



**APPEAL**  
*Integrated Planning Act 1997*

**File No. 03/05/044**

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## **BUILDING AND DEVELOPMENT TRIBUNAL - DECISION**

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**Assessment Manager:** Toowoomba City Council  
**Site Address:** *withheld* – “the subject site”  
**Applicant:** *withheld*

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### **Nature of Appeal**

Appeal under Section 21 of the Standard Building Regulation 1993 against the decision of the Toowoomba City Council to refuse an application for a siting concession for a garage already partly constructed on land described as Lot *withheld*, situated at “the subject site”, together with an appeal under Section 4.2.13 of the Integrated Planning Act 1997 against the issuing of an enforcement notice relating to reducing the height of the partly constructed building.

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**Date and Place of Hearing:** 10.30am, Tuesday 9 August 2005  
at “the subject site”.

**Tribunal:** Geoff Cornish

**Present:** *withheld* - Applicant  
*withheld* – Joint owner of property  
Mark McKechnie – Building Certifier from qpdb pty ltd  
Bob Orr – A/Senior Building Surveyor, Toowoomba City Council  
Peter Keane – Principal Engineer Strategic Planning, Toowoomba  
City Council

### **Decision**

In accordance with Section 4.2.34 [2] of the Integrated Planning Act 1997, I hereby set aside the decisions of Toowoomba City Council

- a) to refuse an application for a siting variation to enable the construction of an over height garage within the prescribed rear boundary setback of Lot *withheld*, situated at “the subject site”; and
- b) to issue an enforcement notice to reduce the height of the building to conform with the requirements of Part 12 A2 (d)(i) of the Queensland Development Code;

and direct that

- 1) the rear (northern) wall of the partly erected garage be reduced in height so that its mean height measured above natural ground level does not exceed 3.5 metres; and
- 2) that the end walls of the garage and the pitch of the roof within 1.5 metres of the rear boundary be modified so as to transition smoothly between the reduced height of the rear wall and the existing roofline of the building at a point 1.5 metres from the rear boundary.

### **Background**

The matter concerns a decision by Toowoomba City Council to refuse to grant a variation of the height provisions of Part 12 A2 (d)(i) of the QDC to enable the validation of a partly constructed over height garage and also to require the existing structure to be brought into compliance with the requirements of the Code. The applicant believed he had already obtained the necessary approval of the Council for the building as erected, resulting from a previous application for a siting variation.

### **Material Considered**

1. Letter of application from FIMA & Associates to Toowoomba City Council, dated 17.9.04, on behalf of the applicant seeking a siting variation for the garage to be located on the rear (northern) boundary of the property.
2. Letter of approval for a siting variation, dated 25.10.04 and issued by Toowoomba City Council, to enable a garage to be erected on the rear (northern) boundary of the property.
3. A Decision Notice issued by FIMA & Associates dated 13.12.04 giving a Development Permit for the carrying out of Building Work.
4. A Show Cause Notice issued by Toowoomba City Council, dated 8.6.05, requiring a cessation of work and the bringing of the garage into compliance with the height provisions of the QDC.
5. Letter of application from qpdb Pty Ltd, on behalf of the applicant, to Toowoomba City Council dated 11.6.05 requesting approval for variations of the siting provisions of the Code in respect of the height of the rear wall of the partly constructed garage and the heights of fences to be constructed to the northern and western boundaries of the property.
6. Letter from Toowoomba City Council to qpdb Pty Ltd dated 21.7.05 refusing the application for siting variations.
7. Enforcement Notice issued by Toowoomba City Council dated 25.7.05 requiring the height of the northern wall of the garage be reduced to comply with the siting provisions of the Code.
8. Notice of appeal dated 28.7.05 against the decision of Council to refuse the application for siting variations and the issuing of the Enforcement Notice.
9. Letter dated 28.7.05 from qpdb Pty Ltd in support of the applicant's appeal and setting out reasons for the appeal.

10. Letter dated 1.8.05 from qpdb pty ltd submitting the appeal on behalf of the applicant.
11. Verbal submissions by the applicant, his wife and his consultant building certifier on 9 August 2005 setting out why the appeal should be allowed.
12. Verbal submissions by Bob Orr and Peter Keane of Toowoomba City Council on 9 August 2005 setting out why Council had not granted a siting concession for the garage and why the appeal should not be allowed.
13. Building Act 1975.
14. Standard Building Regulation 1993.
15. Queensland Development Code Part 12
16. Integrated Planning Act 1997

### **Findings of Fact**

I made the following findings of fact:

1. The original application for a siting variation for the garage included the submission of certain plans and elevations, but neither the applicant nor the Council could verify that these plans actually included elevations of the proposed garage and its requirement to exceed the height provisions of the Code.
2. The plans held by Council as part of the application included elevations only of the dwelling and only a floor plan of the detached garage. The floor plan indicated that the garage would exceed 9 metres in length along the rear (northern) boundary of the site and Council approved this variation as shown on the plan.
3. The Council file contained no reference to any application for a height variation in respect of the garage wall.
4. The applicant was unable to provide any documentary evidence showing that the initial application made to Council contained either elevations of the garage or any request for a height variation for the rear of the building, notwithstanding that the plans prepared for the building at that stage showed a garage wall height of 3.3 metres and the garage sited on fill retained by a 600mm high retaining wall.
5. The applicant's private certifier, in receiving the approval of Council for a siting variation, proceeded to issue a Decision Notice permitting building work to commence on both the dwelling and the garage in the belief that the siting variation included approval for the height of the rear wall of the garage.
6. The issue of the over height nature of the garage came to the attention of the Council in relation to a proposed subdivision of the adjoining property to the immediate north of the garage.

7. In addition to the over height nature of the originally proposed garage, changes have become necessary on site for constructional reasons to increase both the height of the retaining wall and fill on which the garage is sited and the height of the garage wall itself due to altered structural detailing because of the depth of fill. These changes have further increased the mean height of the garage wall above natural ground level.
8. A Show Cause Notice was issued by Council when it became aware of the height problem.
9. The applicant's private certifier submitted a further siting variation application to Council in an attempt to resolve the issue, but this application was refused by Council who then proceeded to issue an Enforcement Notice to have the height of the structure reduced to comply with the Code provisions.
10. The application submitted in 9 above brought into account, for the first time, the proposed side and rear fences exceeding a height of 2 metres above natural ground level as permitted by the Code. By agreement between the parties this aspect of the appeal has been withdrawn and will be approved separately by Council subject to the agreement of the owner of the adjoining property to the west. Council has accepted the increased height of the proposed fence on the northern boundary adjoining its property.
11. The private certifier, qpdb pty ltd, is the natural successor to the initial certifying authority FIMA & Associates Pty Ltd.

### **Reasons for the Decision**

After assessing the facts and the submissions of the parties, I have reached the following conclusions:

- An application for an increase in height of the garage in relation to natural ground level at the northern boundary of the site was probably intended to be part of the initial application to Council but appears to have been inadvertently overlooked in the making of that application.
- It is unlikely that, had the Council been made aware of the height implications of the garage on the northern boundary of the allotment at the time of the initial application, a siting variation would have been approved including such a height increase.
- The problem has been compounded by the increased height of fill at the north western corner of the allotment and the resultant increase in retaining wall height. This has required changes to structural detailing of the walls of the garage that have increased the wall heights even further.
- Due to the standard size of allotments in the proposed subdivision to the north, the combined height and length of the garage wall will have an impact upon the immediately adjoining allotment.
- The applicant's desire to have a garage of this internal height to house both his boat and other work equipment is acknowledged, but the increased height is not necessary over the full extent of the floor area of the garage.

- The applicant's requirements can be accommodated by retaining the length of the wall, whilst at the same time reducing its mean height above natural ground level at the boundary so as not to exceed 3.5 metres. This would require the shape of the end walls of the garage, together with the pitch of that portion of the roof within 1.5 metres of the northern boundary, to be amended so as to transition smoothly between the modified northern wall height and the existing roof profile at a point 1.5 metres from the northern boundary. This will still result in that part of the roof structure within 1.5 metres of the rear boundary exceeding the 3.5 metre height provision of the Code, but this is considered to be an acceptable outcome given the immediate reduction in impact upon the adjoining property and retention of the majority of the ceiling height within the building.

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**G.S.Cornish**  
**Building and Development**  
**Tribunal Referee**  
**Date: 16 August 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:

The Registrar of Building and Development Tribunals  
Building Codes Queensland  
Department of Local Government and Planning  
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