



Building and Development Tribunals – Decision

Integrated Planning Act 1997

Appeal Number:	3–08–048
Applicant:	<i>Withdrawn</i>
Assessment Manager:	Cliff Rix for and on behalf of Matrix Certification Services
Concurrence Agency: (if applicable)	Lockyer Valley Regional Council
Site Address:	<i>Withdrawn</i> —the subject site

Appeal

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

Date of hearing:	10.30 am – Thursday, July 24 2008
Place of hearing:	Inspection of the subject site followed by a hearing at Council offices
Tribunal:	Dennis Leadbetter – Chair Greg Rust – Member
Present:	Cliff Rix – Assessment manager, Matrix Certification Services Tim Higgs – Matrix Certification Services Representative David Kay – Locker Valley Regional Council Representative Peter Dowdell – Locker Valley Regional Council Representative Sonny Liyou – Locker Valley Regional Council Representative

Decision:

The Tribunal, in accordance with 4.2.34(2)(c) of the IPA, **sets aside** the decision of the Assessment Manager dated 4 July 2008 to refuse the development application for building work and replaces it with the following decision.

The Assessment Manager is **directed** to reassess and decide the building development application, subject to compliance with all other relevant building assessment provisions, and including the following condition:

- The detached dwelling can be constructed up to not less than 4.5 metres from the *withdrawn* Street alignment and 6.45 metres to the *withdrawn* Court alignment measured to the outer most projection.

Background

The proposal was for the development of a single story, brick veneer and tile roof dwelling on the subject site, located to within 4.5 metres of the southern street alignment to the outer most projection (OMP). The proposed dwelling is sited to face the western road alignment, the property being a corner allotment. The drawings submitted for approval indicate an 1800 mm high fence to the *withdrawn* Place boundary.

The assessment manager had overlooked the fact that the road boundary set back was less than 6 metres, requiring a relaxation, when assessing the application and had issued an approval. Prior to pouring of the slab, the certifier had submitted file copies to council and council had raised the issue with the certifier who then alerted the builder to the problem. Before that communication reached the site the concrete slab was poured.

Council's response directed the assessment manager to refuse the application. In Council's opinion there were alternative siting positions available that would allow the maintenance of the 6 metre road boundary set back provisions. The street in question was the primary frontage and the main entry to the particular residential estate. The Council wanted to maintain the 6 metre setback.

There have been alignment setback relaxations granted to other sites in this estate, including the adjoining block to the east to the *withdrawn* Street alignment, and the site opposite to the west to the *withdrawn* Street alignment.

The estate is relatively small, and council has indicated that it cannot be expanded because of significant infrastructure limitations. The street is not a through road and traffic using this street would be solely to the estate.

Material Considered

1. 'Form 10 – Notice of Appeal' and grounds of appeal contained therein;
2. 'Form 18 – Notice of Election' provided to the Registrar 23 July 2008, by Locker Valley Regional Council;
3. Drawings and photographs submitted with the appeal;
4. Verbal submissions at the hearing from the assessment manager and representative of Matrix Certification Services;
5. Verbal submissions from Locker Valley Regional Council's representatives at the hearing;
6. The IPA;
7. The Integrated Planning Regulation 1998;
8. Part 12 of the Queensland Development Code (QDC);
9. Submissions from adjoining owners obtained by the assessment manager and further clarification post the hearing made by the Tribunal; and
10. The aesthetic fit of the proposed dwelling to the existing street scape and visual amenity of the estate.

Findings of Fact

The Tribunal makes the following findings of fact:

- The assessment manager had made an error in issuing the building approval before seeking a concurrence agency approval for the road boundary relaxation.

- The assessment manager had been involved with an adjoining building where a relaxation to the same street had been granted.
- The builder had been advised by the assessment manager that there was a problem prior to the pouring of the concrete slab but the slab was poured a few days later.
- Construction has ceased post the pouring of the slab.
- The subject site is a corner block.
- Council has nominated the street to the southern boundary as the primary frontage.
- The proposed house has been oriented with garages and main entry entering from the street to the west.
- That other developments in the same street have been granted alignment setbacks.
- The topography of site and surrounding estate is flat.
- All the existing buildings are of a single storey construction, similar to the proposed dwelling.
- The building proposed to the east is also a single storey.

Reasons for the Decision

Part 12 of the QDC provides performance criteria and an acceptable solution, which the local government can vary to take account of alternative solutions, topography and other matters.

Council's representatives at the hearing discussed alternative siting positions, which included significant changes to the dwelling's appearance. These included changes to the roof profile and resiting the dwelling to less than 500 mm to the northern alignment.

It is the Tribunal's opinion that the proposed changes to the roof, including the removal of any overhang to the northern facade would significantly and deleteriously impact the aesthetics of the dwelling. A dimension less than 500 mm does not provide a reasonable and adequate space to safely carry out maintenance to that portion of the dwelling.

Council's second option was to reduce the northern side alignment setback to 450 mm to the OMP. This would require a relaxation to the southern street alignment, which Council indicated they would approve. That solution also did not provide a reasonable and adequate space to safely carry out maintenance on that portion of the dwelling.

It would be compliant to abut the residence against the northern alignment because that section of the dwelling is class 10, being the garage. The Tribunal is of the opinion that such a situation should only be as a last resort, and not encouraged, because of maintenance access problems. It can also result in neighbours, knowingly or otherwise, blocking weepholes or bridging termite barrier systems with potential catastrophic consequences.

The Tribunal has also considered the potential impact on traffic and safety at the intersection that any relaxation may have, and are of the opinion that there will be no impact with the set back to *withdrawn* Court greater than 6 metres.

In considering the streetscape, and being cognisant of the fact the property owners are intending to fence the property with a 2 metre high fence, the visible impact of the dwelling will be negligible. When walking on the northern road footpath the gutter would not be visible to the average person, being obscured by the fence. From the southern side of the street, it would be visible, but would not be imposing or dominant.

The Tribunal is of the opinion that the reduction in the road alignment set back from 6 metres to 4.5 metres in this instance will not impact on the street scape, nor on the local amenity. This setback is within normal requirements for a corner block, and in some planning schemes is self assessable.

The Tribunal is of the opinion, that from a planning perspective, the siting of the proposed dwelling is sympathetic to the estate's built environment.

General Comments

The Tribunal requested the applicant seek opinions from adjoining neighbours, and only the owner of the property to the immediate east had objections, indicating that any relaxation would impact on their property in terms of drainage and light. The Tribunal sought additional information from the owners of this property to more fully understand their concerns and have considered the impact this development, and any road set back relaxation may have on their property, including in relation to their detailed concerns.

In assessing the natural run off, the natural topography falls slightly to the east, thus drainage of the adjoining block will not be affected by this development. Rain water cannot be discharged on site and has to be discharged to the street channel or stormwater mains, thus only normal surface run off would be involved and the proposed development will limit the volume of run off.

The other matter of concern for the adjoining property owner was the shading effect that may be caused by this development. The Tribunal in assessing this concern looked at the topography, the location of the proposed dwellings on both sites. The Tribunal is of the opinion that the reduction of the street alignment set back will not increase the shading to the adjoining owners proposed residence. The Tribunal is of the opinion that the dividing fence will potentially cast greater shading to their proposed dwelling than the proposed dwelling on this site, because of the alignment setback to the east.

The distance between the two dwellings and with both being single storey limits the potential impact further.

The Tribunal is of the opinion, that from a planning perspective, the siting of the proposed dwelling is sympathetic to the estate's built environment.

Building and Development Tribunal Chair
Date: 1 October 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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