



Building and Development Tribunals

Queensland Government

Department of **Local Government and Planning**

APPEAL

Integrated Planning Act 1997

File No. 03-05-055

BUILDING AND DEVELOPMENT TRIBUNAL - DECISION

Assessment Manager: Redland 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 Redland Shire Council to approve, subject to conditions, an application for Building Works for a proposed dwelling house on land described as Lot *withheld* and situated at “the subject site”.

Date and Place of Hearing: 3:00pm on Thursday 13th October 2005
at the Building and Development Tribunal Offices,
Level 17, 41 George St, Brisbane

Tribunal: Mr Chris Schomburgk

Present: *withheld* – applicant;
Mr Mike Ryan – Redland Shire Council; and
Mr Ken Rauber – Redland Shire Council
Ms Simone Boughen – Building and Development Tribunal

Decision:

The decision of the Redland Shire Council as contained in its written Decision Notice dated 7th July 2005, to approve a Development Permit for a single occupancy dwelling, subject to conditions, is **upheld** and **the application is approved, subject to conditions, including an amendment to Condition 16 as set out below. The appeal is therefore dismissed.**

Material Considered

The material considered in arriving at this decision comprises:

- The application and supporting plans and documentation;
- The relevant provisions of the Town Planning Scheme for Redland Shire Council;
- The Queensland Development Code;
- Council’s Decision Notice dated 7th July 2005;
- The Development Permit for the Material Change of Use for a Dwelling House on the subject

site, that approval being dated 21st November 2003; and

- The Integrated Planning Act 1997.

Findings of Fact

I make the following findings of fact:

- The site comprises Lot *withheld*, with frontage to *withheld* Terrace on *withheld* Island.
- The Planning Scheme for the Redland Shire requires an application for Material Change of Use (Code Assessable) for a dwelling house on this land. Such an application was approved by the Council in November 2003 and remains current at the time of the hearing of this appeal. That approval was the subject of conditions which were not appealed against by the applicant.
- One of those conditions requires the amalgamation of Lot 275 with Lots 276, 277 and 278 on the same RP, prior to the use or occupation of the dwelling house.
- I was provided with a copy of a Survey Plan that shows that Lot 277 was amalgamated with Lot 278 to form the subject Lot 1. The other lots (275 and 276) have not been amalgamated as is required by the Material Change of Use approval.
- The current application seeks a Development Permit for Building Works for a Dwelling House on Lot 1.
- The Council's Decision Notice for this application sought to reflect the relevant Material Change of Use Development Permit conditions. It included, relevantly, conditions 2, 3 and 16. It is these conditions that are the subject of this appeal.
- Condition 2 of this approval repeats the condition of the Development Permit for the Material Change of Use for the proposed dwelling house (Condition 12 of that approval).
- Condition 3 requires a final plumbing and drainage compliance certificate prior to use or occupation of the proposed dwelling house.
- At the hearing of this appeal, the applicant conceded that the Council was bound to continue to apply the conditions of the Material Change of Use Permit requiring amalgamation to the subject application. This Tribunal has no power to review, amend or delete any of those conditions.
- The applicant agreed to seek alternative means to attempt to address this issue, including the option of applying to change or delete the offending condition. It was noted that neither the Council officers in attendance nor the Referee could provide any indication as to how any such application might be considered by the Council.
- What became the issue in this appeal, then, was the timing of certain final inspections for the proposed house (Condition 16).
- The Council representatives agreed that minor changes to the wording of Condition 16 would have the same intended effect and may appease, at least to some degree, the applicant's concern.
- It was agreed by both parties that the fourth dot point of Condition 16 be amended to read "*Final inspection within 2 years of the date of this Decision Notice. Note that a Completion Certificate will not be issued until Condition 2 above has been satisfied.*"
- This would have the effect of allowing construction to commence and be completed, but that no use or occupation could occur until the Certificate of Completion had issued.

Reasons for the Decision

- The proposed amendment to Condition 16 did not change the intent of the Condition, that no use or occupation could occur until the amalgamation issue was resolved.
- The applicant was still required to amalgamate the relevant parcels, or obtain alternative resolution to this issue, prior to use or occupation of the dwelling house.
- It is beyond the power of this Tribunal to amend or delete Condition 2 of this approval, given

that it applies to the Material Change of Use component of the proposed use.

- Condition 3 of this approval is a proper and usual condition of approval for Building Works for a dwelling house.

Conditions of approval:

The conditions set out in the Decision Notice of 7th July 2005, remain, with the exception that the fourth dot point in Condition 16 is amended to read as follows:

- **“Final inspection within 2 years of the date of this Decision Notice. Note that a Completion Certificate will not be issued until Condition 2 above has been satisfied.”**

Chris Schomburgk
Building and Development Tribunal General Referee
Date: 18th October 2005

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:

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