



APPEAL
Integrated Planning Act 1997

BUILDING AND DEVELOPMENT TRIBUNAL - DECISION

Assessment Manager: Total Building Consult Pty Ltd

Concurrence Agency: Gold Coast City Council

Site Address: *withheld* – ‘the subject site’

Applicants: *withheld*

Nature of Appeal

Appeal under Section 4.2.9 (2)(b) of the *Integrated Planning Act 1997* (IPA) against the decision of Total Building Consult Pty Ltd to refuse a development application for building works, namely extensions to a class 1a detached dwelling and class 10 carport. The decision is based on a concurrence agency response from Gold Coast City Council, pursuant to Section 9(a), Schedule 2, Table 1 of the *Integrated Planning Regulation 1998*.

Date and Place of Hearing: 9.00 am Friday 11 April 2008 at ‘the subject site’

Tribunal: John Panaretos – Chairperson
Peter Nelson – General Referee

Present: Applicant / Owner
Steve Morley – Private Certifier, Total Building Consult
Rodney Davies – Gold Coast City Council Representative
Sarah Kay – Gold Coast City Council Representative
Patrick Giess – Gold Coast City Council Representative

Decision

In accordance with Section 4.2.34 (2)(c) of the IPA the Tribunal **sets aside** the decision of Total Building Consult Pty Ltd to refuse a development application for extensions to a class 1a detached dwelling and class 10 carport to be built within the street and southern side boundary setback **and replaces with the following:-**

Total Building Consult Pty Ltd is directed to approve the development application subject to the following conditions:-

1. The road boundary clearance to the Nobby Parade alignment is varied to zero metres subject to submission by the applicant of a modified plan notating the garage door, pedestrian gate and short side wall of the carport and entry structure being constructed of slats with 50% void; and

2. The southern boundary clearance is varied to 600mm subject to submission of a modified plan and elevations fully dimensioning setbacks in accordance with this determination and correcting all errors contained on the previously submitted plan and elevations and the addition of notation specifying that the 'Timber Deck' is 'Unroofed'; and
3. Setbacks to walls are to remain unchanged. The reduced setback is to be taken as being measured from the relevant boundary alignment to the *outermost projection* as defined in the QDC MP 1.2.

Background

The existing building is a low set, single level house some decades old with 600mm setbacks to both the north and south side boundaries. It is set back from the street alignment approximately 6m. The proposal is to add an enclosed extension to the rear of the house along with a slightly raised open deck. A carport is to be added to the front southern side of the house. Along the southern side, the existing eave line of the house will be extended forward to the front of the carport and back along the rear extension of the house.

Council contends that the application is assessable against the provisions of the Detached Dwelling Domain of the Gold Coast Planning Scheme. Part 5, Division 1 Chapter 2 Section 4.5 requires that, to trigger assessment against the scheme, building work must be associated with a Material Change of Use (MCU). Building work not associated with a MCU is expressly excluded from assessment against the scheme.

The site is located in the Detached Dwelling Domain. The Table of Development for that domain lists Detached Dwellings as Self Assessable against the Detached Dwelling Domain Code except where the proposed work is a *Minor Change in the scale or intensity of an existing lawful use*. In such circumstances, the work is Exempt, thus not assessable against the scheme. In this case, if the work constitutes or is associated with a MCU, it satisfies the definition of *Minor Change* in that the change in the intensity or scale of the use does not exceed any of the parameters prescribed by the definition of *Minor Change*. Note that the increase in floor space does not constitute an increase in "...total use area;"

Hence, assessment is against the Siting Requirements of the Queensland Development Code only. Thus the following provisions from MP1.1 Element 1 are relevant:

- P1/A1 Front Setback
- P2/A2 Side & Rear Boundary Clearance

Material Considered

- Proposal Plans numbered 07M302ic Sheets 1 & 2 Issue 4 dated 25/2/08 drawn by Bill Taylor Building Designer;
- 'Form 10 – Notice of Appeal' lodged with the Building and Development Tribunals on 3 April 2008, including Grounds for Appeal;
- Council's Concurrence Agency Request for Further Information dated 19 February 2008;
- Council's Concurrence Agency Response dated 11 March 2008;
- Total Building Consult's Decision Notice dated 2 April 2008;
- Property details as available through Council's website;

- 'Form 18 – Notice of Election' from Council, dated 8 April 2008;
- Verbal submissions made by the applicant at the hearing;
- Verbal submissions made by the private certifier at the hearing;
- Verbal submissions made by Council representatives at the hearing;
- Letter from neighbour, dated 10 April 2008 supporting the subject extensions. The letter was handed to the tribunal at the hearing;
- Letter from Council, signed by Rod Davie Senior Planner MCU Citywide, dated 10 April 2008, expounding on Council's reasons for refusal. The letter was handed to the tribunal at the hearing;
- Detached Dwelling Domain Code and other relevant sections of the Gold Coast City Council Planning Scheme;
- The *Integrated Planning Act 1997*;
- The *Building Act 1975*; and
- MP 1.1 of the Queensland Development Code (QDC).

Findings of Fact

The existing building setback to the southern side boundary is 600mm to the eave and 1200mm to the side wall. The existing front setback is 6m.

Siting variations sought by the appellants are as follows: the proposed street setback is zero metres and the proposed southern side boundary setback is 600mm to the *outermost projection*.

Siting requirements for Class 1 and Class 10 buildings and structures are determined by MP 1.1 of the QDC.

As the subject site is less than 450m² in area and approximately 10m wide, the following setbacks apply:

Front (Street Setback) – The required front setback is dependent on street type and the setback of structures on adjoining sites. In any case, the maximum setback required by Acceptable Solution AS 1 is 4m.

The **Performance Criteria** for buildings and structures under the QDC MP 1.1 P1 is as follows:

The location of a building or structure facilitates an acceptable streetscape, appropriate for –

- a) the bulk of the building or structure; and*
- b) the road boundary setbacks of neighbouring buildings or structure; and*
- c) the outlook and views of neighbouring residents; and*
- d) nuisance and safety to the public.*

Side Boundary Setback – The relevant Acceptable Solution (AS 2) is 0.75m for a 10m wide site.

The **Performance Criteria** for buildings and structures under the QDC MP 1.1 P2 is as follows:

Buildings and structures –

- a) provide adequate daylight and ventilation to habitable rooms;*
- b) allow adequate light and ventilation to habitable rooms of buildings on adjoining lots;*
- c) do not adversely impact on the amenity and privacy of residents on adjoining lots.*

The nature of this appeal is a point of disagreement between the parties to the appeal. The points of difference are as follows:

- a) Council's assessment and decision were based on both the City of Gold Coast Planning Scheme, specifically the Detached Dwelling Domain Code provisions, and the Siting Requirements of the Queensland Development Code; and
- b) The assessment manager contends that Council's referral agency powers are limited to assessment against the Siting Requirements of the Queensland Development Code.

Reasons for the Decision

Front Setback (P1 of MP 1.1 of QDC)

The structure does not impact on the streetscape adversely by way of bulk, outlook or views for the following reasons:

- Allotments in the area are narrow, generally 10m wide; thus the streetscape is characterised by carports, garages and entry structures, with a high proportion of transparent structures;
- The structure is single storey, thus does not significantly intrude into the streetscape or views from adjoining residences;
- Council is agreeable with the setback relaxation subject to a transparent structure to the streetscape elevation.

No issues were raised by the parties with respect to public nuisance or safety, nor were any apparent at the site inspection.

Southern Side Boundary Setback (P2 of MP 1.1 of QDC)

The reason for the side boundary relaxation is the proposed continuation of the wall and eave line of the existing house. The relaxation is required, not for the wall position, but for the eave. The wall position, at 1200mm setback, is in excess of that required by the Acceptable Solution (750mm). The relaxation required for the eave is 150mm. The existing eave, at 600mm wide, is characteristic of traditional housing in the area, being a suitable response to prevailing climatic conditions. Such a minor change in the eave line is not warranted by reasons of light, ventilation or amenity, particularly in light of the more than adequate wall setback.

John Panaretos
Building and Development Tribunal Chairperson
Date: 22 April 2008

Appeal Rights

Section 4.1.37. of the IPA 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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