



APPEAL
Integrated Planning Act 1997

BUILDING AND DEVELOPMENT TRIBUNAL - DECISION

Assessment Manager: Queensland Building Approvals

Concurrence Agency: Gold Coast City Council

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

Applicant: *withheld*

Nature of Appeal

Appeal against the decision of Queensland Building Approvals, dated 8 March 2008, to impose conditions on a Development Application for Building Works - alterations and additions, namely waterfront boundary setback clearances. The decision was based on a concurrence agency response from Gold Coast City Council dated 29 February 2008 (reference number BLD 2727565 PN 46789/16/-(P1)).

Date and Place of Hearing: 9.00 am Monday 7 April 2008 at
Gold Coast City Council Chambers,
Nerang Southport Road, Nerang

Tribunal: Mr Leo F Blumkie Chairperson
Mr Steve Adams General Referee

Present: Applicant
Owners
Mr Andrew Powell Gold Coast City Council Representative
Mr Patrick Giess Gold Coast City Council Representative
Mr Jonathan Lee Gold Coast City Council Representative

Decision

In accordance with 4.2.34 (2) of the *Integrated Planning Act 1997* (IPA), the Tribunal **confirms** the appeal and **directs the applicant to submit amended drawings to the assessment manager to reflect changes made to the Gold Coast City Council concurrence agency response**, dated 29 February 2008, as follows:-

On page 1 of 5 under Planning Scheme:-

(1) change the second dot point to read as follows:-

"Part 7 Division 3 Chapter 3 of the Gold Coast Planning scheme 2003 to permit the erection of a class 1 dwelling addition - highset building (Balcony 1) at a minimum distance of 5.1 metres to the outermost projection from the waterfront property boundary."

(2) change the third dot point to read as follows:-

"Part 7 Division 3 Chapter 3 of the Gold Coast Planning scheme 2003 to permit the erection of a class 1 dwelling addition - lowset building (roofed patio) at a minimum distance of 3.393 metres to the outermost projection from the waterfront property boundary."

(3) Delete the fourth dot point.

On page 2 of 5 under Conditions of Our Advice:-

(1) **Condition 4** to read as follows:-

"The roofed patio (outdoor entertainment area) is not to be enclosed except for a stainless steel railing made up with a top rail and stainless steel wires which satisfy building legislation requirements."

(2) **Condition 6** to read as follows:-

"The proposed terrace "A" (outdoor entertainment area) floor level, located within the waterfront boundary setback clearance, is not to exceed RL 2.960. The parapet to the roof to terrace "A" is not to exceed 500mm in height unless a greater height is approved by the Gold Coast City Council."

(3) **Condition 7** to read as follows:-

"The proposed unroofed terrace "B" floor level (boat shed roof), located within the waterfront boundary setback clearance, is not to exceed RL 3.16."

Background

The property is a 858m² residential block, with street frontage and backs onto a canal.

A two-storey residence exists on the property.

Building work is currently being undertaken on the property, within the required setback from the canal, without a development.

The assessment manager made an application to Council in November 2007, for a boundary relaxation for the required setback to the canal.

The concurrence agency, Gold Coast City Council approved the application with conditions on 29 February 2008.

The client is not satisfied with the changes made to the application by Council namely:-

- Roofed patio (outdoor entertainment area) to be a minimum distance of 5m to the outermost projection from the waterfront boundary.
- The floor level of the terrace B not to exceed RL 2.8.

An appeal was lodged with the registrar on 25 March 2008.

The applicant identified a number of properties within the canal which had structures erected within the required waterfront boundary setback.

Material Considered

In coming to a decision, consideration was given to the following material:-

- Council's refusal of the application dated 29 February 2008
- 'Form 10 – Notice of Appeal' lodged with the registrar on 25 March 2008 including grounds for appeal, drawings and correspondence accompanying the appeal
- Verbal submissions from the applicants
- Verbal submissions from the owners
- Verbal submissions from council representatives
- Council's response on nominated structures erected within the required canal setback
- Council's planning scheme - Part 7 - Division 3 - Chapter 3 - Canals and Waterways PC1
- The *Building Act 1975*
- The *Building Regulation 2006*
- The *Integrated Planning Act 1997*.

Findings of Fact

The site is located on a canal and under the Gold Coast planning scheme (approved in August 2003), must satisfy Part 7, Division 3, Chapter 3 for building setbacks from the canal - PC1

"All buildings and structures must provide for setbacks from the waterway which ensure the efficient use of the site, respond to the waterside location, and have minimal impact on adjoining properties"

Building work (erection of columns and beams etc) has been undertaken within the required setback from the canal, contrary to the conditions of the development permit.

Reasons for the Decision

Council representatives advised at the hearing that the approved application had been conditioned to require a minimum setback of 5m to the outermost projection from the water front property boundary.

This was because of the bulk of the proposal within the setback area. This consisted of rendered columns and a parapet (approx 1200mm in height) to the roofed terrace A (outdoor entertaining area).

The owners agreed at the hearing that the height of the parapet could possibly be reduced in height to match the width of the rendered columns. If this change was made, it was agreed by council representatives that the bulk of the proposal would be acceptable and would be similar to other relaxations granted in the area.

In regard to the floor level of roofed terrace B requiring a maximum of RL 2.8, there was a misunderstanding by council of the floor level of the boat shed and hence the minimum ceiling height considered acceptable and subsequently the floor level of the terrace.

After receiving accurate advice on the boat shed floor level above max high tide and the minimum recommended ceiling height, it was agreed by council that a floor level terrace B - RL 3.16 was acceptable.

The owners acknowledged the terraces would remain unenclosed except for the required railings - which would consist of a stainless top rail and stainless steel wire infill - all satisfy current building legislation.

The tribunal concurred with council representatives that the modified proposal satisfied PC1 of the planning scheme.

The applicant agreed plans would be modified and resubmitted to council. Upon receipt of the modified plans, Council would change the conditions of the approval to reflect the decision of the Tribunal.

The owner would investigate the minimum height possible for the parapet, and if more than 500mm, seek Council approval for the increased height.

Leo F Blumkie
Building and Development Tribunal Chairperson
Date: 11 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:

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