



APPEAL
Integrated Planning Act 1997

File No. 3-04-023

BUILDING AND DEVELOPMENT TRIBUNAL - DECISION

Assessment Manager: Caboolture Shire Council

Site Address: Lot 2, Holmwood Road, Stony Creek

Applicant:

Nature of Appeal

Appeal under Section 4.2.9 of the Integrated Planning Act 1997 against the decision of the Caboolture Shire Council to refuse an application for the conversion of part of a class 10 building to Class 1, on aesthetic and character grounds, in that *a shed converted to a dwelling would not be in keeping with the street and would set a precedent*, on land described as Lot 2 RP 882487, Parish of Durundur, and situated at Lot 2 Holmwood Road, Stony Creek.

Date and Place of Hearing: 10.00 am on Thursday, May 6, 2004
At Lot 2 Holmwood Road, Stony Creek.

Tribunal:

Robbie Pocock	Aesthetic Referee
Phil Locke	Aesthetic Referee
Dennis Leadbetter	Aesthetic Referee (Chairperson)

Present:

Owner	
Owner's representative	
Private Certifier	
Caboolture Shire Council	
Robbie Pocock	Tribunal Member
Phil Locke	Tribunal Member
Dennis Leadbetter	Tribunal Chairperson

Decision

The decision of the Caboolture Shire Council as contained in its letter dated 16 March, 2004, reference BRX-2004-172 (CH:pm), not to grant approval under its Amenity and Aesthetics resolution, to convert part of a shed to a dwelling is **set aside**.

It is decided that there is no requirement for the development to be assessed under the provisions of Section 50 of the Standard Building Regulation 1993, i.e. Caboolture Shire Council's Amenity and Aesthetics resolution.

Background

The application was for development consent to convert portion of an existing, steel framed, Colorbond steel clad shed for dwelling purposes.

The Tribunal estimates the existing shed to be in excess of 10 years old, based on the fading of the Colorbond finish, and is informed there are no records held by council of any approvals related to its erection.

The building was in place at the time of purchase by the existing owner.

Council refused the application stating the grounds for refusal in their letter, to be *Aesthetically a shed converted to a dwelling would not be in keeping with the street and would set a precedent.*

The building is approximately 22 metres by 9 metres and located on an 18.68 hectare site, approximately 18 metres to the nearest property boundary and 200 metres from the nearest road boundary, the site is zoned rural, and located in a rural community containing small detached dwellings and typical farm shed outbuildings of varying aesthetic standards.

The owner, once becoming aware that the structure did not have the required approvals, sought to correct the situation and lodged an application with a private certifier, who then lodged a development application with Council, based on his interpretation of the Caboolture Shire Council's *Amenity and Aesthetics Class 1 and 10 Buildings Policy.*

Material Considered

1. Appeal notice and grounds of appeal contained therein;
2. Drawings submitted to Caboolture Shire Council;
3. Letter from the Caboolture Shire Council, dated 16 March, 2004, not to grant approval for the change of use;
4. Verbal submissions from owner and the owner's representative and private certifier;
5. Verbal submissions from Caboolture Shire Council, indicating that he had never been to the site and having viewed the property stated that the building was not in conflict with the surrounding area nor would a conversion of portion of the building not be in keeping with the aesthetics and amenity of the area nor set a precedent for the street;
6. Letters from the owners of the adjoining properties, indicating no objection to the development;

7. Caboolture Shire Council's *Building Approval Procedures Amenity and Aesthetics (Class 1A and 10A buildings) Policy 202/02*;
8. The Standard Building Regulation 1993 (SBR);
9. The Integrated Planning Act 1997;
10. An inspection of the area, which revealed properties of similar size and used primarily for residential and farming purposes, having a range of farm outbuildings of varying construction methods, materials and standards.

Finding of Fact

The Tribunal established the following findings of fact:

- 1 The building is existing, was well constructed, weather proof, complete with gutters and downpipes, had a concrete floor, and contained a shower and a toilet connected to a septic system.
- 2 That no approvals were recorded with the Caboolture Shire Council in relation to any of the work related to the erection of the building or installation of sanitary fixtures (viz the septic system).
- 3 Caboolture Shire Council adopted by resolution an Amenity and Aesthetics Policy, under Section 50 of the *Standard Building Regulation 1993*, September 5, 2000 and amended that Policy on February 19, 2002 and December 17, 2002. That policy, inter alia, set out specific building types that require Amenity and Aesthetic approval by Council.
- 4 The building is located on an 18 hectare site, zoned rural, and the building is located approximately 200 metres from the nearest road, and approximately 20 metres from the nearest property boundary.
- 5 The surrounding properties are also of a similar size and the nearest residential building is a considerable distance away.
6. The Tribunal was of the opinion that the existing building, and the conversion of portion of the existing building for use as a dwelling, would not be in conflict with the character of the street or surrounding areas.

Reasons:

The Tribunal is of the opinion that the Caboolture Shire Council's Amenity and Aesthetics Policy is not applicable to this site and this application, as the development falls outside the specific criteria for class 10 buildings, with the site being over 2000 square metres and the building being single storey and less than 3.6 metres in height, and also outside the provisions of section 3.2 5, in that the building is not proposed to be erected, but existing, lawfully or otherwise.

In the opinion of the Tribunal, the existing building is totally acceptable for the site and the surrounding area and would not have any detrimental effect on the Amenity or Aesthetics of the area, nor impact on the outlook from adjoining neighbours.

Key issues considered by the Tribunal were:-

- The building, its location, its construction, the property size, its use and that of the surrounding properties.
- Alignment setbacks.
- Road alignment setbacks.

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 16 March, 2004, not to grant approval to change the use of portion of a class 10 building for use as a class 1, and decided that there is no requirement for the development to be assessed under the provisions of Section 50 of the *Standard Building Regulation 1993*, ie the Caboolture Shire Council's Amenity and Aesthetic Resolution.

Tribunal Comments:

In determining this appeal, as the Caboolture Shire Council had refused the application primarily on Aesthetic grounds under Council's resolution under Section 50 of the *Standard Building Regulation 1993*, the Tribunal looked carefully at the provisions contained in that resolution document, Caboolture Shire Council's policy no. 202/02.

The Tribunal found that policy document poorly drafted, leading to considerable confusion in interpretation as to Council's real intent, having cognisance of the provisions of the *SBR* Section 50 (1).

Areas that the Tribunal found lacking, included, but were not limited to, the following:-

- 1 Section 3.2 subsection 5, specifies *steel kit* or *prefabricated kit construction*, but the document does not provide a definition of the intended meaning of those phrases. As an example, does *prefabricated kit construction* include framing for a building which has been factory manufactured, no matter what the material, as is common practice in the domestic construction industry? The current resolution could clearly be so interpreted, and would, in the Tribunal's opinion, considerably exceed the intent of Section 50 (1) *SBR*.
- 2 Section 3.2 subsection 5 is also limited to where a building is to be erected on *vacant land*? This limitation seems to have no logical basis.
- 3 Section 3.3 could be construed to imply that all class 1 buildings require an Amenity and Aesthetics approval, and Section 4 would seem to support that interpretation. This is clearly outside the provisions of the *SBR* Section 50 (1), under which the resolution is made.

- 4 The Council resolution needs to be more specific and detailed in stating the *location and forms of buildings and structures* which require assessment, as provided for under Section 50 (1) SBR.

Dennis Leadbetter

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

Building and Development

Tribunal Chairperson

Date: 17 May 2004

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:

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