



Building and Development Tribunals

Queensland Government

Department of Local Government and Planning

APPEAL
Integrated Planning Act 1997

File No. 03-07-002

BUILDING AND DEVELOPMENT TRIBUNAL - DECISION

Assessment Manager: Gold Coast City Council

Site Address: *withheld*-“the subject site”

Applicant: *withheld*

Nature of Appeal

Appeal under Section 4.2.9 of the *Integrated Planning Act 1997* against the decision of the Gold Coast City Council to impose a condition on a Development Application for Preliminary Approval for Building Works – siting provisions - on land described as “the subject site”.

Date and Place of Hearing: 2:00pm on Monday 12th March 2007
at “the subject site”

Tribunal: Mr Chris Schomburgk

Present: Applicants / Owners
Mr Grant Harris – Gold Coast City Council Representative

Decision:

The decision of the Gold Coast City Council as contained in its Decision Notice dated 14th December 2006, to include a condition requiring removal or reduction of the “as constructed” screen fence (Condition 5), is **set aside** and **Condition 5 is to be deleted**. **All other conditions of the approval remain.**

Material Considered

The material considered in arriving at this decision comprises:

- The application and supporting plans and documentation;
- The relevant provisions of the Town Planning Scheme for Gold Coast City Council;

- The Council's Decision Notice dated 14th December 2006;
- The Queensland Development Code Part 12; and
- The *Integrated Planning Act 1997*.

Findings of Fact

I make the following findings of fact:

- The site comprises Lot 115 on SP 112131 and is located at *withheld*. The site is part of a short cul-de-sac and comprises a single storey house, swimming pool and outbuildings. A pedestrian laneway runs along the rear boundary of the site. The topography of the locality is such that many other homes that have this laneway as the rear or side boundary have erected retaining walls with fences on top, such that the end result is a narrow lane (approx 3m wide) with very high sides up to 4m high in parts.
- The subject application seeks approval for, inter alia, a screen structure that extends to about 2.8m high. The structure exists. The structure is set back from the rear fence by about 0.1m and has a shade structure extending into the subject site to provide privacy and shade for part of the swimming pool area. It has a Balinese style thatched roof.
- The Council included a condition in its Decision Notice requiring this structure to be removed or reduced in height to 1.8m. It is this condition that is the subject of this appeal.
- The applicants explained that the screen became necessary for two reasons:
 - To provide visual privacy from persons using the laneway at the rear of the site; and
 - To provide shade for users of the pool area (the applicants' young children).
- The Council was concerned that casual surveillance of the laneway should be achieved, but it was evident on site that this was unlikely in any event due to the high retaining walls on other properties that backed onto this laneway. The laneway was not a safe and secure lane in any event because of these high walls and the fact that the lane was not visible from one end to the other because of its alignment.
- The applicants explained that vandals had jumped their rear fence on at least one occasion and used their pool, and that items were often thrown over the fence into their yard. The subject site is one of the lowest sites that back onto the lane, due to the topography of the locality.
- The Council officer who attended on site (Mr Harris) properly conceded that the lane was not the best example of a pedestrian thoroughfare, and would probably not be approved in current planning assessment because of the problems identified above.

Based on my assessment of these facts, it is the Tribunal's decision that **Council's decision** to impose a condition on the Application for siting variation for the screen requiring it to be removed or reduced in height is **set aside** and **the condition is to be deleted**.

Reasons for the Decision

- The structure provides appropriate security and shade for the landowners and their family.
- The structure is not out of place given the other structures that back onto this lane in the immediate vicinity.
- The structure does not create or exacerbate any problems with the built form character of the locality.

Chris Schomburgk
Building and Development Tribunal General Referee

Date: 19th March 2007

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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