



APPEAL
Integrated Planning Act 1997

BUILDING AND DEVELOPMENT TRIBUNAL - DECISION

Assessment Manager: All Construction Approvals

Concurrence Agency: Mareeba Shire Council

Site Address: *withheld*—‘the subject site’

Applicant: *withheld*

Nature of Appeal

Appeal under Section 4.2.7(2)(b) of the *Integrated Planning Act 1997* (IPA) against the decision of All Construction Approvals, dated 3 March 2008, to refuse an application for the construction of a proposed rumpus room to have no road boundary clearance to *withheld*. The reason for refusal is based on a concurrence agency response from Mareeba Shire Council dated 31 January 2008.

Date and Place of Hearing: 11.00 am Thursday 3 April 2008 at ‘the subject site’.

Tribunal: Mr R W Rooney Chairperson
Mr G Heelan General Referee

Present: Applicant/Owner
Mr H Weber Certifier, All Construction Approvals
Mr R McCullagh All Construction Approvals
Mr N Daniels Mareeba Shire Council Representative

Decision

In accordance with Section 4.2.34 (2)(c) of the IPA, the Tribunal **sets aside** the decision appealed against and replaces it with the following decision:-

The siting of the proposed rumpus room on the road boundary to *withheld* is approved, subject to the following conditions:

1. The whole of that part of the proposed building within 6m of the *withheld* boundary must be kept below the level of the existing ground surface at the *withheld* frontage of the property; and
2. The roof, where within 6m of the *withheld* road boundary must be accessible and trafficable as an open space or deck and must be at or below the ground level at the *withheld* road boundary; and

3. In assessing the building development application for approval, the following are required:-
- (a) Complying fire separation must be maintained between the commercial development on the site and the dwelling as a class 1a dwelling; and
 - (b) If the dwelling is a class 4 dwelling, or if at any time the proximity of the dwelling to the commercial development causes the dwelling to become a class 4 dwelling, then the dwelling must be brought up to the required standards for a class 4 dwelling, whether the proximity is caused by the currently proposed building work or by some future building work; and
 - (c) Under Section 58 of the *Building Act 1975* the applicant is to provide a cadastral survey (identification survey) showing:
 - (i) The boundaries of the allotment;
 - (ii) The boundaries of any easement in the vicinity of the building; and
 - (iii) The actual location of existing and proposed buildings on the allotment.

Background

- The siting proposal required approval from Mareeba Shire Council as the concurrence agency.
- On behalf of the applicant, All Construction Approvals made an application to Council for a preliminary approval for the siting of a proposed rumpus room on the subject site.
- Council refused the application by letter of 31 January 2008. No reasons for refusal were given.

Material Considered

In coming to a decision, consideration was given to the following material:

1. 'Form 10 – Notice of Appeal' lodged with the Registrar on 4 March 2008 from the applicant, including attachments and photos;
2. Plan of site indicating proposed siting of building;
3. Plans and elevations of proposed building;
4. Council's letter dated 31 January 2008 refusing the proposal;
5. Verbal submissions from the applicant;
6. Verbal submissions from All Construction Approvals representatives supporting the owner's application;
7. Verbal submissions from Council's representative;
8. Council's report and recommendations dated 17 and 31 December 2007;
9. The *Building Act 1975*;
10. The *Building Regulation 2006*;
11. The Queensland Development Code Part 12;
12. The *Integrated Planning Act 1997*;
13. Council's planning scheme.

Findings of Fact

1. The legislation requires that an application for a siting dispensation for a building be referred to the local authority as a concurrence agency for direction.
2. Mareeba Shire Council, as the concurrence agency, refused the application in a letter dated 31 January 2008.
3. Accordingly, All Construction Approvals could not grant preliminary approval under the IPA 3.5.12.
4. The siting requirements of Council's planning scheme are performance based.
5. No reason for refusal was given by Council.
6. The on-site meeting revealed the existing shop and toilet building to be approximately on the road boundary to *withheld*, not 2m from it as indicated on the plan submitted. The proposal to allow the same road boundary clearance for the rumpus room is clearly intended. The line designated 'boundary' is the kerb and channel, which is approximately 4m from the road boundary, not 2m as shown. Council officers recognised this error in making their recommendation to Council.

Reasons for the Decision

1. At the time of refusal, the proposed building site was in the Myola zone of Council's planning scheme. This planning scheme had no performance requirements relative to siting provisions.
2. Provisions of the planning scheme apply and are complementary to the Queensland Development Code (QDC) Parts 11 and 12 – Design and Siting Standards for Single Detached Housing.
3. The Assessment Manager in conjunction with Council determined the proposed building – rumpus room as Class 1a, for the purposes of assessment.
4. The proposal satisfies the performance criteria of both the QDC – Part 12 and the planning scheme as that part within 6m of *withheld* boundary will not be above the existing ground surface at the *withheld* frontage of the property.
5. This classification would change should the owner build shops over the rumpus room at a later date.
6. Irrespective of the above classifications, the proposed siting of the rumpus room will not have an adverse effect on neighbouring properties or the general environment.

Ray Rooney
Building and Development Tribunal Chairperson
Date: 18 April 2008

Appeal Rights

Section 4.1.37. of the IPA 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
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