



APPEAL
Integrated Planning Act 1997

File No. 3-05-048

BUILDING AND DEVELOPMENT TRIBUNAL - DECISION

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

Nature of Appeal

Appeal under Section 21 *Standard Building Regulation 1993* (SBR) against the decision of the Caboolture Shire Council in application of its *Amenity and Aesthetics* Policy under Section 50 SBR, refusing an application for a Class 1 building, to be used as relocatable parent accommodation, on land described as Lot *withheld*, situated at “the subject site”.

Date and Place of Hearing: 11.00 am on Thursday 22 September, 2005
At “the subject site”.

Tribunal:	Gregory Schonfelder Phil Locke Dennis Leadbetter	Aesthetic Referee Aesthetic Referee Aesthetic Referee (Chairman)
Present:	<i>withheld</i> Richard Pugh Pam Strong Chris Harris Melanie Millar	Owner’s representative Glendale Homes Glendale Homes Caboolture Shire Council Caboolture Shire Council

Decision

The decision of the Caboolture Shire Council as contained in its letter dated 10 August, 2005, reference BRX-2005-619(CH:pmc), not to grant a approval under their *Amenity and Aesthetics Policy* to permit the erection of a Class 1 building (relocatable parent’s dwelling) on the land is **set aside**.

The applicant may erect the class 1 building as per the drawings submitted on the site subject to the following provisions:

- The building **need not** have the longer elevation facing the road frontage as required by section 3.0 6. of the Caboolture Shire Council's Amenity and Aesthetics Policy;
- The building **need not** have minimum 600 mm overhangs as required by section 3.0 11., but the 200 mm nominated on the drawings;
- The building perimeter to be enclosed below floor level, with timber battening or similar.
- Subject to approval as required by Caboolture Shire Council's Transitional Planning Policy.

Background

The application was for development approval to build a relocatable dwelling to be used as parent accommodation. Caboolture Shire Council has a specific policy procedure under section 50 of the Standard Building Regulation, in relation to *Transportable and Relocatable Homes – Private Property*.

Council refused the application on the grounds that:

The proposal does not comply with the requirements under Division XIV of Council's Transitional Planning Scheme in that:-

1. a) *The materials or the cabin are NOT similar to the Dwelling as the Dwelling is brick veneer; and*
i) *the (sic) location must be within 20.00 metres of the dwelling*

Subsequently an application to vary the Town Planning Scheme requirements for these two issues is required.

Material Considered

1. Appeal notice and grounds of appeal contained therein;
2. Drawings attached to that appeal notice;
3. Letter from the Caboolture Shire Council refusing the application;
4. Caboolture Shire Council's Policy Procedure No POL 9, Transportable or Relocatable Homes – Private Property, dated 5 September 2000, adopted by resolution under Section 50 SBR;
5. Caboolture Shire Council's Transitional Town Planning Scheme, Division XIV – Aged, Invalid or Infirm Persons (sic) Accommodation;

6. Verbal submissions from the owner's representative, explaining their reason for the proposed structure, and its positioning;
7. Verbal submissions from Mr Richard Pugh and Ms Pam Strong, the supplier of the relocatable dwelling;
8. Verbal submissions from Mr Chris Harris, and Ms Melanie Millar, Caboolture Shire Council, detailing the reasons for the refusal;
9. The Standard Building Regulation 1993 (SBR).

Finding of Fact

The tribunal made the following findings of fact:

- 1 The Tribunal does have jurisdiction in relation to the Caboolture Shire Council's Policy Procedure, but not the Transitional Town Planning Scheme.
- 2 The site is a large block, area approximately 8000 m², with a 53 metre frontage to *withheld* Road.
- 3 The site has a slight fall to the rear.
- 4 The site has a residence, shed, swimming pool all as indicated on the drawings submitted.
- 5 The proposed transportable or relocatable home and its location were generally in compliance with the Caboolture Shire Council's Policy, except those minor items nominated in the decision.
- 6 The land is zoned Rural Residential.

Reason for the Decision

Caboolture Shire Council's *Policy Procedure – Transportable or Relocatable Homes – Private Property* states, inter alia:

1.0 INTENT

That in the case of an application for a transportable or relocatable home, which is to be established on a property within the Shire other than within a relocatable home park or caravan park, **that approval be granted when the application complies with Council's minimum requirements:**

Those minimum requirements include:

1. Compliance with Section 50 SBR, in terms of amenity and aesthetics, the Tribunal were of the opinion that the proposed structure would not be out of character with other structures on site and the neighbourhood;

2. There is no #2 requirement within the policy;
3. A minimum floor area of 60 m², the proposed structure complies;
4. A minimum width of 6 metres, the proposed structure complies;
5. The external cladding options, the proposed structure complies;
6. The longer elevation is to face the frontage, unless otherwise approved by the Principal Building Surveyor. The proposed structure does not, but in the proposed location the structure is not visible from the road, and the Tribunal considers that this will not impact on the amenity of the area;
7. The building be low set, the proposed structure complies;
8. The building, if on low stumps, to have the perimeter suitably enclosed, the builder has indicated that they are prepared to enclose the under dwelling space, and this is a condition of the Tribunal's decision, therefore this condition is complied with;
9. Where the building includes a verandah, the external appearance must be aesthetically acceptable in relation to the character of the particular neighbourhood, the structure is to have a verandah and this component is incorporated into the overall dwelling design, the Tribunal considers that this is aesthetically acceptable, and therefore complies. **It should be noted that the verandah is not part of the current building approval, but is to be constructed by the owners at a later date;**
10. The roof to be of minimum 10 degree pitch, the proposed structure complies;
11. The eaves overhang to be a minimum of 600 mm, the proposed structure has 200 mm and is a condition of the Tribunal's decision, therefore this condition is complied with;
12. A road bond, complying with Council's policy – Building Approval Procedures – House Removal (Bonds) shall be submitted to Council prior to the issue of a development permit. Mr Harris, from CSC, indicated to the Tribunal that Council did not always require such bond. Because of the nature of the proposed structure, ie not being a removal house, the Tribunal has determined that no bond is required.

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 Caboolture Shire Council, contained in its letter dated 10 August, 2005, not to grant development approval to erect a class 1 building on the site.

Tribunal Comments

This application was for a relocatable type dwelling for Aged Parent Accommodation, and the Caboolture Shire Council has two separate sets of requirements, one under the provisions of Section 50 SBR covering Amenity and Aesthetics of all relocatable structures, and the other under a town planning scheme that has specific conditions for

Aged Person's Accommodation. Each currently require a separate application, which the Tribunal believes should be combined to a single application, which should be processed within the various Council departments as an integrated approval process.

The Tribunal also considers that Council, should they persist with this dual application requirement, should not refuse applications of this nature, except where such refusal is based on one or more of the specific requirements of the policy, as the application of Section 50 SBR, under which the relevant Council Policy is empowered, does not provide for a refusal based on legislation other than that contained within the Building Act, Standard Building Regulation and Queensland Development Codes, as has been done in this instance where the refusal has been based on Town Planning Legislation.

Dennis Leadbetter

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

Building and Development

Tribunal Chairperson

Date: 27 October 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
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