



Building and Development Tribunals
Queensland Government

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

APPEAL

File No. 3-04- 035

Integrated Planning Act 1997

BUILDING AND DEVELOPMENT TRIBUNAL - DECISION

Local Government: Townsville City Council

Site Address: 11 Eden Street, Belgian Gardens, described as Lot 25 on RP 701699

Applicant :

Nature of Appeal: Appeal under Section 4.2.9 of the Integrated Planning Act 1997 and Section 21 of the Standard Building Regulation 1993 against the decision of the Townsville City Council not to grant approval for the proposed roof construction over the front timber deck for an existing dwelling.

Date and Place of Hearing: 3.30 pm on Thursday 8th July 2004, on site at 11 Eden Street.

Tribunal: Nigel Daniels

Present: Applicant
Architect for the applicant
Townsville City Council representative
Townsville City Council representative
Townsville City Council representative

Decision:

Under the provisions of Section 4.2.34 of the Integrated Planning Act 1997, the tribunal changes the decision appealed against as follows:

- Condition No 1 of the Assessment Manager's Conditions in the Development Permit for Building Work made on 13/05/04, and issued on 17 May 2004, is deleted together with the corrected condition referred to in the letter from the Townsville City Council dated 22 June 2004, and the following condition put in its place:
- **On the deck facing the street, all of the structure, including the roof, more than one metre above the level of the deck (handrail height) must not be closer to the road boundary than six metres and must not be closer to the side boundaries than two metres**

Background (if needed): On 27 April 2004, the applicant made application for determination of a siting relaxation for additions to the dwelling at 11 Eden Street, Belgian Gardens. The Council by letter dated 6 May 2004, advised Mr Walsh that the application was refused.

The applicant subsequently made application for approval of building work, being alterations to the dwelling at 11 Eden Street, Belgian Gardens. The application included building work at a distance less than six metres from the road boundary. This building work in the six metre distance included part of a timber deck at the upper floor level. The drawings showed that the deck would be roofed, part of the roof also being within the distance of six metres from the road boundary.

The development permit for the building work, decided on 13/05/04 and issued on 17 May 2004, carried a condition (No 1) that the roof construction over the front timber deck is not approved. This condition referred to a decision on amenity and aesthetics, seemingly made by the Council.

The applicant lodged an appeal against that condition.

By letter dated 22 June 2004, the Council advised the Acting Registrar Building & Development Tribunals that the condition was erroneous in referring to an amenity and aesthetics decision and advised that the condition should have referred to the relaxation of siting provisions refused by the Council. The tribunal understands that no application was made nor a decision made on the basis of amenity and aesthetics, the decision of Council having been made under the provisions Section 36 of the Standard Building Regulation.

Preparatory to proceeding with the hearing of the appeal, the issue of the corrected condition was discussed with the applicant and the Council's representatives. Both parties accepted that the hearing should proceed on the basis of the corrected condition.

Material considered:

- Written material provided by the applicant
- Written material provided by the Council
- Configuration of the building and buildings on neighbouring sites as seen by on-site inspection during the hearing.
- The provisions of Section 36 of the Standard Building Regulation; Schedule 6 of the Standard Building Regulation ; Part 12 of the Queensland Development Code relating to siting.
- Council's advice that the siting provisions under the Standard Building Regulation are the only regulations forming the basis of its decision, there being no provision in the planning scheme for height or siting limitations relating to 11 Eden Street.

Findings of Fact and Reasons for the Tribunal's decision:

- The view from the topmost level of the adjacent house is the only seaward view from that house.
- The proposed roof over the timber deck would impede that view to an undue extent.
- The applicant may build to six metres from the road boundary and two metres from the side

boundaries, without the need for relaxation or concession under the Standard Building Regulation. .

The dwelling at 11 Eden Street falls into the category referenced in Section 34(3) of the Standard Building Regulation; i.e., that the siting requirements contained in QDC Part 12 apply. Schedule 6 of the Standard Building Regulation lists compliance with the performance criteria mentioned in QDC Part 12 among those things which must be assessed by the local government where the development does not comply with the as acceptable solution stated in QDC part 12.

The performance criteria relevant to this case are:

P1 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.

P4 The height of the building is not to unduly-

- (a) overshadow adjoining houses; and
- (b) obstruct the outlook from adjoining lots.

It is considered that the bulk of the building is consistent with the streetscape. The setback from the road boundary has been approved, with the exception of the roof. Issues of nuisance and safety were not raised by either the applicant or the Council.

The outlook and views of neighbouring residents must be considered. The tribunal has formed the view that the outlook from the adjoining lot will be obstructed unduly; therefore it would be reasonable to limit the extent of the roof to the boundary clearances permitted by the QDC part12. as acceptable solutions.

**Nigel Daniels, Dip Arch, Reg Arch,
Building and Development
Tribunal Referee
Date: 16 July 2004**

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
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