



APPEAL
Integrated Planning Act 1997

BUILDING AND DEVELOPMENT TRIBUNAL - DECISION

Assessment Manager: Redland Shire Council
Site Address: *withheld*—"the subject site"
Applicant: *withheld*

Nature of Appeal

The appeal under section 4.2.7 of the *Integrated Planning Act 1997* against the decision of Redland Shire Council to impose a condition on a Preliminary Development Permit for the proposed development of a class 10a structure. The condition being:-

"The approval is for one only shed which is twice the allowable size under the criteria for domestic out buildings as detailed in Policy No 1734. It should be noted that there are other existing sheds on the property which increase the area of outbuildings far beyond what could be considered as acceptable".

The proposed structure is to be erected on "the subject site".

Date and Place of Hearing: 9.00am Thursday 1 November 2007
on "the subject site".

It was not necessary to reconvene the hearing, as after further consultation, the applicant and Council reached agreement on an amended proposal.

Tribunal:

Mr L F Blumkie	Tribunal Chairperson
Mr Phil Locke	Tribunal
Mr Steve Adams	Tribunal

Present at Hearing:

Owner / Applicant	
Agent for the Owner / Applicant	
Mr Mike Ryan	Redland Shire Council Representative
Mr Phil Parkes	Redland Shire Council Representative
Mr L F Blumkie	Tribunal Chairperson
Mr Phil Locke	Tribunal
Mr Steve Adams	Tribunal

Decision

The Tribunal, in accordance with section 4.2.34 (2)(a) of the *Integrated Planning Act 1997* (IPA), **sets aside** the decision of the Redland Shire Council dated 15 October 2007 and replaces the decision set aside with the amended proposal as identified on the 4 documents (reference Nos UD-5625-002, 003, 005 and 006) forwarded by Council to the Registrar on the 4 January 2008 and signed by the applicant on the 10 January 2008.

Background

The property is a 7.5 hectare site zoned Rural/Non Urban under the Redland Shire Council planning scheme. *Withheld* live on the site and operate a home based business (tree lopping and pruning service) from the site.

The property is developed with an existing Class1 building and associated Class 10a carport as well as a number of class 10 buildings associated with the home based business.

Withheld obtained building permits for four class 10 buildings each 20m x 15m in area from a Private Certifier on 27 and 29 March 2006.

The current Redland Shire Council Planning Scheme came into effect on 30 March 2006.

Having obtained the approvals, *withheld* in good faith proceeded to clear vegetation in preparation for construction of the proposed sheds.

The vegetation clearing came to the attention of Council, and on 3 November 2006 Council issued a Compliance Notice regarding the clearing.

Withheld subsequently advised Council that the clearing was for proposed sheds for which he had obtained a development permits from a Private Certifier.

On 24 November 2006 Council forwarded correspondence advising that the building permits were ineffective due to Council not receiving and approving an Amenity and Aesthetics application as required by the then S50 of the *Standard Building Regulation 1993* and Council's Amenity and Aesthetics Policy.

An Amenity and Aesthetics Policy Application was submitted to Council in late November 2006. After numerous phone calls requesting feedback, Council verbally advised that if the sheds were reduced in height to 4.5 metres the application would be approved.

Amended plans were submitted showing a building height of 4.5 metres.

Contrary to the verbal advice, the owners received a Decision Notice dated 15 October 2007 from Council advising that the application had been approved with conditions. The condition being that only one shed was to be included in the approval.

An appeal was lodged with the Registrar on 24 October 2007.

Material Considered

In coming to a decision, consideration was given to the following material: -

1. Statement from adjoining owners that they have no objection to the proposed sheds;
2. Statutory Declaration from *withheld* stating that the proposed sheds are required for purposes ancillary to the residential use of the property;
3. Amenity and Aesthetics application documents dated 8 August 2007;
4. Response to information request dated 8 August 2007;
5. Redland Shire Council guideline document - Assessment Criteria for Section 50 applications;
6. Statutory Declaration dated 19 October 2007 stating that "proposed sheds are for rural and private use only";
7. Copy of Preliminary Decision Notice dated 15 October 2007;
8. Copy of the appeal dated 22 October 2007;
9. Correspondence from Jensen Bowers (*withheld*) dated 30 October 2007;
10. Redland Shire Council Policy Document Amenity and Aesthetics No 1734 effective from 7 August 2002;
11. Redland Shire Council Guideline Document No 1734 on Amenity and Aesthetics;
12. Verbal submissions from *withheld* and *withheld*;
13. Verbal submissions from Mr Mike Ryan and Mr Phil Parkes;
14. Written Submission from Redland Shire Council;
15. Inspection of the site;
16. The *Building Act 1975*;
17. The *Standard Building Regulation 1993*;
18. The Queensland Development Code (QDC);
19. The IPA;
20. The Redland Shire Council planning scheme;
21. Amended plans submitted to Council;
22. Further written advice from the Redland Shire Council dated 4 December 2007;
23. Amended plans signed by both the Applicant and Council representative dated 7 December 2007;
24. Amended plans forwarded to the Registrar on the 4 January 2008;
25. Plans forwarded to the Applicant by the Registrar on the 8 January 2008, and
26. Amended plans signed by *withheld* on behalf of the Applicant on 10 January 2008.

Findings of Fact

The Redland Shire Council adopted an Amenity and Aesthetics Policy under Section 50 of the *Standard Building Regulation 1993*. The Policy was effective from 7 August 2002.

Under the superseded planning scheme (ie the planning scheme applicable at the time the development application for the sheds was considered) the subject property was zoned Rural/Non Urban.

The area of the allotment is 7.5 hectares i.e. 75,000m².

Under the Amenity and Aesthetics Policy the maximum gross floor area for Class 10a structures on allotments greater than 15,000m² is 150m².

The proposal for four sheds each 20m x 15m (300m² in area) is a total area of 1200m² and therefore exceeds the maximum allowable under of the Policy.

Section 5.3.5(4) of the IPA states that a private certifier must not decide an application until all necessary development permits or preliminary approvals are effective for other assessable aspects for the development.

The certifier contravened Section 5.3.5(4) of IPA and had no authority to issue the development permits, without first obtaining an Amenity and Aesthetics approval from the Local Authority.

Reasons for the Decision

In the Information Request correspondence to Council dated 8 August 2007, the use of the sheds was described as follows:-

Shed A	a garage and storage area for domestic purposes including workshop for the maintenance of the property.
Shed B	domestic outbuilding and private BBQ and entertainment area.
Shed C	stabling of two horses and storage of associated equipment.
Shed D	domestic storage purposes - specifically storage of hay for off-site cattle property and as feed for the two horses.

After an inspection of the site it was found that the proposal for each shed lacked detail e.g. the location for each shed had considerable ground fall - the plans showed level ground. The detailed use of sheds A & B was not known.

The owner was unable to demonstrate why shed C - 15m x 20m was necessary for the housing of only two horses. The storage of hay for an off-site cattle property was not an ancillary use of the residential property.

After discussion on the detailed use of the sheds, the owner agreed to reconsider his specific needs for each shed, and prepare amended plans for submission to Council.

Both parties agreed to adjourn the hearing to enable the following to occur:-

- (1) The applicant is to prepare sketch drawings indicating the detailed specific design (doors, windows, overhang, heights etc) for the proposed use, access and location of each of the four proposed sheds namely:-
 - A vehicle/boat/bike/trailer storage taking into account the dimensions of each item, access driveways, ground slope and the use of the existing vehicle accommodation (ancillary to the house) etc;
 - B entertainment area - specific use and area requirements for each activity, light ventilation, orientation, access, ground slope, services etc;
 - C horse stables, and ancillary storage needs, normal and typical for a two horse stable, ancillary to residential house use; and
 - D hay storage necessary only for a two horse stable, including bulk purchase taking into account appropriate vermin control and fire separation between the horse stable and hay shed.

All of which shall be presented to and discussed with Redland Shire Council on or before 22 November 2007.

- (2) Following discussion with Council and after taking into account Council's comments, final detail drawings indicating levels etc shall be prepared indicating the applicants preferred proposal. This shall be completed within one week of the discussion with Council. Copies of the final proposal shall be forwarded to both the Registrar (for distribution to the Tribunal) and Redland Shire Council.
- (3) Redland Shire Council shall prepare written comments on the final drawings and submit them to the Applicant and Registrar within one week of receiving the final proposal.
- (4) Upon receipt of Council comments the Registrar shall forward copies to the Tribunal and reconvene the hearing at the address of the applicant on a date and time acceptable to all parties.

An amended proposal for each shed was emailed to Council in approximately the last week of November 2007.

Council forwarded written comments on the amended proposal to the Applicant and Registrar on 4 December 2007.

On 7 December 2007, the Applicant met with the Council representative and both parties agreed on a number of further amendments to the new proposal.

The amended proposal was accepted and signed by both parties on 7 December 2007.

On 12 December 2007, the applicant advised the Registrar that agreement had been reached with Council and there was now no need for the Tribunal to be reconvened.

The Registrar requested amended plans of the new proposal.

On 4 January 2008, Redland Shire Council sent 4 amended plans to the Registrar (reference number's: UD-5625-002, 003, 005 and 006).

The Registrar forwarded the 4 plans to the applicant on the 8 January 2008 requesting an acceptance signature and date on each.

Signed and dated documents were returned to the Registrar on the 10 January 2008.

As a result of both parties reaching agreement on an amended proposal, the Tribunal decided to set aside the original decision of Council dated 15 October 2007 and replace it with the amended proposal as identified on the documents forwarded by Council to the Registrar on the 4 January 2008 and signed by the applicant on the 10 January 2008.

Leo F Blumkie
Building and Development
Tribunal
Date: 16 January 2008

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 grounds:

- (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 Infrastructure and Planning
PO Box 15031
CITY EAST QLD 4002
Telephone (07) 3237 0403 Facsimile (07) 3237 1248