



## Building and Development Tribunals – Decision

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### *Integrated Planning Act 1997*

<b>Appeal Number:</b>	<b>3–08–061</b>
<b>Applicant:</b>	Lorraine & Jakob Brunner
<b>Assessment Manager:</b>	Mr Gerard Van Eyk for and on behalf of Accord Building Certifiers
<b>Concurrence Agency:</b> (if applicable)	Gold Coast City Council
<b>Site Address:</b>	51 Cotlew Street, Southport and described as Lot 238 RP140755–‘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 Accord Building Certifiers to refuse a Development Application for Building Work, namely a Class 10a carport.

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<b>Date of hearing:</b>	3pm – Thursday 18 September 2008
<b>Place of hearing:</b>	The subject site
<b>Tribunal:</b>	Mr John Panaretos – Chair Ms Greg Rust – General Referee
<b>Present:</b>	Lorraine Brunner – Applicant Gerard Van Eyk – Accord Building Certifiers representative, private certifier Graham Meyer – Eco Projects and Developments, Builder

Gold Coast City Council was not represented at the hearing, instead opting to lodge a written submission.

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### **Decision**

The Tribunal, in accordance with 4.2.34(2)(c) of the IPA, **sets aside** the decision of the Assessment Manager dated 14 August 2008 to refuse the development application, and replaces it with the following decision.

The Assessment Manager is **directed** to reassess and decide the development application, subject to compliance with all other relevant building assessment provisions, and including the following condition:-

The re-application is made in accordance with plans drawn by Peter Jess and Partners Project No. 1.10.794 and endorsed by Gold Coast City Council on 19 September 2007 (Ref No. 27/03986) and subject to submission of detail construction plans as required by the private certifier.

## Background

The application was for the construction of a Class 10a carport over an existing driveway sloping up from the street alignment at front of an existing dwelling. The structure has a two level roof, is integrated with the front boundary wall, fitted with an open slat garage door, straddles a sewer main and has been built prior to determination of the application.

Council as the Concurrence Agency advised that the application can not be approved as the details of the proposal conflict with conditions of a preliminary building approval it issued on 19 September 2007. The preliminary approval modifies the provisions of Part 5 Division 2 Chapter 4 of the Gold Coast Planning Scheme 2003 "...to permit the erection of a carport at a minimum distance of zero metres to the outermost projection from the Cotlew Street road front property boundary." subject to conditions including:

- i) Condition 2, compliance with Australian Standard AS/NZS 2890.1:2004 Part 1; and
- ii) Condition 8, a vehicle crossing permit to be issued before the development approval for building work.

The driveway, which now constitutes the floor of the carport, does not comply with the maximum car park and driveway gradients prescribed by AS/NZS 2890.1:2004. Council has advised that neither it nor the tribunal have the power to relax the standard, or modify the condition and approve the building work application in the absence of an application for a fresh Material Change of Use Application. Ostensibly, issuing the approval for building work would offend s 3.1.5(1) of the IPA.

Council also refers to Acceptable Solution AS3.1 of Part 7 Division 3 Chapter 4 of the planning scheme, the Car Parking, Access and Transport Integration Code, which also requires compliance with Australian Standard AS2890.1.

The maximum gradients permitted by the Australian Standard are specified in Sections 2.6.2 and 2.4.6, as follows:

- i) *The maximum gradient of domestic driveways shall be 1 in 4 (25%)...*
- ii) *The maximum gradient of the associated access driveway across a property line or building alignment shall be 1 in 20 (5%)...*
- iii) *The maximum gradients within a parking module...shall be...:*
  - (a) *Measured parallel to the angle of parking – 1 in 20 (5%)*
  - (b) *Measured in any other direction – 1 in 16 (6.25%)*

By comparison, the gradient of the 'as constructed' carport, as shown on submitted plans, increases from 7% in the section abutting the house to 20% at the front alignment.

In contrast to AS2890.1, MP 1.2 of the Queensland Development Code (QDC) apparently accepts carport grades up to 1 in 5 or 20% - see Acceptable Solution A1(c).

Finally, Council has refused to issue a crossover permit until the approval for building work is issued by the assessment manager. Since work on the crossover has been stopped, the construction site has been cordoned off from pedestrians for many months blocking the footpath. Pedestrians are currently forced to skirt around the crossover works by walking on the busy carriageway.

## Material Considered

The material considered in arriving at this decision comprises:

1. The application, including 'Form 10 – Notice of Appeal' lodged 28 August 2008, statement of grounds for appeal, Decision Notice issued by the assessment manager, original and modified plans drafted by Peter Jess and Partners and the plans stamped approved by Gold Coast Water for building near or over council services;
2. 'Form 8 – Notice of Election' dated 11 September 2008 and received by the Registrar on 15 September 2008;

3. Email correspondence between the applicant and building certifier submitted by the applicant;
4. Preliminary Approval modifying Part 5 Division 2 Chapter 4 of the Gold Coast Planning Scheme 2003 issued by Council;
5. Covering letter issued by assessment manager to accompany the Decision Notice, listing the reasons for refusal;
6. Email between assessment manager and the Tribunal correcting an error in the issue date to the Decision Notice;
7. Submission from Council dated 18 September 2008 clarifying the reasons for its position, provided to the parties before and after the hearing;
8. Verbal submissions from the applicant and the assessment manager at the on-site hearing;
9. Request to change or cancel condition of a Preliminary Approval to Council dated 16 May 2008 on behalf of the applicant;
10. Submissions from the applicant received by the Registrar 20 and 23 September 2008;
11. Submission from Council received by the Registrar 22 September 2008;
12. Submission from the assessment manager dated 23 September 2008 in response to Council's submission;
13. Various relevant parts of the Gold Coast Planning Scheme;
14. The QDC – Part MP1.2;
15. The IPA; and
16. The Integrated Planning Regulation 1998.

### **Findings of Fact**

The Tribunal makes the following findings of fact:

#### Planning Framework

- Council contends that the application is assessable against the provisions of the Detached Dwelling Domain of the Gold Coast Planning Scheme. Part 5, Division 1 Chapter 2 Section 4.5 requires that, to trigger assessment against the scheme, building work must be associated with a Material Change of Use (MCU). Building work not associated with a MCU is expressly excluded from assessment against the scheme.
- The site is located in the Detached Dwelling Domain. The Table of Development for that domain lists Detached Dwellings as Self Assessable against the Detached Dwelling Domain Code except where the proposed work is a Minor Change in the scale or intensity of an existing lawful use. In such circumstances, the work is also Exempt, thus not assessable against the scheme. In this case, if the work does constitute or is associated with a MCU, it satisfies the definition of Minor Change in that the change in the intensity or scale of the use does not exceed the parameters prescribed by the definition of Minor Change. Note that the increase in floor space does not constitute an increase in "...total use area;"
- Hence, the current proposal stands independent of the preliminary approval. It is Exempt from assessment against the planning scheme, assessable only against the siting requirements of the QDC. In such circumstances, it is open for the Building and Development Tribunal to make a determination in this matter.

#### QDC

- As the site is larger than 450m<sup>2</sup>, MP1.2 of the QDC applies;
- Acceptable Solution A1 allows a zero front setback to an open carport, where there is no acceptable alternative location for a carport on site. The proposal satisfies the requirements of the acceptable solution;

## Sewer Main

- By plans stamped 11 September 2007, Gold Coast Water has endorsed the proposal;

### **Reasons for the Decision**

1. The application is Exempt Development under the Gold Coast Planning Scheme and thus independent of the previous Preliminary Approval cited by Council;
2. The proposal satisfies Acceptable Solution A1 of the QDC;
3. Gold Coast Water has endorsed the plans and thus offers no objection;
4. It is in the interests of the Gold Coast community that the matter be determined expeditiously so that work on the crossover can be finalized to reopen the footpath which is within 30 metres of a bus stop.

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**John Panaretos**  
**Building and Development Tribunal Chair**  
**Date: 6 October 2008**

## **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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Department of Infrastructure and Planning  
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