



APPEAL
Integrated Planning Act 1997

File No. 3-06-060

BUILDING AND DEVELOPMENT TRIBUNAL - DECISION

Assessment Manager: Gold Coast City Council

Site Address: *withheld*—"the subject site"

Applicant: *withheld*

Nature of Appeal

Appeal under Section 21 of the *Standard Building Regulation 1993* (SBR) against the decision of the Gold Coast City Council to refuse an application for a class 10 building to be erected on land described as "the subject site" on the grounds that *The proposal is in Council's opinion a Detached Dwelling and is therefore not an ancillary use to the primary dwelling. And further that as a second dwelling is not a desirable use in Precinct 9 of the Coomera Local Area Plan, there are strong amenity and character concerns relating to this proposal.*

Date and Place of Hearing: 1.00 pm on Wednesday 26 July, 2006
At Level 14, Mineral House 41 George Street, Brisbane.

Tribunal:	Gary Choveaux	Aesthetic Referee
	Phil Locke	Aesthetic Referee
	Dennis Leadbetter	Aesthetic Referee (Chairman)

Present:	Owner / Applicant	
	Roger Sharpe	Gold Coast City Council
	Jamie Thorley	Gold Coast City Council

Decision

The decision of the Gold Coast City Council as contained in its letters dated 2 June, 2006, and 6 July 2006, both referenced PN140501/16(P1) not to grant an approval under their *Amenity and Aesthetics Policy* to permit the erection of a Class 10 building (shed) on the land described as "the subject site" is **set aside**.

The applicant may erect a class 10a building on the site subject to the following conditions:

- The buildings shall be of the nominal form and dimensions indicated on drawings, reference number GM-02A, GM-03A, GM-04A, GM-05A and GM-06A, prepared by DJB Drafting Service, and generally located in the position on site indicated on drawing reference number GM-01A, **incorporating the following changes:-**
 - The outer walls of the upper floor shall be located to the outer line of the verandah located to the southern end of the building (refer sketch at the end of the decision notice);
 - The outer walls of the upper floor shall be clad in Colorbond metal sheeting of profile determined by the applicant;
 - The outer walls may have windows of size and location at the discretion of the applicant;
 - Internal walls to the upper floor shall be limited to those required to provide a structurally stable building in accordance with the relevant Australian Standards, appropriate to the applicable wind loadings for the structure in its location.
- The building when constructed shall not be used as a residence or for residential purposes.
- The building is to be used for activities ancillary to the existing residence.

This approval is also conditional on compliance with all normal Local Government approvals, including, but not limited to, building approval and plumbing approval, as appropriate.

Background

The application was for development approval to build a two storey class 10 structure on the land for use as a machinery shed and for storage, ancillary with the existing residence located on the site.

Council refused the application on the grounds that:-

The proposal is in Council's opinion a Detached Dwelling, or capable of being converted into a dwelling, and is therefore not an ancillary use to the primary dwelling.

At the hearing, Council submitted a written statement in support of their decision, which included the following:-

- 1) *The application was refused, as the site is located in the Rural Living / Open Space Precinct of the Coomera Local Area Plan under the Gold Coast Planning Scheme 2003. The intent of the Rural Living / Open Space Precinct is to ensure open space and landscape intent values are protected. It is Council's strong opinion that the proposed "New Barn – Machinery Shed" is a DWELLING OR HAS THE POTENTIAL TO BE CONVERTED INTO A DWELLING. There is already a dwelling on the site, and a second dwelling would require an Impact Assessable Material Change of Use application. A second dwelling on this site, according to the Planning Scheme would be an UNDESIRABLE land use, and*

would severely undermine the intention of the precinct, which is to preserve a rural/open space character.

- 2) *MCU Required – the ‘(sic)new barn – machinery shed clearly takes on the appearance of a dwelling – with balconies, rendered concrete walls, brick face work, external stairs and insulated roof. In Council’s opinion, the proposal will take on the form of a Class 1 building, and can not be considered A CLASS 10 BUILDING OR ANCILLARY to the main rural /open space nature of the site. This use is not listed in the Table Of Development under the Coomera Local Area Plan, and therefore an Impact Assessment Material Change of Use application is required, and not an Amenity and Aesthetics application. Council, by its resolution adopted an Amenity and Aesthetics (sic) policy in August 2004. This resolution limits the assessment of Amenity and Aesthetics applications to Class 10 Buildings only. As this proposal, in Council’s opinion, is a Class 1 building, the application can not be considered as an Amenity and Aesthetics application.*
- 3) *Council requests that the Tribunal agree that the proposed use is that of a dwelling, or Class 1 building, and instruct the applicant to apply for an MCU Impact assessment application for a second dwelling on the site.*
- 4) *Please note that if the Tribunal sees fit to agree with the applicant on this matter, then Council will appeal this matter to the Planning and Environment Court.*

Material Considered

1. Form 10 – Building and Development Tribunal Appeal Notice and grounds of appeal contained therein;
2. Drawings attached to that appeal notice;
3. Letters from the Gold Coast City Council refusing the application, in which it should be noted that Council changed its description of the proposed structure from *Class 10 building* (May 15, 2006), *a building* (June 2, 2006) and finally *a dwelling* (July 6, 2006);
4. Verbal submissions from the owner, explaining their reason for the proposed structure, specifically his intended use for his hobby activities and personal storage;
5. Verbal submissions from Mr Roger Sharpe, Gold Coast City Council, detailing the reasons for the refusal, and submission to the Tribunal of a written submission giving revised grounds for refusal, including a contemptuous statement stating that should the Tribunal not support Council, then Council would appeal the matter to the Planning and Environment Court;
6. The *Standard Building Regulation 1993*;
7. The nature of developments located on adjoining properties.
8. Aerial photographs and subdivisional plans of the site and surrounding areas.

9. Photographs submitted by the applicant of the block and surrounding structures.

Finding of Fact

The Tribunal made the following findings of fact:-

1. The site is a large block, area approximately 6.3 ha, with an approximate 120 metre frontage to *withheld*, and the site is of regular shape.
2. The site has a significant fall to the rear to the creek.
3. The site has significant stands of native vegetation.
4. The immediate neighbouring area is comprised of large allotments, to be expected in a rural zoning, but there are substantial areas of new subdivisions in close proximity,
5. The land is zoned Rural.
6. The site of the proposed structure is close to the rear of the site and requires a significant cut to achieve the necessary building platform. The new structure provides a retaining wall and access to the upper level is from the natural ground adjacent to the cut.

Reason for the Decision

Gold Coast City Council's refusal was based solely on the opinion of an assessing officer that the building *was not a class 10 building but a class 1 building, or a building capable of being converted into a dwelling*, this opinion being founded on such factors as the building's shape, proposed materials and the inclusion of such items as roof insulation.

Council officers at the Tribunal hearing indicated that a *tin shed* would be favourably accepted, clearly inferring that, in their opinion, such a structure would be more aesthetically acceptable to the character of the area, compared to the structure proposed, which reflected and therefore would be more sympathetic to the character and style of existing buildings on the site and in the immediate neighbourhood.

Council also determined that the structure's intended use was not ancillary, again based on an opinion of what it considered the building might be used for, despite a notice from the owner dated 22 May, 2006 that the building was to be used for machinery and storage.

Section 50 of the SBR does not provide for an Amenity and Aesthetics assessment based on a building's shape, size, materials, inclusions such as stairs, roof insulation, or on an opinion of an assessing officer of what alternative use that officer may consider the building capable of conversion.

Section 50 of the SBR states:

Local government declaration about amenity and aesthetics on methods of building and locality

- (1) A local government, by resolution, may declare, for single detached class 1 buildings or class 10 buildings or structures, localities and forms of buildings and structures the local government considers-
 - (a.) may have an extremely adverse effect on the amenity or likely amenity of a locality; or
 - (b.) may be in extreme conflict with the character of a locality.
- (2) Building development applications for forms of buildings or structures in localities mentioned in subsection (1) must be assessed by the local government for the amenity and aesthetic impact of the proposed building work.
- (3) The local government may refuse an application to which subsection (2) applies only if-
 - (a.) the building or structure, when built, will have an extremely adverse effect on the amenity or likely amenity of the building's or structure's neighbourhood; or
 - (b.) the aesthetics of the building or structure, when built, will be in extreme conflict with the character of the building's or structure's neighbourhood.

The Tribunal is of the opinion that the proposed structure,

- Is to be used as a class 10 building and therefore is an ancillary use to the residential use;
- When altered in accordance with the conditions of this judgement will be in keeping with the existing amenity of the property and the surrounding properties.

Hence, in accordance with the provisions of Section 4.2.34 2(c) of the *Integrated Planning Act 1997*, the Tribunal determined to **set aside** the decision of the Gold Coast City Council, contained in its letters dated 15 May, 2006, 2 June, 2006 and 6 July, 2006, not to grant preliminary development approval to erect a class 10a building on the site, and allow the development **subject to the conditions listed**.

Dennis Leadbetter

Dip. Arch. QUT; Grad. Dip. Proj. Man QUT; METM UQ.

Building and Development

Tribunal Chairperson

Date: 28 July 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 of Building and Development Tribunals
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