



## Building and Development Tribunals – Decision

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### *Integrated Planning Act 1997*

<b>Appeal Number:</b>	<b>3–09–001</b>
<b>Applicant:</b>	Mr Patrick Cavanagh
<b>Assessment Manager:</b>	Mr Darren Wright for and on behalf of Queensland Building Approvals
<b>Concurrence Agency:</b> (if applicable)	Gold Coast City Council ('Council')
<b>Site Address:</b>	1 Drysdale Place, Paradise Point and described as Lot 109 on RP126272 –the subject site

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### **Appeal**

Appeal under section 4.2.9 of the *Integrated Planning Act 1997* (IPA) against the decision of the assessment manager to refuse a development application for building work, namely Class 1 alterations and additions (storeroom) to an existing residence. The decision was based on a concurrence agency response issued by the Council.

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<b>Date of hearing:</b>	10.00 am – Thursday, 22 January 2009
<b>Place of hearing:</b>	The subject site
<b>Tribunal:</b>	Mr John Panaretos – Chair Mr David Whittaker – Member
<b>Present:</b>	Patrick Cavanagh – Applicant Darren Wright – Assessment Manager Wiremu Cherrington – Council representative Shailendra Singh – Council representative Brian Burrows – Gold Coast Water representative

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### **Decision:**

The Tribunal, in accordance with section 4.2.34 (2) (a) of the *Integrated Planning Act 1997* (IPA) **confirms** the decision appealed against and the appeal is dismissed.

### **Background**

The development application for building works was made to gain approval of an “as constructed” storeroom attached to an existing Class 1 dwelling.

The siting variation application was referred to Council for its response as a concurrence agency. Council, as contained in its concurrence agency response dated 21 November 2008, refused the siting variation application due to conflict in the siting of the storeroom. Council's reasons for refusal are as follows –

- a) Provisions of the Detached Dwelling Domain and the corresponding Place Code of the Gold Coast Planning Scheme;
- b) 9.0m x 9.0m corner setback provisions of the Queensland Development Code (QDC);
- c) 2.0m minimum setback requirement from a sewer main as applied by Gold Coast Water.

The assessment manager refused the development application for building works and issued a decision notice, dated 3 December 2008 as instructed by the Council. The applicant was dissatisfied with the decision and lodged an appeal with the Building and Development Tribunals on 7 January 2009.

Mr Burrows from Gold Coast Water clarified at the on-site hearing that a 2.0m clearance is normally required from sewer mains. Reduction down to 1.0m may be considered where circumstances justify an alternative solution. However, access for maintenance purposes is important.

Enquiries by the Tribunal subsequent to the hearing have revealed that the building development application followed the issue of a Show Cause Notice (dated 5 June 2008) and an Enforcement Notice (dated 9 October 2008) by the Council. Both notices related to the "as constructed" storeroom. This information was not submitted with the application and is not subject to the appeal.

### **Material Considered**

The material considered in arriving at this decision comprises:

1. The application, including 'Form 10 – Notice of Appeal', lodged with the Registrar on 7 January 2009, statement of grounds for appeal (includes a letter from the applicant with an attached petition);
2. Decision notice refusal issued by the assessment manager, dated 3 December 2008;
3. Concurrence agency response from Council, dated 21 November 2008;
4. Development application Form 1 Parts A & B and drawings A1.0, A1.1a, A1.2, A1.4 and Sheet 5 of 5 prepared by AA Drafting Services;
5. Verbal submissions by the applicant, the assessment manager and representatives of Council and Gold Coast Water;
6. The Gold Coast Planning Scheme 2003, including Policy 11 Land Development Guidelines;
7. Parts MP 1.2 and NMP 1.4 of the QDC;
8. The IPA;
9. The *Building Act 1975*.

### **Findings of Fact**

The Tribunal makes the following findings of fact:

- Plans submitted to the Tribunal show that the storeroom is set back approximately 1.2m from the street frontage of Drysdale Place and approximately 3.4 metres from the Abalone Avenue alignment.
- The extension is 3.0m x 6.525m with a floor area of approximately 19.5m<sup>2</sup>, the walls ranging in height from 2.0m to 2.25m.
- The storeroom only slightly intrudes into the 9.0m x 9.0m truncation at the corner of the road frontages as shown in Figure 3 of Acceptable Solution A1 of the QDC MP1.2 – Design and Siting Standard for Single Detached Housing – on Lots 450m<sup>2</sup> and over.
- The storeroom is completely enclosed and can not be classified as a carport under the provisions of

the QDC MP1.2 – Design and Siting Standard for Single Detached Housing – on Lots 450m<sup>2</sup> and over.

- The storeroom has been erected on a previously constructed concrete slab. This slab extends from the end of the carport of the existing residence to the 1.8 m high masonry fence on the boundary. Hence the footings may be considered to be nominal. The light weight construction of the storeroom plus the distribution of its weight by the concrete slab would impose a negligible load on the sewer. There has been no construction of bored piers or piles as set out in Acceptable Solution A1 (d) of the QDC NMP 1.4 – Excavation and Piling Near Sewers, Stormwater Drains & Water Mains.
- The storeroom has a skillion, metal, 3<sup>0</sup> pitch roof with no eaves. This is inconsistent with the pitched, tiled roof with eaves of the existing residence.
- The storeroom has been clad externally with fibre cement (FC) sheets. The applicant advised that he intended to install dark windows and render and paint the FC sheets to match the existing residence. On the western wall of the storeroom, these sheets were out of alignment with the existing masonry columns to which the wall was attached. The internal walls of the storeroom were not sheeted.
- Documents presented by the applicant included expressions of support, or at least ‘no objection’ from residents of four nearby properties.

### **Reasons for the Decision**

- The proposal is Exempt Development under the Gold Coast Planning Scheme. Thus the provisions of the Detached Dwelling Domain do not apply. Hence, the setback provisions of the QDC MP1.2 are applicable.
- For the purposes of the QDC, the subject site is a corner site at the intersection of Abalone Avenue and Drysdale Place with an average depth narrower than 24m. Based on Acceptable Solution A1(b), required road setbacks were calculated at 6.0m and 3.0m. These setbacks correspond with the setbacks of the approved, existing building from Abalone Avenue and Drysdale Place respectively. Any departure from these setbacks is required to be assessed against Performance Criteria P1 of MP1.2.
- The extension does not facilitate an acceptable streetscape, appropriate to the road boundary setbacks of neighbouring buildings. The location of the storeroom on the street corner makes it highly visible in the streetscape even though it is partly hidden by the 1.8m high fence.
- The style of construction of the storeroom clashes with that of the existing and adjacent residences.
- The storeroom does not comply with the provisions of Acceptable Solutions A1 (a) and (d) of QDC NMP 1.4 – Excavation and Piling Near Sewers, Stormwater Drains & Water Mains nor the provisions of Gold Coast City Council Policy 11 Land Development Guidelines Section 7.7 Building Near or Over Council Water, Sewer and/or Stormwater Services. The Tribunal accepted that the weight of the structure was unlikely to impact on the sewer main but no evidence was adduced that maintenance access would not be compromised.

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**John Panaretos**  
**Building and Development Tribunal Chair**  
**Date: 12 February 2009**

## **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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