

APPEAL

Integrated Planning Act 1997

File No. 3-01-021

BUILDING AND DEVELOPMENT TRIBUNAL - DECISION

Assessment Manager: Caboolture Shire Council

Site Address: 8 Coogee Place
Sandstone Point Qld 4511

Nature of Appeal: Appeal against refusal by Caboolture Shire Council of an application for building relaxation for side and rear boundary setbacks, under *section 48* of the *Standard Building Regulation 1993* for a shed under construction at 8 Coogee Place – Sandstone Point, not complying with the requirements of the *Standard Building Regulation 1993*.

Date and Place of Hearing: 9.00 am Wednesday 2 May 2001 at site – 8 Coogee Place
Sandstone Point

Tribunal: E K George

Present: Owners of 8 Coogee Place
Councillor John Bateman – Caboolture Shire Council
Mr Chris Harris – Principal Building Surveyor – C. S. Council
Mr Jeffrey Brooks – Country and Coastal Certifiers
Mr Phil Butler – Country and Coastal Certifiers
Mr Glen Schultz – Shed Builder
Mr Phil Burns - Builder for Dwelling
Mr Errol George - Referee

Decision:

In accordance with Section 4.2.34(2) of the Integrated Planning Act 1997, I set aside the decision of the Caboolture Shire Council as contained in its written notice dated 21 March 2001, not to permit the construction of a Class 10a building greater than a mean height of 3.5 metres as depicted on site plan A952001. The shed may be constructed in the proposed location, subject to the following conditions:

- 1.0 The storage shed is to be located approximately 1200mm from the rear property boundary.
- 2.0 The storage shed is to be constructed approximately 500mm from the northern property boundary.
- 3.0 The storage shed shall have a maximum height to top of rear and front walls of 3450mm.
- 4.0 The storage shed shall have a maximum height at apex of 3750mm.
- 5.0 The exterior of the storage shed shall be in Colorbond finish.
- 6.0 The storage shed has been classified as Class 10 and shall be used only for private storage purposes.
- 7.0 The storage shed shall be constructed in accordance with drawings A 9052001/1 and A9052001/2, as attached.

Background

The site meeting was held as detailed above. At the site meeting it was determined that the shed under construction was not in accordance with the requirements of the *Standard Building Regulation 1993*. An attendee at the meeting, Councillor John Bateman expressed concern that the height of the shed would be discussed at a forthcoming Progress Association meeting on the next weekend. Invitations were made to Caboolture Shire Council to forward any documentation from this meeting for consideration by the Tribunal. The Private Building Certifier was also invited to liaise with the owners and the shed constructor, Mr Schultz, as to whether alternative construction was available to meet the minimum requirements for storage of the high motor home.

Telephone contact was made with two owners of adjoining properties,

- 1.0 The owner of 7 Scarborough Court, who advised she was able to accept the revised height of the shed.
- 2.0 The owner of 9 Scarborough Court, who considered that the shed should be further lowered to comply with the requirements of the *Standard Building Regulation 1993*.

Material Considered

- 1.0 Building Approval File – Country and Coastal Certifiers
- 2.0 Copies of petitions from local residents, provided by Caboolture Shire Council
- 3.0 Amended documentation provided by Country and Coastal Certifiers following consultation with the owners and Mr Schultz.
- 4.0 Documentation submitted with appeal notice Number 3-01-021
- 5.0 Verbal submissions provided by all parties at the hearing

Findings of Fact

Inspection of Building Approval File – Country and Coastal Certifiers revealed the following facts:

- 1.0 No calculation had been made of mean height of the proposed storage shed
- 2.0 Proposed height of shed was not clearly defined in documentation
- 3.0 Decision Notice for building work was not in accordance with *section 41* of the *Standard Building Regulation 1993*, due to excessive mean height.
- 4.0 Decision Notice for building work was issued without prior approval of a building relaxation under *section 48* of the *Standard Building Regulation 1993*, by Caboolture Shire Council

Assessment under section 48 of the Standard Building Regulation 1993

1.0 Obstruction of natural light or ventilation of adjoining allotments: The construction of the Class 10a building in 8 Coogee Place to a mean height of 3.75 metres will have an impact on the natural light and ventilation of adjoining allotments. The dwelling in the rear property at 7 Scarborough Court is located approximately 3.0 metres from the wall of the shed. It is not considered that the increase in mean height from 3.5 metres to 3.75 metres will appreciably increase the impact on adjoining properties in relation to natural light or ventilation.

2.0 Interference with the privacy of adjoining allotments: The building at 8 Coogee Place will provide increased privacy to the rear yard at 7 Scarborough Court, in that the shed is for storage use, and is non-habitable.

3.0 Restriction of the areas of the allotment suitable for landscaping: The existing dwelling and shed at 8 Coogee Place do not represent more than 50% of site coverage by buildings. Whilst there is a large expanse of concrete driveway on the site, there is still area available for landscaping.

4.0 Obstruction of outlook from adjoining allotments: The construction of the Class 10a building in 8 Coogee Place to a mean height of 3.75 metres will have an impact on the outlook of adjoining allotments. It is not considered that the increase in mean height from 3.5 metres to 3.75 metres will appreciably increase the impact on adjoining properties in relation to outlook.

5.0 Overcrowding of allotment: As above, the existing dwelling and shed at 8 Coogee Place do not represent more than 50% of site coverage by buildings. The shed cannot be considered to overcrowd the allotment.

6.0 Restriction of off-street parking for the allotment: The shed will not restrict off-street parking for the allotment, it will provide for increased parking and increased amenity in the neighbourhood, given that the extra height of the shed will allow for storage of a high mobile home, which otherwise may be kept in the street in Coogee Place.

7.0 Obstruction of access for normal building maintenance: The shed is to be constructed of Colorbond finish, which is expected to require minimal maintenance from the outside. It is considered that this shed meets a satisfactory standard, given the concession available in *section 41 of the Standard Building Regulation 1993* allowing the siting of a Class 10a building within the prescribed side and rear boundary setback distances.

Reasons for the Decision

- 1.0 As detailed above, the Decision Notice for building work was not issued in accordance with the *Standard Building Regulation 1993*. It was agreed on site that this was due to a genuine oversight.
- 2.0 Caboolture Shire Council indicated that whilst no action against the Private Building Certifier was proposed, there was considerable concern in the immediate community in regard to the construction of the storage shed.

- 3.0 The proposed shed is required predominantly for the storage of a high mobile touring home; it was agreed that this vehicle would be better stored in a shed, rather than parked in the street in front of the property.
- 4.0 Due to the specific requirements to cater for the height of the motor home, Country and Coastal Certifiers were invited to liaise with the owners and Mr Schultz to address alternative heights and door configurations of a revised shed, that may approach the requirements of *section 41* of the *Standard Building Regulation 1993*.
- 5.0 Caboolture Shire Council were invited to forward copies of comments from a proposed public meeting, where comments in regard to the shed may be received by Council.
- 6.0 My decision to allow the proposed shed, as detailed in drawings A 9052001/1 and A9052001/2, as attached is based on calculation that the mean height of the proposed storage shed is 3.75 metres, which is within 10% of the maximum mean height stated in *section 41* of the *Standard Building Regulation 1993*.

Errol K George
Building and Development
Tribunal Referee
Date: 31 May 2001

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
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