



Building and Development Tribunals
Queensland Government
Department of **Local Government and Planning**

APPEAL
Integrated Planning Act 1997

File No. 3-02-025

BUILDING AND DEVELOPMENT TRIBUNAL - DECISION

Assessment Manager: Fitzroy Shire Council
Appellant: Rockhampton Building Services
Site Address: 16 Anna Street Gracemere.
Property Description: Lot 8 RP 856853.

Nature of Appeal: Appeal under Section 21 of the Standard Building Regulation 1993, against the decision of the Fitzroy Shire Council to grant a relaxation of the Standard Building Regulation for the erection of a shed with a varied setback distance of 3.00m from the Hutchings Street boundary and not the 1.5 m clearance requested.

Conduct of the hearing: The Appellant and the Fitzroy Shire Council agreed to the Tribunal deciding the appeal on the basis of written submissions.

In response to written questions provided by the Tribunal, additional submissions were provided by the Appellant and the Fitzroy Shire Council.

Tribunal: Bert Dean.

Parties to the

Tribunal:	Bert Dean	Tribunal Referee
	Ms Cheryl Wood	Fitzroy Shire Council.
	Mr Bernie Ryder &	Rockhampton Building Services &
	Mr Bruce Krenske	(Owners representative)

Decision

In accordance with section 4.2.34.(2) of the Integrated Planning Act 1997, the decision of the Fitzroy Shire Council in its letter dated 21 May 2002 (Reference:HB-01-17 & BA 10802) refusing the relaxation of the Hutchings Street road boundary setback clearance sought, but approving a relaxation for a road boundary clearance of 3.00m in lieu of the prescribed 4.7m, **is confirmed**

Material Considered

1. Appeal documentation including drawings detailing the proposed shed and the siting relaxation sought by the applicant. Correspondence between the Appellant and Fitzroy Shire Council.

Photographs of other existing buildings and structures seen by the appellant as precedents were considered.

2 Correspondence from the Council dated 21 May and 26 June 2002 refusing the request for relaxation and granting an alternative relaxation.

3 Correspondence from the Appellant dated 11 June 2002 to Fitzroy Shire Council appealing the Council's decision not to grant the relaxation sought.

4. Correspondence from Fitzroy Shire Council outlining the Council's assessment of the application and giving its reasons for refusal of the relaxation sought, and agreeing to an alternative relaxation to allow siting at a 3.0m setback.

5. Further written submissions from Rockhampton Building Services and from Fitzroy Shire Council, answering questions from the Tribunal and expanding on material previously provided. Additional photographs were provided by the Appellant and the Council.

Findings of Fact

I made the following findings of fact:

1. The dwelling at 16 Anna Street is constructed with a Hutchings Street boundary setback of 4.5m. Other existing boundary clearances comply with current setback requirements.

2. The adjoining dwelling in the immediate vicinity is constructed with a setback distance from Hutchings Street similar to the dwelling on the subject site.

3. The subject site has its Hutchings Street road boundary offset, creating a reduced width of roadway (footpath) from the site to the northern end of Hutchings Street.
4. A paved area is installed in Hutchings Street as a traffic calming device to ensure that vehicles reduce speed when entering this narrowed section of the road. This device is in close proximity to the vehicle entry point for the proposed garage.
5. Fitzroy Shire Council does not have a resolution pursuant to Section 50 of the Standard Building Regulation meaning the application was not required to be assessed under amenity and aesthetics provisions of Section 51.
6. Fitzroy Shire Council has no local laws or planning scheme provisions applying to setback distances for the proposed development.
7. Under Section 48 of the Standard Building Regulation 1993, the Local Government may vary the application of Division 2 – boundary clearances.
8. Fitzroy Shire Council, in considering the matter as required by Section 48 found that none of the items raised under Section 48 (4) would be unduly affected by the proposed garage, however it was necessary to consider a matter under Section 48(3). The Tribunal concurs with this assessment.

Discussion

The structure to which the application is relevant is a roofed and enclosed garage building having a total height above the ground level to its apex of approximately 3.7m. A roller door is fitted to the street elevation.

The site has no special features that might support the request for relaxation of the Hutchings Street setback to only 1.5m. It does in fact have a feature (offset property boundary) which in the opinion of the Fitzroy Shire Council mitigates against the proposed relaxation.

There are no existing or proposed buildings or structures on closely adjoining allotments that would support approval of the proposed reduced setback. There do not appear to be any extraordinary circumstances on the site which would have made the set back sought, appropriate.

The issues of precedent as they relate to the proposed development were considered by the Tribunal.

The structures referred to by the appellant in their submission as precedents do not duplicate the circumstances of the subject development. Therefore they do not support approval of the reduced setback proposed by the applicant.

An undesirable precedent would be created by approval of the setback proposed.

Council is of the opinion that consideration had to be given to public safety in a situation where the driver of a vehicle exiting the building would have obstructed vision of the footpath and road. Other associated matters affecting safety are the reduced width of the footpath at the point of vehicle crossing, and the existence of a traffic calming device in close proximity to the point of exit.

This matter of public safety and the Councils' duty of care in relation to it was considered under Section 48 (3) (f) of the Standard Building Regulation.

It is considered that in the light of these issues, the Council has not been unreasonable in refusing the application. The Council did in fact allow a lesser setback than would normally be allowed by Section 47(3)(a) of the Standard Building Regulation.

The Tribunal has considered the applicant's drawings for the proposed development and further written representations. The facts and circumstances of the site and the area were also considered.

Having considered the representations, facts and circumstances, and the issues as they relate to the matters required to be considered under Section 48(3)(f) of the Standard Building Regulation; the proposed relaxation of the standard setback provisions of the Standard Building Regulation is not appropriate in relation to the proposed development.

It is therefore the conclusion of the Tribunal that the decision of the Fitzroy Shire Council to refuse the proposed reduced front setback contained in its correspondence dated 21 May 2002 is appropriate, and is **confirmed**.

The alternative setback offered by the Council in its letter entitles the owners to proceed with planning the development at that setback (3.0m) should they so desire.

Reasons for the decision:

1. The Tribunal agrees that the building work as proposed does not sufficiently satisfy a matter considered relevant under Section 48 (3)(f), of the Standard Building Regulation (SBR).

The proposed setback distance has the potential to endanger users of the footpath or road during periods of vehicular egress from the building and the Tribunal agrees that a greater setback than that proposed should be applied.

2. An undesirable precedent would be created by approval of the setback proposed.
3. Fitzroy Shire Council has recognised the applicants wishes to make the best use of the existing back yard by allowing a setback of 3.0m rather than the 4.8m which would normally be required by Section 47(3) of the Standard Building Regulation.

Bert Dean
Building and Development
Tribunal Referee
Date 8 August 2002

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 notice of the Tribunal's decision is given to the party.

Enquiries

All correspondence should be addressed to:

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