



**APPEAL**  
*Integrated Planning Act 1997*

**File No. 3-05-023**

## **BUILDING AND DEVELOPMENT TRIBUNAL - DECISION**

**Assessment Manager:** Redland Shire Council  
**Site Address:** *withheld* – “the subject site”  
**Applicant:** *withheld*

### **Nature of Appeal**

Appeal under Section 21 *Standard Building Regulation 1993* (SBR) against the decision of the Redland Shire Council in application of its *Amenity and Aesthetics* Policy under Section 50 SBR, refusing an application for a Class 10 building on land described as Lot *withheld*, situated at “the subject site”.

**Date and Place of Hearing:** 9.00 am on Thursday 28 April, 2005  
At “the subject site”

<b>Tribunal:</b>	Gregory Schonfelder Phil Locke Dennis Leadbetter	Aesthetic Referee Aesthetic Referee Aesthetic Referee (Chairman)
<b>Present:</b>	<i>Applicant</i> <i>Applicant</i> Mike Ryan Jeff Hollyman Jennifer Gavin Lacey Thomson	Owner Owner Redland Shire Council Redland Shire Council Redland Shire Council Redland Shire Council

### **Decision**

The decision of the Redland Shire Council as contained in its letter dated 7 March, 2005, reference BD130965, not to grant *Preliminary Development Approval* to permit the erection of a Class 10 building on the land is **set aside**.

The applicant may erect a class 10a building on the site as follows:

- The building shall have a nominal gross floor area of up to 250 m<sup>2</sup> (+ 5% to accommodate standard product designs), with a width of approximately 15 metres;

- The building shall have a nominal wall height of 3.6 metres and a maximum height at the ridge of 5 metres;
- The building may be of a gable roof design;
- The walls, gutters, downpipes and trim of the building shall be Colorbond (colour other than pure white), and the roof may be Zinalume;
- The building shall be located no closer than 9 metres to the road frontage, and that dimension shall be determined to achieve a maximum 1:6 gradient to the driveway, from the road crossover to the entrance into the building;
- The building platform shall not extend more than 1 metre above existing natural ground level, and shall have suitable battered banks or retaining walls to contain fill, and minimise erosion to cut banks;
- A system shall be installed to collect and dispose of rainwater to minimise erosion to banks and prevent flooding of the building;
- The building may include any of the following facilities and services:-
  - Toilet, shower, hand basin and sink,
  - Power,
  - Water,
  - Security system,
  - Telephone;
- The road frontage and the surrounds to the building shall be suitable landscaped;
- Stormwater drainage to be disposed of on site so as not to concentrate run off to adjoining properties.

**Subject to the following conditions:-**

- 1 A master plan, showing existing and proposed structures on the site, together with site levels, vehicular accesses, major services and a landscape plan to be **submitted to the Building Tribunal** for final approval. The drawing of the proposed structure shall indicate location of doors, windows and other fitments. This shall be done within 9 weeks of the date of the hearing;
- 2 Approval from Redland Shire Council to remove existing vegetation to the proposed site of the Class 10 building, and of proposed landscaping associated with the new Class 10 building. If approval to remove existing vegetation is not granted, the Class 10 building may be positioned within the existing cleared area east of the current sealed carpark for the tennis courts.
- 3 Redland Shire Council approval to install a third vehicular crossing to the Street. (The Tribunal has spoken to Mr Michael Kriedman of Redland Shire Council on this matter on Thursday 28 April, 2005, and have been advised that Council would look favourably on this application because of the following criteria:
  - The use of the proposed building is ancillary to a residential use and the traffic generated would be minimal;
  - The size of the land and the large frontage of the land and the separation distances between the entrances;
  - The fact that *withheld* Road is a relatively low traffic volume road; and
  - The fact that visibility, due to the topography, would allow good visibility of any vehicles entering or leaving the property.)
- 4 Site development (including tennis courts and carpark) to be confined to 30% of the site area.
- 5 Compliance with normal Local Authority approvals, eg plumbing approval, work on road reserve, etc.

## **Background**

The application was for preliminary development approval to build a metal framed and metal clad shed (class 10a structure) on the site.

Council refused the application, without stating, in their letter, the grounds for that refusal.

## **Material Considered**

1. Appeal notice and grounds of appeal contained therein;
2. Drawings attached to that appeal notice;
3. Letter from the Redland Shire Council refusing the application;
4. Redland Shire Council's Policy no 1734, Amenity and Aesthetics, dated 7 August 2002, adopted by resolution under Section 50 SBR;
5. Verbal submissions from applicants explaining their contact with council in relation to the application to date, and their development plans for the site;
6. Verbal submissions from Mr Jeff Hollyman, Mr Mike Ryan, Ms Jennifer Gavin and Ms Lacey Thomson, Redland Shire Council, detailing the reasons for the refusal and other council policies that may be relevant to the development;
7. The Standard Building Regulation 1993;
8. Discussions, post the tribunal hearing, with Mr Michael Kriedman Redland Shire Council in relation to the installation of a third cross over to *withheld* Road.

## **Finding of Fact**

The tribunal made the following findings of fact:

- 1 The site is a large corner block, area approximately 10 330 m<sup>2</sup>, with the longer frontage to *withheld* Road and the shorter frontage to *withheld* Road.
- 2 The site currently has a residence, 2 tennis courts with associated toilets and shelter shed, and a sealed carpark adjacent for use by the tennis court patrons.
- 3 The tennis courts are operated as a business and have done so for a considerable amount of time.
- 4 The site falls in a south westerly direction. It was estimated that across the proposed building that the land fall was approximately 1.5 metres.
- 5 There is a large stand of she oaks on the proposed building site.

- 6 A council sewer main traverses the site just westward of the stand of trees/proposed building site.
- 7 There was a dam on site to the south western corner which drains to a dam on the adjoining site (both sites have common ownership).
- 8 The neighbouring area is comprised of large allotments with houses and outbuildings, and a school and church is located to the northern side of *withheld* Road, the adjoining site to the south is operated as a nursery.
- 9 The land is zoned Rural Non Urban.

### **Reason for the Decision**

The Tribunal firstly requested from Redland Shire Council the reason for the refusal and how the application was assessed against the criteria contained in their Amenity and Aesthetics Policy. From the explanation by Mr Jeff Hollywell, the refusal appeared to be based solely on the floor area being in excess of the 80m<sup>2</sup> as listed in the table under Policy Statement. The Tribunal does not believe that the intent of the policy is to restrict the area of any building, that the area limitation is purely a trigger mechanism to initiate an assessment under Redland Shire Council's Amenity and Aesthetics' Policy. The Tribunal holds that view as the policy document states:

#### **POLICY STATEMENT**

Council hereby declares that an application for an Amenity and Aesthetics application must be made, together with the relevant fee being paid, to Council prior to any Building Work Decision Notice being determined for the following items:

##### **Item 1**

Class 10a structures that:

- (a) exceed the following maximum gross floor areas and/or nominated heights.

Zone	Area of allotment	Maximum Aggregate Gross floor area	Overall height (above natural ground level)	Wall Height (measured from pitching line)
Ru/NU	2000m <sup>2</sup> – 15000m <sup>2</sup>	80m <sup>2</sup>	4.5m	-

(Table is abridged to show only relevant land zoning and site area)

The policy lists the assessment criteria for any such application under four specific performance criteria, these being:

- P1 The design, siting and construction materials of the Class 10a structure is in keeping with the existing amenity of the surrounding area and the intent of the Strategic Plan designated for the locality
- P2 The design and siting of the Class 10a structure does not unreasonably obscure sunlight to habitable rooms or private open space of existing buildings on adjoining sites in winter.

P3 The design and siting of the Class 10a structure ensures access to prevailing summer breezes on adjacent properties is not unduly affected.

P4 The design and siting of the Class 10a structure does not have adverse impacts on existing views.

The Tribunal is of the opinion that the proposed structure:

- 1 Is in keeping with the existing amenity of the surrounding properties, and with the intent of the Strategic Plan of Redland Shire Council, as evidenced by photographs of other similar existing structures, supplied by the applicant, and some verified as being approved post the current legislation by the Redlands Shire Council personnel.
- 2 The proposed structure and its siting will not obscure sunlight to the adjoining properties (between the hours of 9 am and 3 pm on June 21 as prescribed in the deemed to satisfy solutions of the policy document) because of its orientation and distance from property boundaries.
- 3 The proposed structure and its siting will not unduly restrict or limit summer breezes to adjoining sites, because of the size of this and surrounding sites, the topography, orientation and distance from property boundaries.
- 4 The proposed structure and its siting will not impact on views further than the existing vegetation on site and that on 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 Redlands Shire Council, contained in its letter dated 7 March, 2005, not to grant preliminary development approval to erect a class 10a building on the site.

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**Dennis Leadbetter**

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

**Building and Development**

**Tribunal Chairperson**

**Date: 30 April 2005**

**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  
Building Codes Queensland  
Department of Local Government and Planning  
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