



Building and Development Tribunals

Queensland Government

Department of **Local Government and Planning**

APPEAL

Integrated Planning Act 1997

File No. Insert No. 3-05-087

BUILDING AND DEVELOPMENT TRIBUNAL - DECISION

Assessment Manager: Gold Coast City Council

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

Applicant: *withheld*

Nature of Appeal

Appeal under section 21 of the Standard Building Regulation 1993 against the decision of the Gold Coast City Council to grant a preliminary Building Approval for the erection of:

A swimming pool with a minimum building setback of 2.0m to the waters edge within the waterfront boundary setback; and

A retaining wall at a minimum distance of 1.81m to the outermost projection from the waterfront property boundary; and

A deck at a minimum distance of 1.2m to the outermost projection from the waterfront property boundary.

Date and Place of Hearing: 10.00am on Friday, 23 December 2005.

At Level 25 Conference Room, Mineral House, 41 George Street,
Brisbane.

Tribunal: Gregory Schonfelder

Present: *withheld* - Applicant's Representative

Decision

I determine that the requirements of the Decision Notice to grant preliminary Building Approval for the erection of a swimming pool, retaining wall and cantilever deck be altered to allow the deck to be sited at 1.0m to the outer most projection from the waterfront property boundary for a length of 10m centred on the proposed swimming pool as shown on Drawing 2388-4 which formed part of the approval.

Background

The applicant's representative explained the basis for their original application to Council for a siting variation and the basis for their appeal in that:

- The proposed cantilever deck being a 150mm thick slab and the handrail would have no effect on the amenity of the area.
- Adjacent properties to the east have encroachments within the setback required by Council (refer photographs).
- Condition No 5 of the Decision Notice states that the structures must be a minimum of 1000mm landward of the revetment wall (boundary), the notations on the approved drawings indicate a minimum setback of 1200mm, an increase of 200mm.
- The proposed cantilever encroaches on this setback by only 450mm.
- The cantilever will have no impact on river flow or flood storage volume during flood conditions.
- The increased setback required by Council results in an aisle width of only 725mm between the handrail and the pool coping (refer drawings 2388-BT1 & 2388-BT2) which was considered dangerous especially with boisterous children.
- This increased set back also results in a distance of only 1025mm between the waters edge and the handrail. Councils' normal minimum walkway width is 1200mm.
- The existing retaining wall is very stark in appearance. Reconstruction to Councils' requirements will result in very little improvement. Reconstruction to the clients' wishes will create a much better appearance, particularly with the increase in the area of the wall covered by shadow in bright sun. The clients also intend to plant creepers in pots under the cantilever to approve the appearance of the wall.
- The photographs supplied were explained and a colour set was provided.

The Council's facsimiled response stated:

- Council officers were unable to attend due to the short time frame for notification.
- The existing retaining wall is located 1.2m back from the existing revetment wall at a height of 1.8m. The applicant proposes to raise the height of the retaining wall to 2.1m and cantilever a deck on top of the retaining wall, further out to the canal to only 600mm from the revetment wall.
- In assessing this application the Council Officer considered the increases proposed by this application were significant in that it would push the structures further out to the canal and at an increased height which would generate adverse amenity impacts on the waterfront environment.
- Council has received numerous complaints from property owners within canals who have been concerned at recent developments, and also the extent of relaxations Council has granted. Council has attempted to control the extent of the structure especially in relation to the proximity to the revetment wall. This proposal is for a deck structure being 2.1m in height above the revetment wall set back only 600mm from the waterfront boundary.
- Although the deviations proposed in relation to the existing (and approved in 1973) are relatively small, if the proposal was submitted for a new development, Council would refuse it.
- Precedent is a major factor why Council does not support the applicant's proposal. The approval of these proposals results in an eroding of waterfront amenity and ultimately the intent of the Canals and Waterfront Constraint Code within the Gold Coast Planning Scheme.

Material Considered

1. Decision Notice from the Gold Coast City Council dated 8 November 2005 to grant preliminary Building Approval, (Application No 2515176) for the erection of a swimming pool, retaining wall and cantilever deck. Annotated approved plans also included 2388-1 to 6.
2. Appeal form dated 21 November 2005 and accompanying letter dated 14 December 2005 from the applicant's representative appealing the Council's decision. Additional material includes:
 - Letter dated 11 August 2005 from the applicant's representative to support the application for siting variation.
 - Letter dated 26 November 1999 from the Gold Coast City Council to the owners advising of the poor condition of the revetment wall and secondary retaining wall and the effect they may have on the existing swimming pool.
 - Letter dated 9 December 1976 from the Department of Harbours & Marine giving approval for a boat ramp and retaining wall.
 - Survey Plans 888078 & 907710 showing the land acquisition along the waterway. Photographs 1-7
 - Additional Plans 2388-BT1 & 2388-BT2
3. Facsimile dated 28 December 2005 from the Gold Coast City Council (Roger Sharpe) outlining Council's reasons for their approval and basis for not varying the submitted plans.
4. Plans for a similar proposal for an adjacent property designed by the applicant's representative.
5. Colour copy of the photographs submitted with the appeal form.
6. The Standard Building Regulation 1993.
7. The Integrated Planning Act 1997.

Findings of Fact

1. The original retaining wall was constructed in 1977 approximately 200mm behind the river front boundary as existed at the time. The owners have since purchased an additional strip of land approximately 1000mm wide.
2. The proposal as submitted was for a new retaining wall set back a further 600mm from the location of the existing wall which would be 1800mm from the waterfront boundary with the cantilever deck being 600mm from that boundary. The existing swimming pool is also to be removed and replaced as part of this project.
3. There is considerable development; decks, landings and retaining walls, along the canal bank on both sides of the river, especially in proximity to this proposal.
4. The retaining wall needs replacement due to the structural defects which were noted in the letter from Council dated 26 November 1999.

Reasons for the Decision

The effect of the cantilever deck and balustrade setback 1.0m from the property line adjacent to the pool and 1.2m for the balance will have a minimal impact on the amenity of the waterway.

The additional deck area to that shown on the Council approval provides reasonable access between the pool and the balustrade (approximately 925mm from the balustrade to the edge of the coping).

The proposed pool could be moved closer to the dwelling if the design called for equal spacing of the pool from the canal side balustrade and the new pool fence adjacent to the dwelling.

The proposal to landscape the area behind the revetment wall to the new retaining wall will improve the appearance of these structures from the river.

Gregory Schonfelder
Building and Development
Tribunal Referee
Date: 20 January 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.

Enquires

All correspondence should be addressed to:

The Registrar of Building and Development Tribunals
Building Codes Queensland
Department of Local Government and Planning
PO Box 31
BRISBANE ALBERT STREET QLD 4002
Telephone (07) 3237 0403: Facsimile (07) 32371248