



Building and Development Tribunals

Queensland Government

Department of **Local Government and Planning**

APPEAL

File No. 3/03/059

Integrated Planning Act 1997

BUILDING AND DEVELOPMENT TRIBUNAL - DECISION

Assessment Manager: Gold Coast City Council

Site Address: 3 Marine Court, Jacobs Well

Nature of Appeal

The appeal is against the decision of the Gold Coast City Council to refuse an application for Preliminary Building Work under its amenity and aesthetics policy because:

- The proposed development is not in keeping with the existing character of the buildings neighbourhood and;
- Proposed building's construction materials are inconsistent with existing buildings in the neighbourhood

The development is proposed to be erected on land described as Lot 20 on SP 123102 and situated at 3 Marine Court, Jacobs Well.

Date and Place of Hearing: 9.30am Friday 7 November 2003.

Commencing with an inspection of the existing house at 310 Hawthorne Road, Hawthorne followed by an inspection of the site at 3 Marine Court, Jacobs Well and further submissions at the offices of the Gold Coast City Council, Nerang-Southport Road, Nerang.

Tribunal:

Mr Phil Breeze	Tribunal member
Mrs Jenny Owen	Tribunal member
Mr L F Blumkie	Tribunal Chairperson

Present:	Christine Cain	Applicant
	Mrs Gail Howes	Owner
	Mr Ian Howes	Owner
	Mr Brian Gobbie	Gold Coast City Council representative
	Mr Craig Tonkin	Gold Coast City Council representative
	Mr L Blumkie	Tribunal Chairperson
	Ms Jenny Owen	Tribunal
	Mr Phil Breeze	Tribunal

Decision

The Tribunal, with the consent of the applicant, varies the application and reverses the decision notice of the Gold Coast City Council to approve the application subject to the following conditions:

- 1 The class 1 building is sighted as shown on the site plan submitted with the application.
- 2 The roof to the rear of the class 1 building is changed from a gable roof to a hip roof.
- 3 The class 1 building is fitted with a new colorbond roof.
- 4 The dimension from the ground level to the underside of bearers is not greater than 2700mm.
- 5 The class 1 building has battening to the four sides as follows:
 - (a) full height battening to the line of stumps one row in from the outer perimeter of the building; and
 - (b) arched battening directly under the bearer line to the outer perimeter of the building.
- 6 If the laundry is to be enclosed and located on the perimeter of the building then the length of the external wall shall be the same length as the external wall of the bathroom above.
- 7 If weather protection is to be provided to the rear stairs then the stairs are to be relocated so that there is no solid enclosure to the perimeter of the building.
- 8 The dwelling to have a colour scheme using traditional “queenslander” colours.
- 9 The underside of the dwelling to have space for 2 car accommodation.
- 10 Consideration being given to the location and design of the front stairs to provide suitable car access.
- 11 A landscaping plan being prepared showing driveway, paths, planting, fencing and choice of materials etc.
- 12 All new railings to be similar in style to the existing railings. (Note: railings to comply with the Building Code of Australia).
- 13 Submission of a Cash Bond or Bank Guarantee to the amount of \$26,250 to the Gold Coast City Council which will be refunded when all conditions are satisfied.
- 14 The subject building work must be commenced within two (2) months and must be completed within (6) months of formal building approval being granted.
- 15 The owner being responsible for the preparation of a detailed work program commencing with the date the dwelling is to be removed from Hawthorne and ending on the date when the building work, as indicated on the formal building approval, is completed. The program to indicate the commencement and completion dates for stages of the work to be undertaken by each principal contractor.

16 All other conditions as required by the Gold Coast City Council in

- (a) General Information – House Removals and
- (b) Conditions of Approval

form part of this approval.

Background

The appellant made a Preliminary Application to the Gold Coast City Council seeking approval to relocate a class 1 building from Hawthorne to Jacobs Well.

Council refused the application on 13 October 2003 on the grounds that the:

- proposed development is not in keeping with the existing character of the buildings neighbourhood,
- proposed building's construction materials inconsistent with existing buildings in the neighbourhood.

The applicant considered the reasons were not appropriate.

The applicant lodged an appeal with the Department of Local Government and Planning on the 21 October 2003.

Material Considered

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

1. Drawings accompanying the application.
2. Copy of the Decision Notice dated 13 October 2003.
3. Copy of the Appeal Notice dated 21 October 2003.
4. Verbal submissions from Mr & Mrs Howes.
5. Verbal submissions from Christine Cain.
6. Verbal submissions from the Gold Coast City Council representatives.
7. Gold Coast City Council General Information – House Removals.
8. Gold Coast City Council – Conditions of approval.
9. Gold Coast City Council – resolution dated 15 May 1998.
10. The Standard Building Regulation 1993.
11. The Integrated Planning Act 1997.

Findings of Fact

A Standard Building Regulation - Division 4 - Amenity and Aesthetics

Gold Coast City Council adopted an Amenity and Aesthetics policy under Section 50(1) of the Standard Building Regulation on the 15 May 1998.

The resolution amongst other things, declared that all development applications for relocatable houses to be erected within the City of Gold Coast are subject to amenity and aesthetics assessment by the local government assessment manager.

Section 50 (2) of the Standard Building Regulation 1993 states that applications mentioned in Section 50 (1) must be assessed by the local government for the amenity and aesthetics impact of the proposed building work.

Section 50 (3) states that the local government may refuse an application to which subsection (2) applies if the building when built would have an extremely adverse effect on the amenity or likely amenity of the building's neighbourhood etc.

B Integrated Planning Act – Division 6 Tribunal process for appeals - Appeal Decision

Section 4.2.34(2)(e) of the Integrated Planning Act grants power to an Amenity and Aesthetics Tribunal to vary applications with the consent of the appellant. The legislation appears not to grant power to a local government to vary applications by conditioning decision notices especially on amenity and aesthetics matters.

C Integrated Planning Act – Division 6 – Conditions

Section 3.5.30.(1) of the Integrated Planning Act states that a condition must be relevant and not unreasonable etc.

D Site

The site is vacant and the preliminary application is for a relocatable house. The site is level and rectangular in shape.

E Development in the neighbourhood.

An inspection of the neighbourhood indicated a variety of:

- (a) both high and low set class 1 buildings
- (b) numerous class 10 buildings
- (c) modern and older style class 1 buildings
- (d) variety of materials

The adjoining property to the west was a modern low set brick set approximately 2 metres from the side boundary of the subject property.

From the rear of the subject site looking towards the east was a high set similar style house complete with battens around.

F Forms of buildings and Council policy

The local government representatives were unable to table a written policy on the forms of buildings, which the local government considered acceptable under their amenity aesthetics resolution.

Reasons for the Decision

After consideration of the verbal submissions from the Council representatives and then general discussion with the applicant and owners, it was agreed by all parties the following elements of the proposal required further consideration.

- 1 Bulk of the building.
- 2 Roof design and necessary roof framing changes.
- 3 Changes to wall heights to family room as a result of roof design .
- 4 Roof material and exposure to marine environment.
- 5 Car accommodation and access.
- 6 Laundry facilities and exposure to the elements.
- 7 Rear stair access and exposure to the elements.
- 8 Railings and compliance with the Building Code of Australia.
- 9 Front stair design and possible interference with vehicular access.
- 10 Landscaping and vehicular access.
- 11 Enclosure under the building – battening style and location.
- 12 Colour scheme.
- 13 Moving of the dwelling and completion times.
- 14 Bonds.
- 15 Heights above ground and use of area under the dwelling.

The owner agreed the proposal as submitted had been documented without proper consideration and required changes.

The applicant and owner agreed to incorporate the following changes:

- 1 Change the roof to the rear of the proposal from a gable to a hip design.
- 2 Use a colorbond roof material.
- 3 Battening set back from the perimeter of the dwelling.
- 4 Include a landscaping proposal.
- 5 Keep the clearance to underside of bearers to maximum of 2700mm.
- 6 Provide similar balustrading.
- 7 Pay a bond.
- 8 Complete the building work within 6 months.
- 9 Provide a detailed program for completion of the development.

The Council representatives agreed that if the above changes were incorporated then the proposal would **not** have an extreme adverse on the character of the buildings neighbourhood.

The Tribunal also agreed the amended proposal would **not** have an extreme adverse effect on the character of the buildings neighbourhood.

Hence, in accordance with section 4.2.34(2) (e) of the Integrated Planning Act the Tribunal with the consent of the applicant decided to vary the application and reverses the decision notice of the Gold Coast City Council to approve the application subject to the following conditions:

- 1 The class 1 building is sighted as shown on the submitted site plan.

- 2 The roof to the rear of the class 1 building is changed from a gable roof to a hip roof.
- 3 The class 1 building is fitted with a new colorbond roof.
- 4 The dimension from the ground level to the underside of bearers is not greater than 2700mm.
- 5 The class 1 building has battening to the four sides as follows:
 - (c) full height battening to the line of stumps one row in from the outer perimeter of the building; and
 - (d) arched battening directly under the bearer line to the outer perimeter of the building.
- 6 If the laundry is to be enclosed and located on the perimeter of the building then the length of the external wall shall be the same length as the external wall of the bathroom above.
- 7 If weather protection is to be provided to the rear stairs then the stairs to be relocated so that there is no solid enclosure to the perimeter of the building.
- 8 The dwelling to have a colour scheme using traditional “queenslander” colours.
- 9 The underside of the dwelling to have space for 2 car accommodation.
- 10 Consideration being given to the location and design of the front stairs to provide suitable car access.
- 11 A landscaping plan being prepared showing driveway, paths, planting, fencing and choice of materials etc.
- 12 All new railings to be similar in style to the existing railings. (Note: railings to comply with the Building Code of Australia).
- 13 Submission of a Cash Bond or Bank Guarantee to the amount of \$26,250 to the Gold Coast City Council which will be refunded when all conditions are satisfied.
- 14 The subject building work must be commenced within two (2) months and must be completed within (6) months of formal building approval being granted.
- 15 The owner being responsible for the preparation of a detailed work program commencing with the date the dwelling is to be removed from Hawthorne and ending on the date, when the building work as indicated on the formal building work, is completed. The program to indicate the commencement and completion dates for stages of the work to be undertaken by each principal contractor.
- 16 All other conditions as required by the Gold Coast City Council in
 - (e) General Information – House Removals and
 - (f) Conditions of Approval

form part of this approval.

Leo F Blumkie
Building and Development
Tribunal Chairperson
Date: 11 November 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 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 Local Government and Planning
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