



## Building and Development Tribunals—Decision

---

### *Integrated Planning Act 1997*

**Appeal Number:** 3—08—083

**Applicant:** Cristian Travis Walker

**Assessment Manager:** Mr Troy Ellerman for and on behalf of Innovative Building Certifiers

**Concurrence Agency:** Gold Coast City Council – ‘Council’  
(if applicable)

**Site Address:** 12 Balmoral Avenue, Bundall – ‘the subject site’

---

### Appeal

Appeal under section 4.2.9(1)(a) of the *Integrated Planning Act 1997* (IPA) against the decision of the assessment manager to refuse a Development Application for Building Work, namely construction of a Class 10 carport and renovations to an existing Class 1 building.

---

**Date of hearing:** (1) - Thursday, 18 December 2008  
(2) – Wednesday, 6 May 2009

**Place of hearing:** The subject site  
(1) – The subject site  
(2) – held by teleconference

**Tribunal:** Mr Paul Smith – Chair  
Mr Jim Graham – General Referee

**Present at the on site hearing:** Mr Paul Smith  
Mr Jim Graham  
Cristian Walker - Applicant

**Present at the teleconference:** Mr Paul Smith  
Troy Ellerman – Assessment Manager

---

### Decision:

The Tribunal, in accordance with section 4.2.34 of the IPA, **sets aside** the decision of the Assessment Manager to refuse a building development application for an open carport located over a Council sewer on the basis of the concurrence agency response from Gold Coast City Council.

The Tribunal **directs** the Assessment Manager to assess and decide the development application as amended including the following amended plans on the basis that the concurrence agency does not require the application to be refused or conditions to be imposed.

### **Amended Plans to form part of the application to be assessed and decided**

<b>Plan / Document Number</b>	<b>Plan / Document Name</b>	<b>Date</b>
Sheet 4 of 8 issue H	Footings and Slab Plan with the accurately located and dimensioned sewer main by a licensed surveyor	2/11/2007
Sheet 5 of 8 issue E	Sewer Bridging Details and Section showing footings one (1) metre clear of the sewer	2/10/2008
Sheet 6 of 8 issue E	Footings and Slab Details The masonry fence detail as approved by Gold Coast Water	2/11/2007

### **Background**

The application was for the erection of an open carport, gate house and masonry fences in front of an existing house. The carport was proposed to be erected up to the front road alignment. Council's sewer is located within the boundary of the site and would be bridged by the carport and other structures if approved.

Council as a concurrence agency approved the necessary boundary clearance relaxation, but on advice from its business unit; Gold Coast Water, directed the assessment manager to refuse the application.

Council directed that the application be refused because, in the opinion of Gold Coast Water, insufficient information concerning the location of the sewer and the footing details was provided to enable it to decide whether the proposed structures would damage the sewer.

Gold Coast Water requested:

- accurately located and dimensioned sewer main by a licensed surveyor be shown;
- bridging details showing footings one (1) metre clear of the sewer be shown; and
- the masonry fence detail be shown where the fence bridges the sewer.

During without prejudice discussions between the parties the applicant agreed to provide the information sought by Gold Coast Water.

The plans submitted for approval were amended accordingly and Council consented to the tribunal setting aside the decision appealed against for the application to be approved without conditions.

### **Material Considered**

The material considered in arriving at this decision comprises:

1. 'Form 10 – Appeal Notice', grounds for appeal and correspondence accompanying the appeal lodged with the Registrar on 2 December 2008
2. Gold Coast Water's written submission dated 17 December 2008.
3. Oral submissions from the parties at the hearing.
4. Various correspondence including letters and emails to the senior registrar including:
  - Email from the applicant 11 February 2009.

- Letter from Assessment Manager to Gold Coast Water 17 February 2009.
- Letter from Gold Coast Water to assessment manager 3 March 2009.
- Letter from the concurrence agency 6 April 2009;
- Email from the concurrence agency 28 April 2009;
- Email from the assessment manager 30 April 2009;
- Email from the concurrence agency 5 May 2009.

### **Findings of Fact**

The only issue in dispute in this appeal was the location of the proposed open carport and other structures that formed part of the application in relation to council's sewer.

There are not reasonable alternative locations on the site for the proposed development which does not involve the bridging of Council's sewer.

The proposed development is a reasonable and appropriate use of the site.

### **Reasons for the Decision**

The proposed development is unlikely to have an adverse effect on Council's sewer if constructed in accordance with the amended plans submitted by the applicant's engineers following without prejudice discussions with Gold Coast Water.

---

**Paul Smith**  
**Building and Development Tribunal Chair**  
**Date: 16 June 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  
Building Codes Queensland  
Department of Infrastructure and Planning  
PO Box 15009  
CITY EAST QLD 4002  
**Telephone (07) 3237 0403 Facsimile (07) 3237 1248**