



APPEAL
Integrated Planning Act 1997

File No. 3-06-086

BUILDING AND DEVELOPMENT TRIBUNAL - DECISION

Assessment Manager: Redland Shire Council

Site Address: *Withheld* – “the subject site”

Applicant: *Withheld*

Nature of Appeal

Appeal under the *Standard Building Regulation 1993 and the Integrated Planning Act 1997* against the decision of Redland Shire Council for refusing a development application for the erection of an unroofed patio structure, because it does not comply with the fire-separation requirements.

Date and Place of Hearing: 10 am on Thursday 28 September 2006
at “the subject site”

Tribunal: Michael Harris Chairperson

Present: “withheld” Owner / Applicant
“withheld” Observer
Jeff Hollyman Building Surveyor - Redland Shire Council
Tyrone Brown Cadet Building Surveyor - Redland Shire Council

Decision

The decision of the Redland Shire Council, as contained in its Development Application Decision Notice dated 16 August 2006 (File Reference No. BD137282) which refused to approve the development application for the erection of the unroofed structure because it failed to comply with the fire separation requirements, is **set aside**.

It is the decision of the Tribunal that the owner must bring the said structure into conformance with the Building Code of Australia (BCA) after submitting amended drawings to the Council which Council considers acceptable, and to carry out the following rectifications along the structure’s full length and width extending into the rear BBQ area:

- All timber rafters, roof battens and posts contained in the existing structure shall be replaced by non-combustible materials of a size and spacing required by the Council.
- The metal roof covering shall be re-installed in its present location, at 600mm clearance from the side property boundary in question.

All rectification work performed to the structure including structural tie-down and member fixings, shall be in accordance with the relevant requirements of the BCA, as approved by the Council and be **completed by Thursday 30 November 2006**.

This approval is also conditional on compliance with all Council approvals including but not limited to, building approval, plumbing and drainage approvals, as deemed appropriate.

Background

The application to the Council had been for development approval to erect a structure described as an 'unroofed patio'. However, the owner advised that all work had been completed prior to the lodgement of the application.

The structure, which consists of timber rafters, roof battens and posts, is attached to a Class 1a building on the same site and extends to the Northern side boundary. It is also partially roofed with a metal roof covering located to within 600mm of the side boundary. The open roof space thus provided at the side boundary is covered with shade cloth to provide a degree of privacy from the windows of the high-set dwelling situated on the adjoining property.

The owner had complained to the Council when a high-set dwelling was first erected on the adjoining property 3-4 years previously. Drainage problems had occurred due to land build-up, and because of its extreme height in close proximity to the side boundary, this dwelling had created massive heat radiation in summer and a loss of privacy to the owner's property. For this reason, the owner had sought approval to erect the structure to incorporate a metal roof covering, and also to provide a 600mm space along the side boundary for light and ventilation purposes.

In consideration of the development application by the owner, the Council had refused to grant approval solely on the grounds that - *it did not comply with the fire separation requirements.*

Material Considered

1. Redland Shire Council Development Application Decision Notice dated 16 August 2006.
2. Appeal Notice and the grounds for appeal received by the Building & Development Tribunals Registrar on 13 September 2006.
3. Letter from "withheld" to Redland Shire Council (undated).
4. Drawings and accompanying photographs relating to the structure in question.
5. The *Building Act 1975* and the *Standard Building Regulation 1993*.
6. BCA (Volume 2) Housing Provisions - Part 3.7.1 - Fire Separation.

Findings of Fact

1. An application for development approval to erect an unroofed patio was made to the Redland Shire Council.
2. The application was refused by the Council.
3. The appeal to the Building and Development Tribunal was lodged within the required time.
4. The Tribunal has jurisdiction to hear the appeal.
5. An inspection by the Tribunal found that the structure as built, failed to comply with the fire separation requirements of the BCA.
6. The owner has now agreed to carry out the necessary rectification work in order allow the structure to gain compliance with BCA (Volume 2) Part 3.7.1 - Fire Separation.

Reasons for the Decision

The structure is considered to be open on its boundary side and at both ends, and to have an unroofed space of 600mm from the side boundary in question.

At the hearing, the Council's officers advised that the reason for refusal of the development application was that the structure failed to meet the requirements of the BCA (Volume 2) Housing Provisions - Part 3.7.1 - Fire Separation. As a timber structure attached to a Class 1a dwelling, it encroached the required side boundary clearance and failed to protect that dwelling from the spread of fire from the allotment boundary.

The Tribunal therefore considers that the patio structure can be brought into compliance by applying the exemptions provided for under 3.7.1.6 (d), the same as for a Class 10a carport structure in close proximity to an allotment boundary. This provision allows an exemption where the structure has two or more sides open and has not less than one third of its perimeter open, and where the roof covering adjacent to that open side is not less than 500mm to the allotment boundary and is non-combustible.

In addition to the above, by replacing the timber members in the entire structure with non-combustible materials, the requirements for the protection of the subject Class 1a dwelling from the spread of fire from the allotment boundary, shall be deemed to have been fully satisfied.

Michael Harris
Building and Development
Tribunal Referee
3 October 2006

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 Local Government, Planning and Sport
PO Box 15031
CITY EAST QLD 4002
Telephone (07) 3237 0403: Facsimile (07) 3237 1248

