



APPEAL
Integrated Planning Act 1997

File No. 3/08/029

BUILDING AND DEVELOPMENT TRIBUNAL - DECISION

Assessment Manager: Sunshine Coast Regional Council

Site Address: *withheld* – ‘the subject site’

Applicant: *withheld*

Nature of Appeal

Appeal under Section 4.2.9 of the *Integrated Planning Act 1997* (IPA) against the decision of the Sunshine Coast Regional Council to refuse to issue a Preliminary Approval for Building Work (Code Assessment) to enable the construction of a shed on the subject site within 10m of a side boundary.

Date and Place of Hearing: 9:00 am Friday 16 May 2008 at the subject site

Tribunal: Robin King-Cullen – Tribunal Chairperson
David Mansell – Tribunal Member

Present: Applicant’s representative
John Dunn – Sunshine Coast Regional Council Representative

Decision

In accordance with Section 4.2.34 (2)(a) of the IPA, the Tribunal **confirms** the decision appealed against and the appeal is dismissed..

Background

The matter concerns the decision of the Sunshine Coast Regional Council (the Council) to refuse to issue a Preliminary Approval for Building Work (Code Assessment) to enable the construction of a shed on the subject site within 10m of a side boundary. The proposed Shed is 12m by 9m in area and has a maximum height of 4.719m.

Although the site is large (approximately 11.6 ha), the applicant wishes to construct a shed on the land in close proximity to the existing dwelling on ‘the subject site’ for convenience and security reasons and in a location that has been previously levelled.

The subject site shares a common easement access with the adjoining Lot 1 SP191637 and the side boundary for which relaxation is sought relates to the common boundary with Lot 1 SP191637.

The occupants of the house on adjoining Lot 1 SP191637 currently enjoy rural views to the south over the subject site to Petrie Creek from several rooms. The Tribunal noted that a shed set back 10m from the side boundary (in lieu of the 3m setback proposed) would help reduce the negative impact on the existing views from the neighbouring property.

The Council representative provided the Tribunal with background information about a previous application for a shed over the subject site that was refused (with a 4m setback to the northern boundary), and information regarding site works apparently undertaken several years ago to create the level area which is the site of the proposed shed.

Material Considered

1. Copy of the application dated 27 March 2008 made to the Council;
2. Copy of the notification dated 14 April 2008 from the Council to the Applicant stating that the application for a preliminary approval had been refused;
3. 'Form 10 – Notice of Appeal' lodged with the Building and Development Tribunals, dated 22 April 2008, against the decision of the Council to refuse the application and setting out the grounds of the appeal;
4. Verbal submission made at the hearing by the Applicant's Consulting Engineer on 16 May 2008 stating reasons for the appeal and setting out why the Appeal should be allowed;
5. Verbal submission made by the Council on 16 May 2008 setting out why the Council had refused the application and why the Appeal should not be allowed in its present form;
6. Written submission by the Council representative provided at the hearing on 16 May 2008, including a copy of letter dated 9 May 2008 from the adjoining property owner;
7. Verbal submissions made by the neighbouring property owner at his home following the hearing;
8. Copy of Code 4.1 – Code for the Development of Detached Houses and Display Homes contained in Maroochy Plan 2000;
9. The *Building Act 1975*;
10. The *Integrated Planning Act 1997*; and
11. The Building Code of Australia.

Findings of Fact

The Tribunal made the following findings of fact:

1. The subject site, approximately 11.6 ha in area, contains an older style timber dwelling. Some farming pursuits are carried out on the site.
2. There is no undercover car accommodation on the subject site.
3. Access to the dwelling on the subject site is via a common easement on the adjoining Lot 1 SP191637.

4. The adjoining Lot 1 SP191637 is 4767m² in area and contains a dwelling and a separate double garage structure. The separate double garage structure is located within 3m from the common side boundary with the subject site.
5. The subject site has been levelled in the location of the proposed shed.
6. The subject site is in Precinct Area 28 of Maroochy Plan 2000, Precinct # 1 – Perwillowen/Hunch – General Rural Lands. The north eastern boundary of the site forms part of the edge of this Precinct. Low density residential subdivision adjoins the subject site on its north eastern boundary.
7. The neighbour on Lot 1 SP191637 has submitted a written objection to the proposed location of the shed on the grounds that the building will impact on their views and also block breezes in summer.
8. There are no apparent impediments, apart from the need to undertake some further earthworks, to locating the proposed shed 10m from the side boundary.

Reasons for the Decision

1. It is considered that the location of the proposed shed within the 10m side setback fails to meet Performance Criteria P3 of Code 4.1 of Maroochy Plan (21 August 2006) in that amenity of the adjoining property to the north would be adversely affected. It is noted that the owners of the adjoining property to the north have objected to the location of the proposed shed; and
2. The Tribunal noted that a shed set back 10m from the side boundary (in lieu of the 3m setback proposed) would help reduce the negative impact on the existing views from the neighbouring property; and
3. There are no special site circumstances or constraints to justify granting the side boundary set back relaxation.

Robin King-Cullen
Building and Development Tribunal Chairperson
Date: 22 May 2008

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 Infrastructure and Planning
PO Box 15009
CITY EAST QLD 4002
Telephone (07) 3237 0403 Facsimile (07) 3237 1248