



Building and Development Tribunals

Queensland Government

Department of **Local Government and Planning**

APPEAL

Integrated Planning Act 1997

File No. 3-06-048

BUILDING AND DEVELOPMENT TRIBUNAL - DECISION

Assessment Manager: Burnett Shire Council

Site Address: *withheld*-“the subject site”

Applicant: *withheld*

Nature of Appeal

An appeal under Section 21 of the *Standard Building Regulation 1993* against the decision of the Burnett Shire Council to refuse a siting concession. The application for a siting variation, being required to build a Class 10a structure 750mm from the side boundary, on property described as “the subject site”.

Date and Place of Hearing: 9.30am, Thursday the 25th May 2006 at “the subject site”

Tribunal: Debbie Johnson

Present: Applicant / Owner;
Mr Trevor Jakeman – Burnett Shire Council Building Certifier;
Mr Richard Jenner – Burnett Shire Council Town Planner.

Decision

The decision of the Burnett Shire Council to refuse an application for a siting concession for a class 10a ‘shed’, as contained in its written notice, dated 13th April 2006, Ref No D-904964-2, is **confirmed**.

Background

On the 22nd March 2006, an application for a siting variation to build a shed, within the required 2m setback from a side property boundary, was lodged with Burnett Shire Council, by the applicant’s lawyers, on behalf of the applicant, owner of the subject site.

The Burnett Shire Council refused the application in writing on the 13th April 2006, stating that they have assessed the proposal against the requirements of the Queensland Development Code Part 12 and refused the Alternative Solution proposed by the applicant, on the following grounds-

- Does not further contribute to the efficient use of the lot;
- The shed if sited as proposed because of its excessive size, heights, length and crowding the boundary would not contribute favourably, but present an adverse impact and be in conflict with the amenity of the existing established detached dwellings and associated existing established outbuildings in the residential area to the residents;
- The shed is not in association with a single detached dwelling as the lot is vacant;
- The proposed siting of the shed if permitted would establish a precedent for future proposals for the area;
- Acceptable Solutions are solutions to the Performance Criteria and therefore are an acceptable standard or benchmark. It is accepted that the Performance Criteria must take into account all necessary expectations for residents of a residential area. For an Alternative Solution to be accepted the circumstances should be considerable and/or exceptional, for approval to be given to excessive differences in heights, length and closeness to the boundary.

The application, included a written submission by the applicant's lawyers, a written submission by the applicant, drawings prepared by *withheld* Building Designs and photographs of the subject site. The proposed siting variation was for a 750mm clearance to the side boundary in lieu of the 2m setback required for a building that exceeds a mean height of 4.5m.

Note, the site plan prepared for the application by *withheld* Building Designs, on the 18th March 2005, nominates a 500mm setback. This was not the setback that was proposed in the written submission to the Burnett Shire Council, dated 22nd March 2006. At the tribunal hearing, the applicant stipulated the proposed siting of the shed was to facilitate sufficient area on site in which to manoeuvre his vehicle and boat.

Material Considered

1. Written advice from Burnett Shire Council, dated 13th April 2006, refusing the application made to them by the applicant's lawyers;
2. A calculation sheet and vehicle turning diagram prepared by the Burnett Shire Council, to substantiate information contained in its written notice of refusal;
3. Written joint submission from the applicant's lawyers, and the applicant being the application for a siting concession;
4. Architectural Drawings prepared by *withheld* Building Designs, comprising:
Site Plan Dwg No 5310-03 dated 18th March 2005;
Floor Plan Dwg No 5310-01 dated 4th August 2005;
Elevations Dwg No 5310-02 dated 18th March 2005.
5. Photographs taken of the subject site, numbered 1 through to 11, and a reproduction of the architectural site plan with directional arrows to clarify the direction from which the photographs were taken. An aerial photograph of the site area was also included;
6. Written submission by the applicant outlining in detail the grounds for this appeal application;
7. Written submissions, outlining specific concerns, by adjoining property owners;
8. Verbal representations, on site, by the applicant;

9. Verbal representations, on site by Mr Trevor Jakeman and Mr Richard Jenner of the Burnett Shire Council;
10. The *Standard Building Regulation 1993*;
11. Part 12 of the Queensland Development Code;
12. The *Integrated Planning Act 1997*; and
13. The *Building Act 1975*, Schedule Dictionary.

Findings of Fact

The following points are considered as findings of fact:

1. Adjoining property owners affected by the proposed development have written letters of objection to the Registrar for the Building and Development Tribunal. They are concerned at the size and location of the proposed shed and specifically the proposed use of the shed.
2. The subject site is large, being 2249m², it could be described as a battleaxe in shape and is currently vacant.
3. The proposed shed is also large being 165m², with an overall length of 15m, along the boundary in question. The maximum building height will be 5.46m at the ridge with a mean height of 4.646m. The proposed shed is to be constructed in lightweight materials, specifically, colourbond cladding to the roof and walls. There are no window or door openings along the boundary or Eastern side of the shed.
4. There is no record of a building application or approval for a dwelling pertaining to this site. The applicant has stated that he will apply for a building approval for a residence in the future.
5. Should the applicant lodge an approval for a single detached dwelling to be built in association with the proposed shed, then the provisions of Performance Criteria P2, of the Queensland Development Code Part 12, become applicable, as the intentions of this section, is to apply the standards to a Class 10 building on land where there is a single detached Class 1 building or where a Class 1 building is permitted on the land.
P2 states:
Buildings and structures-
 - (a) provide adequate daylight and ventilation to habitable rooms; and
 - (b) allow adequate light and ventilation to habitable rooms of buildings on adjoining lots.
 - (c) Do not adversely impact on the amenity and privacy of residents on adjoining lots.

Reasons for the Decision

1. A site visit to *withheld* demonstrated that the proposed shed would be completely concealed from view when looking from *withheld*. It would however be obvious from *withheld* and the outlook from residents on adjoining allotments will be compromised regardless of the exact siting of the structure.
2. The proposed shed will adversely impact on the amenity of residents on adjoining lots due to its size and overall scale. The shed does not offer any visual amenity being totally clad in colourbonded steel sheeting.
3. The site is sufficiently large enough for the required siting provisions to be complied with.
4. The adjoining neighbours have written to the Registrar of the Building and Development Tribunal expressing their concern.
5. The siting provisions of the Standard Building Regulations and the Queensland Development Code are not applicable to a shed when it is not in association with a single detached dwelling.

6. To further clarify this decision, should the application for a siting concession for the proposed shed have been made in association with a single detached dwelling, the application would have been refused under P2 of Part 12 of the Queensland Development Code on the grounds the shed adversely impacting on the amenity of residents on the adjoining lots.

Debbie Johnson
Building and Development
Tribunal Referee
Date: 13th June 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:

The Registrar of Building and Development Tribunals
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