



**APPEAL**  
*Integrated Planning Act 1997*

**File No. 3/02/022**

## **BUILDING AND DEVELOPMENT TRIBUNAL - DECISION**

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**Assessment Manager:** Isis Shire Council  
**Site Address:** 84 The Esplanade Woodgate

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### **Nature of Appeal**

The appeal is against the decision of the Isis Shire Council to refuse an application to resite a dwelling currently located at 84 The Esplanade Woodgate to land described as Lot 16 on RP No 889686 situated at 38 Acacia Street Woodgate. The Council considers the relocation of the dwelling would be prejudicial to the amenity and aesthetics of the area in Acacia Street.

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**Date and Place of Hearing:** 1.00 pm Thursday 6 June 2002  
84 The Esplanade Woodgate and later at the Council Hall Woodgate.

**Tribunal:**

Phil Breeze	Tribunal member
Jeff Miles	Tribunal member
L F Blumkie	Tribunal Chairperson

**Present:**

Applicant / Owner	
Applicant / Owner	
Mr S Johnson	Isis Shire Council representative
Mr J Hartnett	Isis Shire Council representative
Mr L Blumkie	Tribunal Chairperson
Mr Jeff Miles	Tribunal
Mr Phil Breeze	Tribunal

## Decision

In accordance with section 4.2.34. of the Integrated Planning Act 1997, the Tribunal changes the decision of the Isis Shire Council and varies the application with the consent of the appellant to allow the dwelling to be resited subject to the following conditions: -

1. The dwelling is lowset;
2. The dwelling is set back from the street alignment a minimum of 6 metres;
3. A deck measuring 2.1m x 4.0m is added to the front of the dwelling and includes the following:-
  - A gable roof cut into the main roof of the existing dwelling;
  - A shot edge timber floor;
  - Timber railings with vertical balusters and “bread loaf” top rail, all to design and heights as required by the Building Code of Australia.
4. A roofed deck measuring 2.4m x 6.6m is added to the rear of the dwelling and includes the following: -
  - Timber shot edge floor;
  - Timber railings as described above;
  - Lattice panels to each end. The side boundary clearance is a minimum of 500 mm;
5. A new colorbond roof is added to the whole development;
6. The external wall sheeting is treated with “granasite” or similar material. Hardiplank sheeting would be considered acceptable.
7. All existing windows and doors (excluding possibly the front and rear doors) are removed and replaced with anodised aluminium windows and doors;
8. The dwelling and deck is enclosed under with battens or similar material to the front and both sides;
9. A laundry is installed in an enclosure cupboard on the new rear deck;
10. A free standing gable roofed carport (single or double) is sited to the left of the dwelling with a minimum of 1.5m clearance to the dwelling and is located with at least half its length adjacent to the side of the dwelling;
11. A complete colour scheme is submitted to the satisfaction of the Isis Shire Council;
12. A landscaping plan is submitted to the satisfaction of the Isis Shire Council;
13. Any water tanks installed are screened with lattice or landscaping to the satisfaction of the Isis Shire Council;
14. Any asbestos material to be removed shall be carried out in accordance with Queensland Law;
15. Payment of a \$10,000 bond to the Isis Shire Council for the satisfactory relocation and completion of the development;
16. The replacement of any damaged or defective materials;
17. The roof water is discharged to the kerb or as directed by the Isis Shire Council;
18. A septic and sullage system is installed to the Isis Shire Council’s Engineers specification and design;
19. An impervious seal is provided to laundry tubs, splashback to kitchen sink and bathroom fixtures;
20. Provide bracing and tie down to the dwelling and additions to satisfy wind rating of W41N and indicate all details on the building application plans;
21. Submit for approval to the Isis Shire Council parts A & B of the IDAS application form. The plan should show all room sizes;

22. Building work shall commence within 2 months of the building approval date;
23. All development shall be completed within 6 months of the building approval date;
24. Should the development not be completed within 6 months of the building approval date a new building application is to be submitted to the Isis Shire Council. Any such application will be assessed in accordance with legislation applicable at the time and be subject to all fees and charges applicable at the time of lodgement; and
25. All fees and bond to be paid to the Isis Shire Council prior to the structure or any part of the development being resited to Lot 16 on RP 889686, 38 Acacia Street. Fees and bond are as follows: -

• Bond	\$10,000.00
• Building fee	\$402.00
• Septic fee	\$175.00
• Water fee	\$458.00
• Inspection fee	\$175.00

**Total \$11,210.00**

### **Background**

The appellant made a written request to the Isis Shire Council seeking permission to relocate the dwelling from The Esplanade Woodgate to Acacia Street Woodgate in correspondence dated 18 March 2002.

Additional details were provided to Council in a second letter dated 21 March 2002 which outlined some of the work to be undertaken, it included: -

- The fibro roof would be pressure cleaned and painted;
- The walls would be cement rendered;
- The existing rain water tank would also be relocated;
- The dwelling would be positioned approximately 1m above ground on concrete stumps;
- A new deck would be added to the rear and a new front porch both with concrete floors.

Council refused the application on 7 May 2002 as it considered “the relocation would be prejudicial to the amenity and aesthetics of the area in Acacia Street”. Council also considered “the proposal was not compatible in design with the surrounding area”.

The Tribunal was advised of an objection being lodged with the Department of Local Government and Planning dated 2 June 2002 from the owners of 34 Acacia Street. Hence an interview was held with them at their residence on 6 June 2002.

The Tribunal provided a detailed explanation on the proposal including: -

- The relocated dwelling would be lowset;
- Roofed decks would be added to both the front and rear;
- A carport would be added;

- The fibro roof will be removed and a new colorbond roof added;
- All asbestos would either be removed or treated.

The owners confirmed on that basis they would now have no objection to the proposal.

The owner of the adjoining property confirmed in correspondence to the Department of Local Government and Planning in correspondence dated 30 May 2002 that they had no objection to the resiting of the dwelling onto Lot 16 Acacia Street.

The Council representatives explained at the hearing that Council's 2 main issues with the refusal were: -

1. The proposed relocation site was in a new subdivision area where developments were new houses and the proposal, due mainly to existing materials and size of the dwelling, would be in extreme conflict with the surrounding developments;
2. Woodgate consisted of (a) the old development along The Esplanade where older style fibro houses were common and (b) the new subdivision with modern houses. The older dwellings on The Esplanade were being gradually replaced with modern expensive houses. Council considered the older style dwelling was not appropriate in the new area.

### **Material Considered**

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

1. Correspondence from the applicants dated 18 March 2002, to the Isis Shire Council requesting a decision on the resiting.
2. Correspondence from the applicants dated 21 March 2002 to the Isis Shire Council providing further information on the proposal.
3. Isis Shire Council refusal of the request dated 7 May 2002.
4. Survey Plan of the site. Plan No 895039.
5. Local newspaper article on the resiting.
6. Copy of the appeal notice dated 16 May 2002.
7. Copy of Isis Shire Council resolution on amenity and aesthetics dated 18 September 2001.
8. Written submission dated 2 June 2002 from the owners of 34 Acacia Street Woodgate.
9. Written submission dated 30 May 2002 from the owners of Lot 16 Acacia Street.
10. Verbal submissions from the owners of 34 Acacia Street on 6 June 2002.
11. Verbal submissions from the applicants on 6 June 2002 explaining in detail their proposals for the resiting.
12. Verbal submissions from the Isis Shire Council representatives on 6 June 2002 setting out Council's reasons for the refusal.
13. The Building Code of Australia.
14. The Standard Building Regulation 1993.
15. The Building Act 1975.
16. The Integrated Planning Act 1997.
17. Isis Shire Council Building Surveyor's report to Council, File No: P 16R889686, dated 16 April 2002.

## **Findings of Fact**

Isis Shire Council adopted an Amenity and Aesthetics Policy under Section 50 of the Standard Building Regulation on the 18 September 2001, which established broad conditions for both amenity and aesthetics in their Shire.

The policy applied to, amongst other things, the relocation of any building from one site to another within the Isis Shire Council area.

The building in its current location is high set. It has a 'super six' corrugated asbestos sheet roof and flat asbestos sheeting to the walls. The dwelling is small in area compared to new developments in the neighbourhood. It is situated on the esplanade and is one of many of similar design and style commonly built in the area at the time of its construction.

The proposed site is level and is in a new subdivision area where most dwellings appear to be relatively new, low set and typical in size to that commonly found in most new subdivisions in any location in most Local Government areas.

## **Reasons for the Decision**

At the request of the Tribunal the applicants gave a detailed explanation of the proposed upgrades to the dwelling. These included: -

- Due to the need to upgrade bracing and tie down provisions, the existing fibro roof would need to be removed; hence it would be replaced with a colorbond roof.
- The house would be low set i.e. about 1m above the ground.
- All windows and doors would be replaced with anodised aluminium windows and doors and be fly screened.
- A front porch measuring 2.5m x 4m with a skillion roof would be included.
- A rear deck measuring 2.5m x 6.6m with a skillion roof would be included.
- A single carport with a skillion type roof would be added to the left side of the dwelling. It would be either attached or free standing.
- A laundry would be included on the rear deck.
- Landscaping would be carried out however this had not yet been considered in any detail.

The Tribunal considered the verbal submissions from both Council and the appellants and after further discussion on the roof style to the front deck and carport, the owner agreed a gable roof would be more in keeping with the aesthetic character of the neighbourhood. It would add to the attractiveness of the dwelling and would eliminate possible problems with heights of the existing eaves line.

The Tribunal considered that with the addition of the decks and carport to the dwelling it would appear to be similar in size to other developments in the neighbourhood.

With the change of materials i.e. colorbond roof, changed wall sheeting, timber verandas and railings, battening and landscaping, the Tribunal considered it would not be in extreme conflict with the amenity or aesthetics of the neighbourhood and would satisfy the Isis Shire Council's Amenity and Aesthetics Policy.

The proposal offered by the appellant and the changes recommended by the Tribunal were discussed in detail with the appellant who willingly accepted the conditions.

The Isis Shire Council Building Surveyor's report to Council contained some additional conditions. These were considered by the Tribunal and found to be appropriate and have therefore been included in the conditions of approval.

Hence, in accordance with section 4.2.34 of the Integrated Planning Act the Tribunal decided to change the decision of the Isis Shire Council and vary the application with the consent of the appellant to allow the dwelling to be resited subject to the following conditions: -

1. The dwelling is lowset;
2. The dwelling is set back from the street alignment a minimum of 6 metres;
3. A deck measuring 2.1m x 4.0m is added to the front of the dwelling and includes the following: -
  - a. A gable roof cut into the main roof of the existing dwelling;
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  - c. Timber railings with vertical balusters and "bread loaf" top rail all to heights as required by the Building Code of Australia.
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8. The dwelling and deck is enclosed under with battens or similar material to the front and both sides;
9. A laundry is installed in an enclosure cupboard on the new rear deck;
10. A free standing gable roofed carport (single or double) is sited to the left of the dwelling with a minimum of 1.5m clearance to the dwelling and is located with at least half its length adjacent to the side of the dwelling;
11. A complete colour scheme is submitted to the satisfaction of the Isis Shire Council;
12. A landscaping plan is submitted to the satisfaction of the Isis Shire Council;
13. Any water tanks installed are screened with lattice or landscaping to the satisfaction of the Isis Shire Council;
14. Any asbestos to be removed shall be carried out in accordance with Queensland Law;
15. Payment of a \$10,000 bond to the Isis Shire Council for the satisfactory relocation and completion of the development;

16. The replacement of any damaged or defective materials;
17. The roof water is discharged to the kerb or as directed by the Isis Shire Council;
18. A septic and sullage system is installed to the Isis Shire Council's Engineers specification and design;
19. An impervious seal is provided to laundry tubs, splashback to kitchen sink and bathroom fixtures;
20. Provide bracing and tie down to the development to satisfy wind rating of W41N and indicate all details on the building application plans;
21. Submit for approval to the Isis Shire Council parts A & B of the IDAS application form. The plan should show all room sizes;
22. Building work shall commence within 2 months of the building approval date;
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**Total \$11,210.00**

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**Leo F Blumkie**  
**Building and Development**  
**Tribunal Chairperson**  
**Date: 13 June 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 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  
BRISBANE ALBERT STREET QLD 4002  
**Telephone (07) 3237 0403: Facsimile (07) 32371248**