



APPEAL
Integrated Planning Act 1997

File No. 3-05-009

BUILDING AND DEVELOPMENT TRIBUNAL - DECISION

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

Nature of Appeal

Appeal under Section 21 *Standard Building Regulation 1993* (SBR) against the decision of the Redland Shire Council in varying the application of Division 2 – Boundary clearances, as provided for under Part 12 of the *Queensland Development Code* (QDC), for extensions to a detached house on land described as Lot *withheld*, situated at “the subject site”.

Date and Place of Hearing: 9.00 am on Wednesday 16 March, 2005
At “the subject site”.

Tribunal:	Dennis Leadbetter	Referee
Present:	<i>withheld</i>	Owner
	<i>withheld</i>	Owner
	<i>withheld</i>	Builder
	Mike Ryan	Redland Shire Council
	Ken Rauber	Redland Shire Council

Decision

The decision of the Redland Shire Council as contained in its letter dated 24 February, 2005, reference BD131314, not to grant approval to permit the erection of extensions and alterations to a detached house within the side and front alignment setbacks is **set aside**.

The Redland Shire Council, as agreed at the Tribunal Hearing, is to issue an approval by Friday April 1, for the following alterations and additions:

- The extension to the existing garage to the western boundary as an open carport, following the roof profile and garage dimensions to the western boundary. The carport may have 2 metre high gates to the front and rear. The existing 2 metre paling fence to the west alignment to remain in place.

- The erection of a shade sail to the area behind the garage and new carport, with a horizontal dimension of approximately 9 metres to the western alignment and the apex travelling to the end of the existing structure (master bedroom). The shade sail to be approximately 3 metres high above natural ground at the alignment.

Background

The application was for consent to build an extension to

- The existing garage as a single storey open carport up to the western alignment, having a curved roof following the existing garage and being approximately 3.3 metres at its highest point. The garage is approximately 8 metres deep. Because of the shape of the site, the carport extension will encroach within the 6 metre front alignment setback to approximately 5 metres from the front alignment.
- The existing residence has a single storey garden shed to the western alignment. **This part of the application has been withdrawn.**
- To install a shade sail between the two above structures, approximately 9 metres long along the fence and with the apex travelling to the end of the existing bedroom wing.

Council initially refused the application, providing several grounds for that refusal in their letter, primarily because the application as submitted:-

- Did not provide details of the structures sufficient to assess the application, eg the shade sail was not indicated on any document submitted.
- The information on the application form was less than informative
- Council's requests for information from the applicant was not forthcoming, other than to indicate where the shade sail was to be installed which made some sense of the information supplied on the application form.

Material Considered

At the hearing, Council officers were very cooperative to assist in arriving at an amicable solution. The drawings and accompanying application form as submitted were examined and were totally insufficient to clearly understand the application and make a reasonable assessment and, despite council's contact with the certifier, who had made the application on behalf of the applicant, were unable to obtain sufficient additional information to assess the application.

After discussion, Council were agreeable to portions of the development application as outlined above and have amended the drawings and agreed to issue a development approval.

Finding of Fact

I made the following findings of fact:

1. The original application, as submitted by *withheld*, was inadequate to assess the application, and I am satisfied that council did make reasonable attempts to seek clarification. Their knowledge of the shade sail had come from those contacts.
2. The letter of refusal, from Redland Shire Council, had been forwarded to the owner by *withheld*, without any explanation or recommendations, and the owner initiated a Building and Development Tribunal hearing.
3. The site is an irregular shape, located almost at the top of the hill and falls primarily to the west and lesser falls to the south towards the road. There is a pedestrian access pathway, approximately 4 metres wide, between this site and the adjoining site to the west, thus providing a reasonable buffer to the site to the west.
4. The extension is likely to have little impact on the adjoining site to the west, in terms of light and ventilation, outlook, or general amenity, because of the separation that this walkway provides.

Reason for the Decision

Clearly the decision of the Redland Shire Council to refuse the application was taken because of insufficient information provided with the application, and the further lack of response from the applicant for the relaxation. Council officers who attended the hearing, were most cooperative and after discussion with the appeal applicants, understood the full nature of the development and were agreeable to reconsider their previous decision and issue an approval, without further fee, and to amend the drawings to provide clarification of the works required. They agreed to issue an approval within the time frame set in the decision.

Dennis Leadbetter

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

Building and Development

Tribunal Referee

Date: 21 March 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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