



Building and Development Tribunals

Queensland Government

Department of **Local Government and Planning**

APPEAL

Integrated Planning Act 1997

File No: 03-07-061

BUILDING AND DEVELOPMENT TRIBUNAL - DECISION

Assessment Manager: Queensland Building Consulting Group

Concurrence Agency: Redland Shire Council

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

Applicant: *withheld*

Nature of Appeal

Appeal under Section 4.2.9 of the *Integrated Planning Act 1997* against the decision of Queensland Building Consulting Group to refuse an application to vary the siting requirements for an existing deck to be erected on “the subject site”, based on a concurrence agency response from Redland Shire Council.

Date and Place of Hearing: 8.30 am on Thursday 8th November 2007 at “the subject site”

Tribunal: Mr Peter John Nelson – Chairperson
Mr Greg Rust – General Referee

Present: Applicant / Owner
Mr Mick Ryan – Redland Shire Council Representative
Mr Phil Parks – Redland Shire Council Representative

Decision:

The decision of Queensland Building Consulting Group, based on a concurrence agency response from Redland Shire Council, as contained in its decision notice dated 17 October 2007 is **SET ASIDE**, and the following decision replaces the decision set aside :-

The position of the existing deck as shown on the plans submitted with the appeal showing that a section of the deck is in line with the existing revetment wall and the balance of the deck is set back 500mm from the revetment wall, is **ALLOWED, subject to the following conditions:-**

1. The section of the deck that is within 1.5 metres of the revetment wall is to be supported on load bearing posts and the balance of the deck cantilevered using knee bracing or similar structural elements.
2. The footings, posts and cantilevering are to be designed and constructed in accordance with designs by a registered RPEQ Engineer to the satisfaction and approval of a Building Certifier.

Background

Redland Shire Council approved the pool and an original deck approximately 12 years ago. The extension to the deck has been in existence for approximately 9 years. As it is supported within 1.5 metres of the revetment wall it does not comply with the Redland Shire Council Waterways Authority requirements.

The owner has lived in the residence for approximately 9 years and is now relocating to Western Australia. The residence was put on the market and has sold. A condition of the sale was that any outstanding approvals were to be satisfied with Council.

An application for the deck extension was applied for and refused. After inspecting the deck and the surrounding area it was seen that about 80% of the residences in the estate had decks that extended to the revetment walls. It is considered that if the deck was made to comply with the 1.5 metres setback for the supporting structures, then the deck did not impact on the surrounding environment.

Material Considered

1. "Form 10 – Notice of Appeal" with accompanying documentation and photographs;
2. Plans supplied with documentation that are neither numbered or dated;
3. Verbal submission from Redland Shire Council Representatives at the on-site hearing;
4. Verbal submissions from the Appellant at the on-site hearing;
5. On site inspection;
6. Amenity of the surrounding area;
7. *The Integrated Planning Act 1997*;
8. The Queensland Development Code; and
9. Redland Shire Council Waterways Structure Policy.

Findings of Fact

I made the following findings of fact:-

1. The property at *withheld* has frontage to *withheld* and rear access to a canal waterfront.
2. The property has a level building platform and rear entertainment area that fall sharply away close to the rear waterfront boundary.
3. Redland Shire Council's main concern was the loading of the structure within 1.5 metres of the revetment wall.
4. 80% of the residences at this section of the waterway have decks that extend to the revetment wall.
5. Privacy would be almost impossible to achieve as swimming pools were exposed by open or glass fencing and were all clearly visible from the opposite side of the canal, from boats using the canal or from people standing on the numerous pontoons in the canal. All two storey residences looked into the rear yards of the neighbours.
6. The deck does not obstruct views from adjoining allotments. The deck does not overcrowd the allotment, in fact it enables a better use for the land available. The deck does not obstruct access for normal building maintenance.
7. The pool and the original deck were approved by Redland Shire Council approximately 12 years ago. It is only the new section that was added 9 years ago that is the main concern.
8. The entertainment area is adequately landscaped with many advanced and deep planted specimens.
9. There is no issue with privacy and overlooking. The neighbor has installed glass pool fencing to the canal boundary and a corrugated iron fence to a small section of the side boundary.

Reasons for the Decision

1. The main concern of Council is the integrity of the revetment wall. They stated that if the supporting posts could be set back the required 1.5 metres, they would be happy with that as the solution.
2. Inspection showed that it would be a simple matter to comply with Council's request to support the deck 1.5 metres off the revetment wall and cantilever the balance of the deck.
3. The deck has been in situ for many years without causing any concern to the neighbours, most of whom have similar structures.
10. The Tribunal drove around the immediate area to ascertain the effect this structure would have on the amenity of the area. The Tribunal is of the opinion that the proposed development would not affect the amenity of the area.

In reaching this decision the Tribunal considered the performance criteria established in the *Waterways Structure Policy*, to satisfying the performance criteria it is required that condition 1 above be adhered to.

The outlook and views of neighbouring resident -

The proposed building does not obstruct the views of neighbouring residences.

(c) Nuisance and safety to the public -

P1 The deck does not create a nuisance or safety hazard.

P2 Building and structures – allow adequate light and ventilation to habitable rooms of buildings on adjoining lots –

The existing deck has no effect on adjoining premises.

P3 Adequate open space is provided for recreation, service facilities and landscaping.

The existing deck increases the useable yard area for recreational purposes.

P4 The proposed deck is set into the landscape and has no effect on adjoining premises.

(a) Obstruct the outlook from adjoining lots.

The proposed building has no effect on adjoining lots.

P5 Buildings are sited and designed to provide adequate visual privacy for neighbours.

The proposed building does not interfere with visual privacy for neighbours.

P6 The location of the building or structure facilitates normal building maintenance.

The proposed deck does not interfere with normal building maintenance.

In the opinion of the Tribunal, after taking into account the particular circumstances of the site, the Deck and the effect on the neighbours and the neighbourhood, that the existing deck is to be allowed to remain with support being provided in accordance with condition 1 above.

PETER JOHN NELSON
Building and Development Tribunal Chairperson
Date: 22 November 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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