



Building and Development Tribunals—Decision

Integrated Planning Act 1997

Appeal Number:	3—09—028
Applicant:	Justin Kuskie and Keisha Keep
Assessment Manager:	Tanya Smith for and on behalf of GMA Certification Group
Concurrence Agency: (if applicable)	Dalby Regional Council 'Council'
Site Address:	9 Colamba Street, Chinchilla and described as Lot 2 on RP58933 — the subject site

Appeal

Appeal is under section 4.2.9 of the *Integrated Planning Act 1997* (IPA) against the decision of the assessment manager to refuse in part a Development Application about design and siting requirements of building work. The building work is for a proposed garage approximately 2.7m – 3.6m in height and sited 0.0m from the road boundary. The proposed building work does not comply with the Acceptable Solution of the Queensland Development Code (QDC) MP1.2 Part A1 (a) (i) and was assessed under Performance Criteria P1 of the QDC MP1.2.

Date of hearing:	3:15 pm — Thursday, 9 April 2009
Place of hearing:	The subject site
Tribunal:	David Kay — Chair
Present:	Kiesha Keep and Justin Kuskie — Applicants / Owners Allen Hassall — Assessment Manager Lee Irwin — Builder Ian O'Donnell — Council Representative Gerard Irwin — Council Representative Don Drummond — Council Representative Kevin Jackson — Council Representative David Sabiston — Council Representative Matthew Wilson — Council Representative

Decision:

The Tribunal, in accordance with section 4.2.34 (2)(c) of the IPA, **sets aside** the decision of the Assessment Manager dated 1 April 2009, and replaces it with the following decision:-

The Tribunal, in accordance with section 4.2.34 (1), **directs** the Assessment Manager to reassess the Building Development Application subject to compliance with the following conditions:-

1. The garage having a minimum road setback of 0.0m from the Condamine Street road frontage.
2. The garage otherwise being generally in accordance with the details shown on Feather & Lawry Drawings 08-0701 / SD00 C1, SD01 C1, SD02 C1 and SD03 C1, dated July 2008.
3. All other relevant building assessment provisions applicable to the Building Development Application.

Background

Applicant's submission to the Tribunal

The applicant submitted reasons in the documents lodged with the appeal application which included:-

- The proposed garage will be obscured by landscaping and a large tree and a 1.8m high fence from the west and facilitates an acceptable streetscape.
- The garage will not intrude into the existing streetscape as the bulk of the garage is relatively small.
- The proposed garage will not cause a nuisance or be of a safety concern to the public as existing pedestrian and vehicle traffic sightlines remain unaffected.
- Nearby properties have buildings or structures with road setbacks similar the setback for this garage.
- The garage replaces an existing structure that was dilapidated and located over or on the side boundary and this represents an improvement to the neighbourhood.

Council's submission to the Tribunal

The Council's representatives submitted reasons for the refusal which included:-

- The existing allotment is not constrained in and there are alternative areas on the site that can be used for a garage.
- The QDC MP1.2 road boundary setback acceptable solution for a garage for this site is 6.0m.
- The location of the garage will obstruct the neighbour's views.
- There is a need to consider the safety of footpath traffic and the location of the garage on the front road boundary as it presents a nuisance and risk to the safety of the public.
- There was no approval for the demolition of the existing structure.

Material Considered

The material considered in arriving at this decision comprises:

- 'Form 10 – Notice of Appeal' lodged with the Registrar on 2 April 2009;
- Material submitted by the Applicant accompanying the Notice of Appeal;
- Decision Notice from the Assessment Manager, dated 1 April 2009;
- Concurrence Agency Response from Council, dated 29 January 2009, refusing the Siting Variation Application.
- 'Form 8 – Notice of Election' received from Council 6 April 2009;
- Various email correspondence between the Chair and the parties;
- Verbal submissions from the Applicant and their representative at the hearing;
- Verbal submission from the Assessment Manager at the hearing;
- Verbal submissions from the Council representatives at the hearing;
- The IPA;
- The Integrated Planning Regulation 1998;
- The *Building Act 1975* (BA);
- The Building Regulation 2006 (BR);
- The QDC MP1.2 – Design and Siting Standard for Single Detached Housing – on lots 450m² and over.

Findings of Fact

The Tribunal makes the following findings of fact:

- An application for a concurrence agency response was made to Council by the Assessment Manager.
- The Council directed the Assessment Manager to refuse the application for the garage road front boundary clearance.
- The Assessment Manager issued a Decision Notice to the applicant, dated 1 April 2009.
- The appeal to a Building and Development Tribunal was lodged within the required timeframe.
- The Tribunal has jurisdiction to hear and decide the appeal.
- This appeal relates only to the road front boundary clearance for the garage.
- The road front boundary setback of the carport proposed for this site does not comply with the QDC MP1.2 Acceptable Solution Part A1 (a) which requires a 6.0m road front boundary clearance.
- The Performance Criteria P1 of the QDC MP1.2 contains the performance requirements for the assessment of the application.

Reasons for the Decision

The relevant siting requirements are set out in QDC MP1.2. These are building assessment provisions for the purposes of section 30 of the BA.

The garage location does not comply with the QDC MP1.2 Acceptable Solution A1 (a) requiring a 6.0m setback from the road front boundary.

QDC MP1.2 Acceptable Solution A1 (a) (ii) is not applicable to the subject site as it specifically refers to the setbacks of adjacent dwellings and does not make reference to garages, carports or structures. Therefore in considering the adjacent setbacks, only the dwelling setbacks should be considered and both of these are at least 6.0m.

The related relevant Performance Criterion of QDC MP1.2 is as follows:-

“P1 –The location of a building facilitates an acceptable streetscape appropriate for -
a) the bulk of the building or structure; and
b) the road boundary setbacks of neighbouring buildings or structures; and
c) the outlook and views of neighbouring residents; and
d) nuisance and safety to the public.”

Bulk of the building or structure

The proposed garage is between 2.7m to 3.6m in height. When viewed from the Condamine Street road frontage the height of the garage carport will be approximately 3.0m above the road front boundary level. There is an existing 1.8m high colorbond screen fence along the western side boundary. There are substantial footpath trees to the west of this property that are of a similar height to the garage. The Tribunal is of the opinion that the location of a building facilitates an acceptable streetscape appropriate for the bulk of the building.

Building character and appearance

The proposed garage has the appearance of a single storey building and does not extend beyond the alignment of the current building. The character of existing dwellings in the street is generally that of lowset single storey dwellings. The proposed garage shown on the plans is consistent with the character and appearance of the area.

Road boundary setbacks of neighbouring buildings or structures

The building setbacks along Condamine Street between Colamba Street and Birckett Street are generally 6.0m and consideration of this matter in isolation would not support a reduction of the front boundary setback.

However, a number of buildings, garages or structures in the area including older established garages in 36 Birkett Street with a 1.5m setback and 2 Condamine Street with a 0.0m setback, a shopfront in the residential area at 39 Heeney Street with a 0.0m setback and a set of units under construction at the corner of Heeney Street and Hypatia Street with a setback of 2.5m all have setbacks less than 6.0m. A roofed pergola in Glasson Villas at 34 Glasson Street was also observed. Of particular significance is the extensive carport structure used in conjunction with professional offices on the North east corner of Colamba Street and Condamine Street.

In consideration of the wider neighbourhood it is the opinion of the Tribunal that the location of the garage facilitates an acceptable streetscape appropriate the road boundary setbacks of neighbouring buildings and structures.

Outlook and views of neighbouring residents

The adjacent dwelling to the west is a lowset dwelling but is screened from this property by trees and bushes. There is a 1.8m high colorbond screen fence along the common side boundary. The Tribunal is of the opinion that the outlook and views of the adjacent residents would not be adversely affected when considering the impact of the self assessable fence and the existing vegetation.

The view from neighbouring residents opposite the subject site is currently a lowset building. The proposed building work will present a similar outlook from the neighbouring premises opposite. The portion of the proposed building work within the 6.0m front boundary setback is lowset. The Tribunal is of the opinion that the location of a building with a 0.0m setback facilitates an acceptable streetscape appropriate for the outlook and views of neighbouring residents.

Nuisance and safety to the public

The existing 1.8m high side boundary fence would be the significant feature that would affect safety to the public from vehicles exiting the subject site. This fence is allowed under the QDC MP1.2. There are significant footpath trees that obstruct visibility when looking to the west. The view to the east would be unobstructed but would be no worse than that from a vehicle exiting the site if there was a 1.8m – 2.0m high fence along the front boundary which is allowable under the QDC MP1.2

It is the opinion of the Tribunal that the location of a building with a 0.0m setback facilitates an acceptable streetscape appropriate such that it does not create a nuisance and does not adversely affect the safety of the public.

However, the footpath area will need to be regraded to allow suitable vehicle access to the garage and this can be achieved with suitable slopes and fall complying to Councils standards. This has been considered to ensure that pedestrian safety would not be an issue if an access driveway is constructed. By constructing a driveway with a slope of 1 in 20 and having a 50mm step at the entry the height of 250mm can be accommodated. The side slope along the footpath should be a maximum of 1 in 8 allowing this to be tapered off over a distance of 1.6m at the highest point along the front boundary. The construction of this aspect is not within the scope of this Tribunal decision.

It is the Tribunal's view that the proposed garage with a road front boundary setback of 0.0m satisfies the relevant Performance Criterion P1 of the QDC MP1.2 when considering all of the matters requiring consideration in combination.

David Kay
Building and Development Tribunal Chair
Date: 21 April 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:

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