



APPEAL

Integrated Planning Act 1997

File No. **03-06-090**

BUILDING AND DEVELOPMENT TRIBUNAL - DECISION

Assessment Manager: Gold Coast City Council

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

Applicant: *Withheld*

Nature of Appeal

Refusal of Preliminary Building Application (No. 2614644) for a fence incorporating a water feature (as built) near to the northern boundary of the property and adjoining the swimming pool.

Date and Place of Hearing: 9am Thursday 26 October 2006
At “the subject site”

Tribunal: Greg Rust

Present: “*withheld*” Owner / Applicant
Roger Sharpe Gold Coast City Council Representative
Patrick Giess Gold Coast City Council Representative

Decision

In accordance with Section 4.2.34 of the *Integrated Planning Act 1997*, I **set aside the decision** of the Gold Coast City Council contained in Decision Notice dated 15 September 2006 to refuse the application for the fence and incorporated water feature (as built) **and replace the decision with the following:**

The fence and incorporated water feature (as built) be approved subject to the following condition:

- The owner shall ensure that both sides of the wall have a smooth finish and are painted in a light colour.

Background

The wall in question was constructed in conjunction with the swimming pool. The swimming pool was part of the owner's redevelopment of the site. The pool was approved by a Private Certifier within the rear boundary canal setback after the Gold Coast City Council had relaxed the setback measurement. Condition of that approval required the boundary fence not exceed 1.2 metres above the pool platform.

The fence construction proceeded not in accordance with the requirement of the Councils' variation in that the fence height (as built) is approximately 1.5 metres high rather than the 1.2 metres as required by the Gold Coast City Council.

A second application for the as built work was refused by the Council on the 15 September 2006 citing that the application failed to meet PC1 and PC3 of the Canals and Waterways Constraint Code in that –

- “The structure(fence/water feature) does not respond positively to the waterside location due to an adverse impact on the adjoining northern side boundary property”; and
- “The structure (fence/water feature) creates a dominating effect to the northern side boundary property and to the water frontage”.

Material Considered

1. Total Building Consult approved plans and decision notice dated 6 September 2005;
2. Decision notices from the Gold Coast City Council dated 15 September 2006;
3. Building and Development Tribunal Appeal Notice – Form 10 and supporting documentation received by the Registrar on 12 October 2006; and
4. Gold Coast Planning Scheme (Part 7, Division 3, Chapter 3) Canals and Waterways.

Findings of Fact

- Construction of the fence and incorporated water feature has proceeded not in accordance with the prior approval of the private certifier and the siting relaxation granted by the Gold Coast City Council.
- On 15 September 2006, the Gold Coast City Council gave consideration of the non-conforming work and refused the application for that work.

Reasons for the Decision

Having regard to the Council's prior approval in which it had relaxed the canal setback for construction of the swimming pool and also permitted the pool to be at a level approximately 2 metres higher than the natural ground level, it is reasonable to expect that the boundary fence surrounding the pool would be at the normal dividing fence height of 1.5 metres. Effectively, the platform level of the swimming pool, as a result of that approval, became the new natural ground level of the rear yard of the property.


Furthermore, if the boundary fence had been constructed to the Council's requirements of 1.2 metres, a further loss of privacy, by overlooking from the pool platform, would have occurred.

I observed a number of examples of similar pool constructions in the area.

To bring the work into conformity with the Council requirements would result in a reduction in height of approximately 300mm which would be of minimal gain.

In accordance with Performance Criteria (PC3) of Gold Coast Planning Scheme, the wall in question would not cast a shadow on the adjoining property since it is located on the northern boundary of the applicant's property. Similarly, views have not significantly been diminished as a result of this development.

Therefore, the above reasons provide reasonable grounds for my decision to approve the application and allow the fence and incorporated water feature (as built) to remain.



Greg Rust
Building and Development
Tribunal Referee
Date: 16 November 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.

Enquiries

All correspondence should be addressed to:

The Registrar of Building and Development Tribunals
Building Codes Queensland
Department of Local Government and Planning
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