



APPEAL
Integrated Planning Act 1997

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* (IPA) against the decision of Coastline Building Certification Group, based on a concurrence agency response from Gold Coast City Council, pursuant to Section 9 (a), Schedule 2, Table 1 of the *Integrated Planning Regulation 1998* (IPR), to impose conditions on a development application approval for a proposed detached garage/shed.

Date and Place of Hearing: 12.00pm Monday 21 January 2008 at “the subject site”.
Further written submissions of the various dates identified herein were received.

Tribunal: Mr Paul Smith Chairperson

Present: Applicant
Applicant’s representative
Mr Scott Oakes Coastline Building Certification Group
Mr Grant Harris Gold Coast City Council representative
Ms Sarah Kay Gold Coast City Council representative
Ms Sharon Boyce Gold Coast City Council representative

Decision

The Tribunal, in accordance with section 4.2.34 of the IPA, **changes** the decision of Coastline Building Certification Group, dated 4 December 2007 by:

- a) deleting the words “*Plan No. Sheet 1-2 prepared by Total Span dated 07*” under the heading “List of Approved Drawings” and substitute the following words:

“The three structural drawings prepared by Fredrick R Smith for Totalspan Buildings marked Job No TS4000, issued February 2007 and bearing the Coastline Building Certification Group Pty Ltd stamp, as amended by drawing NCD000/00, sheet 1 and 2 dated Feb 08 by Nerang Creative Design Pty Ltd showing a site plan and landscaping.”

b) deleting Council's concurrence agency condition No 1 forming part of Council's conditions of approval (namely "*The development shall be carried out generally in accordance with the plans submitted to Council (Plan No A and B Dated 27/11/07 Drawn by Un-named) as amended in red and returned with this decision notice, except where modified by the conditions of approval herein*") as set out in Council's letter dated 30 November 2007, and substituting the following new condition No 1:

"1. The development shall be carried out generally in accordance with the drawings NCD000/00, sheets 1 and 2 dated Feb 08 by Nerang Creative Design Pty Ltd showing a site plan and landscaping, except where modified by the conditions of approval herein" as attached.

Background

A development application, seeking a building permit for a detached garage/shed, was made to a private certifier; Coastline Building Certificate Group.

The application was approved by Decision Notice dated 4 December 2007 (Building Permit QB0710606).

Under the IPA, Council directed that a number of conditions be imposed, including condition No 1 to reduce the height of the building, measured to the top plate of the side external walls, from the proposed height of 4.8m to 3.6m. This is the only concurrence agency condition being appealed against.

In verbal submissions at the hearing, Council representatives advised to the effect that they were of the opinion that the size and bulk of the proposed building was of an industrial character inconsistent with the existing and likely future residential amenity and aesthetics of the area. Council was of the opinion that a reduced height would assist in reducing this adverse impact.

The appellant advised that the building was required to be of the proposed size and height to accommodate his boats, vehicles and other residential equipment.

The appellant was invited to, and did, submit revised plans showing the proposed floor level (relevant to the existing ground level) of the proposed development, the design and configuration of the driveway giving access to the shed, the approximate level of the access to the building and a landscaping plan.

Material Considered

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

1. 'Form 10 – Notice of Appeal' lodged with the Registrar on 19 December 2007 including grounds for appeal and correspondence accompanying the appeal;
2. Copies of plans showing details for shed and a site plan;
3. 'Form 18 – Notice of Election' from Gold Coast City Council;
4. Development Application Decision Notice from Coastline Building Certification Division, dated 4 December 2007;
5. Concurrence agency response from Gold Coast City Council dated 30 November 2007;
6. Verbal submission from the applicant at the hearing and a copy of written correspondence dated 20 March 2008;
7. Gold Coast City Council verbal submission at the hearing and a letter dated 4 March 2008 advising of the outcome of its review of the revised set of development plans;

8. The *Building Act 1975*;
9. The *Building Regulation 2006*;
10. The Queensland Development Code Part 12;
11. The *Integrated Planning Act 1997*;
12. The *Integrated Planning Regulation 1998*;
13. The Gold Coast City Council planning scheme.

Findings of Fact

The appeal was lodged with the Registrar within the prescribed timeframe.

Under Council's planning scheme, the proposed development is self-assessable. However, under the IPR Schedule 2, Table 1, the application requires referral to Council as a concurrence agency.

The subject land falls within the Gold Coast City Council area and is included in the "Park Living" domain in Council's planning scheme.

Council's jurisdiction is "*The amenity and aesthetic impact of the building or structure if the building work is carried out.*"

The applicant proposed to use the structure for ancillary residential purposes and further, because of the size of his boats, a height of 4.8m would be most appropriate for his use.

The proposed structure is visually of an industrial character and that its proposed location on the site, some 50m from the existing residence and elevated above the existing residence, would, if approved, adversely affect the amenity and aesthetics of the area as viewed from the street and that Council's proposed condition would assist in reducing this adverse effect.

Due to the excavation required to build the structure on the sloping land, it would not have had a significant adverse effect when viewed from the rear. With some additional landscaping, as offered by the appellant, it also will not have had a significant adverse effect when viewed from the sides.

Reasons for the Decision

One aspect of the proposal that the Tribunal believes significantly added to the adverse amenity and aesthetic effect of the building is its location. It was proposed to be located some 50m away from the existing residence which means it is elevated above the residence and would have been seen as a separate structure with no visual connectivity with the residence.

While the Tribunal accepts that the structure would have been a significant distance from the road and would have been partly obstructed by trees, it would have been partly visible from the road and from adjoining properties. It would have been viewed as a large industrial type shed dominating the landscape at the rear of the property. It would have been seen as having no visual relationship with the residence on the property.

The Tribunal formed the opinion that the adverse effect on the amenity and aesthetics of the area would be significantly reduced if the proposed building was moved down the hill and closer to the existing residence. If moved, it would visually connect with the residence, rather than appearing as a separate industrial character structure dominating the rear of the site. Secondly, it would lower the structure so as to be largely shielded from sight from the road and adjoining properties from the front of the site. The 20m proposed length of the building also adds to its industrial character.

The Tribunal has formed the opinion that the proposed development as proposed to be amended by the appellant on 20 March 2008 will not have unacceptable adverse impacts on the amenity and aesthetics of the area.

Paul Smith
Building and Development Tribunal Chairperson
Date: 31 March 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
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