



**Building and Development Tribunals**

**Queensland Government**

Department of **Local Government and Planning**

**APPEAL**

*Integrated Planning Act 1997*

**File No. 03-05-071**

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**BUILDING AND DEVELOPMENT TRIBUNAL - DECISION**

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**Assessment Manager:** Noosa Shire Council

**Site Address:** *withheld* - "the subject site"

**Applicant:** *withheld*

**Nature of Appeal**

Appeal under Section 21 of the *Standard Building Regulation 1993* against the deemed refusal of the Noosa Shire Council of an application for Building Works – siting variation - on land described as Lot *withheld* and situated at "the subject site".

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**Date and Place of Hearing:** 8:30am on Thursday 13<sup>th</sup> February 2006  
at Noosa Shire Council offices, 9 Pelican St, Tewantin

**Tribunal:** Mr Chris Schomburgk

**Present:** *withheld* – applicant;  
Mr Greg Jorgensen – Noosa Shire Council  
Mr Shane Adamson – Noosa Shire Council

**Decision:**

I **confirm** Noosa Shire Council's deemed refusal of an application for relaxation of the siting requirements (front boundary setback) for a carport and the appeal is **dismissed**.

**Material Considered**

The material considered in arriving at this decision comprises:

- The application and supporting plans and documentation;
- The relevant provisions of the Town Planning Scheme for Noosa Shire Council;
- Council's Decision Notice dated 23<sup>rd</sup> January 2006;
- A written statement of reasons provided by the Council officer;
- A written statement provided by the applicant, including a copy of a submission to the then-draft Noosa Shire Planning Scheme;
- The *Standard Building Regulation 1993*;
- The Queensland Development Code;
- The *Integrated Planning Act 1997*; and

- *Implementation Note 6* for the *Integrated Planning Act 1997* issued by the Department of Local Government and Planning and dated 22<sup>nd</sup> February 2006.

### **Findings of Fact**

I make the following findings of fact:

- The site comprises Lot *withheld* and is located at “the subject site”.
- The applicant lodged an application for siting variation relying on the procedures set out in the *Standard Building Regulation 1993* (“SBR”) section 20.
- The Council advised that the application was not properly made and required the lodgment of an application using the *Integrated Planning Act 1997* Integrated Development Assessment System (IPA, IDAS). The applicant complied with this request and an approval had subsequently issued under that process.
- At the hearing, it became evident that the issue in dispute was not so much the subject application, but the Council’s procedures relating to building siting provisions as contained in the Noosa Shire Planning Scheme. It is noteworthy that the Council’s Planning Scheme had just been superseded by an IPA-compliant Planning Scheme, which came into effect on the 3<sup>rd</sup> February 2006. The issues about process for siting requirements in the now-superseded Planning Scheme have been carried forward into the new Planning Scheme.
- It was made clear at the hearing that the role of the Tribunal was not to make or question local government policy, but to interpret it and make decisions based on that policy. By way of advice to both parties, however, I undertook to research the matter and to seek to offer some guidance to both parties to the extent of my jurisdiction.
- Subsequent to the hearing of this appeal, the Department of Local Government and Planning released an IPA Implementation Note No 6 dealing specifically with the issue at hand.
- A local government IPA-compliant Planning Scheme goes through a rigorous process of preparation, notification and adoption. A mandatory part of that process is a state government “sign-off” to ensure, inter alia, that “*there is an efficient, effective and accountable planning and development assessment system*” (Schedule 10 of IPA, definition of “state interest”). It must be assumed that that process has occurred for the Noosa Shire Planning Scheme.
- The DLGP Implementation Note makes it clear that a Planning Scheme may vary the siting and boundary clearance provisions of the SBR (now reflected in the QDC) and include the varied standards in the Planning Scheme. However, that Implementation Note also provides that local governments should not make a house (for example) assessable development under the Planning Scheme where alternative siting provisions are involved. Rather, the process under section 20 of the SBR to deal with alternative provisions should prevail.

Based on my assessment of these facts, it is my decision that **the appeal is dismissed. The subsequent Development Permit for variations to the siting requirements for a dwelling house is confirmed.**

### **Reasons for the Decision**

The now-superseded Planning Scheme made siting variations for a house assessable development under the Planning Scheme. Whether that is appropriate or not is not for this Tribunal to determine. A Planning Scheme is a statutory document under Queensland law.

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**Chris Schomburgk**  
**Building and Development Tribunal General Referee**  
**Date: 27<sup>th</sup> February 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:

The Registrar of Building and Development Tribunals  
Building Codes Queensland  
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