



Building and Development Tribunals
Queensland Government

Department of **Local Government, Planning,
Sport and Recreation**

APPEAL
Integrated Planning Act 1997

File No. 03-06-013

BUILDING AND DEVELOPMENT TRIBUNAL - DECISION

LOCAL GOVERNMENT: Cairns City Council

SITE ADDRESS: *withheld*-“the subject site”

APPLICANT : *withheld*

NATURE OF APPEAL: Appeal under Chapter 4 of Part 2 of the *Integrated Planning Act 1997* and Section 21 of the *Standard Building Regulation 1993*, against a decision of the Cairns City Council to refuse a Development Application requesting siting dispensation for a shed, on property located at “the subject site”.

**DATE AND PLACE
OF HEARING:** 9.00 am on Tuesday 21 February 2006.

TRIBUNAL: Nigel Daniels.

PRESENT: Applicant / Owner.

Jayne Formby, Cairns City Council.
Kerry Maggs, Cairns City Council.

DECISION:

Under the provisions of the *Integrated Planning Act 1997*, section 4.2.34, the Tribunal **sets aside** the decision of the Cairns City Council appealed against and makes a decision replacing the decision set aside, as follows:

The application to site an additional shed, as constructed on site and as shown on the lot plan, in line with existing sheds on the property, giving a total overall length of 32 metres, is approved.

BACKGROUND:

The applicant requested approval to site a shed at a distance varying from approximately 0.5 metre to 0.75 metre from the side boundary. At the time of the hearing, the shed had been constructed. The shed was in line with existing sheds, also at a distance from the boundary less than 1.5 metres. The council refused the application.

REASONS FOR THE DECISION:

The proposal satisfies the performance criteria in Part 12 of the Queensland Development Code (a copy of the assessment against those performance provisions is attached to this decision).

The applicant has demonstrated a need for siting the shed as constructed; that is to keep the shed in line with the existing sheds to avoid cluttering the site and to allow better control of overland stormwater flows.

The buildings on the adjacent property are a sufficient distance from the common boundary, to reasonably ensure that there will be no loss of amenity to occupants in the habitable rooms in those buildings.

The area on the adjacent property against the common boundary is, by observation, an intermittent natural watercourse, making it unlikely that future habitable buildings will be erected at the minimum allowable distances from the common boundary. Consequently, there is no likely interference with amenities for future habitable buildings on the adjacent property.

MATERIAL CONSIDERED:

- Form 10 – Building and Development Tribunals Appeal Notice from the applicant, and material attached to the Notice.
- Verbal submission by the applicant, at the hearing.
- Verbal submission by the Council’s representative, at the hearing.
- Information gained by inspection of the site.
- The *Building Act 1975*
- The *Standard Building Regulation 1993*.
- The *Queensland Development Code, Part 12, Design and Siting Standard for Single Detached Housing - on Lots 450 sqm. and Over (QDC Part 12)*.
- The *Integrated Planning Act 1997*.

FINDINGS OF FACT:

1. The topography of the site, with a steep fall from the road towards the rear of the site requires stormwater issues to be addressed; in turn affecting the desirable placement of buildings on the property.
2. Buildings on the neighbouring property are at a distance from the shed which will reasonably ensure that there is no loss of amenity to habitable areas in the buildings.
3. The siting of the shed complies with the performance requirements of Part 12 of the Queensland Development Code, so allowing an acceptable solution.

Nigel Daniels,
Referee, Building and Development Tribunal.

Date: 22 February 2006.

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, Building & Development Tribunals
Department of Local Government and Planning
PO Box 15031
CITY EAST QLD 4002

Telephone 3237 0403: Facsimile 3237 1248

EXTRACT OF PERFORMANCE CRITERIA FROM THE QUEENSLAND DEVELOPMENT CODE, PART 12, (lots 450 sq m and over).

Buildings and Structures	
<p>P1 The location of a <i>building</i> or <i>structure</i> facilitates an acceptable streetscape, appropriate for-</p> <ul style="list-style-type: none"> (a) the bulk of the <i>building</i> or <i>structure</i>; and (b) the road boundary <i>setbacks</i> of neighbouring <i>buildings</i> or <i>structure</i>; and (c) the outlook and views of neighbouring residents; and (d) nuisance and safety to the public. 	<p>Complies</p> <p>Complies</p> <p>Complies</p> <p>Complies</p>
<p>P2 Buildings and structures-</p> <ul style="list-style-type: none"> (a) provide adequate daylight and ventilation to <i>habitable</i> rooms; and (b) Allow adequate light and ventilation to <i>habitable</i> rooms on adjoining <i>lots</i>. 	<p>Not applicable</p> <p>Complies</p>
<p>P3 Adequate open space is provided for recreation, service facilities and landscaping.</p>	<p>Complies</p>
<p>P4 The <i>height</i> of a <i>building</i> is not to unduly-</p> <ul style="list-style-type: none"> (a) overshadow adjoining houses; and (b) obstruct the outlook from adjoining <i>lots</i>. 	<p>Complies</p> <p>Complies</p>
<p>P5 Buildings are sited and designed to provide adequate visual privacy for neighbours.</p>	<p>Complies</p>
<p>P6 The location of a <i>building</i> or <i>structure</i> facilitates normal building maintenance.</p>	<p>Complies</p>
<p>P7 The size and location of <i>structures</i> on corner sites provide for adequate sight lines.</p>	<p>Not applicable</p>
<p>P8 Sufficient space for on-site carparking to satisfy the projected needs of residents and visitors, appropriate for –</p> <ul style="list-style-type: none"> (a) the availability of public transport; and (b) the availability of on-street parking; and (c) the desirability of on-street parking in respect to the streetscape; and (d) the residents likelihood to have or need a vehicle. 	<p>Complies</p> <p>Complies</p> <p>Complies</p> <p>Complies</p>