



Building and Development Tribunals—Decision

Integrated Planning Act 1997

Appeal Number: 3-09-072

Applicant / Appellant: Ben Martain

Assessment Manager / Respondent: Coastline Building Certification Group Pty Ltd

Concurrence Agency / Co-Respondent: Gold Coast City Council

Site Address: 50 Alec Avenue, Mermaid Waters, and described as Lot 200 on RP 149705

Appeal

Appeal under section 4.2.9 of the *Integrated Planning Act 1997* (IPA) against the decision, dated 21 September 2009, by Coastline Building Certification Group on instruction from the concurrence agency, Gold Coast City Council, to refuse an application relating to the bulk of the proposed roof structure over the approved building extensions on the subject site.

Date of hearing: 10.00 am — Tuesday, 29 September 2009

Place of hearing: The subject site

Tribunal: Georgina J Rogers – Chair
Ernie Harvey - Referee

Present: Ben Martain – Owner/Applicant
Scott Oakes – Coastline Building Certification Group
Peter Knott – Building Designer
Jonathan Lee – Supervising Planner, Gold Coast City Council
Wayne Gleeson – Building Surveyor, Gold Coast City Council

Decision:

The Tribunal, in accordance with section 4.2.34 (2)(c) of IPA **sets aside** the decision appealed against to refuse the development application for building works, namely amendment to the roof design over the approved extension to the rear of the existing dwelling and site and **directs** the assessment manager to re-assess the development application with the proposed roof design.

Background

During the on-site hearing, the Tribunal observed that the neighbourhood has low traffic volume and is a located on an existing canal in a community of older residential dwellings, a significant number of which are undergoing refurbishment and extensions.

The site is a rectangular lot fronting Alec Avenue and the rear addresses an existing canal. The site has a frontage of 18.286m and a depth of 39.334m. The lot is generally flat, and has been retained at the 9m setback distance from the canal revetment wall. Approval has been given to build up to the 9m setback area.

Onsite car-parking is accessed via Alec Avenue. Adequate provision for carparking has been provided on site.

The following correspondence and documentation was reviewed and taken into consideration:-

- **29 September 2009** – Appeal meeting – Gold Coast Planning Scheme – Performance Criteria extract which was basis for refusal.
- **22 September 2009** – Building and Development Tribunals Appeal Notice -10
- **21 September 2009** – Coastline Building Certification Group – Decision Notice - Refusal
- **18 September 2009** – Siting Variation Application with associated plans from Ben Martain to Coastline Building Certification Group for Gold Coast City Council.
- **15 September 2009** – Gold Coast City Council – Referral (Concurrence) Agency Response
- **26 August 2009** – Gold Coast City Council – Approval for building within 2 metres of Stormwater Infrastructure
- **24 August 2009** – Information Request Response from Maxworthy Constructions to Coastline Building Certification Group for Gold Coast City Council.
- **14 August 2009** – Gold Coast City Council – Information Request
- **Adjoining Owners** – Letters of support to proposed extension after viewing plans.

As a result of the assessment manager's refusal of the building development application (based on concurrence agency advice), the applicant chose to appeal the decision to the Building and Development Tribunals by Notice of Appeal, received 22 September 2009.

Material considered

The material considered in arriving at this decision comprises:

1. Form 10 – 'Notice of Appeal' and grounds for appeal lodged with the Registry on 22 September 2009.
2. Decision notice from the assessment manager advising that the concurrence agency directed refusal of the development application, dated 21 September 2009.
3. Site plan, plans and elevations of the proposed extensions, showing roof elevations and plan.
4. Verbal submission from the owner and reasons for the retention of the proposed roof design in its current form in its location to the rear of the site, fronting the canal.
5. Verbal submissions from the designer and reasons for the retention of the proposed roof design in its current form to be retained in its location to the rear of the site, fronting the canal.
6. Verbal submissions from the assessment manager addressing the proposed roof design in its current form.
7. Verbal submissions from Council's representatives (as concurrence agency) at the hearing outlining Council's assessment of the application and reasons for refusing the application.
8. Gold Coast City Council Planning Scheme.
9. *Integrated Planning Act 1997.*
10. *Building Act 1975 (BA)*

11. *The Building Regulation 2006.*
12. The Queensland Development Code (QDC).

Findings of Fact

The Tribunal makes the following findings of fact:

1. It was determined that 2 applications had been made, one to construct a building extension to the rear of the existing dwelling which included new bedroom and roofed terrace areas and a second application to build within 2m of stormwater infrastructure.
2. Approval (the first approval) was granted by the Gold Coast City Council (GCCC) on 26 August 2009 for the extension to be built up to 9m setback from the canal revetment wall within 2m of an existing stormwater main subject to conditions.
3. Approval (the second approval) was granted by the concurrence agency (GCCC) on 15 September 2009 for the extension to be built up to 9m setback from the canal revetment wall. The approval allows the extension to be constructed subject to conditions requiring amendments to building designs.
4. The concurrence agency in the second approval requested the roof over the terraced areas to “present a minimal visual profile” and for further amended drawings to be provided demonstrating this. From the meeting it was determined that this would include a redesign of the roof over these areas.
5. The proposed roofs cover two separate terraces which are separated by a small space and front the canal. The roofs are to have 14 degree pitch, which is lower than the existing main roof which is currently 20 degree pitch. The existing main roof over the dwelling is being removed and replaced with the slightly lower pitch roof. The shape of the roof over the existing dwelling is being changed from a tiled hip roof to a series of lower pitch raked roofs sheeted with colorbond corrugated roof sheeting. Over the terraces the roofs are supported on rafters and columns and therefore would appear to present with a minimal visual profile.
6. From the discussions on site it was determined that the appellant’s proposed roof profile would not be visually significant and would be in keeping with the rest of the proposed reroofing design, which was not contended.
7. The appellant’s proposed roof profile and design is of a type and form found within the neighbourhood, and is widespread throughout residential areas.
8. The appellant’s proposed structure is consistent with other similar structures within the neighbourhood which have received Council approval on lots with similar size, shape and outlook.
9. Adjoining and adjacent owner’s letters were received and noted.

Reasons for the Decision

1. QDC MP1.2 (Design and siting standard for single detached housing – on lots 450m2 and over)

MP1.2 of the QDC sets out Performance Criteria (P1 & P2) in relation to siting requirements which a local government must consider and be satisfied that the application meets the intent of each criterion for that application. In addition, the development must not unduly conflict with the intent of each of the Performance Criteria:-

P1 – Design and Siting of Buildings and Structures

(a) The bulk of the building

From the plans and on-site inspection, the proposed roofs over the approved extension and terraces will not significantly increase the bulk of the existing dwelling being refurbished and extended on site.

The greatest impact of the size and bulk of the proposed roof structure is viewed from across the canal to rear lot. The proposed profile is similar to others in the area and it is therefore able to be established that the visual impact of the new roofs will be minimal.

2. Based on the above facts it is considered that the appeal is upheld. The decision held in this application is separate to any other applications which may be made over the property at this time or in the future.
3. The QDC provides Performance Criteria and some Acceptable Solutions. The Acceptable Solutions are to provide reasonable and achievable outcomes. The local government is in a position to vary the Acceptable Solutions in relation to an application for siting requirements and to assess the application based on its merits.
4. In assessing the criteria from this part of the Code in relation to the roof design over the approved extension to the rear of the existing dwelling and site in its current size and location the Tribunal found that there were grounds to allow for the structure to be retained in its proposed design.

Georgina Rogers
Building and Development Tribunal Chair
Date: 16 October 2009

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 Infrastructure and Planning
PO Box 15009
CITY EAST QLD 4002
Telephone (07) 3237 0403 Facsimile (07) 3237 1248