Building and Development Tribunals
Queensland Government
Department of Local Government and Planning

APPEAL **File No. 3/03/055**
Integrated Planning Act 1997

BUILDING AND DEVELOPMENT TRIBUNAL - DECISION

Assessment Manager: Caloundra City Council

Site Address: 171 Oceanic Drive, Warana

Nature of Appeal

Appeal under Section 4.2.9 of the Integrated Planning Act 1997 against a decision of Caloundra City Council to refuse to issue a Development Permit for the construction of a dwelling on Lot 289 on Plan W 95563, situated at 171 Oceanic Drive, Warana.

Date and Place of Hearing: 4.00pm on 6 November, 2003
at Caloundra City Council

Tribunal: Geoff Cornish

Present: Applicant
Robbie Pocock- Caloundra City Council
Andrew Stewart- Caloundra City Council

Decision

In accordance with Section 4.2.34 [2] of the Integrated Planning Act 1997, I hereby set aside the Decision Notice issued by Caloundra City Council, refusing permission for building work on the grounds of amenity and aesthetics, and direct that the Council reassess the application for a single detached dwelling to be located on Lot 289 on Plan W 95563, situated at 171 Oceanic Drive, Warana, on the basis that the resolution of Council, made in February 2002 pursuant to Section 50 of the Standard Building Regulation 1993, does not apply to this application.

Background

The matter concerns a Decision Notice, issued by Caloundra City Council on 9 September, 2003, refusing approval for the construction of a dwelling, on the basis that the applicant had not applied to Council for an assessment of the proposed dwelling against the amenity and aesthetics provisions

of the Council's resolution made pursuant to Section 50 of the Standard Building Regulation. Council stated in the decision that the dwelling, if built, would have an extreme adverse effect on the amenity of the building's neighbourhood and would be in extreme conflict with the character of the building's neighbourhood. The applicant believes that the Council's resolution is not applicable to the building and therefore an approval, not a refusal, should have been issued.

Material Considered

1. Decision Notice issued on 9 September 2003, refusing permission for the construction of a dwelling.

2. Building and Development Tribunals Appeal Notice dated 24 September 2003, containing reasons for the appeal, together with covering letter of the same date and further attachments.

3. Verbal submission by the applicant on 6 November 2003 setting out why the appeal should be allowed.

4. Verbal submissions by Robbie Pocock and Andrew Stewart of Caloundra City Council on 6 November 2003 setting out Council's reasons for refusing the application.

5. Written submission by Caloundra City Council detailing statements made by Robbie Pocock.

6. Copy of Council circular, dated 6 March 2002, setting out the resolution of Caloundra City Council, pursuant to Section 50 of the Standard Building Regulation 1993, in respect of Amenity and Aesthetics provisions to be applied to certain forms of construction within the Shire.

7. Standard Building Regulation 1993.

8. Building Act 1975.

9. Integrated Planning Act 1997.

Findings of Fact

I made the following findings of fact:

1. Council has in place a lawfully made resolution, in respect of amenity and aesthetics, pursuant to Section 50 of the Standard Building Regulation 1993.

2. Three applications have been made to Council for the approval of this dwelling.

3. The first two applications were withdrawn by the applicant.

4. Council made a verbal request to the applicant on 30 June 2003, in respect of the second building application, for a separate application to be made to Council to have the matter of the amenity and aesthetics aspects of siting this dwelling on this allotment considered in accordance with Council's resolution.

5. The applicant responded in writing to Council on 7 July 2003 stating that the amenity and

aesthetics provisions of the Council resolution, in his view, did not apply to the application and that he would not comply with the request.

6. Council decided that the dwelling was subject to Council's resolution, and made a written request to the applicant, on 14 July 2003, for a separate application to be made to Council to have the amenity and aesthetics aspects of siting this dwelling on the allotment assessed against the Council resolution.

7. The applicant sought, and subsequently received around 7 August 2003, separate legal advice stating that the application was not subject to Council's resolution.

8. The second building application was withdrawn on or about 8 August 2003.

9. The third building application was made to Council on 20 August 2003.

10. No separate application was made to Council, in respect of the third building application, for an assessment of the amenity and aesthetics aspects of siting the building on this allotment.

11. Council, in assessing the third application, decided that the dwelling required assessment against Council's resolution regarding amenity and aesthetics.

12. In the absence of an application for amenity and aesthetics assessment, Council proceeded to assess the proposed dwelling and decided it could not be approved.

13. Council proceeded to refuse the application for a development permit for building work and issued a Decision Notice to that effect on 9 September 2003.

14. The applicant made application to the Planning & Environment Court for a determination that, inter alia, the dwelling is not caught under the resolution of Council made pursuant to Section 50 of the Standard Building Regulation 1993.

15. Notwithstanding that the proceedings in that Court have not been completed, this Tribunal has jurisdiction to hear this appeal.

Reasons for the Decision

After assessing the facts and the submissions of the parties, I have reached the following conclusions:

- As the dwelling does not currently exist, it cannot be considered to constitute a building that is being relocated to 171 Oceanic Drive, Warana.

- The Oxford English Dictionary defines **"locate"**, as it applies to a building, as **"to fix the site of"**.

- The Oxford English Dictionary defines **"relocation"** as **"the action of locating afresh"**.

- The building is proposed to be manufactured in a factory, in parts, and transported to site for fixing in its first location.

- There is no available definition as to at what stage separate parts, when stored at the place of manufacture ready for transportation to site, constitute a building that is to be relocated.

- The difference between a former building stored in sections at the yard of a builder, specialising in the relocation or resiting of buildings, and the building proposed to be constructed in this application, is that the former building has already had a previous **"location",** the site of which was fixed, and will ultimately be **"relocated"** when given its new site. The builder's yard in which the building may be stored between **"locations"** does not, of itself, constitute a site that has been fixed for that building. Were that not the case, each and every such building would require not only a development permit to be issued for its removal from its original site, but also a development permit for its siting upon the builder's land. By definition, this would then require the connection of services, the provision of suitable footings, and the undertaking of relevant inspections.

- There is no definition that states that the manufactured parts, when stored at the factory, constitute a building for which the factory is the site that has been fixed for that building.

- On the above basis I must conclude that the unassembled parts, irrespective of their number, cannot constitute a building that has been located as per the dictionary definition.

- If the building has never been **"located"**, it cannot be **"relocated"**.

- If the building cannot be relocated, it is not a building to which the relocation provisions of Council's resolution apply.

- Apart from a resolution made under Section 50 of the Standard Building Regulation, there are no other provisions in the Building Act 1975, or the Standard Building Regulation 1993, that enable a local government to refuse an application for a single detached dwelling on amenity and aesthetic grounds.

- If Council's resolution does not apply to this building, the Decision Notice, refusing the application for a development permit for building work on the grounds of amenity and aesthetics considerations, was not lawfully issued.

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G.S.Cornish
Building and Development
Tribunal Referee
Date: 17 November 2003

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
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