



Building and Development Tribunals – Decision

Integrated Planning Act 1997

Appeal Number: 3–08–076

Applicant: Robyn Mary Smith

Assessment Manager: Darryl O'Brien for and on behalf of Certcon Pty Ltd

Concurrence Agency: Bundaberg Regional Council
(if applicable)

Site Address: 12 Aqualine Court, Bargara and described as Lot 105 on RP199006, Parish of Barolin – the subject site

Appeal

Appeal under section 4.2.9 (1) (a) of the *Integrated Planning Act 1997* (IPA) against the decision of the assessment manager to refuse a development application for building works, namely, a proposed dwelling.

Date of hearing: 9:00am–Thursday, 6 November 2008

Place of hearing: The Department of Infrastructure and Planning via teleconferencing

Tribunal: Peter Nelson – Chair
Jack Williamson – Member

Present: Robyn Smith – Applicant
Darryl O'Brien – Assessment Manager
David Job – Certcon Pty Ltd Representative
Steven Curran – Bundaberg Regional Council Representative
Brad Geaney – Bundaberg Regional Council Representative

Decision:

The Tribunal, in accordance with section 4.2.34 (2)(c) of the IPA, **sets aside** the decision of the assessment manager dated 13 October 2008, and replaces it with the following decision:-

The assessment manager is **directed** to decide the building development application if satisfied that the application complies with the following conditions:-

1. The set back of the dwelling is to be 6.0 metres from the front boundary from the southern corner of the front store attached to the garage as shown on plan 280509 – AO2 prepared by Harris Design and Communications dated May, 2008. [The encroachment of part of the garage and the first floor deck within this 6.0 metre set back is acceptable].

2. The new dwelling is to maintain a set back from the existing sewer line at the rear of the property of 1.0 metre.
3. The designer is to show the dimensions of the set back and the offset from the sewer on a revised site plan.
4. A survey certificate issued by a licensed surveyor on completion of the floor slab is to be made available to the assessment manager for their records.
5. All other relevant building assessment provisions are applicable to the building development application.

Background

The applicant lodged a development application on 10 October 2008 with the assessment manager for a new dwelling to be constructed on the subject site.

The assessment manager made an application to the Council for a concurrence agency response about siting of the proposed dwelling.

The application was lodged with Council on 24 September 2008 and an application fee was paid to Council.

On 13 October 2008 the assessment manager advised the applicant that there had been no response from Council.

The assessment manager refused the building development application because no response had been received from the concurrence agency, and therefore the application was deemed to have been refused pursuant to section 3.3.16 (4) of the IPA.

Council's response was that the correct fee had not been paid and the application was deemed to be 'not properly made', this advice was sent by mail to the applicant.

Council stated they had been approached by builders who were preparing quotes to construct the proposed dwelling. Advice was given that Council would not approve the set back as shown on the plans.

Material Considered

The material considered in arriving at this decision comprises:

1. 'Form 10 – Notice of Appeal' received by the Registrar on 28 October 2008.
2. Grounds for Appeal from the applicant, dated 24 October 2008.
3. Copies of plans showing details of the proposed development and photographs of the subject site and adjoining properties.
4. Development Application decision notice from the assessment manager, dated 13 October 2008.
5. 'Form 1 – Development Application' – Part A.
6. Copy of Registered Plan.
7. 'Form 8 – Notice of Election' from the Council, dated 6 November 2008.
8. Letter to the assessment manager from Council, dated 3 October 2008, in relation to application fees.
9. Verbal submission from the assessment manager at the hearing.
10. Verbal submission from the applicant at the hearing.
11. Verbal submission from the Council representatives at the hearing.
12. The *Building Act 1975* (BA).

13. The Building Regulation 2006.
14. The IPA.
15. The Integrated Planning Regulation 1998.
16. The Queensland Development Code (QDC).

Findings of Fact

The Tribunal makes the following findings of fact:

1. Council representative's objected to the proposed front boundary set back of the dwelling.
2. The front façade had a first floor deck that extended approximately 700 mm forward of the residence and encroached into the required 6.0 metre set back zone. There was also a small store area at the front of the garage that encroached into the set back zone.
3. There is an existing sewer line at the rear of the property that appears to be set into the property about 1.0 metre from the corner of the northern boundary and about 2.0 metres from the southern boundary. This sewer line is required to be offset by the building by 1.0 metre.
4. The building is set back off the rear boundary by 3.040 metres and is single story in this area.

Reasons for the Decision

1. The Council representatives agreed that if a set back of 6.0 metres was maintained at the southern corner of the store at the front of the garage, then Council would accept the minor intrusion of the first floor deck and part of the garage corner into the 6.0 metre set back zone.
2. It is possible for the building to be moved towards the rear of the allotment enough to allow a minimum offset to the existing sewer line of 1.0 metre and also achieve the set back requirement that Council is prepared to accept.
3. The applicant is prepared to accept the compromise offered by Council.

Peter Nelson
Building and Development Tribunal Chair
Date: 12 November 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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