



Building and Development Tribunals—Decision

Integrated Planning Act 1997

Appeal Number:	3—09—084
Applicant:	Robert, Pamela and Darryn Tomkins
Assessment Manager:	Scott Oakes for and on behalf of Coastline Building Certification
Concurrence Agency: (if applicable)	Gold Coast City Council
Site Address:	1 Bolgart Court, Elanora and described as Lot 659 RP 179394 — the subject site

Appeal

Appeal under section 4.2.9 of the *Integrated Planning Act 1997* (IPA) against the decision of the assessment manager to refuse a development application for building works, namely an application to erect shade sail structures on the subject site.

Date of hearing:	By consent of the parties the appeal was decided on the basis of written submissions without a hearing
Place of hearing:	Not applicable
Tribunal:	Mr Paul Smith – Chair
Present:	Not applicable

Decision:

The Tribunal, in accordance with section 4.2.34 (1) of the IPA, orders the assessment manager to assess and decide the application, the subject of this appeal, as if the concurrence agency had assessed the application and had no concurrence agency requirements.

Background

A development application for carrying out building work under the IPA was received by the assessment manager for the erection of a shade sail structures on the subject site.

The application was referred to Council for its response as a referral (concurrence) agency. Council in its referral agency response dated 21 September 2009 instructed the assessment manager to refuse the application.

The assessment manager issued a decision notice refusing the building development application on 6 October 2009. The appellant lodged an appeal against the decision to the Building and Development Tribunals by Appeal Notice dated 27 October 2009 and received by the Tribunal on 29 October 2009.

By email dated 30 November 2009 Council advised as follows:

“Council has withdrawn all its grounds for refusal and now does not oppose the approval of the siting variation application (shade sail structures).

However, Gold Coast City Council does provide the following advice note to the appellant:

"A shade sail structure is not considered to be a covered car parking space by Council. Acceptable Solution AS16.1 of the Car Parking, Access and Transport Integration Constraint Code of the Gold Coast Planning Scheme 2003 requires a detached dwelling to provide a minimum of 2 car parking spaces, of which one is to be covered. Should the applicant not be able to comply with the requirements of AS16.1 then a Material Change of Use (Code Assessment) development application for a Detached Dwelling is required to be submitted to Council for assessment."

By consent of the parties the appeal has been decided on the basis of the written submissions received.

By emails dated 7 December 2009 from Scott Oakes for Coastline Building Certification and 8 December 2009 from Darryn Tomkins, the parties agreed to that the appeal may be decided on the basis of written submissions.

Material Considered

The material considered in arriving at this decision comprises:

1. 'Form 10 – Notice of Appeal' received by the Registrar on 29 October 2009 including grounds for appeal, Council's referral agency response dated 21 September 2009, the assessment manager's decision notice advising of its decision to refuse the development application on 6 October 2009, photographs of the shade cloth structure and of other shade cloth structures in the area and two drawings of the proposed shade cloth structure by Peter Buckland, licensed draftsman, dated January 09 and August 09 respectively
2. Email from the applicant dated 8 December 2009
3. Emails from the Council dated 9 November 2009 and 30 November 2009
4. Emails from the assessment manager dated 3 November 2009, 7 December 2009 and 8 December 2009
5. The IPA.

Findings of Fact

The Tribunal has found that Council no longer opposes the approval of the application and has withdrawn its decision to instruct the assessment manager to refuse the development application.

Council advice of 30 November 2009 to the appellant concerning the potential need for the appellant to obtain a *Material Change of Use (Code Assessment) development application* is not relevant to this appeal.

Paul Smith
Building and Development Tribunal Chair
Date: 5 January 2010

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