



Building and Development Tribunals—Decision

Integrated Planning Act 1997

Appeal Number:	3—09—029
Applicant:	Jared Poole Design
Assessment Manager:	Paul McHenry for and on behalf of Gold Coast Building Approvals
Concurrence Agency: (if applicable)	Gold Coast City Council 'Council'
Site Address:	7 Viking Court, Surfers Paradise and described as Lot 201 on SP206281— 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 a proposed Storage Area. The structure is ancillary to an approved dwelling which is currently under construction. The decision followed a concurrence agency response from the Council, as the proposed works required a siting variation in relation to the side boundary setback.

Date of hearing:	12.00pm – Thursday, 9 April 2009
Place of hearing:	Gold Coast City Council Offices, Nerang
Tribunal:	Debbie Johnson – Chair Greg Rust – Member
Present:	Jared Poole – Applicant Lawrence Reece – Property Owner Paul McHenry – Assessment Manager Jonathon Lee – Council representative Jack Matijevic – Council representative

Decision:

The Tribunal, in accordance with section 4.2.34 (2) (c) of the IPA, **sets aside** the decision of Gold Coast Building Approvals dated 31 March 2009 and replaces it with the following decision:-

The Tribunal, in accordance with section 4.2.34 (1) of the IPA, **directs** the Assessment Manager to reassess the Building Development Application subject to compliance with the following conditions:-

1. The height of the structure shall not exceed 2.7m as taken from the finished surface level of the pool surround, represented as RL 3.390 on the proposed drawings prepared by Jared Poole Design Dwg No 245/WD1 D; and

2. The access door into the storage area shall be relocated to maintain a 1.0m minimum clearance from the side boundary alignment; and
3. All other relevant building assessment provisions applicable to the Building Development Application.

Background

On 11 June 2008 a siting variation application pertaining to the subject site lodged with the Gold Coast City Council. The application related to a gatehouse, swimming pool, pool pump room and spa area. The application was approved subject to relevant conditions. These conditions included a requirement for a 900mm minimum clearance from the side boundary for the pool pump room and spa area.

On 2 February 2009 a new siting variation application for a pool pump storage area only was lodged. The proposed structure was indicated along the side boundary for a length of 6.2m.

This latest application did not include spa provisions in conjunction with the proposed storage area. On 23 February 2009, Council issued their written notice to the Applicant. In the response, the concurrence agency again stipulated a minimum 900mm offset from the side boundary and noted a maximum 2.7m building height for the structure as taken from natural ground. The Assessment Manager subsequently refused the building application on 31 March 2009, as the Applicant elected not to amend the proposal in compliance with the advice received from Council.

On the 2 April 2009, the Applicant lodged an appeal against the refusal of the building application with the Building and Development Tribunal.

Material Considered

The material considered in arriving at this decision comprises:

1. 'Form 10 – Notice of Appeal' lodged with the Building and Development Tribunals on 2 April 2009.
2. Council's concurrence agency response, dated 23 February 2009.
3. The Assessment Manager's Notice of Refusal, dated 31 March 2009.
4. Property details, including mapping and the Gold Coast City Council's Planning Scheme as available through Council's website.
5. The application material including drawings detailed by 'Jared Poole Design'.
6. The applicant's grounds for appeal against the Council's reasons for refusal submitted with the application.
7. 'Form 8 – Notice of Election' received from Council on 6 April 2009.
8. Verbal submissions made by the Applicant at the hearing.
9. Verbal submission made by the property owner at the hearing.
10. Verbal submissions made by the Council's representatives at the hearing.
11. Written submission provided by Council at the tribunal hearing.
12. Written submission in support of the application by a neighbouring property owner.
13. The IPA.
14. The *Building Act 1975* (BA).
15. The *Building Regulation 2006* (BR).
16. The QDC.

17. The BCA.

Findings of Fact

The Tribunal makes the following findings of fact:

The subject site falls gently away from the road towards the Nerang River canal system. Being situated at the end of a cul de sac it is basically a fan shaped parcel with a total site area of 900sq/m. The property is not constrained by easements, services or topographic elements.

The lot has an approximate street frontage of 16.5m an average depth of 36.0m and a wide river frontage of 35.0m. The outlook over the water is from the north-east across to the south-east.

The subject site and the adjoining property to the north are the only two in the immediate vicinity that remain undeveloped. The property owners have commenced construction for their home which is a contemporary two storey dwelling nearing completion.

The house is orientated to overlook their swimming pool and beyond to the waterway along their rear boundary. Similarly the living areas are positioned to take advantage of the north-eastern aspect. Together, the dwelling and associated ancillary structures will occupy 34% of the site area.

Setback 20.0m from the frontage, the proposed storage area is approximately 2.8m wide and 3.2m long, running parallel and adjacent to the northern side boundary. This boundary is delineated by a 2.0m high rendered concrete block fence. The overall length of the proposed structure is further extended by 3.0m with a cantilevered concrete slab roof line. It is relevant however that the storage area is architecturally designed and complimentary to the existing dwelling on the subject site. The entire structure will have a maximum height of 2.7m as measured from the finished surface level of the existing pool surround. Given the undisturbed natural contours on the neighbouring property the proposed structure will initially measure from 3.0m high on the western end to 4.0m high at the eastern end. The total length of the structure along the boundary being 6.2m in all.

The owners of the subject site have elected to position the storage area along the side boundary wall to maximise their outlook and to provide privacy screening from the neighbouring lot. It is relevant to note that the current owners of the adjoining site, who are likely to be most affected by any buildings along this boundary, have provided a letter of support for the proposal.

The Council has sited provisions under Part 5 Division 2 Chapter 4, within the Gold Coast Planning Scheme 2003 for refusing to allow the siting of the storage area to be positioned along the side boundary. In this instance the siting of residential buildings and other structures is potentially determined by both the requirements of the Queensland Development Code (QDC) and the Gold Coast Planning Scheme 2003.

To elaborate on the Gold Coast Planning Scheme provisions relative to the QDC MP 1.2 and the provisions of section 33 of the BA the Tribunal notes the following:-

Section 33 of the BA states:

“33 Alternative planning scheme provisions to QDC boundary clearance and site cover provisions for particular buildings—

- (1) This section applies for work (*relevant work*) that—
 - (a) is building assessment work or self-assessable building work; and
 - (b) is for a single detached class 1 building or a class 10 building or structure located on the same allotment as a single detached class 1 building.
- (2) A planning scheme may include provisions (*alternative provisions*) that, for relevant work, are alternative or different to the QDC boundary clearance and site cover provisions.
- (3) However, a planning scheme may include alternative provisions only if the provisions are a qualitative statement or quantifiable standard.

- (4) If there are alternative provisions for relevant work, the QDC boundary clearance and site cover provisions only apply to the extent the alternative provisions do not apply to the work.
- (5) Alternative provisions can not be made other than under a planning scheme.
- (6) In this section—
qualitative statement means a statement about a performance or outcome sought to be achieved when applicable buildings or structures are completed.
quantifiable standard means a standard that achieves a performance or outcome sought under a qualitative statement”.

This section of the BA was introduced in the version of the Act that came into force on 1 September 2006.

The Gold Coast Planning Scheme makes alternative provisions in Part 5 Domains Detached Dwelling – Division 2, Chapter 4, under the heading of ‘5.3 Development Guidelines’ there are Performance Criteria, Probable Solutions applying to assessable development, and Acceptable Solutions applying to self-assessable development. The minimum side boundary setback for a building (excluding a covered car parking space or carport) is 1.5m.

Since the Scheme was amended in January 2007 (Gold Coast Planning Scheme 2003 Version 1.1) and passed State Interest Check, it has to be assumed that the specific requirements of section 33 of the BA are met. However, in contrast to QDC MP 1.2, the Scheme does not differentiate according to the class of building to which the alternative solutions apply, and must therefore be taken to apply to all buildings. The planning scheme stipulates the following Performance Criteria relating to setbacks for buildings on residential lots.

BUILDING SETBACK

PC2

All buildings must provide for setbacks from the street frontage and the side and rear boundaries, which are appropriate to the efficient use of the site and the streetscape character of this domain.

The Scheme does not distinguish between Class 1a (dwellings) and Class 10a (non-habitable) structures such as sheds, and removes all the concessions provided by the QDC for Class 10a structures. This is a significant reduction in entitlements.

Under the Scheme provisions applying at the subject site, a Concurrence Agency determination from the Council is required for the type of structure described above.

Reasons for the Decision

The proposed storage area is architecturally designed and complementary to the newly constructed dwelling on the subject site. The structure is to be positioned 20.0m from the street boundary and will not be visible from the road particularly once the adjoining site is developed. The proposed siting therefore does not afford an unacceptable streetscape. Similarly the neighbours most likely to be affected have submitted a letter in support of the proposal.

Debbie Johnson
Building and Development Tribunal Chair
Date: 23 April 2009

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:

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