



Building and Development Tribunals—Decision

Integrated Planning Act 1997

Appeal Number: 3—09—065

Applicant: Mr Harry Trevor

Assessment Manager: Sunshine Coast Regional Council

Concurrence Agency: N/A
(if applicable)

Site Address: 206 River Road, Maroochy River and described as Lot 2 on CG1787 — the subject site

Appeal

Appeal under section 4.2.9(1)(a) of the *Integrated Planning Act 1997* (IPA) against the decision of the Sunshine Coast Regional Council to issue a Decision Notice dated 27 July 2009 refusing a development application for a class 10a shed.

Council reasonably believes that the development application for a class 10a shed does not comply with the performance criteria of Code 4.1, Element 9, P1 of the Maroochy Plan 2000:-

"Floor levels of detached houses and display homes are provided at a height above flood levels at which the safety of people on the site is maintained and potential damage to property on the site is minimised".

Date of hearing: 11:00am Monday 31 August 2009

Place of hearing: The subject site

Tribunal: Mr Leo Blumkie— Chair

Present: Mr Harry Trevor – Applicant
Mr Philip Trevor – Applicant's son
Mr Steven Settle – Adviser to applicant
Mr Fred Vicary – Sunshine Coast Regional Council
Mr Leo Blumkie – Chairperson

Decision:

The Tribunal, in accordance with section 4.2.34 (2) (c) of the IPA, **sets aside** the decision appealed against and **directs** that the Assessment Manager deletes the reason for refusal (*the class 10a shed does not comply with the performance criteria of Code 4.1, Element 9, P1 of the Maroochy Plan 2000*) and **approves** the Application subject to compliance with all other matters required under Queensland building legislation.

Background

The applicant owns two adjoining parcels of land (2 deeds) lots 1 and 2, each approximately 11.4Ha in area, both having the Maroochy River as one boundary. An existing Class 1 building and numerous Class 10a buildings are located on Lot 1.

The subject site Lot 2 is zoned rural (Sustainable Cane Lands) under the Maroochy Plan 2000.

This appeal is about the new Class 10a shed erected on Lot 2 without a development approval.

On the 29 August 2006 a Preliminary approval was granted for a dwelling (Class 1) to be located on the subject site. The proposed shed was not part of this preliminary approval.

Since that preliminary approval an application was made for a shed however the application lapsed in July 2007 due mainly to lack of information being submitted.

On the 28 October 2008 an application for Operational Works (driveway and building pad for a shed) was approved with conditions for the subject site. The amount of works for the pad and the shed was to be determined at the building application stage.

On the 16 April 2009 an application for Building Works for the subject shed was submitted to Council.

On the 29 April 2009 a request for additional information was forwarded to the applicant requesting a site-works plan to show the extent of the building platform, batters and the proposed finished floor level.

The information received as a result of the information requested indicated that the floor height of the shed did not comply with the minimum floor requirements of Code 4.1, Element 9, of the Maroochy Plan 2000 namely:-

"Floor levels of detached houses and display homes are provided at a height above flood levels at which the safety of people on the site is maintained and potential damage to property on the site is minimised".

On the 24 June 2009 a further request for information (outstanding issues) was forwarded to the applicant requesting a demonstration as to how the proposal complies with the performance requirements of the above code.

As a result of the outstanding information requested, the applicant contacted Council (Fred Vicary) and advised that compliance with the performance criteria could not be achieved as the shed had already been constructed.

Council therefore refused the application on 27 July 2009.

An appeal was lodged with the Registrar Building and Development Tribunals on 17 August 2009.

On the 24 August 2009 the Acting Registrar advised:-

- the Sunshine Coast Regional Council in writing that an appeal had been lodged regarding the Decision Notice on the subject property and also
- the Applicant and Assessment Manager in writing that a Tribunal had been established to consider the appeal including the time, date and location for the hearing.

The hearing commenced at 11.00am and after discussion on a number of issues, with the approval of the applicant and Council, was adjourned (Refer correspondence). The adjournment was to enable the applicant's adviser, Mr Steven Settle RPEQ, to prepare an expert written statement on all hydraulic (flood) matters, which are pertinent to the subject site, and were referred to in the appeal submissions and/or raised at the hearing.

It was also agreed that the statement would be forwarded to the Registrar Building and Development

Tribunals on or before the 30 September 2009.

Upon receipt of the statement, the Registrar was requested to forward a copy to the Sunshine Coast Regional Council for written comment. Council comment was requested to be forwarded to the Registrar within one week of receiving the statement.

The written statement was forwarded to the Registrar on the 22 September 2009. The statement was forwarded to the Tribunal and Sunshine Coast Regional Council on the 24 September 2009.

Sunshine Coast Regional Council in their e-mail of 7 October 2009 advised the Registrar that Council had no further comments to make on the appeal.

As Council had no further comments on the appeal, the Tribunal decided it was not necessary to reconvene the hearing and the appeal was decided.

Material Considered

The material considered in arriving at this decision comprises:-

1. 'Form 10 – Appeal Notice', grounds for appeal drawings, photos, extracts and correspondence accompanying the appeal lodged with the Registrar on 17 August 2009.
2. Decision Notice issued by the Assessment Manager dated 27 July 2009.
3. Verbal submissions from the Applicant, Applicants son and adviser at the hearing.
4. Code 4.1 Element 9 of the Maroochy Plan 2000.
5. Written submission from the Applicant's adviser (Mr S Settle RPEQ 3142) dated 22 September 2009.
6. E-mail response from Sunshine Coast Regional Council dated 7 October 2009 advising that Council has no further comments to make on the appeal.
7. *Building Act 1975*.
8. *Building Regulation 2006*.
9. The IPA.

Findings of Fact

The Tribunal makes the following findings of fact:

- The site is 11.432Ha in area, zoned rural under the Maroochy Plan 2000 and has one boundary to the Maroochy River.
- The Maroochy River floods and the flood levels have been recorded by the Applicant on a post under the residence over the past 67 years.
- The recorded food levels have been documented by the applicant's adviser and have been included as Appendix A in the submission dated 22 September 2009.
- The Maroochy Plan 2000 utilises the flood prediction of the Maroochy River for the flood levels for the 100 year ARI event on the subject site.

- The flood prediction of 400mm above the 100 year ARI flood level used to determine the acceptable standard (as contained in the Council's refusal) would have had to have been derived from a study completed prior to the introduction of the Maroochy Plan 2000.
- Based on the evidence presented at the hearing the flood level or hydraulic prediction model would have utilised the frictional resistance or roughness below the waterway surface for specific run-off conditions.
- The greater the frictional surface the greater the flood level will become.
- The lands of the lower Maroochy River in the vicinity of the subject site have, up to 2003, been intensively cultivated with sugar cane for in excess of 50 years.
- Cultivation of sugar cane in the lower reaches of the river diminished substantially with the closure of the Nambour sugar mill in 2003.
- The applicant estimates that the reduction in cane since 2003 is around 70 percent.
- The shed has been constructed with a freeboard of 160mm.

Reasons for the Decision

A SAFETY OF PEOPLE

The performance criteria of Code 4.1 of the Maroochy Plan 2000, refers to detached houses and display homes. Its purpose as written on the first page of the code is to ensure floor levels of such buildings are provided at a height above flood levels at which the safety of people, and potential damage to property on the site is maintained.

The purpose of the code contains the following reference under notation 1 which states:-

"It contains provisions that relate not only to the main residential building, but also to associated outbuildings.....associated with a detached house or display home."

The shed being a class 10A building is considered to be an outbuilding.

Code 4.1 particularly element 9 contains no such provisions and makes no reference to outbuildings. Hence, it is not clear that the criteria is applicable to outbuildings.

As people are not living in the shed, it is considered the shed should not be required to have the same safety features - i.e. the same floor level as that required for a detached house or display home.

B PERSONAL EXPERIENCE

The owner has lived on the site for some 67 years. In the opinion of the Tribunal, he would not be putting his property at risk by building a shed with a floor level below the highest recorded flood level especially where he intended to store valuable machinery, vehicles and/or equipment.

C FLOOD LEVELS

The amount of sugar cane grown in the lower reaches of the Maroochy River has diminished with the closing of the Nambour mill in 2003.

As a result of the reduction of cane the roughness conditions of the flood plain lands have changed substantially from those existing at the time of the flood level prediction for the Maroochy analysis

Therefore, the conditions used (frictional resistance) to calculate the predicted flood levels in the Maroochy Plan 2000 are now, most likely, not up to date.

The consequence of reduction in frictional resistance, if reanalysed in the hydraulic model for the 100 year ARI event, would most likely indicate a reduction in flood level. The extent of this reduction would be significant in terms of the subject application and quite possibly could be of a magnitude such that the shed achieves the nominated flood performance objective of 100 year ARI.

D PROPERTY DAMAGE

The shed being above the 100 year ARI flood level with considerable freeboard, and greater distance from the river than the existing residence is, in the opinion of the Tribunal, very low risk of sustaining damage based on the geographic location and anecdotal observations.

With a shed floor level of 160mm above the 100 year ARI it is the opinion of the Tribunal that there is low risk of inundation, and hence the safety of people and the potential damage to property satisfies the performance criteria of element 9 of the code.

Leo Blumkie
Building and Development Tribunal Chair
Date: 20 October 2009

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 Infrastructure and Planning
PO Box 15009
CITY EAST QLD 4002
Telephone (07) 3237 0403 Facsimile (07) 3237 1248