



APPEAL
Integrated Planning Act 1997

File No. 3/06/047

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 6.000m road boundary setback, on land described as “the subject site”.

Date and Place of Hearing: 9.00 am on Tuesday , 16 May, 2006 at “the subject site”
Tribunal: Georgina J Rogers
Present: Builder
Building Consultant contractor to Kingaroy Shire Council

Decision

The decision of the Kingaroy Shire Council as contained in its letter dated 28 April 2006 (Reference: JJ:LT 239451) refusing the application to construct an proposed new dwelling, within the prescribed 6.000m road 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 6.000m road boundary alignment setback subject to the following conditions:-

1. The proposed new dwelling is constructed with a minimum 6.000m setback from the road boundary alignment to the front wall of the dwelling with the setback adjustment only applying to the 600mm roof overhang, in lieu of the required 6.000m setback to the outermost projection of the building, being the edge of the roof overhang;

Background

The meeting was held on site with the builder and council representative. The applicant's representative did not attend, however phoned later in the day to discuss the tribunal.

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 road boundary setback. This anomaly was identified after the footings and subsequently the slab had been poured. It was advised that a surveyor had setout the building and had not observed the anomaly, and that the builder was not present at the time and also did not pick up the anomaly until after the slab construction.

The slab for the proposed dwelling has been constructed 6.000m from the road boundary alignment. The item in question is that the roof overhang projects into the required 6.000m road boundary setback by 600mm.

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. Appeal documentation including drawings indicating the location of the proposed new dwelling in relation to the road boundary alignment;
2. Site plan, plans and elevations of the proposed new dwelling;
3. Verbal submission by the builder and reasons for the incorrect location of the dwelling on the site in relation to the road boundary setback;
4. Correspondence from the Kingaroy Shire Council dated 28 April 2006, not granting approval for the siting of the new dwelling within required the road boundary setback;
5. Verbal submission by the representative of the Kingaroy Shire Council outlining the Council's assessment of the application;
6. The *Standard Building Regulation 1993*; and
7. The Queensland Development Code (QDC), Part 12.

Findings of Fact

I made the following findings of fact:

1. The Kingaroy Shire Council wrote to the applicant on 28 April 2006 (Reference: JJ:LT 239451) not allowing the relaxation for the proposed new dwelling to be constructed within 6.000m of the road boundary alignment.

2. An on site visit was undertaken and plans 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 existing dwelling has been constructed parallel to the southern road boundary alignment.
3. The plans indicate that the proposed new dwelling would be setback 6.000m from the road boundary alignment to the wall of the dwelling, but with the roof overhang the setback to this outermost projection would be reduced to 5.400m.
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. It appeared that the majority of the existing adjacent and new residential dwellings were constructed with the required minimum 6.000m setback from the road boundary alignment to their outermost projections. 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 5.400m from the road boundary alignment to its 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.

A solution could have been achieved by deleting the overhang, which projected into the 6.000m road boundary setback, from the front of the building; however this would have reduced the amenity of the building as the bulk of the building could then remain in its setout location.

A carport could be constructed within the 6.000m road boundary setback and it was viewed that a roof overhang of 600mm would have less impact than this allowed type of structure.

(c) the outlook and view of neighbouring residents

No feedback was received from the adjoining neighbours. Therefore the construction of a dwelling retaining its roof overhang would have minimal impact on the neighbouring resident's outlook and view. The site to the east and adjacent to the overhang in question has not been constructed at the time of this tribunal.

(d) nuisance and safety of public

The proposed new dwelling roof overhang would not cause any nuisance nor increased 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

The 600mm roof overhang is located on the southern of the master bedroom. While there is not direct sunlight into the room and is desirable to provide weather protection over this window opening.

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 will affect the overshadowing of the adjoining houses.

(b) obstruct the outlook from adjoining lots

The location of the proposed new dwelling will 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 as access is via the existing driveway and these setbacks will not be affected.

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 6.000m of the road boundary alignment will not affect on site traffic vision as it is only the roof overhang which will project into this setback area.

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 existing 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 6.000m required setback from the road boundary alignment. The Tribunal found that there were grounds to allow for the roof overhang to project into the required road boundary setback for the proposed new dwelling 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 5.4000m in lieu of the required 6.000m to the buildings outermost projection from the road boundary alignment.

GEORGINA J ROGERS
Building and Development
Tribunal Referee
Date: 1 June 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
LOGAN ALBERT STREET QLD 4002
Telephone (07) 3237 0403: Facsimile (07) 32371248