



APPEAL
Integrated Planning Act 1997

File No. 3/07/007

BUILDING AND DEVELOPMENT TRIBUNAL - DECISION

Concurrence Agency: Burnett Shire Council

Site Address: *withheld*-“the subject site”

Appellant: *withheld*

Nature of Appeal:

This is an appeal under s 4.2.7(2)(b) of the *Integrated Planning Act 1997* (“**IPA**”) against the decision of the Burnett Shire Council, acting as a concurrence agency pursuant to s 9(a) and item 19, schedule 2, table 1 of the *Integrated Planning Regulation 1998*, to refuse an application for an extension to an existing dwelling on “the subject site” to exceed the maximum building height of 8.5 metres as prescribed as acceptable solution A4 of Element 1 –Design and Siting Standards of Buildings and Structures of the Queensland Development Code, Part 12 (the **QDC, Part 12**).

Date and Place of Hearing: Monday 26 March 2007 commencing at around 10am
On “the subject site”.

Tribunal: Mr Paul R Smith

Present: Colin Job, Building Surveyor, Burnett Shire Council
Megan Cobb, Town Planner, Burnett Shire Council
Appellant
Builder, for the Appellant
Consulting Engineer, for the Appellant
Town Planner, for the Appellant

Decision:

The height of the proposed extension complies with performance criteria P4 of Element 1 –Design and Siting Standards of Buildings and Structures of the QDC, Part 12. Accordingly the decision of the Burnett Shire Council, as contained in its written Decision Notice dated 16 January 2007, to refuse to approve the height of the proposed extension is **set aside** and the application is instead approved.

Material Considered

The material considered in arriving at this decision include:

- Written and oral submissions made by the representatives at the hearing;
- The Appellant’s Notice of Appeal and attachments;

- Council’s decision dated 16 January 2007;
- IPA; and
- Letters of support from neighbours.

Background and Reasons for decision

1. Both parties agree the only issue in dispute is the height of the proposed extension to an existing house on the subject land.
2. The appellant says that the proposed extension is in the order of 9.19 metres above natural ground surface, namely around .69 metres above the 8.5 metre maximum in the the relevant acceptable solution of the QDC, Part 1, and a portion of the overall building exceeding 8.5 metres in height, represents only 20% of the total floor area and is not significant.
3. Council says that the proposed extension is in the order of 10.62 metres above natural ground surface, namely in the order of 2.62 metres in excess of 8.5 metres, and this is significant.
4. The appellant calculated the natural ground surface by reference to various matters as set out in their notice of appeal and their submissions at the hearing. Essentially, the appellant says that natural ground surface should be the filled level and/or the tidal surge height.
5. Council says the natural ground surface should be determined by reference to a contour site plan provided by the previous owner. That site plan shows the subject land sloping gently down to *withheld*.

THE NATURAL GROUND LEVEL

6. I have formed the opinion that “natural ground surface” as referred to in the Queensland Development Code means the level of the ground as it existed the day the first plan of survey showing the lot was registered or if that level is not known, a reasonable estimate of that level.
7. On that basis, I favour Council’s method of determining the level of the natural ground surface. Another suitable method would be to take soil samples to determine the level of the natural ground surface prior to the filling of the site after the first plan of survey showing the lot was registered.
8. However I have formed the opinion that it is not necessary to fix an accurate natural ground level to decide this appeal, because it is common ground that, on any calculation, the proposed extension exceeds 8.5 metres above the natural ground level and therefore does not comply with the relevant acceptable solution of the QDC, Part 12.

THE QUEENSLAND DEVELOPMENT CODE, PART 12

9. The QDC is a code for assessment of building work under the *Integrated Planning Act 1997* (“IPA”).
10. The QDC is in addition to the Building Code of Australia (BCA and is enforceable by building certifiers.

11. Presently relevant is performance criteria P4, which provides:
- “The height of a building is not to unduly –
- (a) overshadow adjoining houses; and
- (b) obstruct the outlook from adjoining lots.”
12. The acceptable solutions for performance criteria A4 are:
- “For lot slopes:-
- (a) up to 15%, the building height is not more than 8.5 metres; and
- (b) ...”
13. It is common ground that the proposed development does not comply with the acceptable solutions because it is higher than 8.5 metres above the natural ground surface, however measured.
14. On inspection of the site and a review of the shadow diagrams provided by the applicant, I have formed the opinion that the proposed development does not, because of its height, overshadow adjoining houses and does not obstruct the outlook from adjoining lots.
15. Accordingly I have formed the opinion that the proposed development complies with the relevant performance criteria P4 of the QDC, Part 12.

COUNCIL’S 2006 PLANNING SCHEME

16. I include the following notes for completeness only. I have not given regard to Council’s 2006 Planning Scheme when making this decision.
17. The subject land is included in the Coastal Town Planning Area.
18. Under both Tables 3.4 and 3.5, being the assessment tables for development including a material change of use and for development other than a material change of use, the development, which is the subject of this appeal, is self-assessable if it complies with the acceptable solutions of the Detached Dwelling and Domestic Storage Code (“**DDDSC**”).
19. If the proposed development complies with the QDC, Part 12 it meets the acceptable solution in the DDDSC.

I complement the representatives at the hearing

- The Tribunal complements all representatives at the hearing for their candid, respectful and helpful submissions.

Paul Smith
Building and Development Tribunal General Referee
Date: 26 March 2007

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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