- the road boundary setbacks of neighbouring buildings or structure; and
- the outlook and views of neighbouring residents; and
- nuisance and safety to the public.”

(QDC, Part 12-Design & Siting Standard for Single Detached Housing, P1, p6)

Reasons for the Decision

The garden shed and covered barbecue area are clearly visible from *withheld* although there is a high masonry fence along this boundary.

The design of the structures and the materials used to construct them is not in keeping with that of the existing residence on this site. This effectively impacts on the streetscape.

Due to the location of the structures, the lighting that has been installed would potentially affect the amenity of neighbouring residents.

The relevant performance criteria within the QDC stipulate that structures facilitate an acceptable streetscape appropriate for the bulk of the structure with consideration for the outlook or views from neighbouring sites.

Debbie Johnson
Building and Development Tribunal Chair
Date: 10th September 2007

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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