

BUILDING AND DEVELOPMENT TRIBUNAL - DECISION

Local Government: Cairns City Council.

Site Address: 13 Paperbark Street, Bramston Beach.

Nature of Appeal: Appeal under Chapter 4 Part 2 of the *Integrated Planning Act 1997* and Section 21 of the *Standard Building Regulation 1993* against the decision of the Cairns City Council, made at its meeting on 4 December 2003, to refuse an application under its amenity and aesthetics policy for approval to relocate a house from 140 McLeod Street, Cairns, to 13 Paperbark Street, Bramston Beach.

Date and Place of Hearing: 16 December 2003,
9.00 am on site at 140 McLeod Street, for inspection of dwelling to be relocated.
10.30 am on site at 13 Paperbark Street for inspection of the neighbourhood into which the dwelling is proposed to be relocated.
12.45 formal hearing at offices of Cairns City Council, 119-145 Spence Street, Cairns.

Tribunal: Nigel Daniels, Chairperson
Clayton Baker, representative of the Local Government Association.
Mike Watts, representative of the Queensland Master Builders' Association.

Present: Appellant
Laurie Phipps, Cairns City Council

Appellant (at site inspection 140 McLeod Street)
William Courtney, Cairns City Council (at site inspections 140 McLeod Street, and 13 Paperbark Street).

During the inspection at Bramston Beach, the Tribunal met with representatives of the Bramston Beach Progress Association, to hear their views as persons having standing in the matter.

Decision:

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

Preliminary approval is given for the relocation of a dwelling from Lot 2 RP 715176, 140 McLeod Street, Cairns, to Lot 26 PLN B8779, 13 Paperbark Street, Bramston Beach, subject to the following:

- 1. A permit is to be obtained from the Police Department**
- 2. A permit is to be obtained from the Main Roads Department with respect to any roads under its control**
- 3. A permit is to be obtained from Telstra with respect to any overhead telephone lines or any cables which may be crossed**
- 4. A permit is to be obtained from Ergon Energy so far as any electricity lines are concerned**
- 5. So far as the roads and streets within the Cairns Local Government area are concerned, where these are under the control of the council, conditions are:**
 - a. Any damage to the pavement, the shoulders of any road, the water table or any kerbing and channelling or part of the footpath is to be made good and fully replaced to the complete satisfaction of the Chief Executive officer.**
 - b. Any water main or house connection services which may be damaged or interfered with are to be fully replaced to the satisfaction of the Chief Executive Officer.**
 - c. Any reinstatement of the road shoulders must be in gravel, with the material being approved by the Chief Executive Officer.**
 - d. No trees shall be lopped or otherwise interfered with in any way whatsoever.**
 - e. Any street signs or other work under its control of Council which may be damaged as a result of the transport of the said structure must be repaired or replaced to the satisfaction of the Chief Executive Officer.**
- 6. A development approval must be obtained.**
- 7. A security deposit of \$15,100 is to be lodged with Council before the development permit is issued.**

8. A plumbing permit is to be obtained.
9. A signed public indemnity form is to be submitted with a subsequent development application.
10. The building work must be completed within 6 months of the development approval being issued.
11. The external wall sheeting (re: ripple iron) is to remain on the building.
12. Engineers certification on the integrity of the timber to be obtained.
13. The structure of the building is to be up-graded to cyclone category C2 standard.
14. All external works, structural up-grading, the proposed alterations shown on the drawing submitted to the Tribunal, external cleaning and re-painting of the building, removal of defective materials and replacement with new, to be completed within the 6-month period specified in condition No 10.

Conditions numbered 1 to 12 inclusive are taken from conditions 1 to 13 listed in the report submitted to Council when it first considered the application at its meeting on 27 November 2003. (Condition No 11, requiring replacement of the roof sheeting, of those submitted to council was deleted, because the roof sheeting has been replaced at some time in the building's recent history).

All 14 conditions were consented to by the appellant as a variation to the application for approval, as provided for in section 4.2.34 of the Integrated Planning Act 1997.

Background :

The application was first considered by the Council at its meeting on 27 November 2003. Council did not decide the matter, but referred it for community consultation.

The Council considered a new report on the application at its meeting on 4 December 2003. Council refused the application.

Material considered:

1. The written submission from the appellant, submitted with the notice of appeal.
2. Verbal submission by the appellant at the hearing.
3. Verbal submission by the Council's representative at the

hearing.

4. Information obtained from inspections of the building proposed to be relocated and of the neighbourhood into which the building is proposed to be relocated.
5. Verbal statements made by representatives of the Bramston Beach Progress Association; and a written submission given by them to the Tribunal.
6. A drawing of the proposed alterations to the building, submitted by the appellant at the hearing.
7. Reports to the Council at its meetings on 27 November 2003 and 4 December 2003.
8. The relevant provisions of the Integrated Planning Act 1997 and the Standard Building Regulation 1993.

Findings of Fact:

1. The neighbourhood of the site at 13 Paperbark Street is that locality containing the streets Sassafra, Paperbark and Dawson Streets and the properties fronting on to those streets.
2. There is a diversity of building styles and types in the neighbourhood. The building proposed to be removed will add to and complement the diversity.
3. The building proposed to be removed has details similar to or consistent with those on buildings in the neighbourhood of the proposed site at 13 Paperbark Street, including:
 - a. The scale of the building;
 - b. The roof pitch, although steeper than most;
 - c. Details – window hoods, gable roofs, hip roofs, balustrade;
 - d. Materials.
4. There will be no extremely adverse effect on the amenity of the neighbourhood, because
 - a. there is already a diversity of styles, scale, details and materials used in the buildings in the neighbourhood; and
 - b. the building proposed to be removed has the capacity (on completion of the proposed alterations and restoration work) to enhance the amenity.
5. There will be no extreme conflict with the character of the neighbourhood; for the same reasons as given in item 4 in relation to amenity.

6. The conditions, consented to by the appellant as varying the application for approval, give reasonable assurance that the alterations and restoration work will be carried out satisfactorily within the timeframe.

Reasons:

1. The Tribunal did consider whether the whole of the Bramston Beach area should be the “neighbourhood”. The neighbourhood as finally determined by the Tribunal is visually separated from other developed areas of Bramston Beach; consequently it is appropriate for the neighbourhood to be the immediate locality of the proposed site.
2. The character of the neighbourhood is one of diversity of building types, scale, styles, details and materials; rather than a character of similarity.
3. Other reasons relied upon by the Tribunal are contained in the Findings of Fact.

NOTES:

The list of conditions 1 to 12 are those which would have been applied under an approval by the Council.

A decision of the Tribunal is taken for the purposes of the Integrated Planing Act to be the decision of the Council. The decision of the Tribunal can not be appealed (IPA 4.2.34(3)) (except on a point of law or want of jurisdiction); consequently, there is no opportunity to add reasonable conditions after the decision of the Tribunal has been made. The conditions were included in the Tribunal’s decision at the request of the Council, and after having been consented to by the applicant as a variation to the application (IPA 4.2.34(2)(e)).

ATTACHMENTS:

1. Drawing of the proposed alterations to the building, submitted by the appellant.
2. Written submission from representatives of the Bramston Beach Progress Association.

Nigel Daniels,
Chairperson of Tribunal.

Clayton Baker.
Tribunal Member

Mike Watts.
Tribunal Member

Date:

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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