



APPEAL
Integrated Planning Act 1997

File No. 3-07-024

BUILDING AND DEVELOPMENT TRIBUNAL - DECISION

Assessment Manager: Gold Coast City Council
Site Address: *withheld* - "the subject site"
Applicant: Michael Ross Certification

Nature of Appeal

Appeal against the decision of the Gold Coast City Council to refuse an application for the relocation of a class 1 building to be erected on "the subject site" on the grounds that '*The proposed house relocation will be in extreme conflict with the character of the locality*'.

Date and Place of Hearing: 2.00 pm on Wednesday 9 May 2007
at "the subject site"

Tribunal:	Steve Adams Phil Locke Dennis Leadbetter	Aesthetic Referee Aesthetic Referee Aesthetic Referee (Chairman)
Present:	Owner Mark Viska Guy Drake Dale Schroeder Sarah Kay	Michael Ross Certification Drake Homes Gold Coast City Council Gold Coast City Council

Decision

The decision of the Gold Coast City Council as contained in its letters dated 7 March 2007, reference BLD2702259, not to grant a preliminary building approval under councils '*Rural Domain Place Code*' to permit the erection of a relocation Class 1 building (dwelling) on "the subject site" is **set aside**.

The Tribunal found that the setback from the Walter Court alignment, which is 47.5 metres, complied with the *acceptable solution* as determined by Gold Coast City Council under item AS3 of Clause 5.3 of the Rural Domain Place Code, which states:-

All buildings are set back not less than 10 metres from the frontage and six metres from the side and rear boundaries of the site.

Therefore, no decision was required in relation to a siting determination as the proposal was compliant.

The applicant may erect the relocated class 1 building on the site subject to the following conditions:

- The building shall be of the nominal form and dimensions and be located generally in the position indicated on drawings, reference number 06/593 drawing numbers 01, 02, 03 and 04, (all amendment 01), as prepared by Graeme Moulston and Associates Pty Ltd;
- Handrails to be in compliance with the BCA having cognisance of the height of the dwelling's floor above ground level;
- Natural overland water flows shall be directed away from the excavated banks to prevent erosion;
- Bracing to the underfloor section to be detailed and certified by a RPEQ.

This approval is also conditional on compliance with all normal Local Government approvals, including, but not limited to, building approval and plumbing and drainage approval, as appropriate.

Background

The application was for preliminary building approval to relocate a removal dwelling and locate such removal house a minimum set back of 47 metres to "the subject site".

Council refused the application on the grounds that:-

The proposal house location will be in extreme conflict with the character of the locality.

Prior to the hearing the Gold Coast City Council provided a copy of Part 5 Division 2 Chapter 1, Domains Rural section of the Gold Coast City Council's planning scheme.

Material Considered

1. Form 10 – Building and Development Tribunal Appeal Notice and grounds of appeal contained therein;
2. Drawings attached to that appeal notice;
3. Letter from the Gold Coast City Council refusing the application, dated 7 March 2007;
4. Written submission from Michael Ross Certification Pty Ltd;
5. The Gold Coast City Council's Domains Rural planning scheme and Rural Domain Place Code;
6. The *Integrated Planning Regulation 1998*, Reprint 6A;
7. The *Building Act 1975*;
8. The nature of developments located on adjoining properties;
9. Photographs submitted by the applicant of the block and surrounding structures;

10. Additional drawings submitted post the hearing showing the additional material requested at the hearing.

Finding of Fact

The Tribunal made the following findings of fact:-

1. The site is a large block, area approximately 1.22 ha, located on the end of a cul de sac, with an approximate 14 metre, 2 chord frontage and the site is multi sided, but roughly quadrangular in shape.
2. The site has a significant fall to the rear (west) away from the road.
3. The site has stands of native vegetation, which are to be retained.
4. The neighbouring area is comprised of large allotments, to be expected in a rural zoning, and these had a range of building structures in a range of building materials, including brick, render, corrugated iron, and timber. Roof profiles also included gable, hip and skillion profiles.
5. The land is zoned Rural.
6. The site of the proposed relocation is 6 metres to the eastern side alignment of the site and there is a significant fall across the area to be occupied by the house.

Reason for the Decision

Gold Coast City Council's refusal was based solely on the opinion of an assessing officer that the building *would be in extreme conflict with the character of the locality*, based primarily on the skillion roof profile and external materials, of chamfer boards walls and corrugated iron roof.

Schedule 2, Item 15 of the *Integrated Planning Act 1998* states:

Application involving	Referral agency and type	Referral jurisdiction
Amenity and aesthetic impact of particular building work		
15 Building work for a building or structure if it is – <ol style="list-style-type: none"> (a) a single detached class 1 building or a class 10 building or structure; and (b) in a locality and of a form for which the local government has, by resolution, declared that the form may – <ol style="list-style-type: none"> (i) have an extremely adverse effect on the amenity, or likely amenity, of the locality; or (ii) be in extreme conflict with the character of the locality 	The local government – as a concurrence agency	The amenity and aesthetic impact of the building or structure if the building work is carried out

The Tribunal, after viewing structures in the reasonable vicinity, is of the opinion that the proposed structure,

- Is of a size, shape and constructed of materials consistent with other structures in the area and in contemporary use;
- After considering the additional information supplied, it will be in keeping with the existing amenity of the property and the surrounding properties; and
- It will not be in conflict with the character of the locality.

The Tribunal also considered the Gold Coast City Council's *Rural Domain Development Requirements*, in particular the Performance Criteria listed below, and found that the proposed development complied with the acceptable solution nominated by Council:-

Performance Requirement	Acceptable Solution
Development that is Self assessable, Code assessable or Impact assessable	
Building Height	
PC1 All buildings must be of a height which is in keeping with the predominantly rural character of the surrounding area. Building height must not result in a significant loss of visual amenity.	AS1 The building has a maximum of two storeys.
	Tribunal Determination The structure is single story, and its location will cause minimal impact on visual amenity because of the topography of the area.
Accommodation Density	
PC2 Accommodation density must be low to maintain and enhance the quality of rural landscape, farmland, natural landscape and the hinterland scenic backdrop.	AS2 The dwelling density does not exceed one detached dwelling per lot.
	Tribunal Determination The proposed development is a single detached dwelling.
Building setback	
PC3 All buildings must provide for setbacks from the street frontage and the side and rear boundaries of the site, which are appropriate for the: <ul style="list-style-type: none"> a.) efficient use of the site; b.) rural character of the area; c.) separation from neighbouring properties and from frontages to roads. 	AS3 All buildings are set back not less than ten metres from the frontage and six metres from the side and rear boundaries of the site
	Tribunal Determination The building is set back over 40 metres from the street alignment, 6 metres from the east alignment and 20 from the north alignment and approximately 100 metres from the western alignment. The proposed development exceeds the acceptable solution.

<p>PC4 All buildings must provide for setbacks from water courses/waterways which are appropriate to ensure that protection of water quality in those watercourses and riparian vegetation associated with those watercourses.</p>	<p>AS4 All buildings are set back not less than 30 metres from the tip of the high bank of a waterway as identified on Overlay Map 11. (Where no definable bank is present, the setback is to be measured from the normal water level).</p>
	<p>Tribunal Determination There is no watercourse on the site or bordering the site.</p>
<p>Vehicular Crossings</p>	
<p>PC5 Vehicular crossings associated with development must be designed and constructed to ensure:</p> <ul style="list-style-type: none"> a.) a safe footpath environment; b.) safe vehicular access to the property; c.) appropriate hydraulic performance for the stormwater infrastructure; d.) no damage to vehicle or road infrastructure; e.) minimal loss of on-street parking spaces; f.) continued amenity of the neighbourhood. 	<p>AS5 The vehicular crossing is provided and designed in accordance with Part 10, Division 1 – Standard Drawings:</p> <ul style="list-style-type: none"> • Drawing No. 59213 (Rural Access with pipe crossing); • Drawing No. 59217 (Driveway and verges low density residential); • Drawing No. 59218 (Driveways industrial, commercial and multi-residential). <p><i>Note: All vehicular crossings require an approval in accordance with Local Law No 11- Roads and Malls.</i></p>
	<p>Tribunal Determination The location had kerb and channel and it would seem reasonable that the appropriate crossover would be to drawing 59217 for low density residential, however it was noted that adjoining properties did not have such a crossover in place.</p>

Hence, in accordance with the provisions of Section 4.2.34 2(c) of the *Integrated Planning Act 1997* the Tribunal **sets aside** the decision of the Gold Coast City Council, contained in its letters dated 7 March 2007 not to grant preliminary building approval to erect a removal class 1 building on the site and allow the development.

Dennis Leadbetter

Dip. Arch. QUT; Grad. Dip. Proj. Man QUT; METM UQ.

Building and Development

Tribunal Chairperson

Date: 30 May 2007

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
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