



Building and Development Tribunals

Queensland Government

Department of Local Government and Planning

APPEAL
Integrated Planning Act 1997

File No. 3-07-040

BUILDING AND DEVELOPMENT TRIBUNAL - DECISION

Assessment Manager: Toowoomba City Council

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

Applicant: *withheld*

Nature of Appeal

Appeal under Part 2 Section 4.2.9 of the *Integrated Planning Act 1997* against the decision of Toowoomba City Council not to approve a siting variation for a roofed patio *structure*. The application for concession was required to allow a structure to be built within 6.0m of the street boundary on “the subject site”.

Date and Place of Hearing: 10.30 am Friday 27 July, 2007
at “the subject site”

Tribunal: Debbie Johnson – Chairperson
Peter Matthews – General Referee

Present: Applicant
Owners
withheld–son of the Owners
Ross Ford – Toowoomba City Council Representative

Decision

The decision by Toowoomba City Council to refuse a preliminary application for building works of a roofed patio *structure* to be built within the 6.0m street *setback*, as contained in its written notice No. DISBLD/2007/2026 dated 21 June 2007 is **set aside**.

The road boundary clearance to *withheld* is varied to 1.5m for an overall length of 8.65m to accommodate a roofline over the existing outdoor area as proposed. The overall height of the structure is not to exceed 2.4m as taken from the existing finished surface level within the outdoor area.

Background

Withheld purchased their home at “the subject site” 10 years ago. The house was originally built 15 years ago.

Prior to their purchase a large outdoor ‘umbrella’ style awning, having a diameter of approximately 6.0m, was erected as a permanent *structure*.

The *structure* was sited within the 6.0m street *setback* along *withheld* and is still in place at this time. It is proposed that this ‘umbrella’ *structure* will be removed to enable the proposed *structure* to be erected.

Material Considered

- ‘Form 10 – Notice of Appeal’ lodged with the Building and Development Tribunals on 17 July 2007 including supporting plans and documentation;
- Toowoomba City Council decision notice, No. DISBLD/2007/2026, issued to the applicant;
- The applicants, in their grounds of appeal submitted with their application, outlined the need for the *structure* and argued against Toowoomba City Council’s reasons for refusal;
- Ross Ford, 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 by the owners 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 with a wide frontage to *withheld*. The existing residence appears to be situated at least 6.0m from the *withheld* to the South and approximately 4.5m from the *withheld* frontage to the East. There are no *structures* in the South Eastern corner of the site, therefore an approach from either street affords a clear line of sight to the intersection.

There is a slope running north, south through the allotment. The existing outdoor area, which is to be covered by the proposed *structure*, sits approximately 600mm below the finished surface level of the adjacent footpath. This outdoor area is separated from the footpath by an existing stepped timber paling fence at 1.8m and feature brick columns being 2.0m. The existing fascia and gutter line of the residence is only just visible above the height of this fence as a result of the differences in the finished ground levels on each side of the fence.

The outdoor area is located on the North Eastern corner of the site and is the only area available for recreation as the existing residence is built to approximately 2.0m on both the north and the western sides. The existing ‘umbrella’ *structure* has never had an approval permitting its erection. Council have no record of any complaints in relation to this *structure*.

Siting for Class 10 buildings and structures is determined by Part 12 of the Queensland Development Code (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

For a period of at least 10 years the existing residence has had an obtrusive ‘umbrella’ *structure* used as a shading device within the prescribed *road boundary* setback to *withheld*. Due to its height, this *structure* is visible from the street over the existing fence adjacent to *withheld*.

The proposed roof line is relatively ‘flat’ and can be built to a maximum height of 2.4m. Effectively this ensures the majority of the proposed *structure* will be below the height of the existing fence line.

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.

In this instance, the proposed roof line will not be visible from adjoining sites and there will be no nuisance or safety issues as a result of the structure being located within the road boundary setback.

Debbie Johnson
Building and Development Tribunal Chair
Date: 10th August 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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