



APPEAL

File No. 3/06/053

Integrated Planning Act 1997

BUILDING AND DEVELOPMENT TRIBUNAL - DECISION

Assessment Manager: Kingaroy Shire Council

Site Address: *withheld*-“the subject site”

Applicant: *withheld*

Nature of Appeal

Appeal under Section 4.2.9 of the *Integrated Planning Act 1997* against the decision of the Kingaroy Shire Council in relation to not granting an approval for the siting of a proposed new dwelling to be located within the prescribed 1.500m side boundary setback, on land described as “the subject site”.

Date and Place of Hearing: No on-site inspection requested – written report based on a previous site inspection undertaken on Tuesday, 16 May, 2006 at “the subject site”

Tribunal: Georgina J Rogers

Reports: Applicant’s representative
Mr Merv O’Reilly – O’Reilly, Nunn, Favier, Surveyors & Spatial Data Specialists
Mr Ron Roberts – Building Consultant contractor to Kingaroy Shire Council
CEO – Kingaroy Shire Council

Decision

The decision of the Kingaroy Shire Council as contained in its letter dated 31 May 2006 (Reference: JJ:LT 243671) refusing the application to relax the side boundary setback for the dwelling under construction, within the prescribed 1.500m side boundary alignment setback of the site is **set aside and is replaced with the following decision:**

The proposed new dwelling may be constructed within the prescribed 1.500m side boundary alignment setback subject to the following conditions:-

1. The proposed new dwelling is constructed with a minimum 1.000m setback from the eastern side boundary alignment to the wall of the dwelling;
2. A 1.800m high screen fence be constructed along the eastern alignment of the site for the length of the eastern side wall of the dwelling;
3. External screens may be provided to the window openings to provide weather protection. These should be restricted to 800mm maximum setback from the eastern side boundary.

Background

No on site inspection was requested, however a meeting on site had been undertaken on Tuesday, 16 May, 2006 in relation to another siting issue on the same dwelling.

The site is regular in shape and it was advised that the drawings lodged for approval with the certifiers did not comply with the required side boundary setback. This anomaly was identified after the footings and slab had been poured. A relaxation was applied for to the Kingaroy Shire Council by the surveyors who had set out the building on site.

The slab for the proposed dwelling has been constructed 1.060m from the eastern side boundary alignment. The item in question is that the slab and footings have been constructed within the required 1.500m side boundary required setback.

The dwelling is being constructed on an 800sq.m. site. It has a 20.000m road frontage to *withheld*, which is noted on the plan as being *withheld*. The road frontage faces south.

Material Considered

1. Form 10 – Building and Development Tribunal Appeal Notice and documentation including drawings indicating the location of the proposed new dwelling in relation to the eastern side boundary alignment;
2. Site plan, plans and elevations of the proposed new dwelling;
3. Written submission by the surveyor requesting relaxation and provide supporting statement for this relaxation to the eastern side boundary setback;
4. Written submission by the Applicant requesting relaxation and provide supporting statement for this relaxation to the eastern side boundary setback;
5. Correspondence from the Kingaroy Shire Council dated 31 May 2006, for not granting a relaxation for the siting of the new dwelling within required the eastern side boundary setback;
6. Written submission by the representative of the Kingaroy Shire Council outlining the Council's assessment of the application;
7. The *Standard Building Regulation 1993*; and
8. The Queensland Development Code, Part 12.

Findings of Fact

I made the following findings of fact:

1. The Kingaroy Shire Council wrote to the applicant on 31 May 2006 (Reference: JJ:LT 243671) not allowing the relaxation for the proposed new dwelling to be constructed within 1.500m of the eastern side boundary alignment.
2. The plans were viewed showing the location of the proposed new dwelling on site. The following was able to be determined:-
 - The site is regular in shape and has a site area of approximately 800sq.m.;
 - Vehicle access is via *withheld* to the south and has a frontage of approximately 20m;
 - The site consists of one lot and the proposed dwelling is being constructed parallel to the southern road boundary alignment.
3. The plans indicate that the proposed new dwelling would be setback 1.060m from the eastern side boundary alignment to the wall of the dwelling.
4. The dwelling is being constructed within a new subdivision, a number of which, it was advised, are by the same builder associated with this dwelling. The dwellings are generally brick veneer construction with tile roofs. The area is on a slight hill and looks over a valley to the north.

Reasons for the Decision

1. Part 12 of the QDC, sets out Performance Criteria (P1-P8) in relation to siting requirements which a local government must consider and be satisfied that the application meets the intent of each criteria for that application, and that the development does not unduly conflict with the intent of each of the Performance Criteria:

P1 The Location of a building or structure facilitates an acceptable streetscape, appropriate for –

(a) the bulk of the building or structure

From the plans provided the proposed new dwelling is to be setback a minimum 1.060m from the eastern side boundary alignment to its wall and outermost projection, being the edge of the roof overhang. The dwelling is of the same standard and style of those within the neighbourhood and is single storey.

The bulk of the building would not appear increase in dominance or character when constructed in its proposed location and design as it will blend in with the existing neighbourhood dwellings.

The proposed new dwelling to be constructed in the proposed location will not be inconsistent with the bulk of the surrounding neighbourhood.

(b) the road boundary setbacks of neighbouring buildings or structure

The proposed new dwelling will not impact on the existing road boundary setbacks of the neighbouring buildings or structure.

(c) the outlook and view of neighbouring residents

No feedback was received from the adjoining neighbours. It is understood from the information provided that there has not been a dwelling constructed on the adjacent site of the eastern side boundary which is in question for relaxation. Therefore the construction of the dwelling in its current setout location would appear to have minimal impact on the existing neighbouring resident's outlook and view.

(d) nuisance and safety of public

The proposed new dwelling eastern side boundary setback of minimum 1.060m to the wall would not cause any nuisance nor increase safety issues to the public as it is located within the existing property.

P2 Buildings and structures–

(a) provide adequate daylight and ventilation to habitable rooms

No request has been made to provide a roof overhang within the requested eastern side boundary setback distance of 1.060. The rooms which face east would be able to take advantage of morning sunlight.

No request has been made to provide external weather protection to the openings within this setback area. This could be desirable and would be able to be provided by individual awnings over each window in the form of external screens fitted within 200mm to the walls.

The location of the proposed new dwelling would have no impact on the extent of daylight and ventilation to habitable rooms within the existing dwelling, based on the evidence provided.

(b) allow adequate light and ventilation to habitable rooms of buildings on adjoining lots

The location of the proposed new dwelling would have no impact on the extent of daylight and ventilation to habitable rooms of neighbourhood dwellings, based on the evidence provided.

P3 Adequate open space is provided for recreation, service facilities and landscaping–

The location of the proposed new dwelling would have no impact upon the usable open space provided for recreation, service facilities and landscaping for the dwelling.

P4 The height of a building is not to unduly–

(a) overshadow adjoining houses

The location of the proposed new dwelling would not appear to overshadow any adjoining houses.

(b) obstruct the outlook from adjoining lots

The location of the proposed new dwelling would not impact upon the outlook of the adjoining allotments.

P5 Buildings are sited and designed to provide adequate visual privacy for neighbours–

The proposed new dwelling would not appear to overlook the adjoining neighbour and therefore would have minimal affect on the privacy of the neighbourhood.

P6 The location of a building or structure facilitates normal building maintenance–

The proposed new dwelling would not impact on the access for normal building maintenance onto the site.

P7 The size and location of structures on corner sites provide for adequate sight lines–

The location of the proposed new dwelling within the required 1.500m to 1.060m of the eastern side boundary alignment will not affect on site traffic vision as it is a side boundary.

P8 Sufficient space for on-site carparking to satisfy the projected needs of residents and visitors, appropriate for–

(a) the availability of public transport

The availability of public transport is not relevant to this hearing, as provision has been made by exiting on-site carparking which is not proposed to be changed.

(b) the availability of on-street parking

The availability of on-street parking would not be affected by the proposed development. The nature of the neighbourhood would not require significant on-street carparking generally.

(c) the desirability of on-street parking in respect to the streetscape

On-street car parking would not be reduced nor affected by the proposed development.

(d) the residents likelihood to have or need a vehicle

The residents need for a vehicle will not be affected by the proposed development and is therefore not relevant to this hearing.

2. Based on the above facts it is considered the appeal is proven.
3. QDC provides Performance Criteria and some Acceptable Solutions. The Acceptable Solutions are guidelines to provide reasonable and achievable outcomes. The local government is in a position to vary the Acceptable Solutions in relation to an application for siting requirements and to assess the application based on its merits.
4. In assessing the criteria from this part of the Code in relation to the proposed new dwelling to be constructed within the required 1.500m required eastern side boundary setback. The Tribunal found that there were grounds to allow for the dwelling to be constructed within the required side boundary setback in the location shown.
5. An assessment of Part 12 of the QDC did not identify any valid reason for refusing the application for the proposed new dwelling to be setback 1.000m in lieu of the required 1.500m to the buildings outermost projection from the eastern side boundary alignment.

GEORGINA J ROGERS
Building and Development
Tribunal Referee
Date: 5 July 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 of Building and Development Tribunals
Building Codes Queensland
Department of Local Government and Planning
PO Box 31
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