



Building and Development Tribunals—Decision

Integrated Planning Act 1997

Appeal Number:	3—08—056
Applicant:	<i>Withdrawn</i>
Assessment Manager:	Nick Schofield for and on behalf of North Shore Building Approvals
Concurrence Agency: (if applicable)	Sunshine Coast Regional Council
Site Address:	<i>Withdrawn</i> —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 roofed patio.

Date of hearing:	9am — Friday 12 September 2008
Place of hearing:	The subject site
Tribunal:	Robin King Cullen – Chair Chris Harris – Member
Present:	<i>Withdrawn</i> – Applicant Alan Thompson – Sunshine Coast Regional Council representative Sam Cunningham – Sunshine Coast Regional Council representative

Decision:

In accordance with section 4.2.34 (2) (b) of the IPA, the Tribunal **changes** the decision appealed against of Sunshine Coast Regional Council (as concurrence agency) to refuse a request for boundary relaxation relating to a development application for building works (siting provisions) on the subject site for a roofed patio within 6.00 metres of a road boundary and 1.50 metres of a side boundary, to require that:-

1. a Development Permit for Building Work to be issued within 30 Business days provided that the applicant demonstrates that the dwelling extension and attached carport meets the structural and fire separation requirements of the Building Code of Australia (BCA) part 3 to the satisfaction of the private certifier within 20 business days of this decision; and
2. the solid wall between the top of the fence and the underside of the roof as proposed by the owner by email communication dated 16 September 2008, be removed.

Background

1. The appeal is against the decision of the assessment manager to refuse a development application for building works, described as “Gazebo addition to existing dwelling” on the subject site. The reason for refusal:
 - ”(1) *The proposal has been assessed and REFUSED by Sunshine Coast Regional Council as a Concurrence Agency Response to a siting variation for the front and side boundaries;*
 - ”(2) *Building Code of Australia 2008 Part 3.7.1 (DTS fire separation requirements not compliant, alternative solution required)*
 - ”(3) *Structural details required as per Part 3 Building Code of Australia 2008.*”
2. The subject site is 703 sq metres in area and located on the corner of *withdrawn* and *withdrawn*. The main entrance to the house and the driveway entrance are both located off the longest site frontage.
3. The building works referred to in paragraph 1 above currently exist and comprise an 8.2 metres by 5.2 metres roofed structure erected 0.3m from the *withdrawn* road frontage and 0 metres from the eastern side boundary. The *withdrawn* road frontage of the site has a high solid fence along the majority of its frontage which increases in height to approximately 2.1 metres for a distance equivalent to the length of the roofed patio to the underside of the roof beam of the roofed patio.
4. In the “Material Considered” by the Tribunal, the building works are variously described as “gazebo addition to existing dwelling” (by the private certifier), “pergola” (by the applicant) and “roofed patio” (by the Council). The definition “Dwelling extension and attached Carport” is considered by the Tribunal to best describe the building works.
5. Further, in the “Material Considered” by the Tribunal the building works are classified as Class 10a (by the private certifier) and Class 1a (by the Council). The Tribunal considers the building works to be Class 1a and Class 10a (The 1a part being an extension of the dwelling use via an external covered entertainment area, and the 10a part being an attached carport adjacent the neighbouring boundary).
6. The building works referred to in paragraph 3 above already exist on the subject site and have been built without the necessary development permit/s.
7. Development on the subject site has resulted in a high proportion of impervious areas and, as a result, minimal area is available for landscaping. Whilst the negative environmental impacts of this situation, as outlined by Council representatives the hearing, are acknowledged, there is no breach of any requirement.
8. The report to the Tribunal prepared by Council provides the background to the application lodged as a result of issue of a show cause notice dated 31 March 2008 (issued to the applicant, to which no response was received by the Council). Subsequently, an enforcement notice dated 3 June 2008 was issued by Council.
9. The private certifier issued a decision notice dated 25 July 2008 advising that the subject development application was assessed and refused in response to Councils refusal as a concurrence agency dated 3 July 2008.

Material Considered

- Copy of the Siting Variation (Relaxation) application to Council dated 23 June 2008 including Site/Lower Floor Plan (drawing number 5997 dated 11/2005) with location of building works described as “subject gazebo” marked and undated drawing titled “Existing Structure Spec *withdrawn* – Information Management” showing dimensions and structure of subject building works.
- Copy of notification dated 3 July 2008 from Council to the private certifier of Referral (concurrence)

Agency Response under the IPA Part 3.3.16 for design and siting setting out the reasons for refusal that

“The proposed roofed patio does not comply with and cannot be conditioned to comply with Maroochy Plan 2000, code 4.1, Element 1, P2.

Buildings and structures are sited to contribute positively to the streetscape, maximise community safety, and maintain the amenity of adjacent land and dwellings by having regard to the following:

(a) views and vistas;

(b) building character and appearance;

(c) casual surveillance; and

(d) an adequate area suitable for landscaping being provided for at the front of a lot.”

- “Form 10 – Appeal Notice”, dated 13 August 2008, against the decision of the private certifier to refuse the application and setting out the grounds of the appeal, including letters of support from neighbouring properties at 2, 3, 7, 9, 11, and *withdrawn*; and from neighbouring properties at 3, 4, 7 and *withdrawn*.
- Verbal submissions made by the applicant at the hearing stating reasons for the appeal and explaining why the appeal should be allowed.

Verbal and written submissions made by Council’s representative’s at the hearing explaining why Council had refused the application and why the appeal should not be allowed.

- Email correspondence sent to the Registrar from the applicant on the 15 and 16 September 2008.
- Email advice from Unit Coordinator Building Assessment – Sunshine Coast Regional Council, Mr Tucker, dated 17 September 2008.
- The QDC - MP1.2 “Design and Siting Standard for Single Detached Housing – on lots 450 sq m and over” published 16 November 2007.
- Queensland Government Building Newsflash “Classification of Patio Roofs” issued 28 March 2008.
- Queensland Government Building Newsflash “Length of Class 10a buildings” issued 28 March 2008.
- Maroochy Plan 2000 Section 4.1 “Code for the Development of Detached Houses and Display Homes”.
- The IPA.
- The *Integrated Planning Regulation 1998*.
- The BCA.

Findings of Fact

The Tribunal makes the following findings of fact:-

1. The subject site is 703 sq metres in area and has frontages to both *withdrawn* and *withdrawn*.
2. The subject site is flat and rectangular in shape.
3. The building works, subject of the building development application, already exist and were constructed without the necessary development permit or permits being obtained.
4. The existing building works on the subject site are prominent in the neighbourhood as a result of the size, colour, character and location at the corner of the site.
5. The adjoining neighbours to the east in *withdrawn* (the neighbours most affected by the erection of the building works with 0 metres clearance to the common side boundary) have advised in writing that they

are supportive of the structure to stay as is.

6. The allotment on the opposite corner of *withdrawn* and *withdrawn* is currently vacant. Council officers present at the Tribunal hearing indicated that a development application for a dwelling is currently being assessed on this allotment.
7. The combined length of the Building Works and an existing garage on the allotment exceeds the requirements allowed under A2 (d) of the Queensland Development Code. The maximum length allowable for “as of right” construction within 1.5 metres of the same boundary is 9 metres.

Reasons for the Decision

- The fact that the building work exists unlawfully is no justification, of itself, for approval.
- The Tribunal considers that the design and construction of the building works are in keeping with the house and other structures on the subject site.
- The Tribunal does not consider that the location of the building work detracts from the streetscape having regard to:
 - (a) views and vistas;
 - (b) building character and appearance; or
 - (c) casual surveillance.
- The adjoining neighbours to the east in *withdrawn* (the neighbours most affected by the erection of the building works with 0m clearance to the common side boundary) have advised in writing that they their support of the structure to stay as is. The Tribunal has considered that as the part of the Building Works exceeding the 9 metres length requirement under the QDC is an open Carport and the effected neighbour has no objections to the location of the Building work, a relaxation of this setback requirement could be approved.
- The Tribunal agrees that the location of the building work does not comply with Code 4.1, Element 1, P2 (d) in that “an adequate area suitable for landscaping being provided at the front of the lot” has not been met. However, the Tribunal also noted the views expressed by Council officer Mr Tucker in an email dated 17 September 2008 that landscaping in this area would have a number of negative impacts.
- The Tribunal accepts the opinion expressed at the hearing by Council representatives that removal of the solid structure above the boundary fence would soften the visual impact of the Building work on the streetscape.
- Whilst the Tribunal acknowledges the Council’s concerns regarding possible expectations of other landowners to achieve similar setback relaxations, it is not considered that this decision will set a precedent on which other Council decisions would be based.

Robin King-Cullen
Building and Development Tribunal Chair
Date: 15 October 2008

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 Infrastructure and Planning
PO Box 15009
CITY EAST QLD 4002
Telephone (07) 3237 0403 Facsimile (07) 3237 1248