
BUILDING AND DEVELOPMENT TRIBUNAL – DECISION

Assessment Manager: Gold Coast City Council

Site Address: 9 Naples Avenue, Isle of Capri.

Applicant: Bartley Burns Pty Ltd on behalf of the owner

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 certain conditions on Preliminary Building Application 23/09771 (Development Application No. 23/02308) for the proposed construction of a dwelling on land described as Lot 1 on RP 120665 and Lot 340 on RP 97232 and situated at 9 Naples Avenue, Isle of Capri.

Date and Place of Hearing: 10:30 am on Friday 11 July 2003 at 9 Naples Avenue, Isle of Capri.

Tribunal: B J Williamson

Present:	B J Williamson	Tribunal Referee
	Owner	
	S Bartley	Bartley Burns Pty Ltd
	J Wagner	Gold Coast City Council
	P Giess	Gold Coast City Council

Decision:

The Tribunal sets aside the Decision Notice of 26 June 2003 for Preliminary Building Application No. 23/09771 (Development Application No. 23/02308, Reference DA 23/02308 & BA 23/09771) and confirms the Amended Decision Notice of 6 August 2003 for Preliminary Building Application No. 23/09771 (Development Application No. 23/02308, Reference DA 23/02308 & BA 23/09771) issued by the Gold Coast City Council.

In relation to item 3 of the conditions of approval of the Amended Decision Notice of 6 August 2003, the Tribunal notes that this condition is made under the Gold Coast City Council amenity and aesthetics resolution of 15 May 1998 made in accordance with section 50 of the Standard Building Regulation 1993. This Tribunal has no jurisdiction in amenity and aesthetics matters. Appeals on amenity and aesthetics grounds can only be heard by the Amenity and Aesthetics Tribunal.

If the applicant wishes to pursue the matter through the Amenity and Aesthetics Tribunal, the Gold Coast City Council will need to issue a further decision in accordance with their amenity and aesthetics resolution of 15 May 1998 made under section 50 of the Standard Building Regulation 1993.

Background:

A two storey dwelling is being constructed on the site. A number of boundary clearance relaxations were requested. In the Decision Notice of 26 June 2003 a number of relaxations were approved subject to certain conditions and the appeal concerned 5 of those conditions. At the hearing the existence of the Council resolution was raised but no copy was supplied at the hearing. Nevertheless, it was agreed at the hearing for the Council and applicant to meet to resolve, if possible, the items in dispute. The Amended Decision Notice of 6 August

2003 resolved all issues except the enclosure of the carport (condition item 3) which is now the item of appeal as noted in the letter from Bartley Burns dated 9 August 2003.

Material Considered

1. Copy of proposed dwelling drawings (BA01 issues 4, 5 & H; BA02 issue 5; BA03 issue 2; BA04 issues 2 & F; BA05 issues 2 & E).
2. Copy of Gold Coast City Council Building Act – Relaxations Form.
3. Copy of Gold Coast City Council Decision Notice dated 26 June 2003.
4. Submission from Barley Burns dated 8 July 2003 plus photographs.
5. Copy of Form 10 – Building and Development Tribunals Appeal Notice dated 2 July 2003.
6. Copy of letter from L Morris and M Cameron of 11 Naples Avenue, Isle of Capri.
7. Copy of Gold Coast City Council Report (Item X, Surfers Paradise, Carports and Garages to Houses and Duplex Buildings – File 650/001/003 PT 2)
8. Copy of Gold Coast City Council Resolution of Council Meeting 15 May 1998 (Item 2 Planning Development and Transport, Private Certification of Building Work Under the Integrated Planning Act and the Impact on Council Operations)
9. Copy of Gold Coast City Council Amended Decision Notice dated 6 August 2003.
10. Verbal submission at the hearing by the representative of the Gold Coast City Council.
11. Verbal submission at the hearing by the owner and S Bartley.
12. Copy of letter from Bartley Burns dated 9 August 2003.

Finding of Fact

I made the following findings of fact:

1. As the boundary clearance issues have been resolved, the outstanding issue (enclosure of the carport – condition 3 of the Amended Decision Notice dated 6 August 2003) is an amenity and aesthetics matter.
2. The Council's amenity and aesthetics resolution of 15 May 1998 is a valid resolution made under section 50 of the Standard Building Regulation 1993.

Reasons for the Decision:

1. Although there was no reference to the Council's amenity and aesthetics resolution of 15 May 2003 in the Decision Notice of 26 June 2003 and the Amended Decision Notice of 6 August 2003, it is clear that condition 3 of the conditions of approval in Amended Decision Notice of 6 August 2003 would have been based on the Council's amenity and aesthetics resolution of 15 May 2003 and therefore this Tribunal has no jurisdiction in this matter.
2. Under natural justice and since the Council's amenity and aesthetics resolution was not noted in both Decision Notices issued by the Gold Coast City Council, the applicant should be permitted, if the applicant wishes to pursue the matter through the Amenity and Aesthetics Tribunal, to request the Gold Coast City Council to issue a further decision in accordance with Council's amenity and aesthetics resolution of 15 May 1998 made under section 50 of the Standard Building Regulation 1993.

B J Williamson
Building and Development
Tribunal Referee
Date: 29 August 2003

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 grounds:

- (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 the notice of the Tribunal's decision is given to the party.

Enquires

All correspondence should be addressed to:

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