



## Building and Development Tribunals—Decision

---

### *Integrated Planning Act 1997*

<b>Appeal Number:</b>	<b>3—09-031</b>
<b>Applicant:</b>	John Perkins
<b>Assessment Manager:</b>	Noosa Building Certifiers
<b>Concurrence Agency:</b>	Sunshine Coast Regional Council
<b>Site Address:</b>	5 Lakeview Drive, Tewantin and described as Lot 9 on RP 110988 — the subject site

---

### **Appeal**

Appeal under section 4.2.9 of the *Integrated Planning Act 1997* (IPA) against the decision, dated 10 March 2009, by the assessment manager, Noosa Building Certifiers, as directed by the concurrence agency, Sunshine Coast Regional Council, to refuse an application relating to an extension to the existing dwelling (unroofed verandah) to be constructed within the required 6.0m front boundary setback for the subject site.

---

<b>Date of hearing:</b>	10.00 am — Thursday, 30 April 2009
<b>Place of hearing:</b>	The subject site
<b>Tribunal:</b>	Georgina J Rogers – Chair John Gillespie - Member
<b>Present:</b>	John Perkins – Builder, applicant and owner’s representative Don Grehan – Sunshine Coast Regional Council representative

### **Decision:**

The Tribunal, in accordance with section 4.2.34 (2)(c) of IPA, **sets aside** the decision appealed against to refuse the development application for building works, namely an extension to the existing dwelling (unroofed verandah) to be constructed within the required 6.0m front boundary setback for the subject site and **directs** the assessment manager to approve the development application subject to the following conditions:-

1. The proposed extension to the existing dwelling (unroofed verandah) to be constructed within the required front boundary must be setback minimum 4.5m from the road boundary alignment.
2. The proposed extension to the existing dwelling (unroofed verandah) is not to be enclosed at any stage beyond that shown on the current building application plans.
3. The proposed extension to the existing dwelling (unroofed verandah) is not to be roofed at any stage beyond that shown on the current building application plans.

4. All other relevant building assessment provisions applicable to the Building Development Application are to be complied with.

## **Background**

The Tribunal conducted an on-site hearing and the members took the opportunity to view the development and character of the neighbourhood at this time.

The neighbourhood has low traffic volume and is well established with vegetation. The character of the immediate neighbourhood is well established residential with a mix of construction style and age of dwellings.

The site is rectangular in shape and is shown to have a 18.306m frontage to Lakeview Drive. The site area is greater than 450 sq.m.

The dwelling has an existing 1.5m wide roofed verandah to the front of the building and this is setback approximately 6.0m from the front road boundary alignment. The existing verandah requires upgrading structurally, which has prompted the application to take the opportunity to widen the deck at the same time.

The dwelling to the right of the subject site appears to be setback approximately 4.5m from the front road boundary alignment. The widening of the verandah, without extending the roofline, would bring it in line with this adjoining property setback.

With the extension to the verandah it would become 3.0m wide by 10.6m in length and setback 4.5m to the balustrading from the front road boundary alignment.

The following correspondence and documentation was reviewed and taken into consideration:-

- **10 March 2009** – Decision Notice Refusal from Assessment Agency as directed by Concurrence Agency
- **9 March 2009** – Building and Development Tribunals Appeal Notice 10 lodged
- **13 February 2009** – Concurrence Agency Response – refusal – to Assessment Agency
- **3 February 2009** – Fax from builder to Sunshine Coast Regional Council – requesting boundary relaxation on behalf of owners.
- **23 January 2009** – Part A, Part E, IDAS Assessment Checklist – lodged with plans attached.

Based on the above information, it was determined that the proposed extension to the existing dwelling (unroofed verandah) was properly lodged for approval with the assessment agency. A development permit relaxation was applied for from the Sunshine Coast Regional Council and was subsequently refused.

The assessment manager advised the applicant of the refusal of the building development application.

The applicant appealed the decision of the assessment manager to the Building and Development Tribunals on 9 March 2009.

## **Material Considered**

The material considered in arriving at this decision comprises:

- 'Form 10 – Notice of Appeal' and grounds for appeal dated 9 March 2009;
- Decision notice from the assessment manager advising of the concurrence agency refusing the development application, dated 10 March 2009;

- Site plan, plans and elevations of the proposed extension to the existing dwelling (unroofed verandah);
- Verbal submission by the applicant and reasons for provision of proposed extension to the existing dwelling (unroofed verandah) to be located within the required 6.0m setback to the front road boundary setback fronting Lakeview Drive;
- Verbal submission by the concurrency agency and reasons for the proposed extension to the existing dwelling (unroofed verandah) to be located in accordance with the required road boundary setback for the subject site;
- IPA
- *The Building Regulation 2006*;
- The Queensland Development Code (QDC);
- Relevant sections of the former Maroochy Shire Council's planning scheme.

## **Findings of Fact**

The Tribunal makes the following findings of fact:

- The assessment manager wrote to the applicant on 10 March 2009, (Reference: 2009/0043) advising of the concurrence agency's refusal of the application for the proposed extension to the existing dwelling (unroofed verandah) to be located within the front road boundary setback fronting Lakeview Drive.
- Plans were provided showing the location of the proposed extension to the existing dwelling (unroofed verandah) to be located within the front road boundary setback fronting Lakeview Drive. The following was able to be determined:-
  - The site is rectangular in shape and fronting Lakeview Drive.
  - The site has a frontage less than 20m.
  - The surrounding neighbourhood is well established with vegetation.
  - The structure is a minor extension of the existing verandah attached to the dwelling and is well screened from pedestrians and traffic by a high fence and established vegetation.
  - Vehicle access is via Lakeview Drive. The subject site consists of one lot and the existing dwelling has been constructed parallel to front road boundary alignment.
  - There is an existing approved verandah in the current location which requires upgrading structurally. The extension to this verandah will not alter its location significantly.
- The neighbourhood is well established with dwellings which are generally setback the required minimum 6.0m back from the front road boundary alignments with some exceptions, one being the adjoining neighbour on the right which is setback approximately 4.5m from the front road boundary alignment.
- The neighbourhood has established vegetation.
- The proposed extension to the existing dwelling (unroofed verandah) has been requested so that it is wide enough for people to sit on and walk past without encroaching on each other.

## **Reasons for the Decision**

1. MP1.2 of the QDC sets out Performance Criteria (P1 & P2) for siting requirements that a local government must consider and be satisfied that the application meets the intent of each criteria for that application. In addition, the development must not unduly conflict with the intent of each of the Performance Criteria, as follows:-

### ***P1 – Design and Siting of Buildings and Structures***

**(a) The bulk of the building**

From the plans and photographs provided and on site inspection, the proposed extension to the existing dwelling (unroofed verandah) will have no impact on the bulk of the existing dwelling.

The extension to the verandah will not be significantly visible from pedestrian and vehicle traffic and the adjoining neighbourhood. Significant establishment vegetation exists within the area and this reduces the visual bulk of the building.

**(b) Road boundary setbacks of neighbouring buildings or structures**

The road boundary setbacks of neighbouring building or structures generally appear to comply with the required setback of 6.0m. There is an exception with the adjoining property directly to the right. This appears to have been in existence for some considerable time. The adjoining neighbour setback appears to be 4.5m to the front road boundary alignment.

**(c) The outlook and views of neighbouring residents**

The outlook and views of the neighbouring residents will not be affected by the proposed extension to the existing dwelling (unroofed verandah).

The proposed extension to the existing verandah will be significantly screened by the existing 2.0m high solid timber fence.

**(d) Nuisance and safety to public**

The proposed extension to the existing dwelling (unroofed verandah) is secured by a 2.0m high solid fence. Therefore there will be no affect the current level of nuisance and safety to the public.

**(e) Setbacks**

Under the QDC performance criteria P1, figure 1, the proposed extension to the existing dwelling (unroofed verandah) can be setback in line with adjoining dwelling which is setback approximately 4.5m from the front road boundary alignment.

**P2 Building and Structures –**

**(f) Provide adequate daylight and ventilation to habitable rooms**

From the plans provided and on site inspection, the proposed extension to the existing dwelling (unroofed verandah) will be located within the 6.0m setback to the front road boundary, being setback approximately 4.5m. It abuts the existing dwelling on site and does not affect the provision of adequate daylight and ventilation to the habitable rooms of this dwelling.

**(g) Allow adequate light and ventilation to habitable rooms of buildings on adjoining lots**

The proposed extension to the existing dwelling (unroofed verandah) will not affect the provision of adequate daylight and ventilation to the habitable rooms of the existing adjoining dwellings.

Therefore the structure will have no impact on the light and ventilation of habitable rooms on adjoining lots.

**(h) Do not adversely impact on the amenity and privacy of residents on adjoining lots**

The proposed extension to the existing dwelling (unroofed verandah) would have minimal impact on the privacy of residents on the adjoining or adjacent lots.

**(i) Side and rear boundary clearances – Height in metres**

The proposed extension to the existing dwelling (unroofed verandah) will have minimal impact on the side and rear boundary clearances.

2. Based on the above, the Tribunal decides to set aside the decision of the local government acting as the concurrence agency. However, the Tribunal also notes that this application is separate to any other applications that may be made over the property at this time or in the future.

3. QDC provides Performance Criteria and some Acceptable Solutions. The Acceptable Solutions are designed to provide reasonable and achievable outcomes. The local government is in a position to vary the Acceptable Solutions in relation to an application for siting requirements and to assess the application based on its merits.
4. In assessing the criteria from this part of the QDC in relation to the proposed extension to the existing dwelling (unroofed verandah) being located within the 6.0m setback to the front road boundary the Tribunal found that there were grounds to allow the structure to be built with a reduced setback to 4.5m from the front road boundary fronting Lakeview Drive.
5. The extent of non-compliance with the QDC Acceptable Solution is greater than acceptable and an alternate solution for the setback to be minimum 4.5m would in the Tribunal's opinion, satisfactorily achieve a solution to the relevant Performance Criteria. In addition, the purpose of the QDC is to provide good residential and neighbourhood design while acceptable amenity to residents is not compromised.

**Georgina Rogers**  
**Building and Development Tribunal Chair**  
**Date: 16 June 2009**

## **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  
Building Codes Queensland  
Department of Infrastructure and Planning  
PO Box 15009  
CITY EAST QLD 4002  
**Telephone (07) 3237 0403 Facsimile (07) 3237 1248**