



Building and Development Tribunals
Queensland Government

Department of **Local Government, Planning,**
Sport and Recreation

APPEAL

File No. 03-04-031

Insert No.

Integrated Planning Act 1997

BUILDING AND DEVELOPMENT TRIBUNAL - DECISION

Assessment Manager: Caloundra City Council

Site Address: 76 Sunbird Chase Kawana

Applicant:

Nature of Appeal

An appeal under Section 21 of the Standard Building Regulation 1993 against the decision of the Caloundra City Council to refuse a siting concession. The application for concession being required to build a timber deck and shade structure within 1.5M of the rear boundary setback, and within 4.5M of the canal boundary, on property described as lot 70 SP 103463, situated at 76 Sunbird Chase Kawana.

Date and Place of Hearing: 9.30am, Wednesday 16th June 2004
at 76 Sunbird Chase Kawana

Tribunal: Debbie Johnson

Present: The Applicants
Caloundra City Council representative

Immediately prior to the on site hearing, Debbie Johnson met with neighbours, residing at 78 Sunbird Chase, to allow them to explain their concerns.

Decision

The decision of the Caloundra City Council to refuse an application for siting concessions for building works, Application No BDD-02086, as contained in its written notice dated 23rd April 2004, is confirmed.

Background

A complaint was lodged with Caloundra City Council on 26th March regarding a deck being constructed without approval and affecting privacy and views. Subsequently council conducted an inspection of the property being 76 Sunbird Chase.

The inspection revealed a timber deck and gazebo structure were being constructed within 1.5M of the rear boundary and within 4.5M of the canal boundary. Neither of the structures had received a development approval or an approval for a siting concession.

On the 7th April Caloundra City Council issued a Cease Works Notice and a Show Cause Notice to the applicants for the unauthorised building works. A request for a siting variation was lodged by the applicant on 15th April and was refused by Caloundra City Council on 23rd April 2004. Caloundra City Council also gave written notice on the 19th April to the applicants as the deck construction had caused the removal of pool fencing from around the perimeter of the existing swimming pool.

On the 17th May an Enforcement Notice was issued to the applicants for commencing building works without a development permit having first been issued for the works.

Also on the 17th May, a letter was received by Caloundra City Council from the applicants responding to the Show Cause Notice.

Material Considered

Caloundra City Council supplied the tribunal with a copy of the siting concession application by the applicant, and the Caloundra City Council decision notice dated 23rd April. Caloundra City Council also supplied the tribunal and his report written following the on site inspection of 76 Sunbird Chase. The report included measured drawings of the built structure, and photographs of the built structure.

The applicants provided a detailed written submission addressing Caloundra City Council's reasons for refusal, being;

- Interference with the privacy of adjoining allotments,
- Obstruction of the outlook from adjoining allotments,
- Restrict areas on the site suitable for landscaping,
- Overcrowd the allotment, and
- Affect the amenity of the neighbourhood.

The applicants also provided numerous photographs of other properties along the canal, where decks and other structures have been erected. The applicants had collected many signed declarations from neighbours on the canal opposite their site. These declarations were supportive of their application for the proposed deck and shade structure and therefore concession for siting being approved.

The residents at 78 Sunbird Chase Dawn and Martin Cauclois provided the tribunal with before and after photographs of their outlook along the canal from beside their swimming pool.

Findings of Fact

Council's Development Policy 335, Clearance from canals, requires footings for dwellings or any other building including column footings to be erected no closer than 4.5M to the canal boundary. Council may alter the requirements of the policy where the applicant satisfies Council that the proposed structure will not unduly interfere with the privacy of the adjoining sites or, obstruct the outlook from adjoining sites because of;

- a) The levels, depth, shape or condition of the site or adjoining sites,
- b) The nature of the building or adjoining buildings
- c) Its affect on existing structures and
- d) Such other reason as Council may consider applicable.

Section 20 and Section 34 of the Standard Building Regulation allows for council to vary any part of the Queensland Development Code Part 12 in this particular case the 1.5M setback from the rear boundary. Element A2 (c)(ii) of the Queensland Development Code stipulates structures may be exempted where a pergola or other structure which is not enclosed by walls or roofed; and not more than 2.4M in height at the boundary; and primarily ornamental or for horticultural purposes.

The timber deck and shade structure have almost been completed. The overall height at the rear boundary is 1850mm high measured from the natural ground level to the finished floor level of the decking. In addition there is balustrading and a handrail making the structure 2.8M high adjacent to the canal or rear boundary.

Reasons for the Decision

A site visit to 78 Sunbird Chase and 'before and after' photographs taken from the neighbouring property clearly demonstrates a significant loss of privacy to their outdoor recreational area and indoor living areas. The privacy is lost due to the height of the timber deck and to the extent that it now runs to the rear boundary line. The effect of the deck is worsened by the position of the shade structure on top of the elevated deck. The shade structure is large enough for a group of people to sit under. In this event, privacy to the occupants at 78 Sunbird Chase will be completely compromised. No other neighbour would be similarly affected by the timber deck or the shade structure. The overall height of the deck with balustrading being 2.85M indicate that a siting variation within the 1.5M rear setback is inappropriate.

Debbie Johnson
Building and Development
Tribunal Referee
Date: 24th June 2004

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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