



Building and Development Tribunals
Queensland Government

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

APPEAL
Integrated Planning Act 1997

File No. 03-06-015

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 to refuse a Development Application (No2005/4430) requesting siting dispensation for a porte cochere, on property located at “the subject site”.

**DATE AND PLACE
OF HEARING:**

9.00 am on Friday 10 February 2006 at “the subject site”

TRIBUNAL:

Nigel Daniels

PRESENT:

**Applicant / Owner
Bill Kelly - Builder**

**Jayne Formby - Cairns City Council
Laurie Phipps - Cairns City Council**

DECISION:

Under the provisions of the *Integrated Planning Act 1997*, section 4.2.34, the Tribunal **confirms the decision appealed against**, as made by the Cairns City Council

BACKGROUND:

The applicant proposes to construct a new dwelling at “the subject site”. The proposed dwelling is intended to have two carports and a porte cochere accessible from *withheld*. The porte cochere is intended to be at a distance of 2.5 metres from the *withheld* boundary measured to the fascia of the roof (approximately 3.3 metres to the supporting posts); that is, less than the required 6 metres. The applicant applied for council's approval to have the distance from the boundary as designed. Council refused the application.

REASONS FOR THE DECISION:

It is possible to provide the facilities required by the development, as shown on the drawings submitted to the Tribunal, on the site while complying with the provisions of the *Standard Building Regulation 1993*, including the *Queensland Development Code Part 12*.

The applicant has not demonstrated a need for siting the porte cochere closer to the boundary than 6 metres, in circumstances where the facilities required by the development can be provided in compliance with the provisions of the *Standard Building Regulation 1993*.

MATERIAL CONSIDERED:

- Form 10 – Building and Development Tribunals Appeal Notice from the applicant and material attached to the Notice.
- Verbal submission by the applicant, at the hearing.
- Verbal submission by the Council’s representative, at the hearing.
- Information gained by inspection of the site.
- The *Building Act 1975*
- The *Standard Building Regulation 1993*.
- The *Queensland Development Code, Part 12, Design and Siting Standard for Single Detached Housing - on Lots 450 sqm and Over (QDC Part 12)*.
- The *Integrated Planing Act 1997*.

FINDINGS OF FACT:

1. The contours of the site, as shown on the drawings, show a relatively constant fall from the *withheld* frontage towards the rear, eastern boundary of the site.
2. The constant fall indicates that the dwelling can be built further from the *withheld* road boundary than indicated on the drawings with minimal alteration to the design of the building, including the porte cochere.
3. The dwelling scales at 3,300 mm (approximately) from the road boundary to the supporting posts of the porte cochere; the dwelling can be can be relocated a further 2,700 mm from the road boundary to achieve compliance with the requirements of the *Queensland Development Code, Part 12*.
3. There is sufficient area on the site to accommodate a building with all the facilities as provided in the building shown on the drawings, whether of the same or similar design or of another design.

Nigel Daniels,
Building and Development
Tribunal Referee
Date: 2 March 2006.

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, Building & Development Tribunals
Department of Local Government and Planning
PO Box 15031
CITY EAST QLD 4002

Telephone 3237 0403: Facsimile 3237 1248