



Building and Development Tribunals

Queensland Government

Department of **Local Government and Planning**

APPEAL

Integrated Planning Act 1997

File No. 3/07/038

BUILDING AND DEVELOPMENT TRIBUNAL - DECISION

Assessment Manager: Burnett Shire Council

“The subject site”: *withheld*

Applicant: *withheld*

Nature of Appeal

The appeal is against the decision of the Burnett Shire Council to refuse a Development Application for the proposed resiting of a single detached dwelling (Class 1) on amenity and aesthetics grounds.

Date and Place of Hearing: 10.00 am Thursday 19 July 2007
At “the subject site” and Council premises.

Tribunal:

G. Downie	-	Referee representing LGAQ
A. Langford	-	Referee representing HIA
R. W Rooney	-	Aesthetics Referee (Chairperson)

Present:

Applicant / Owner		
T. Rose	-	Burnett Shire Council
R. Jenner	-	Burnett Shire Council
C. Job	-	Burnett Shire Council
R. W. Rooney	-	Tribunal Chairperson
G. Downie	-	Tribunal Member
A. Langford	-	Tribunal Member

Decision

In accordance with section 4.2.34 of the *Integrated Planning Act 1997*, the Tribunal, taking into consideration the relevant facts and circumstances, **sets aside** the Burnett Shire Council's decision in its Decision Notice dated 27 June 2007 and the **Tribunal decides the Development Application be considered on building matters unrelated to amenity and aesthetic issues.**

Background

- The applicant made a development application (20 April 2007) to Burnett Shire Council for approval to relocate and renovate a class 1 building on "the subject site", area approximately 1000m²;
- In considering the application, Burnett Shire Council also assessed the application under Part 3, Division 3 (10) of the *Building Regulation 2006* for amenity and aesthetic impact of the proposed building work;
- Council inspected the building at *withheld* – letter of 29 May 2007 refers;
- Burnett Shire Council refused the application by letter dated 27 May 2007;
- Building was relocated to "the subject site" on the weekend 9-10 June 2007 with a police permit but without Council approval;
- Council notified the applicant by email to remove the building from "the subject site" No 'show cause' or 'Enforcement' notices were issued;
- The owner paid a 'bond' to Council to be released on completion of works relating to the resite permit.

Material Considered

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

1. Form 10 – Building and Development Appeal Notice dated 4/07/06 from the applicant, including attachments, a letter and photos indicating the aesthetic diversity of existing class 1 buildings in the locality;
2. Plan of site indicating proposed siting of building;
3. Plan and elevations of proposed building;
4. Burnett Shire Council Decision Notice dated 27 June 2007 not approving the proposal, giving reasons;
5. Verbal submissions from the applicant;
6. Verbal submissions from C. Job and other representatives from Burnett Shire Council;
7. The *Building Regulation 2006*;
8. The *Building Act 1975*;
9. The *Integrated Planning Act 1997*; and
10. The Queensland Development Code (QDC).

Findings of Fact

1. The *Building Regulation 2006* allows a local government planning scheme to provide that all or some of the performance criteria 4, 5, 8 or 9 under the QDC Parts 11 or 12 and the relevant acceptable solutions apply for relevant work.
2. The Decision Notice (Refused) dated 27 June 2007 states “Council is of the opinion that the proposed resiting is contrary to the performance requirements of the QDC in this instance”.
3. Under the provisions of the Burnett Shire Planning Scheme, “the subject site” is situated in the “Urban Residential” Zone. (Coastal Towns Planning Area).

The proposed use constitutes a Material Change of Use under the *Integrated Planning Act 1997*. The proposal, a Dwelling House, is defined as a “Detached Dwelling” under the provisions of the Burnett Shire Planning Scheme. In accordance with Table 3.4 Assessment Table – Making a Material Change of Use of Premises in the “Urban Residential” Zone (Coastal Towns Planning Area), a Detached Dwelling is Self-Assessable Development.

The Burnett Planning Scheme calls up the “Detached Dwelling and Domestic Storage Code” (acceptable solutions only). **The Scheme does not call up any other Planning Scheme Codes** for a Detached Dwelling in the “Urban Residential” Zone (Coastal Towns Planning Area).

Reasons for the Decision

1. The Decision Notice (Refusal) issued by Burnett Shire Council on 27 June 2007 includes the following Reasons for Refusal:

*“As the lot is within an Urban Residential Zone, the Burnett Shire Planning Scheme (BSPS2006) provides the parameters to **facilitate for the perceived acceptable amenity to residents within the Coastal Towns Planning Areas, Urban Residential Zone with specific reference to the Detached Dwelling and Domestic Storage Codes:***

- (a) *Council is of the opinion that the proposed resiting of the dwelling is contrary to the Specific Outcomes set out in Table 3.7 of the Town Planning Scheme requirements and specifically the Coastal Towns Planning Area Code at SO.53;*
- (b) *Council is of the opinion that the proposed resiting of the dwelling is contrary to the Town Planning Scheme requirements and specifically the Urban Residential Code at item 3.7.3 (2) (a) (j) (iv) and which refers to the Purpose of the Code;*
- (c) *Council is of the opinion that the proposed resiting of the dwelling is contrary to the Town Planning Scheme requirements at Part 8.5 Detached Dwelling and Domestic Storage Code and specifically at 8.5.2 (a) (i) Purpose of the Code in that the proposed resiting does not protect the amenity of adjoining residents and land owners; ... ”*

2.

- (a) In the Reasons of Refusal, the Assessment Manager refers in 3 (a) to Specific Outcome 53 (SO.53). This Specific Outcome is included in the “Coastal Towns Planning Area Code” and this Code is not called up in Table 3.4 Assessment Table – for a Detached Dwelling and **unable to be used** in the Assessment of the Development Application.
- (b) In the Reasons of Refusal, the Assessment Manager refers in 3 (b) to Item 3.7.3 – Purpose of the Code. This is included in the “Urban Residential Zone Code”, and this Code is not called up in Table 3.4 – Assessment Table – for a Detached Dwelling and **unable to be used** in the Assessment of the Development Application.
- (c) In the Reasons of Refusal, the Assessment Manager refers to Part 8.5.2 (a) (i) – Purpose of the Code, of Division 4 – Detached Dwelling and Domestic Storage Code. This part reads as follows:
 - (1) *The overall outcomes are the purpose of the Detached Dwelling and Domestic Storage Code;*
 - (2) *The overall outcomes for the Detached Dwelling and Domestic Storage Code are*
 - (a) *Detached Dwellings are appropriately sited to –*
 - (i) *Protect the amenity of adjoining residents and landowners;*

This Code (Acceptable Solutions only) is applicable for a Detached Dwelling. The Acceptable Solutions included in Tables 8.3 and 8.5 of the Detached Dwelling and Domestic Storage Code **do not refer to amenity issues**, and are mainly concerned with flooding and storm tide, and infrastructure provision.

- 3. In the Reasons for Refusal, the Assessment Manager has cited P1 of the QDC – “*The location of a building or structure facilitates an acceptable streetscape appropriate for:*
 - (d) the visual compatibility and amenity of the existing and likely future character and acceptable streetscape of the area;

The QDC does not include this performance criteria. It appears that the Assessment Manager has extracted the above in part, from the ‘Detached Dwelling and Domestic Storage Code’, section 8.5.2 (2) (d), which in full reads:

...(d) Domestic storage has an appropriate scale, height and area and is appropriately sited so that when viewed from public places or streets are attractive, proportionate to, and visually compatible with the existing or likely future character of the area”

This relates to **Domestic Storage** and not to Detached Dwellings and is therefore not applicable to the proposed development.

In summary, the Burnett Shire Planning Scheme does not –

- (i) provide that performance criteria and relevant acceptance solutions under the QDC Part 11 and Part 12 apply for relevant work; nor
- (ii) provide the parameters “to facilitate for the perceived acceptable amenity to residents within the Coastal Towns Planning Area Urban Residential Zone” in respect to single Detached Dwellings;
- (iii) Thus the Tribunal is of the opinion that reason for refusal contained in paragraph 3 (a) (b) and (c) of the Decision Notice dated 27 June 2007 are not valid. This view was put to Council at the hearing and was not refuted. Other building matters, including 3 (d) and 3 (e) are not the subject of this appeal and must be assessed to meet the requirements of building legislation.

R. W. Rooney
Building and Development Tribunal Chairperson
Date: 8 August 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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