



Building and Development Tribunals

Queensland Government

Department of **Local Government and Planning**

APPEAL

Integrated Planning Act 1997

File No. 03-06-085

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 Preliminary Approval for Building Works – siting variation - on land situated at “the subject site”.

Date and Place of Hearing: 9:30am on Monday 9th October 2006
at “the subject site”.

Tribunal: Mr Chris Schomburgk

Present: “*Withheld*” – applicant;
Mr Roger Sharpe – Gold Coast City Council; and
Mr Patrick Giess – Gold Coast City Council.

Decision:

The decision of the Gold Coast City Council as contained in its written Decision Notice dated 15th August 2006, to refuse an application for relaxation of the boundary setback, is **set aside** and the application is **approved in part, subject to the following conditions:**

- i) The Bali hut is to be located no closer than 1.0m from the rear (waterfront) boundary.
- ii) The carport is to have open sides above the existing rendered block walls. “Open sides” for the purpose of this approval means a minimum of 50% of that space is to remain open. This may be achieved by timber (or other material) slats, provided the open spacing between slats (whether horizontal or vertical) is a minimum of 50% of the side area for each side.
- iii) This approval does not imply structural building approval, which may need to be required separately.
- iv) This approval does not imply approval for the stairs and landing that encroach into the canal area, which may need to be the subject of separate approval.

Material Considered

The material considered in arriving at this decision comprises:

- Building and Development Tribunal Appeal Notice – Form 10, supporting plans and documentation;
- The relevant provisions of the Town Planning Scheme for Gold Coast City Council;
- The Queensland Development Code (“QDC”);
- Council’s Decision Notice dated 15th August 2006; and
- The *Integrated Planning Act 1997*.

Findings of Fact

I make the following findings of fact:

- The site comprises “withheld” and is located at 56 “the subject site”.
- The subject application arises in response to a Show Cause Notice issued by the Council on 15th August, 2006. The Show Cause Notice alleged a breach of certain building provisions – specifically that a number of structures had been erected without approval. Those structures are:
 - i) A “Bali hut” built close to the waterfront boundary;
 - ii) A timber landing and stairs outside of the waterfront boundary (within the canal)
 - iii) A thatched roof over the front boundary wall; and
 - iv) The carport sides, which have been enclosed.
- The Council agreed, by its letter of 29th May 2006, to stay any further proceedings pending the outcome of a development application. The applicant then sought approval for each of these structures. In the event, the application was refused by Decision Notice dated 15th August 2006.
- At the hearing, which was held on site, it was acknowledged by the Council representatives that the Council did not have authority to decide the landing and stairs component of the application, as these were on “land” outside of the Council’s jurisdiction (the waterway). The remaining elements were then the subject of the hearing and of this decision.
- The Council’s refusal makes reference to specific provisions of the Planning Scheme, to which I have had regard in this decision.

The Bali Hut

- The hut is approximately 4m x 4m and approximately 3.7m high, with open sides and thatched grass roof over solid timber beams and rafters. It is currently erected to within 0.58m of the waterfront boundary. It emerged at the hearing that the hut is not “tied down” and sits on concrete pads that are able to be moved. The applicants explained that it was their intention to remove the structure if they ever sell the house.
- It was agreed between the parties on site that a setback of 1.0m would satisfy the council and could be achieved without major disruption to the back yard. It was also noted that the existing structure was probably not structurally sound, given that it was not properly tied down to the timber deck on which sits or to anything beneath the deck.

The Front Fence

- The owners have erected a timber framed structure with thatched grass roofing on top of the 2.0m high block wall fence for the length of the front (street) boundary. The rafters and grass encroach onto the road reserve by some small extent (approximately 0.5m). The overall impression is of a relatively solid structure up to about 3.5m high, which, coupled with the carport door built on the boundary and the solid timber gates adjacent to it, gives a dominating visual presence. There are no other similar structures along front boundaries in the immediate locality.

The Carport Sides

- Council has given separate approval for a carport built to the front boundary. The applicants have enclosed the two sides of the carport with a low block wall (approximately 1.0m high) with timber and glass above, to create an enclosed garage, in contravention of the carport approval.
- There are a number of other carports built to the front boundary within this locality, and while the Council has allowed solid doors or gates as entry, they have apparently consistently required open sides.

Based on my assessment of these facts and the material considered, and with particular regard to the specific provisions of the relevant Codes in the Planning Scheme, it is my decision that **the appeal is allowed in part.**

- **Council’s decision** to refuse the siting of the “Bali hut” is **set aside and the hut is approved** subject to a minimum setback of 1.0m from the waterfront boundary.
- **Council’s decision** to refuse the thatched roof over the front (street) boundary fence is **upheld and the structure is refused.**
- **Council’s decision to refuse the carport is set aside** and the **carport is approved subject to** the structure above the side rendered block walls being removed or changed to ensure that it a minimum of 50% of that space remains open. This may be achieved by timber (or other material) slats, provided the open spacing between slats (whether horizontal or vertical) is a minimum of 50% of the side area.

Conditions of Approval

- i) The Bali hut is to be located no closer than 1.0m from the rear (waterfront) boundary.
- ii) The carport is to have open sides above the existing rendered block walls. “Open sides” for the purpose of this approval means a minimum of 50% of that space is to remain open. This may be achieved by timber (or other material) slats, provided the open spacing between slats (whether horizontal or vertical) is a minimum of 50% of the side area for each side.
- iii) This approval does not imply structural building approval, which may need to be required separately.
- iv) This approval does not imply approval for the stairs and landing that encroach into the canal area, which may need to be the subject of separate approval.

Reasons for the Decision

- The Bali hut is an attractive but relatively imposing structure. While there are other similar huts on other waterfront properties in the locality, they are predominantly setback at least 1.0m (albeit with one or two exceptions). It is appropriate that such structures are setback from the boundary, in order to comply with the relevant Performance Criteria in the Planning Scheme.
- The structure atop the front (street) boundary fence creates a relatively high, solid street appearance for the whole of the front boundary. It is appropriate to reduce this impact in order to achieve the Performance Criteria in the Planning Scheme.
- The carport as constructed presents as a solid structure and is presently being used as a garage including storage, as opposed to the approved carport which is to be used for covered car accommodation only. The conditions requiring an open sided structure will help achieve the open streetscape as provided for in the relevant provisions of the Planning Scheme.

Chris Schomburgk
Building and Development Tribunal General Referee
Date: 14th October 2006

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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