



Building and Development Tribunals—Decision

Integrated Planning Act 1997

Appeal Number:	3—09—93
Applicant:	Mr Bryan & Michelle Paterson
Assessment Manager:	Express Plan Approval Services Pty Ltd
Concurrence Agency: (if applicable)	Gold Coast City Council
Site Address:	13 Cockleshell Court, Runaway Bay and described as Lot 187 on RP 205568 — the subject site

Appeal

Appeal under section 4.2.17 of the *Integrated Planning Act 1997*(IPA) against the decision of Express Plan Approval Services Pty Ltd as assessment manager to refuse a development application based on concurrence agency advice from Gold Coast City Council for a roofed patio structure. The development is considered to be in conflict with the Canals and Waterway Constraint Code.

Date of hearing:	10:00am – Tuesday, 2 February 2010
Place of hearing:	The subject site
Tribunal:	Mr Geoffrey Mitchell – Chair
Present:	Mrs Michele Paterson – Applicant Mr Milenko Ruzic –Express Plan Approval Services Representative Mr Eric Constantino – Express Plan Approval Services Gold Coast City Council was not represented at the hearing.

Decision:

The Tribunal, in accordance with section 4.2.34 (2) (c) of IPA, **sets aside** the decision of the assessment manager to refuse the building development application, and replaces it with the following decision.

The assessment manager is **directed** to reassess and decide the building development application, subject to compliance with all other relevant building assessment provisions.

Background

The proposal was the retrospective approval of an existing roofed pool deck on the subject site located 0.737 metres from the rear boundary. The structure has a length of 9.117 metres and a width of 4.847metres. The structure is setback from the southern boundary by 1.556 metres and the deck component abuts the Northern Boundary.

Council's response directed the assessment manager to refuse the application. In Council's opinion the development was in conflict with the Canals and Waterways Constraint Code.

Material Considered

The material considered in arriving at this decision comprises:

1. 'Form 10 – Appeal Notice', grounds for appeal and correspondence accompanying the appeal lodged with the Registrar on 8 December 2009
2. Plans and documents provided on behalf of the applicant and the assessment manager at the hearing
3. Verbal submissions by all parties at the hearing
4. The relevant provisions of the Planning Scheme for Gold Coast City Council – in particular the Canals and Waterways Constrain Code
5. The *Integrated Planning Act 1997*.

Findings of Fact

The Tribunal makes the following findings of fact:

- The site has a frontage to a canal, the setback of the structures from the canal is the referral trigger to Gold Coast City Council, the advice of which is the subject of this appeal.
- The subject application seeks approval for an as-constructed deck and roofed patio area.
- The applicable Code is the Canal and Waterways Constraint Code of the Gold Coast Planning Scheme.
- The relevant Performance Criterion is PC1, which states,
 - *All buildings and structures must provide for setbacks from the waterway which ensure the efficient use of the site, respond to the waterside location, and have a minimal impact on adjoining properties.*
- The Council in its concurrence advice refused the proposed siting on the basis of conflict with the Canals and Waterways Constraint Code. Council's response stated;
 - *The development adversely impacts on the adjoining amenity values of the adjoining properties to the north (11 Cockleshell Court) and south (Cockleshell Court). It is considered that the development severely compromises the reasonable residential amenity expectations of the adjoining properties north and south. The development is considered to have a detrimental impact on the existing waterway character of the immediate area through the establishment of buildings/works that is considered to be dominant and visually intrusive when viewed from properties within the area.*

- The property to the north has solid fencing and substantial landscaping between it and the subject property. The orientation of the dwelling and the outdoor living area are such that they take advantage of the canal views to the west and north. It is considered the subject structure has no detrimental effect on the northern property.
- The property to the south has a deck structure that extends towards the canal frontage at a similar distance to the subject structure. The subject structure is set back from the side alignment and due to its open nature still permits views to the north. The significant views from the southern property are to the south and this is not affected by the subject structure. It is considered the subject structure has no detrimental effects on the southern property.
- The Tribunal observed numerous structures of similar bulk and scale along the waterway both north and south. It is considered the subject building has no more of a detrimental effect on the waterway character than any of the other structures in the vicinity.

Reasons for the Decision

- The refusal was based on alleged non-compliance with PC1 of Councils Canals and Waterways Code.
- The subject structure provides for an efficient use of the site and responds to the waterway location.
- The subject structure is not considered to be out of place in the locality due to the presence of numerous structures of a similar nature in the immediate and surrounding area.
- The subject structure is considered to have minimal impact on the adjoining properties.

Geoffrey Mitchell
Building and Development Tribunal Chair
Date: 17 March 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
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