



Building and Development Tribunals

Queensland Government

Department of **Local Government and Planning**

APPEAL

Integrated Planning Act 1997

File No. 03-05-007

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 refuse an application for relaxation of boundary setbacks on land described as Lot *withheld* and situated at “the subject site”.

Date and Place of Hearing: 4:00pm on Tuesday 24th February 2005
at the Building and Development Tribunal Offices, level 25,
41 George St, Brisbane

Tribunal: Mr Chris Schomburgk

Present: *withheld* - owner;
withheld – owner;
Ms Simone Boughen – Building and Development Tribunal office

Decision:

The decision of the Gold Coast City Council as contained in its written Decision Notice dated 25th January 2005, to refuse an application for relaxation of the rear (foreshore) boundary setback is **set aside and the application is approved.**

Material Considered

The material considered in arriving at this decision comprises:

- The application and supporting plans and documentation;
- Additional material provided by the applicant at the hearing;
- The relevant provisions of the Town Planning Scheme for Gold Coast City Council;
- The Queensland Development Code;
- Verbal submissions from the Applicants;
- Council’s Decision Notice dated 25th January 2005; and
- The Integrated Planning Act 1997.

Findings of Fact

I make the following findings of fact:

- The site comprises Lot *withheld*, with frontage to *withheld* Avenue at *withheld* and a rear “frontage” to *withheld* Parade.
- *withheld* Parade is an unformed esplanade to the rear (east) of the subject site.
- A new structure has been erected on the eastern side of the house and encroaches within the Council’s minimum setback from the Marine Parade boundary. A sea wall exists within the subject site, westward of the *withheld* Parade boundary, and extends north and south from the subject site along this stretch of the coastline for erosion protection measures. The sea wall in this part of the beach is constructed of large boulders and is referred to locally as the “A” line. Council’s Planning Scheme requires a minimum setback from this “A” line.
- The applicant advised she purchased the property with the existing house and balcony/verandah. Soon after her purchase, construction work on the property at “the subject site” allegedly caused cracking and disrepair to the existing balcony structure. She engaged a building inspector who advised that the balcony structure was not well built and that its recent decay meant that it needed to be replaced.
- The applicant and the builder have both provided testimony that the new structure was built no closer to the *withheld* Parade boundary (and thus no closer to the “A” line) than the previous structure.
- I was provided with photographic evidence that shows that the new structure has re-used some of the previous structure (the concrete bases of the supports).
- The existing house is raised above natural ground level on this side of the house and a set of stairs leads from the house floor level to the eastern ground level of the property. Those steps are made of concrete and/or tiles and extend beyond the line of the previous and new structure.
- The new structure has been surveyed and I was provided with a plan from Treasure and Associates (surveyors) that shows the new structure is 10.60m from the *withheld* Parade boundary at its northern end and 10.55m at its southern end. This equates to a setback from the “A” line of 7.87 m and 8.06m respectively.
- The Planning Scheme has, as a Performance Criterion (PC1) in its Code for Ocean Front Land, that:
 - All buildings and structures must be set back from the active dunal areas and/or the foreshore seawall line (A line) to enable:*
 - a) *protection of the foreshore seawall (boulder wall);*
 - b) *protection of the beachfront properties;*
 - c) *protection of the active dunal areas; and*
 - d) *access for emergency maintenance.*
- This Performance Criteria is supported by Acceptable Solution AS1, which provides:
 - The building and/or structure is set back:*
 - a) *not less than 8.1 metres from the foreshore seawall line (A line);*
 - b) *in accordance with the road frontage setback provisions of the relevant domain or LAP precinct.*
- The Council’s refusal of the application is based on the alleged non-compliance with PC1 (a) and (d), and AS1(a).
- As can be determined from the surveyor’s plan, the extent of non-compliance with the Acceptable Solution is minimal, being 0.23m at its northern end and 0.04m at its southern end.
- The “A” line is represented on the ground by a wall of large boulders. In my opinion, measurement from this line will necessarily lack the degree of precision sought to be achieved by the Council in this case.

- In such a case, it is appropriate to have regard to the Performance Criterion. In my opinion, neither the protection of the seawall, nor the accessibility for emergency maintenance will be compromised by the erection of this structure.
- The steps from the house to ground level pre-date the subject structure and will have intruded into this setback prior to the introduction of this Planning Scheme.
- The Council did not present any evidence to support their refusal, and in particular, did not provide any evidence to refute the claims by the owner about the extent of intrusion of the previous structure into the setback area.

Based on my assessment of these facts, it is my decision that **the appeal is upheld.**

Council's decision to refuse the siting application for a structure within the setback area **is set aside** and the **application is approved:**

Reasons for the Decision

- When assessing non-compliance with one or more Acceptable Solutions in a performance-based Planning Scheme Code, it is appropriate to have regard to the nature and extent of the non-compliance, and to the Performance Criterion to which the Acceptable Solution/s applies.
- In this case, the extent of non-compliance is minimal and the proposed structure will not compromise the achievement of the relevant Performance Criterion in the Code for Ocean Front Land.
- The seawall is not affected, and the area remains accessible for emergency maintenance.

Chris Schomburgk
Building and Development Tribunal General Referee
Date: 25th February 2005

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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