



Building and Development Tribunals
Queensland Government

Department of Local Government, Planning,
 Sport and Recreation

APPEAL
Integrated Planning Act 1997

File No. 3-05-022

BUILDING AND DEVELOPMENT TRIBUNAL - DECISION

Assessment Manager: Caboolture Shire Council

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

Applicant: *withheld*

Nature of Appeal

The appeal is against the decision of the Caboolture Shire Council to refuse an application under its Amenity and Aesthetics Policy for the location of two shipping containers on land described as Lot *withheld* and situated at “the subject site, as Council considers:-

“The building or 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: 9.00am Friday 6 May 2005.
 At “the subject site”

Tribunal:	Mr L F Blumkie	Tribunal Chairperson
	Mr E Woodruffe	Tribunal Member
	Mr R Dix	Tribunal Member

Present:	<i>withheld</i>	Applicant / Owner
	<i>withheld</i>	Applicant / Owner
	Mr C Harris	Caboolture Shire Council representative
	Mr L Blumkie	Tribunal Chairperson
	Mr R Dix	Tribunal Member
	Mr E Woodruffe	Tribunal Member

Decision

The Tribunal, in accordance with Section 4.2.34 (2) (b) of the *Integrated Planning Act 1997*, changes the decision appealed against and, with the consent of the owner and the agreement of the council representative, grants approval for **one** (only) shipping container to remain on site subject to the following conditions:-

1. A level earth platform is established for the container;
2. An earth mound is established on the *withheld* Road side of the container and extending 3 metres past the container on each end. The mound is to be 900mm above the entrance to the platform;
3. The mound is landscaped with appropriate quick growing trees and shrubs and such trees and shrubs are maintained to establish a permanent screen to the container when viewed from *withheld* Road;
4. The container is tied down to mass concrete piers at each corner to the requirements of building legislation;
5. The existing steel frames are removed from the top of the container;
6. The container is cleaned and painted in a tradesman like manner, in a green colour to match the existing lawn locker at the front of the site;
7. The gathering of equipment and other machinery items are kept to a minimum;
8. The site plan is amended to show the mound;
9. All the above conditions are completed to the satisfaction of the Caboolture Shire Council within 3 months of the date of this decision.

Background

Caboolture Shire Council carried out a pre-purchase inspection on the subject property on the 3 October 2003. It was found that a shipping container had been located on the property without Council approval. Council advised the purchaser's solicitor and the previous owner of these findings on the 8 October 2003.

The applicant advised at the hearing that they were not told of the pre-purchase inspection findings.

On the 27 July 2004 the Council advised the new owner in writing of the need for a Development Application for the shipping container.

It would appear that the owner never received the correspondence, as Council was apparently sending the correspondence to *withheld* Road.

On the 28 September 2004 a Show Cause Notice was issued to the owner.

On the 10 November an Enforcement Notice was issued to the owner.

Again, it would appear that the owner never received the correspondence as it was still being forwarded to the incorrect address.

In December 2005, Council again inspected the property, confirmed the container was still located on the property and on the 3 December 2004 advised the owner in correspondence that they intended to prosecute them for the illegal building work.

A summons was issued to the applicant on 10 January 2005 by registered mail.

The hearing has been adjourned to 21 June 2005.

On the 7 February 2005 the applicant made a development application to the Council for 2 shipping containers to be located on the property.

On 1 March 2005 Council refused the development application on Amenity and Aesthetics grounds.

An appeal was lodged with the Registrar on 31 March 2005.

Material Considered

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

1. Copy of the development application and drawings dated 7 February 2005.
2. Copy of the Decision Notice dated 1 March 2005.
3. Copy of the Appeal Notice dated 31 March 2005.
4. Photographs submitted with the appeal.
5. Verbal submissions from applicants.
6. Verbal submissions from the Caboolture Shire Council representatives.
7. The *Standard Building Regulation 1993* (SBR)
8. The *Integrated Planning Act 1997*
9. The Queensland Development Code (QDC)
10. Caboolture Shire Council Resolution and Policy on Amenity and Aesthetics - Policy No 202/02.

Findings of Fact

A Standard Building Regulation - Division 4 - Amenity and Aesthetics

Caboolture Shire Council adopted an Amenity and Aesthetics policy under Section 50(1) of the *Standard Building Regulation 1993* on the 5 September 2000 and amended that policy on the 19 February 2002 and again on the 17 December 2002.

The resolution, amongst other things, declared that all development applications for Class 1A and 10 Buildings (including shipping containers) proposed to be located within the Caboolture Shire etc., are to be subject to amenity and aesthetics assessment by the Caboolture Shire Council.

Section 50 (2) of the *Standard Building Regulation 1993* states that applications mentioned in Section 50 (1) must be assessed by the local government for the amenity and aesthetics impact of the proposed building work.

Section 50 (3) states that the local government may refuse an application to which subsection (2) applies if the building, when built, would have an extremely adverse effect on the amenity or likely amenity of the building's neighbourhood etc.

B Site

The site is 8022m² in area and is developed with an existing single storey class 1 building.

The site is a corner lot and slopes away from both street frontages.

There is limited (mainly grass) vegetation between the container and the road frontage and hence the shipping container is clearly visible from *withheld* Road.

C Development in the neighbourhood.

Development within the neighbourhood is generally single storey class 1 and 10 buildings. There appeared to be a number of other shipping containers located on properties within the neighbourhood. The Council officer advised that as far as he was aware Council had not given approval for shipping containers on the properties identified.

D Forms of buildings and Council policy

The local government representative was unable to table a written policy on the forms of buildings, (location and screening of shipping containers) etc which the local government considered acceptable under their amenity aesthetics resolution.

Reasons for the Decision

After verbal submissions from the Council representative the applicant agreed that:-

- The Council's specific reasons for the refusal being that the container was clearly visible from a major road and as such was not suitable in a residential estate;
- The same Council officer had **not** decided both the development application and authorized the enforcement notice;
- The Council has not referred to the Queensland Development Code in making its decision;
- On the advice of the Council officer, as far as he was aware, none of the containers in the surrounding area, shown in the photographs had received a development approval and therefore Council appeared to be consistent in applying its Amenity and Aesthetics policy.

The owner advised that the container was necessary to store a lawn mower and other valuable equipment necessary to maintain the 8022m² lot. It was their intention, when funds become available, to build a class 10 building to house personal motor vehicles etc.

The owner agreed the container was not aesthetically acceptable and for that reason they had decided not to locate it close to their house.

The owner also agreed that once the class 10 building was erected it would not be necessary to have the second container and decided to delete it from the development application.

The Tribunal and Council representative agreed that:-

- with appropriate site leveling in the immediate area of the container;
- permanent landscaping as screening;
- painting of the container;
- removal of steel frames from the roof of the container; and
- reduction in the amount of equipment stored at the rear of the container,

its appearance, when viewed from the road, could be made acceptable within the neighbourhood.

Hence, in accordance with Section 4.2.34 (2) (b) of the *Integrated Planning Act 1997*, the Tribunal changes the decision appealed against and, with the consent of the owner and the agreement of the council representative, grants approval for **one** (only) shipping container to remain on site subject to the following conditions:-

- 1 A level earth platform is established for the container;
- 2 An earth mound is established on the *withheld* Road side of the container and extending 3 metres past the container on each end. The mound is to be 900mm above the entrance to the platform;
- 3 The mound is landscaped with appropriate quick growing trees and shrubs and such trees and shrubs are maintained to establish a permanent screen to the container when viewed from *withheld* Road;
- 4 The container is tied down to mass concrete piers at each corner to the requirements of building legislation;
- 5 The existing steel frames are removed from the top of the container;
- 6 The container is cleaned and painted in a tradesman like manner in a green colour to match the existing lawn locker at the front of the site;
- 7 The gathering of equipment and other machinery items are kept to a minimum;
- 8 The site plan is amended to show the mound;
- 9 All the above conditions are completed to the satisfaction of the Caboolture Shire Council within 3 months of the date of this decision.

NOTE

The Council representative advised that the above decision would be brought to the attention of the Council solicitor and it would be recommended that the summons be withdrawn.

Leo F Blumkie
Building and Development
Tribunal Chairperson

Date: 10 May 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
PO Box 31
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Telephone (07) 3237 0403: Facsimile (07) 32371248