



Building and Development Tribunals
Queensland Government

Department of **Local Government, Planning,
Sport and Recreation**

APPEAL
Integrated Planning Act 1997

File No. 03-05-065

BUILDING AND DEVELOPMENT TRIBUNAL - DECISION

LOCAL GOVERNMENT: Cairns City Council

SITE ADDRESS: *withheld* – “the subject site;

APPLICANT : *withheld*

NATURE OF APPEAL: Appeal under Chapter 4 of Part 2 of the *Integrated Planning Act 1997* and Section 21 of the *Standard Building Regulation 1993*, against a decision of the Cairns City Council, as advised to the applicants in the decision notice, a copy of which accompanied the Appeal Notice.

DATE AND PLACE OF HEARING: 9.00 am on Thursday 10 November 2005.

TRIBUNAL: Nigel Daniels.

PRESENT: *withheld*, applicant on behalf of the appellant *withheld*

K Maggs, Cairns City Council.

DECISION:

Under the provisions of the *Integrated Planning Act 1997*, section 4.2.34, the Tribunal **sets aside** the decision of the Cairns City Council appealed against and makes a decision replacing the decision set aside, as follows:

The proposal to build a structure comprising stairs, a deck and a walkway, in part encroaching within the 2 metre distance from the *withheld* Street boundary and in part encroaching within the 9 metre corner truncation (the encroaching structure) is approved; subject to the condition that the maximum height of the encroaching structure shall not be higher than the floor level of the existing house; except for an open balustrade and handrail extending no further than 1200 mm above the floor level of the encroaching structure.

REASONS:

The bulk of the proposed work will be concealed behind an existing concrete masonry fence constructed on both road boundaries of the allotment. The Tribunal is of the opinion that if the bulk of the new construction is restrained to the floor level of the existing house, then the performance criteria will reasonably be satisfied.

For consistency with other provisions of the *Standard Building Regulation 1993*, allowance must be made

for the provision of a balustrade and handrail.

The Tribunal is of the opinion that if the proposed building work were allowed, in full, as shown on the drawing submitted as exhibit 1, then the performance criteria would not be satisfied because the bulk of the building would not facilitate an acceptable streetscape and would be inconsistent with the road boundary setbacks of neighbouring buildings.

MATERIAL CONSIDERED:

- Form 10 – Building and Development Tribunals Appeal Notice from *applicant*, and material attached to the Notice.
- Verbal submission by the applicant for the appellant, at the hearing.
- Verbal submission by the Council’s representative, at the hearing.
- Information gained by inspection of the site.
- Exhibit 1, drawing being an elevation showing the existing dwelling and the proposed building work.
- The *Building Act 1975*
- The *Standard Building Regulation 1993*.
- The *Queensland Development Code, Part 11, Design and Siting Standard for Single Detached Housing - on Lots Under 450 sqm. (QDC Part 11)*.
- The *Integrated Planing Act 1997*.

FINDINGS OF FACT:

1. Part of the proposed work had been constructed at the time of the hearing. A triangular part of the deck approximately 1.5m X 1.5m encroached on the 9m truncation referred to in QDC Part 11, Acceptable Solutions, Section A1 (c).
2. The stairs, walkway and deck encroached on the road boundary setback of 2m referred to in QDC Part 11, Acceptable Solutions, Section A1, Table A1.
3. In the event that the acceptable solutions will not be complied with, then assessment must be made against the performance criteria.
4. The performance requirement to which the two preceding paragraphs are relevant, is contained in QDC Part 11, Performance Criteria, Section P1, which requires:
 - The location of a building or structure facilitates an acceptable streetscape, appropriate for-
 - (a) the bulk of the building or structure; and
 - (b) the road boundary setbacks of neighbouring buildings or structure; and
 - (c) the outlook and views of neighbouring residents; and
 - (d) nuisance and safety to the public

Nigel Daniels,
Referee, Building and Development Tribunal.

Date: 10 November 2005.

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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