
JURISDICTION : TOWN PLANNING APPEAL TRIBUNAL

STREAM : DEVELOPMENT & RESOURCES

ACT : TOWN PLANNING AND DEVELOPMENT ACT
1928 (WA)

CITATION : ROWE and SHIRE OF AUGUSTA-MARGARET
RIVER [2003] WATPAT 2

CORAM : MR P MCGOWAN
MR L GRAHAM
MR E A MCKINNON

HEARD : 5 FEBRUARY 2003

DELIVERED : 24 FEBRUARY 2003

FILE NO/S : APP 156 of 2002

BETWEEN : CHRISTINE MARGARET ROWE and LYNDON
GEOFFREY ROWE
Appellant

AND

SHIRE OF AUGUSTA-MARGARET RIVER
Respondent

Catchwords:

Development application - 3 storey house - Skylining - Leeuwin Naturalist
Ridge Statement of Planning Policy

Legislation:

Nil

Result:

Appeal dismissed.

Category: B

Representation:

Counsel:

Appellant	:	Mr L Rowe
Respondent	:	Ms M Halsall

Solicitors:

Appellant	:	In person
Respondent	:	As Agent

Case(s) referred to in judgment(s):

Nil

Case(s) also cited:

Nil

MR P MCGOWAN, MR L GRAHAM, MR E A MCKINNON:

- 1 The Appellants are the registered proprietors of Lot 11 Redgate Road, Redgate Witchcliffe. The subject land is located approximately one kilometre west of Caves road on the Northern side of Redgate Road and approximately 9kilometres South West of the Margaret River town site. By application dated 30 May 2002 the Appellants applied to the Respondent to demolish the existing single storey residence erected on the subject land and in its place construct a three storey residential dwelling.
- 2 The matter was dealt with by the Respondent at its meeting on 23 September 2002 at which the application for development was refused. Several reasons for refusal were offered which are effectively now reproduced in the Statement by Respondent. This appeal has been brought from that refusal.
- 3 The subject property is zoned special rural under the provisions of the Respondents Town Planning Scheme number 11 and is further identified as being within policy Area A – Areas of Landscape Beauty. The scheme includes the following provisions which appear to be applicable to the subject site.
 - 4.7.6(f) “the siting and direction of any building, outbuilding or fence should not be approved by council unless or until it is satisfied that the design, construction, material and position will be in harmony with the rural character of the land with the zone and the area generally.”
 - 4.7.7 (a) “no person shall use or permit to be used any lot or part of the lot for any purpose which would ... Detract from the rural/residential amenity of adjoining lots; or detract from the rural character of the area generally”.
- 4 In addition the following general provisions of the scheme appear to be applicable.
 - 4.5.9 “Outside the town site, no building or structure other than those required for Agricultural use in the Rural Zones shall exceed 11 metres in height and within town sites, no building or structure shall exceed a height of 8 metres above natural ground level.”

- 5 In addition clause 4.6.2 (d) in the context of polices areas A : Areas of Landscape Beauty provides as follows:

“To protect the areas the Council shall, as a matter of policy ... prevent any proposal which would be likely to adversely affect the amenity, rural character and landscape of the area concerned. Where development must be exposed, Council shall encourage the use of material which are most likely to enhance the rural scene”.

- 6 In addition reference was made to council’s Rural Strategy which locates the subject site within planing unit number 1 Margaret River West. Such strategy includes the following broad objective

“to ensure that demands for competing land uses within the area are accommodated through appropriate policy planning and development guidelines with special emphasis on landscape quality”.

- 7 Further and in addition there is the Rural Strategy guidelines which include the following:

- “(a) There should be a height limit on buildings of 8 metres
- (b) Buildings water tanks and other structures should be located away from tree tops so as to not be silhouetted against the skyline
- (c) Buildings should be sympathetic in design, materials and colour to complement the surrounding landscape elements and be sited away from focal points, out of viewer sight lines and where screening vegetation or landform can be utilised and
- (d) Non reflective building materials should be used”.

- 8 Finally we were referred to the Leeuwin Naturaliste Ridge Statement of Planning Policy (LNRSP). As was made clear this is a statement of planning policy published under section 5 AA of the *Town Planning and Development Act*. As a result by reason of section 53 of that Act council, and in turn this Tribunal, is to have due regard to it in determining development applications. LNRSP is a document dated September 1998. It is a significant document in its own right not only as a statement of planning policy but because of its significance in relation to the area to

which it is addressed. There is no doubt that the subject property forms part of the area with which this policy is concerned.

- 9 In particular the policy at LUS 3.6 provides:

“Maintaining and enhancing the conservation and landscape values of the Ridge Landscape Amenity area will be the primary criteria against which proposals for land use, sub division or development within these areas will be assessed.”

- 10 The area the subject of the policy is not just Cape to Cape (Cape Naturaliste to Cape Leeuwin) but also the inland area effectively extending from West of Busselton then South through Margaret River to Augusta.

- 11 This is an area of considerable tourism and recreational development and interest and, as the policy indicates, there is a need to ensure that the natural landscape and character of this area is preserved for the benefit of all.

- 12 We were also referred to the Leeuwin Naturaliste Landscape assessment study which includes the following policy:

“Development is to have due regard to the landscape integrity and will not breach ‘the Ridge’ skyline when viewed from Geographe Bay or level 1 or 2 roads”.

Nature of the proposed development

- 13 Throughout, the Appellants used the services of Mr Croudace, an architect of considerable experience.

- 14 There is no doubt that Mr Croudace dealt extensively with the planing officers of the Respondent and has endeavoured to arrive at a design which, in his view, addresses the relevant planning considerations while producing an outcome for his client (the Appellants) which is acceptable.

- 15 It emerged during the course of the evidence that the house contemplated to be constructed will be 10 metres in height from natural ground level but that the design effected by Mr Croudace has been angled in such a way as to minimise the impact to those looking in the direction of Lot 11. This is best illustrated by a representational sketch attached to a letter dated 17 September 2002 form Mr Croudace to the Respondent.

- 16 In that sketch there is a representation of the appearance that would be achieved based either upon the contemplated design with a 10 metre elevation but with a narrower profile, as opposed to a house with a 8 metre elevation but a wider profile. In essence the conclusion expressed by those two sketches is that a house with a 10 metre high elevation designed in the way contemplated by Mr Croudace would have a visible area above the 3 metre line, when viewed from Caves Road, of 65 square metres where as a house 8 metres high with a wider profile, again when viewed from Caves Road, would have an area visible above the 3 metre line of 95 square metres.
- 17 Evidence was also led from Mr James who is a registered landscape architect, again of considerable experience and with a private consulting practice in Margaret River. Mr James took a series of photographs the colour versions of which are illustrative of the effect that would be produced upon the ridge of a structure which projected above it. Our attention was drawn to the house on Lot 12. This house appeared to have been constructed some years ago. Although there was some conjecture on the part of the Appellants, in the end the evidence of Mr Reed satisfies us that this house is erected 8 metres above natural ground level. It is apparent from the photographs taken by Mr James that this house is visible from the various vantage points described by Mr James in his evidence. If the Appellants house were to be constructed at a height of 10 metres above natural ground level the effect upon the ridge and upon the skyline would be obvious. It would produce the effect described in square metres described by Mr Croudace in his assessment.
- 18 During the course of the evidence it became clear that in so far as Town Planning Scheme number 11 was concerned the height of the proposed structure taken as a matter of height alone does not depart from the limitations contained within that scheme.
- 19 It does seem to us however that from a planning point of view it is the combined (aggregate) effect of the planning instruments which are to be considered in determining the appropriateness of the contemplated development.
- 20 It is clear from the Respondents Rural Strategy and is equally clear from the considered and important LNRSP that it is the overall effect of such a contemplated development on the ridge which must be carefully considered.

- 21 The fact that there is an expressed limitation within a Rural Strategy of 8 metres is to us an important factor. Of greater significance however, because it is a policy of planning significance and because it is a policy to which we are to have due regard, is the fact that the contemplated development would effect what is known as skylining against the ridge. Without more, this seems to fly in the face of what LNRSP is trying to achieve.
- 22 There seems to us to be little merit in the argument that merely because it will have no greater visual impact than the house on Lot 12 that the development should be permitted. Apart from anything else it seems that the development on Lot 12 preceded LLNSP and may have preceded the Respondents Rural Strategy.
- 23 Some emphasis was also placed upon the existence of a quarry across Redgate Road from the subject property. Whilst of course that appears to be undoubtedly a blight upon the landscape, as pointed out by Mr Reed it appears to be an anomaly in the Respondents Town Planning Scheme (see clause 2.2 (c). The effect of which has now been ameliorated by Interim Development Order dated 11 August 2002.)
- 24 That in itself can not be a reason to determine the outcome of this application.
- 25 In our view the import of the planning instruments to which we have made reference would require this appeal to be determined against the Appellant. To permit the development without more and without specific and soundly based planning considerations would fail to pay due regard to LNRSP and would have no planning basis.
- 26 For those reasons this appeal will be dismissed.