



APPEAL

File No. 3/02/016

Integrated Planning Act 1997

BUILDING AND DEVELOPMENT TRIBUNAL - DECISION

Assessment Manager: Gold Coast City Council

Site Address: 49 King Arthurs Court Paradise Point

Nature of Appeal

Appeal under Section 4.2.9 of the Integrated Planning Act 1997 against the decision of the Gold Coast City Council in varying the application of Division 2 – Boundary clearances, as provided for under Section 48 of the *Standard Building Regulation 1993* (SBR) for a Porte Cochere to a detached house on land described as Lot 126 RP 895142 Parish of Barrow, County of Ward and situated at 49 King Arthurs Court Paradise Point.

Date and Place of Hearing: 2.30 pm Monday 25 March 2002
at 49 King Arthurs Court Paradise Point

Tribunal: Dennis Leadbetter

Present: Owner
Brian Gobie – Gold Coast City Council
Jake Storey – Gold Coast City Council
John Cooper – Queensland Plan Certification

Decision

The decision of the Gold Coast City Council as contained in its letter dated 22 February, 2002, reference DA 22/00095, not to grant approval to permit the erection of a Porte Cochere to a detached house within the road alignment setbacks is **set aside**. The Porte Cochere may be erected with minimum road boundary clearances to both road alignments of 2.0 metres.

Background

The application was for a new detached dwelling, including the Porte Cochere. The local government has granted a relaxation to the 6 metre road alignment setback to the western road

boundary of 4.5 metres and maintained the 6 metre setback to the northern boundary. They have refused the Porte Cochere to the north western corner of the site with proposed boundary clearances of nominal 2 metres to the western boundary and 1.7 metres to the northern boundary.

Material Considered

- 1 Appeal notice and grounds of appeal contained therein;
- 2 Drawings submitted to Gold Coast City Council;
- 3 Letter from Gold Coast City Council approving the detached residence but refusing the Porte Cochere;
- 4 Verbal submission by Messrs John Cooper and the applicant and owner, explaining the reasons why the relaxation should be granted;
- 5 Verbal submission by Messrs Jake Storey and Brian Gobie, Gold Coast City Council clarifying the reasons for the refusal of the Porte Cochere;
- 6 The Standard Building Regulation 1993; and
- 7 Queensland Development Code - Proposed Part 12 – Design and siting standards for single detached housing – on lots 450 m² and over.

Findings of Fact

I made the following findings of fact:

1. The proposed detached residence is a two storey building of generous proportion, which will present a significant presence on the site, and the Porte Cochere is predominantly a roof structure supported on two columns to the outer face. The columns are of reasonably slender proportion.
2. The overall height of the residence is approximately 10 metres to the peak of the roof, while the Porte Cochere is nominated at 5.7 metres.
3. The site has a road frontage to the north of approximately 22 metres and to the west of approximately 31 metres.
4. The site is predominantly flat.
5. The surrounding residences are also large and include large fences of solid and semi solid construction.
6. The estate is a canal development with the adjoining properties focused towards the canal rather than the streetscape.
7. The street is not a through road, and both parties to the tribunal agreed that the traffic would be light.

8. There are similar structures in the surrounding estate, with instances where the structure extends to the road. These structures are not on corner sites.
9. The predominant objection to the proposal from Council was the bulk of the structure's form and its potential impact on the streetscape and vista on approach to the corner.
10. Under Section 48 of the SBR, a local government may vary how Division 2 applies to the application after considering under Section 48(3), the following points:-
 - a. *The level, depth, shape or condition of the allotment and adjoining allotments.*
The allotment and the adjoining allotments are predominantly flat. Buildings on both adjoining allotments generally comply with the siting requirements under Division 2 of the SBR.
 - b. *The nature of any proposed building or structure on the allotment.*
The allotment is currently vacant land, and the proposed structure is of similar generous proportions to that of its current neighbours.
 - c. *The nature of any existing or proposed building or structure on the adjoining allotments.*
The surrounding residences are detached, generally two storey and of generous proportion and include significant fences of both solid and semi solid construction.
 - d. *Whether the allotment is a corner allotment.*
The allotment is a corner allotment.
 - e. *Whether the allotment has 2 road frontage.*
The allotment had only one road frontage, the street continuing around forming a corner.
 - f. *Any other matter considered relevant.*
The Gold Coast City Council has varied the siting requirements after consideration of the matters listed under section 48 (3) and (4), and approved a road boundary clearance to the west side of 4.5 metres in lieu of the 6 metres required under Section 36 for the detached dwelling.
2. In varying the siting requirements, the local government must be satisfied that a building or structure, built on the allotment in the way proposed, would not **unduly** –
 - a. *Obstruct the natural light and ventilation of an adjoining allotment.*
The proposed Porte Cochere is on the north western corner of the site, and thus will have no impact on natural light or ventilation to the adjoining allotments.
 - b. *Interfere with the privacy of an adjoining owner.*
The proposed Porte Cochere will act as a covered vehicle access to the main entry of the proposed residence and its use will not impact on the privacy of adjoining owners.
 - c. *Restrict the areas of the allotment suitable for landscaping.*
The area of the site to the streetscape for landscaping is significant and is not restricted.
 - d. *Obstruct the outlook from the adjoining property.*
The proposed Porte Cochere, being predominantly an open awning structure would not unduly obstruct the outlook from the adjoining property. The surrounding properties are fully fenced with 2 metre high fences, with significant solid panels; this would reduce outlook to a greater

degree than the Porte Cochere. The outlook from the adjoining properties, because of the surrounding subdivision is principally a canal development, is to the canals rather than the streetscape.

The proposed Section 12, limits structures to a 3 chord 6 metre truncated corner of a corner allotment to 1 metre in height. The Porte Cochere is located outside that section of the site.

e. *Overcrowd the allotment.*

The proposed structure, including the Porte Cochere is within the allowable 50% site coverage

f. *Restrict off-street parking for the allotment.*

The proposal provides for adequate off street parking.

g. *Obstruct access for normal building maintenance.*

The development is in low maintenance materials and there is adequate accessible space for maintenance operations.

Reasons for the Decision

Sections 48 (3) and (4) of the SBR allows for local government to vary the application of siting requirements. In assessing the criteria from this part of the legislation and considering the nature and use of the proposed structure and existing structures and their siting on the adjoining allotments, and the limited impact the Porte Cochere would have on the amenity and street scape, the Tribunal found that there was reasonable grounds to vary the road alignment setback to allow the Porte Cochere to be constructed not less than 2 metres to either street alignment.

Dennis Leadbetter

Dip Arch (QUT) Grad Dip Proj Man (QUT) METM (UQ)

Building and Development

Tribunal Referee

Date: 4 April 2002

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 and Planning
PO Box 31
BRISBANE ALBERT STREET QLD 4002
Telephone (07) 3237 0403: Facsimile (07) 32371248