



APPEAL
Integrated Planning Act 1997

File No. 3-06-055

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 structure when built, will have an extreme adverse affect on the amenity or future amenity of the proposed building’s neighbourhood.

Date and Place of Hearing: 10.00 am on Monday 3 July, 2006 at “the subject site”

Tribunal:

Michael Harris	Aesthetic Referee
Phil Breeze	Aesthetic Referee
Dennis Leadbetter	Aesthetic Referee (Chairman)

Present:

Owner	
Tanya Smith	GMA Certification Group – Owner’s representative
Roger Sharpe	Gold Coast City Council
Jamie Thorley	Gold Coast City Council
Craig Tonkin	Gold Coast City Council

Decision

The decision of the Gold Coast City Council as contained in its letter dated 21 April 2006, reference BLD2606572 PN131950/16(P1), not to grant a relaxation to their *Amenity and Aesthetics Policy* to permit the erection of two Class 10 buildings (sheds) on the land described as “the subject site” is **set aside**.

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

- The buildings shall be of the nominal plan dimensions indicated on drawing, reference number BP-0601 D01, version A, prepared by Darryl Robinson and Associates, and generally located in the position on site indicated on the same drawing, **with the exception that the side alignment setback shall be increased to 6 metres.**
- The orientation of the buildings is as confirmed by the owner at the hearing with the access doors facing north.
- The sheds are to be used for activities ancillary to the residence, and not for commercial purposes, other than commercial agricultural activities as allowed by the Gold Coast City Council's Planning scheme.

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

Background

The application was for development approval to build two metal framed and metal clad sheds (class 10a structures) on the site.

Council refused the application on the grounds that:-

The combined area of the sheds is well in excess of the site area of residential units on the site. Due to the scale of the proposed sheds, Council does not agree that the intended use would be ancillary to the existing Class 1 dwelling(s) on-site. Therefore a material change of Use development application is required to be submitted for Council's consideration to determine the "use" of the proposed Class 10 buildings.

At the hearing, Council submitted a written statement, providing alternative reasons for a refusal, including the following:-

- 1) *The application was refused, as the site is located in the Rural Domain under the Gold Coast Planning Scheme 2003. The intent of the Rural Domain is to ensure open space and landscape intent values are protected. There is also a need to protect rural areas from encroachment by urban activities. The Acceptable Solution for Siting requirements under the Rural Domain (PC3) requires all buildings are set back not less than six metres from the site boundary. The proposal only allows for three metres from the site boundary. It is Council's strong opinion that the proposed storage shed is in conflict with the Setback Performance Criteria (PC3) as the buildings are substantial in size, are located inappropriately close to the site boundary, and will undermine the intention of the Domain which is to preserve a rural character.*
- 2) *Officers consider that there is a distinctive and consistent use and character within the local environment. In Council's opinion, the proposed location of the sheds will likely generate extreme adverse amenity impacts on the local environment.*

- 3) **MCU Required** – each shed is approximately 600m² in area. The two sheds have a combined area of around 1200m². This is approximately six times the size of the main dwelling on the site. The sheer size of the sheds can not be considered as **ANCILLARY** to the main rural/residential nature of the site. The application has stated that the sheds are not for agricultural purposes, but will be used for storage and mechanical restoration purposes. Sheds of this size for the proposed activities stated by the applicant, result in their own **LAND USE, being storage and restoration of machinery**. This use is not listed in the Table of Development, and therefore an **Impact Assessment Material Change of Use application is required**, and not an Amenity and Aesthetics application.
- 4) Notwithstanding the matter that an MCU is required for the sheds, Council considers that the scale and size of the sheds is in breach of Section 50 (1) (a) and (b) of the Standard Building Regulation 1993, as the building will have an extreme adverse effect on the character of the neighbourhood. There is no reasonable way to determine that the proposed sheds could be considered compatible with the existing house or with buildings on adjoining sites. Therefore the application can not be considered as meeting Section 50 (3) (a) and (b) of the Standard Building Regulation 1993.

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. Letter from the Gold Coast City Council refusing the application;
4. Verbal submissions from the owner, explaining their reason for the proposed structure, specifically his intended use for his retirement hobby activities;
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;
6. The *Standard Building Regulation 1993*;
7. The nature of developments located on adjoining properties.

Finding of Fact

The Tribunal made the following findings of fact:-

1. The site is a large block, area approximately 1.2 ha, with a 40 metre frontage to *withheld*, and the site is or irregular shape opening up to 78 metres to the rear.
2. The site is predominantly flat.
3. The neighbouring area is comprised of large allotments, to be expected in a rural zoning, some utilised for agricultural pursuits (sugar cane farming), many with large outbuildings of similar nature to the proposed, including a new development, still under construction, which is of considerably larger scale.
4. The land is zoned Rural.

Reason for the Decision

Gold Coast City Council's *Amenity and Aesthetics Policy* provides a trigger for assessment of various class 10 developments based on floor area of the proposed structure, **where not intended for use in agricultural activities**. In relation to the relevant site and zoning, Council's representatives indicated that the floor area is approximately 75m².

The Tribunal is of the understanding that Council's *Amenity and Aesthetics Policy* does not contain any limiting factors on size of developments.

Council's refusal was based on the fact that the proposed structure's floor areas were considerably large compared to that of the existing residential development, and Council's assumption that it was therefore not of an ancillary use.

It should be noted that should the proposed structures be intended for agricultural purposes, Council's *Amenity and Aesthetics* assessment would not be required, irrespective of size, nor would the size, scale, or siting be considered by Council to be in conflict with the building's or structure's neighbourhood.

Section 50 of the SBR does not include for either actual size or size comparison to the main use of the site as a specific criteria for assessment of an application, nor did Council's representatives indicate any Council legislation under Section 50 included any such provision.

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 structures,

- Are to be used as an ancillary use to the residential use;

- Are in keeping with the existing amenity of the surrounding properties, as evidenced by other similar existing structures and structures currently under construction to 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 letter dated 21 April, 2006, not to grant preliminary development approval to erect a class 10a building on the site **subject to conditions**.

Dennis Leadbetter

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

Building and Development

Tribunal Chairperson

Date: 18 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:

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