



Building and Development Tribunals

Queensland Government

Department of **Local Government and Planning**

APPEAL

Integrated Planning Act 1997

File No. 3-03-062

BUILDING AND DEVELOPMENT TRIBUNAL - DECISION

Assessment Manager: Redland Shire Council

Site Address: 12 Melrose Court, Redland Bay

Nature of Appeal

An appeal under Section 4.2.9 of the Integrated Planning Act 1997 against the decision of the Redland Shire Council to refuse the application being a preliminary development approval for building work.

Application being a siting concession required to build a residence within the 6M street setback, on property described as lot 105 SP 153394 situated at 12 Melrose Court Redland Bay.

Date and Place of Hearing: 10.00am, Thursday 6th November 2003
at 12 Melrose Court Redland Bay

Tribunal: Debbie Johnson

Present: The Applicants, Colin and Valerie Sampson
Redland Shire Council, Mike Ryan and Mathew McKay

Decision

The decision of the Redland Shire Council to refuse an application for preliminary approval for building works, Application No BD 124576, as contained in its written notice dated 14th October 2003, is confirmed.

Background

An application was made to the Redland Shire Council for a preliminary development approval, requesting a siting variation for a two storey residence, on a corner allotment.

The site, at 12 Melrose Court, is located on the South West corner of the intersection between

Melrose Court and Hayman Street.

Application to Redland Shire Council was made through a private certifier, Allied Building Certification. The applicant originally sought approval from Allied Building Certification for building works to erect the residence. This application required the building certifier to seek the advise of the local government under the provisions of Section 20 of the Standard Building Regulation. Application was therefore made to the Redland Shire by the private certifier on the 28th September 2003. This application was refused on the 14th October 2003.

In making application to the Redland Shire no grounds were given for the granting of the siting variation. Mike Ryan from Redland Shire Council contacted initially the private certifier, then the applicant's builder McCarthy Homes, and then each of the applicants in turn, for information to provide grounds to support the siting variation. A letter of objection from the owners of lot 104, at 11 Melrose Court, was received by Redland Shire Council on the 5th September 2003. Discussions took place between the applicants and Redland Shire, in regards to some alteration to the building design. No agreement was reached between the Applicants and the Redland Shire Council

At the tribunal hearing conducted at 12 Melrose Court the Redland Shire Council indicated that lots 104,103,102 and 101 Melrose Court, would be disadvantaged if the siting variation was approved as proposed by the Applicants.

The Applicants placed some pegs on the site to demonstrate the position of the proposed residence. Both Applicants felt strongly that they had considered the neighbouring allotments when designing their residence. That part of the building, being two storey that was to be within the 6M street setback was a covered deck with glazed panels proposed for balustrading. Their garage, which was also sited within the 6M setback, was single storey, minimising the impact of any built form adjacent to lot 104.

Material Considered

In giving this advice, I have been provided with and have perused the Redland Shire Council building application file with respect to the property situated at 12 Melrose Court Redland Bay, and the Building and Development Tribunal Appeal file. The following documents appear on the files:

- RSC completed Relaxation Report
- RSC submitted Siting Relaxation Application Form including Section 9 Support Information
- RSC written statement in support of the refusal to allow a reduced setback
- RSC letter of refusal sent to Allied Building Certification dated 14th October 2003
- Letter from adjoining property owners, their site being, lot 104 Melrose Court
- Letter sent to adjoining property owners by the applicant, requesting support for the application
- Preliminary plan of the allotment layouts
- Completed Form 10- Building and Development Tribunals Appeal Notice
- Attachment A to Form 10 written statement by the Applicants
- Redlands Heights Estate Concept Site Plan Layout
- Current title Search of lot 105 SP 153394, search date 31st October 2003-11-14
- Stormwater and level plan of Melrose Court and surrounding streets
- Contract of purchase by the Applicants of lot 105 SP 153394
- Annexure A Redland Heights , Special Conditions relating to the sale of lot 105 SP 153394
- Letter from Redland Heights Estate approving the proposed dwelling at lot 105 SP 153394, against the covenant provisions
- Adjoining owner letter from Simon and Cindy Bowdler, owners of lot 106, located adjacent

- to the subject lot, on Hayman Street
- Architectural working drawings described as Job No 20515C Sheets 1 to 17, (note there was no sheet 15 submitted)
 - Three separate views of the proposed residence for Lot 105 SP 153394 shown as 3D models
 - The Applicant provided a copy of Schedule 10, 11 and 12 from the Standard Building Regulations 1993.

Findings of Fact

Lot 105 SP 153394 has good water views to the East of their allotment. The allotment has a relatively level platform, which falls away evenly to Hayman Street at 1 in 4, so that the platform is 2M higher than the levels along the Eastern boundary. There are also good water views to the North of the site, visible along Hayman Street, although future building work may reduce this vista.

Lots 104, 103, 102 and 101 each sit higher up Melrose Street from Lot 105. From contours submitted the rise appears to be a step up of 1M for each allotment West of Lot 105. The allotments positioned up the slope in Melrose Court all have a good water view to the East at the current time. The allotments have not been developed. None of the allotments on the Southern side of Melrose Court, other than lot 105 appear to have any water view to the North as the built form on the opposite side of Melrose Court is two storey and affectively blocks this outlook.

Lot 95 situated on the North Western corner, of the intersection of Melrose Court and Hayman Street has been developed with a two storey residence having a reduced setback to Hayman Street. The proposed development for lot 105 complies with Shedule 10 and 12 of the Standard Building Regulation 1993. Schedule 11 offers no concession for this proposal as the building height is over 3.5M and the allotment width is 23M.

The Standard Building Regulation 1993

Section 48- Local Government may vary the provisions of Division 2

(3) The local government may consider the following;

a) *the levels, depth, shape or conditions of the allotment or the adjoining allotments;*

The levels of the subject site in relation to the adjoining sites along Melrose Court are relevant as there are water views to be considered. As all allotments may construct a two storey residence similar to that proposed for lot 105, each has an advantage of being 1M higher than the next, as determined by the contours provided. This rise in the land will not be sufficient to permit one development to look over the other enabling the existing views to be retained. All the allotments along Melrose Court are aligned along Melrose Court giving them equal opportunity to look down the street towards the water views in the East.

b) *the nature of any proposed building on the site*

The buildings proposed are a class 1 residence with an attached class 10, being a garage.

c) *the nature of any existing or proposed buildings or structures on the adjoining allotments*

The proposed buildings on adjoining sites are expected to be similar to that proposed on lot 105.

d) *whether the allotment is a corner allotment*

The site is a corner allotment

e) *whether the allotment has two road frontages*

The site is a corner allotment bounded by Melrose Court to the North and Hayman Street to the East.

f) *any other matter it considers relevant*

The subject site and those adjoining to the West have significant water views

(4) The local government must be satisfied that a building or structure, built on the allotment in the way proposed, would not unduly-

a) *obstruct the natural light or ventilation of an adjoining allotment*

It is not likely that natural light or ventilation will be affected by the setback being reduced

b) *interfere with the privacy of the adjoining allotments*

It is not likely that the privacy of the adjoining allotments will be affected by the setback being reduced

c) *restrict the areas of the allotment suitable for landscaping*

It is not likely that the allotment would be restricted for landscaping by the setback being reduced

d) *obstruct the outlook from adjoining allotments*

The amenity of the adjoining allotments will be affected by the setback being reduced, as there is only a small view of the water available to lots 104,103, 102 and 101 once a two storey residence is constructed on lot 105. Any reduction in the street setback to Melrose Court will further reduce any look out to the east that would otherwise be available by looking at an angle straight down Melrose Court from any of the other allotments referred to.

e) *overcrowd the allotment*

The allotment will not be overcrowded by the setback being reduced

f) *restrict off street carparking for the allotment*

The carparking for the development will not be affected by the setback being reduced

g) *obstruct access for normal building maintenance*

Maintenance for the site and the proposed building, will not be obstructed by the setback being reduced.

Reasons for the Decision

Section 48.3 and 4 of the Standard Building Regulation allow for local government to vary the application of siting provisions. In assessing the criteria from this part of the legislation, the tribunal did not find reasonable grounds for varying of the street setback to Melrose Ct. The loss of water views to adjacent lots will cause considerable concern to the owners of these sites, it is also noted lot 105 has good views that are unlikely to be restricted.

Debbie Johnson
Building and Development
Tribunal Referee
Date: 14th November 2003.

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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