

BUILDING AND DEVELOPMENT TRIBUNAL - DECISION

Assessment Manager: Kingaroy Shire Council

Site Address: 2 Alice Street Kingaroy – Lot 16 on RP37003

Nature of Appeal

Appeal under Section 21 of the Standard Building Regulations 1993, against the decision by Kingaroy Shire Council not to permit the erection of an extension to the existing residence within the road boundary clearance, at the above mentioned address.

Date and Place of Hearing: 6 Lorraine Ave Marcoola Beach
10am Thursday 5th April 2001.

Tribunal: Mrs Debbie Johnson

Present: Mrs Debbie Johnson
The Applicant

Decision

The decision of the Kingaroy Shire Council as contained in its written notice dated 12th February 2001, not to permit the erection of a verandah within the 6m setback to Alice Street, is *set aside*. The verandah may be constructed within the street setback to Alice Street, subject to the following conditions:

- a) the minimum setback from Alice Street to the outermost projection of the verandah roof is approved at 5320mm;
- b) the variation of the building line applies only to the structure being a roofed verandah as proposed, on Dwg No 0101, Sheets 1, 2 & 3 of 3, dated 12-1-01 and drawn by Steve Hart.

Material Considered

Submissions were made in person and in writing by the appellant. A written submission was also made by the Kingaroy Shire Council and the occupants of 4 Alice Street..

Photographs of the existing residence at 2 Alice Street, and the properties located adjacent to the south and to the east were submitted, along with a locality plan, copy of documentation, being architectural sketches, and written submission to the Kingaroy Shire Council in the original application, made by Steve Hart on behalf of the applicant.

Findings of Fact

The existing residence is approximately 60 years old. The site has an approximate fall of 500mm from the eastern to the western boundary. The site is regular and rectangular in shape being approximately 20.4x 50.3m in length. It is located as a corner allotment, bounded to the south by Alice Street and to the east by William Street.

Directly opposite this allotment in William Street is the South Burnett Concrete Co plant, flanked by a winery and a Mobil depot. The setback from the William Street boundary to the outermost projection of the roof of the existing residence is 4700mm, this is not proposed to be altered, however Kingaroy Shire Council have stated 3m is the minimum setback to this street.

The setback to Alice Street is currently 6m, whilst the side boundary clearance from 4 Alice Street is 350mm to the outer most projection. The occupants of 4 Alice Street have provided a written submission to support the variation of the building line as proposed by the appellant. All proposed building works comply with the Section 47. (1) and 47. (3) b regarding the 6mx6mx3m and 12mx12m truncation requirements.

The Standard Building Regulation 1993

Section 36 - Road boundary clearance

Stipulates all buildings and structures to which this part applies (being class 1 and 10) must have at least a 6m road boundary clearance. See reference to **Section 48.(3) & (4)** below.

Section 47 - Special requirements for corner allotments

Notes if the average depth of the allotment at right angles to the alignment is not greater than 24m, the clearance to the street boundary may be reduced on one street as nominated by the local government, in accordance with schedule 11. In this instance one road boundary clearance nominated by the local government can be reduced to 5600mm as an as of right.

Section 48 - Local government may vary the provisions of division 2

(3) The local government may consider following:-

(a) the levels, depth, shape or conditions of the allotment or the adjoining allotments

Opposite the site in William Street, there are at least three separate industrial uses being operated currently. The traffic to this side of the subject site is considerably heavier than it is on Alice Street.

b) the nature of any proposed building or structure on the allotment

The nature of the extensions being an attached roofed verandah.

c) the nature of any existing or proposed buildings or structures on adjoining allotments

The adjacent site at 4 Alice Street is currently a residence being a class 1 structure. The existing road boundary clearance of this building is in excess of the existing residence at 2 Alice Street.

d) whether the allotment is a corner allotment

The subject site is a corner allotment.

e) whether the allotment has two road frontages

The subject site has two road frontages being a corner allotment.

f) any other matter it considers relevant

The occupants of 4 Alice street have provided a written submission in support of the appellant's application.

(4) The local government must be satisfied that the building or structure built on the allotment in the way proposed would not unduly:-

a) obstruct the natural light or ventilation of an adjoining allotment

The structure being proposed will not obstruct the natural light or ventilation of the residence at 4 Alice Street.

b) interfere with the privacy of an adjoining allotment

The structure being proposed will not interfere with the privacy of the residence at 4 Alice Street. Similarly the privacy of the residence at 1 Alice Street as determined by photographs submitted with the appeal.

c) restrict the areas of the allotment suitable for landscaping

The subject site is in excess of 1000sq/m, the residence in total, covers approximately 25% of the site.

d) obstruct the outlook from adjoining allotments

The proposed structure will not obstruct the outlook from 1 or 4 Alice Street.

e) overcrowd the allotment

As indicted above, the proposed site coverage is approximately 25%.

f) obstruct access for normal building maintenance.

There is no reason to determine that building maintenance would be affected.

The Tribunal finds the proposal to construct a roofed verandah as proposed within the 6m road boundary clearance is proven to comply with the relevant matters listed in Section 48.(3).and (4).

Reasons for the Decision

Section 48.(3) and (4) of the Standard Building Regulation allow for the local government to vary the application of the siting requirements. In assessing the criteria from this part of the legislation, the tribunal found reasonable grounds for varying the street setback to Alice Street.

DEBBIE JOHNSON
Building and Development
Tribunal Referee
Date: 19 April 2001

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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