



Building and Development Tribunals—Decision

Integrated Planning Act 1997

Appeal Number:	03-09-048
Applicant:	Neil Phillips
Assessment Manger:	Sunshine Coast Regional Council (Council)
Concurrence Agency: (if applicable)	Sunshine Coast Regional Council (Council)
Site Address:	2 Cook Street, Golden Beach, Caloundra and described as Lot 153 RP50050 – the subject site

Appeal

Appeal under Section 4.2.9 of the *Integrated Planning Act 1997* (IPA) against the decision of Sunshine Coast Regional Council to refuse an application for a covered deck within the Cook Street road alignment setback.

Date of hearing:	Monday 13 July 2009 at 10.00 am
Place of hearing:	2 Cook Street ,Golden Beach, Caloundra
Tribunal:	Dennis Leadbetter - Chairperson Kevin McLeish - Member Phil Locke - Member
Present:	Helen Phillips - Owner Nyrel Cox - Owner's representative Gary Sheffield - Council representative

Decision:

The Tribunal, in accordance with section 4.2.34 (2)(c) of the IPA, **sets aside** the decision of Sunshine Coast Regional Council dated 26 May 2009 to refuse the building development application and replaces it with the following decision:-

The assessment manager, in accordance with Section 4.2.34 (1), is **directed** to decide the development application for building works if the application complies with the following:-

1. The portion of the deck to the northern side of the eastern end of the existing dwelling can be erected to the dimensions and set backs of the original deck (now demolished);
2. The deck to the southern side of the eastern end of the dwelling can be erected to a dimension of 1.1 meters further east than that portion noted in clause 1 above, having a calculated Cook Street road alignment setback of 3.580 metres to the main structure and 3.280 metres to the outer most projection;
3. The structure may be roofed, and the eaves of the roof shall project to the north and south past the line of the main structure to line with the existing eaves of the existing roof to the dwelling. That will provide an overhang to the northern and southern faces of 0.45 metres and to the eastern face of 0.3 metres;
4. The roof to the deck shall be set below and parallel to the main roof to the dwelling, with a minimum height of the roof above the deck to the northern end to clear the existing windows to the eastern wall. The Tribunal would believe a dimension of approximately 2.3 metres measured to the underside of the ceiling would achieve this clearance;
5. The deck and stair case are to be provided with balustrades complying with the provisions of the Building Code of Australia;
6. The deck is to remain an open structure and cannot be enclosed other than by handrails. An open type privacy screens, e.g. lattice, may be erected to the southern façade to a maximum height of 2.0 metres above floor level;
7. Vehicle access to the site to be off Burke Street, and located to the western side of the dwelling.

Background

It is estimated that the existing detached dwelling would have been constructed shortly after WW2. It is a high set timber framed and asbestos cement sheeted beach cottage typical of that era. When constructed, Landsborough Shire Council had no town planning scheme and the building ordinances were less restrictive.

The dwelling had a small front verandah outside the living areas of the dwelling, and from the north east corner of this verandah a flight of stairs provided access to the ground to the northern side of the dwelling. That verandah encroached to within 4.38 metres of the Cook Street road alignment and 1.35 metres to the Burke Street road alignment, and the staircase and access landing encroaching to within approximately 0.9 metres to the Burke Street road alignment.

The original proposal submitted to Council was for approval to reconstruct the existing verandah, with a revised roof line, and to extend that verandah and new roof line to the remainder of the eastern facade of the dwelling, projecting an further 1.3 metres into the Cook Street road alignment setback. The new proposal also repositioned the stairs to the eastern face of the existing verandah. Council approved the reconstruction of the existing portion of the verandah, but refused the extension. It is the Tribunal's opinion that no concurrence agency determination was required for the reconstruction of the existing verandah.

Council refused the application on the grounds that:

1. *The building, if built in the form shown in the application, would have an extreme adverse effect on the amenity or likely amenity of the building's neighbourhood;*
2. *The aesthetic of the building, if built in the form shown in the application, would be in extreme conflict with the character of the building's neighbourhood;*
3. *The Development does not comply with the Performance Criteria 1 of MP 1.2 (Design and Siting Standards for Single Detached Housing on 450m² and over) of the Queensland Development Code for the following:-*
 - a. *The proposed structure will be inconsistent with the existing and proposed streetscape;*
 - b. *The proposed structure will detract from the outlook from surrounding properties.*

Material Considered

1. *Form 10 – Notice of Appeal* and grounds of appeal contained therein.
2. *Form 8 – Notice of Election* provided to the Registrar by the COUNCIL.
3. Drawings submitted with the appeal.
4. Verbal submissions from those attending the appeal.
5. Written submission from Sunshine Coast Regional Council presented to the Tribunal at the hearing.

6. *The Integrated Planning Act 1997.*
7. *The Integrated Planning Regulation 1998.*
8. *The Queensland Development Code (QDC) Part MP 1.2.*
9. An inspection of the site, including existing buildings on the site and adjoining sites.

Findings of Fact

The Tribunal made the following findings of fact:

1. The dwelling is a high set (nominal 1.8 metres above natural ground) asbestos cement clad timber framed cottage, which the Tribunal would estimate would have been built in the period post WW2 to 1955.
2. The allotment is a rectangular corner allotment, 12.2 metres wide to Cook Street and 49.8 metres to Burke Street.
3. The site and surrounding area is flat;
4. Dwellings in the immediate area range in age, style and materials, and are a mixture of low set and high set;
5. The dwelling is located on site close to the Cook Street frontage. The set backs to the main dwelling walls are 6.3 metres to Cook Street road alignment and 1.8 metres to the Bourke Street road alignment. The south side alignment set back is 2.15 measure to the dwelling's wall;
6. The existing verandah was built to the eastern side of the dwelling and projected to within 4.6 metres of the Cook Street alignment and to the original stairs approximately 0.9 metres to the Bourke Street road alignment;
7. The dwelling has a skillion roof, falling from south to north. The maximum height of the roof above ground level is approx 5.8 metres to the southern side;
8. That Sunshine Coast Regional Council did not follow the correct procedure as provided in the IPA, in assessing and processing this application.

Reason for the Decision

The Tribunal has considered this application in terms of Amenity and Aesthetics and to the Performance Criteria of the QDC part MP 1.2, for siting as Council determined the application on those grounds.

AMENITY.

The first point that the Tribunal raises is that the Council has determined that the structure will be *inconsistent with the current and proposed streetscape*. The Tribunal is of the belief that the extension is sympathetic with and a continuation of the existing dwelling, and that the existing dwelling would have been one of the original dwellings in the area. That makes it part of the current streetscape. Council's argument is therefore that the existing structure is inconsistent with itself, which the Tribunal has difficulty in comprehending.

The Tribunal also questions Council's determination that the proposed extension of an open verandah would be in *extreme conflict* with the character of the building's neighbourhood. The Tribunal would again suggest that, with the existing building being one of the earlier in the area, the newer buildings could be considered to be in *conflict* with it.

The Tribunal does not believe that the balcony, if built in the form shown on the application, would have an extreme adverse effect on the amenity or likely amenity of the building's neighbourhood.

AESTHETICS.

While the Tribunal does recognize that the existing dwelling may not be of a high aesthetic standard, it is a legal building, and improvements that may enhance the built environment should be considered on their merits and, where enhancing the overall aesthetics of the built environment, encouraged.

The Tribunal does not believe that the balcony, if built in the form shown on the application, would be in extreme conflict with the character of the building's neighbourhood.

PERFORMANCE CRITERIA OF THE QDC.

In determining this appeal, the Tribunal believes that the Performance Criteria P1 of QDC MP 1.2 is relevant to this appeal.

The specific criteria of P1 are:

- (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.

The existing structure has a compliant alignment set back to the south alignment. The minimum allowable under the QDC is 1.4 metres measured to the outer most projection and the actual setback is 1.7 metres. The QDC also lists as an *Acceptable Solution* the road alignment setback for a dwelling on a corner site at 6 metres to both streets, A1 (b) (i). Strict adoption of those conditions would considerably restrict useage of this particular site. Council also indicated at the hearing that they had no issue with the stairs being reinstalled in the existing Bourke Street alignment set back, which is only 1.8 metres to the wall and 1.35 to the omp. The existing structure, being constructed prior to the introduction of the Building Act in 1975, was constructed lawfully, is therefore still lawful and can be maintained.

The QDC also has a provision that no structure over 2 metres high can be built within a 9 metre x 9 metre truncation to a corner site. It should be noted that both the existing verandah and the stairs would fall within the 9 metre x 9 metre truncation, but being pre-existing are still compliant. The new extension to the verandah is outside that area.

It is the Tribunals opinion that the addition of an open verandah to the eastern elevation of the existing structure will considerably improve the appearance and street appeal of the existing dwelling. Positioning of the roof at a lower level to the existing roof would also reduce the apparent height of the building substantially. The positioning of the stairs to the eastern façade, falling towards the north-east, also reduces the impact to the Cook Street and Burke Street vistas. That reduction would be significant to Burke Street.

The Tribunal is of the opinion that an open verandah will reduce the impact the current structure has on the streetscape in terms of the visual bulk of the building and its height.

The existing building is already closer to both the street alignments than the nominated acceptable solution A1 of the QDC Part MP1.2, and to within less than one metre of the Burke Street boundary if the stairs are to be repositioned in their former position. The extension of the verandah to the balance of the east side of the existing dwelling will, in the Tribunal's carefully considered opinion, have a lesser impact on the streetscape than the stairs being placed in their original position close to Burke Street.

The proposed verandah extension will have little impact on the outlook from the immediately adjoining neighbour to the south, who is most likely to be affected, as there is existing landscaping to a height equivalent to the proposed and existing structure located close to the southern boundary. Outlook from other neighbours will not be reduced as the existing verandah is closer to the Cook and Burke Street frontages than the additional verandah and the repositioning of the stairs will also lessen the impact.

The extension of the verandah will not cause a nuisance or safety issue to the public, as the renovations discontinue the use of vehicle access from Cook Street and instead provides vehicular access in Burke Street at a significantly greater distance from the intersection.

It should also be noted that the *Acceptable Solution* listed in the QDC MP 1.2 is not the only solution and Local Government does have the jurisdiction to consider other solutions and make determinations accordingly.

General Comments

The Tribunal is also concerned at the processing of this application by Council. The original application lodged with Council on April 14, was for a *Development Application – for Building Work*. Council responded requesting the applicant to lodge an application for a siting relaxation. The applicant lodged this application with Council on May 13. Council responded on May 26, 2009, with a *Preliminary Application for Building Works*.

The Tribunal is of the opinion that Council did not follow the procedure set forth in the IPA and accompanying regulation. Under that legislation, the Assessment manager, in this instance Council, is responsible for lodging a concurrence agency referral, for siting variation (Table 1, Item 17 Schedule 2 IPR) and amenity and aesthetic impact of particular building work (Table 1, Item 15 Schedule 2 IPR), with the relevant local authority, again in this instance Council. It is not Council's choice to request the applicant lodge such an application, not is such an application provided for under the legislation, other than as a concurrence agency referral by an assessment manager.

Also Council's response to the application, which was for a *Development Application for Building Work*, is in the form of a ***Preliminary Application for Building work***. This requires the applicant to then apply again for a *Development Application for Building work* before proceeding to construction.

The Tribunal is of the opinion that to apply the provisions of Table 1, Item 15 Schedule 2 of the IPR, i.e. *that the proposed structure would be in extreme conflict with the character of the locality or have an extremely adverse effect on the amenity of the locality*, the local authority needs to have made a declaration by resolution in relation to the specific locality and of the form of building or structure which it considers may so impact that locality's character or amenity. The Tribunal has been unable to locate any such resolution.

Dennis Leadbetter

Dip Arch QUT, Grad Dip Proj Man QUT, METM UQ

Building and Development Tribunal Chair

Date: 8 September 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 grounds:

- (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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