



## Building and Development Tribunals – Decision

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### *Integrated Planning Act 1997*

<b>Appeal Number:</b>	<b>3–08–038</b>
<b>Applicant:</b>	<i>withheld</i>
<b>Assessment Manager:</b>	Geoffrey R Mitchell for and on behalf of GMA Certification Group P/L
<b>Concurrence Agency:</b> (if applicable)	Gold Coast City Council
<b>Site Address:</b>	<i>withheld</i> —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 issued on 22 May 2008 to refuse an application for Building Development Approval (Ref Number 20087355) for additions to an existing Class 10a Outbuilding on the subject site, as directed by Gold Coast City Council's concurrence agency response of 20 September 2008 (Ref Number BLD:2714678).

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<b>Date of hearing:</b>	9.10am – Friday, 20 June 2008
<b>Place of hearing:</b>	The subject site
<b>Tribunal:</b>	Greg Schonfelder – Chair Jennifer Neales – Member
<b>Present:</b>	Applicants Mr Wiremu NK Cherrington - Gold Coast City Council representative Ms Tanya Smith - Building Certifier, GMA Certification Group <i>withheld</i> - Adjoining landowner

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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 22 May 2008 to refuse the building development application, and replaces it with the following decision.

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

- the addition to the existing shed being the “as built” Class 10a carport to the rear of the existing shed can be sited at a distance of .20 m from the southern boundary;

- the addition to the existing shed being the “as built” Class 10a extension to the side can be sited at a distance of 1 m from the western boundary;
- the two Class 10b rainwater tanks located either side of the shed extension can be sited approximately 1 m from the western boundary;
- the existing building development approval shall be amended or a new building development approval be applied for to cover the additions to the existing shed, rainwater tanks and the retaining wall/fence along the western boundary;
- a blockwork retaining wall to be constructed along the western boundary, from the south-west corner of the property to join up with the existing brick retaining wall;
- a new 1.8 m high timber paling boundary fence to be constructed on top of the blockwork retaining wall equal to the length of the tennis court. The construction of this fence should meet the requirements of the pool fencing standards where adjacent to the swimming pool;
- the northern wall of the existing shed shall be painted a colour of similar shade to colourbond “Wilderness”;
- landscaping to be carried out in the existing retaining wall terraces on the northern side of the shed as follows - terraces to be excavated and backfilled with topsoil to a minimum depth of 500 mm for a minimum distance of 4 m from the western property boundary. Terraces to be planted with screening plants which will grow to a height of 3 to 4 m (suitable species include Lilypillly and/or Golden Cane). Plants are to be a minimum of 1.5 m height at installation and be spaced maximum 1 m apart;
- landscaping to be carried out to the west of the open carport in the south west corner of the property as follows - provision of minimum 300 mm depth topsoil and screening plans which will grow to a height of 5 – 6 m (suitable species include Lilypillly). Plants are to be a minimum of 1.5 m height at installation and be spaced maximum 1.5 m apart.

**(Note: please refer to the attached drawing for further details of conditions).**

## **Background**

The Applicants explained the need for the original building development approval to be amended and the basis for their appeal in that:

- a contract was entered into in 2006 with Total Span Gold Coast for a large storage shed to house boats and equipment. This shed is 4.2 m in height and subject to Council’s Amenity and Aesthetics (A&A) approval was sited 3 m from the side and rear boundary;
- changes were made to the original design and approval with a lean to carport at the rear to house an additional boat and the main part of the shed was extended closer to the side boundary to accommodate the 14 m mast;
- it was acknowledged that the carport and the additional length to the main shed do not have a building approval. Also the rainwater tanks which were not shown on the original plans are too high in their current location;
- they do not believe that the additions to the existing shed increase the bulk and visual intrusion, especially as they have been advised by Council that the carport could be constructed on the other side of the main shed subject to an amendment to the A&A approval because of the additional floor area only;
- some existing landscaping had been removed for the construction of the shed;
- to complete the shed the rendered wall to the north is to be painted a “paperbark” (light cream) colour and the façade to the open side (east) is to be filled in.

Council responded to its refusal in that:

- the original A&A application was made because the floor area of the shed exceeded 50 m<sup>2</sup> and this was approved in November 2006;
- it became involved through a complaint about the construction of the shed and as a result of an inspection the building work did not comply with both the Local Government Approval and the Building Development Approval;
- the further application made to Council for an approval of the siting of the additions to the existing shed was refused in September 2007. The main reasons put forward in its Concurrence Agency Response were:
  - effective separation has not been achieved;
  - the additions are bulky and visually intrusive to the adjoining properties; and
  - the accumulation development has diminished the local character of the area.

Further information is contained in Council's written submission can be summarised as follows:

- the Applicants carried out illegal additions to an existing Class 10 building located on the site. The existing shed complied with the required three metre side and rear setback and the height restrictions imposed by the Nerang Local Area Plan. During the assessment of the original application Council officers acknowledged the bulkiness of the original application but were satisfied that the siting of the shed resulted in appropriate screening from the road boundary;
- the shed has been modified to include two significant additions being the carport at the rear and the extension to the main part of the shed to create more internal space along the western boundary;
- the Applicants sought a retrospective approval for the siting of these two additions to the existing building. The current setbacks as a result of the as built additions are 0.20 m from the southern boundary and 1 m from the western boundary;
- the subject site is on the southern side of the street, is part of a large lot subdivision and the local area can be characterised as semi-residential with a significant amount of vegetation throughout the subdivision;
- the relevant planning codes applicable building setbacks on the subject site are Performance Criteria 4 and acceptable Solution 8 of the Nerang Local Area Plan (Precinct 10: Large lot residential). (6 m from the front boundary and 3 m from the side and rear boundaries). The performance criteria for this precinct state that "Building setback must contribute to an interesting and attractive street perspective and to the visual amenity of Nerang. Buildings must provide for setbacks from the street frontage and the side and rear boundaries of the site which are appropriate for the: efficient use of the site; local character of the area; effective separation from neighbouring properties and from frontages to roads";
- the reduced setbacks therefore do not provide effective separation from neighbouring properties. Council has received a number of complaints from neighbouring property owners which resulted in the property being inspected and the Show Cause notice being issued;
- as the location of the existing shed diminishes the character of the local area by creating an intensive area of development within this south eastern corner of the property the application for encroachments into the existing setbacks are considered inappropriate given the shed's close proximity to neighbouring dwellings.

The adjoining owner provided the following comments:

- the building and the additions in particular are not in character with the surrounding area and affect the visual amenity of the area;

- the adjoining landowner to the rear (who could not attend the hearing) advised that they support the concerns expressed by the community about the construction of the shed which resulted in Council's investigation. They are most affected by the carport attached to the shed bordering onto the southern boundary;
- other aspects of the development which are of concern are: loss of privacy, inappropriate use, size, dominance, colour, and the rainwater tanks' size and location;

Note: These aspects were further explained when the development was viewed from the adjoining property (inside the dwelling, swimming pool area and tennis court to the rear of the property).

- Council should not have approved the shed of that size and in that location when the original application for A&A was made.

The Assessment Manager's representative provided the following comments:

- the building development approval was issued for the existing building and a final inspection has not been carried out on the building works. The application for additions to the shed was refused on the basis of Council's Concurrence Agency Response to refuse the application;
- the natural ground level needs to be determined at the western boundary adjacent to the shed so that the design and siting of the rainwater tanks can be considered.

### **Material Considered**

The material considered in arriving at this decision comprises:

1. 04.10.02 – Drawing Number 2002-401 – On-site sewerage facility plan for the adjoining property.
2. 07.11.06 – Decision Notice (Ref Number BLD 2622096) issued by Council to Total Span Gold Coast for an A&A approval for a shed set back 3 m from the western (side) and southern (rear) boundaries of the subject site.
3. 14.11.06 – Decision Notice (Ref Number 2006/3039) issued by the Assessment Manager for the approval of the construction of a Class 10a Building.
4. 02.08.07 – Facsimile sent by Total Span to Council, the Applicants and the Assessment Manager advising that the Applicants erected a timber mezzanine floor within the shed.
5. 07.08.07 – Facsimile sent by Total Span to the Assessment Manager advising that the faults with the frame are due to the illegal mezzanine which has been erected. In addition, the awning and extension are affected the allowable siting of the building.
6. 20.09.07 – Council's Concurrence Agency Response (Ref Number BLD 2714678) which directs the Assessment Manager to refuse the application for Building Development Approval on the basis that the siting of the awning and the extension to the existing shed do not comply with Council's performance criteria of 3 m from the side and rear boundaries.
7. 25.09.07 – Facsimile sent by Total Span to the Assessment Manager seeking his support in requiring the Applicants to apply for a siting variation for the building work.
8. 05.10.07 – Facsimile sent by the Assessment Manager to Total Span confirming previous advice of 3 July 2007 to them and the Applicants that changes to the shed require an application for a concurrence agency response to be made to Council.
9. 08.10.07 – Letter sent by the Assessment Manager to Total Span advising that the concurrence agency response received from Council recommended that the proposed modifications be refused and as such the application to change the development approval is refused. The building must be modified to reflect the original approval.
10. 11.12.07 – Facsimile sent by the Assessment Manager to Council forwarding copies of correspondence between the Assessment Manager and the builder advising the framing has not been approved.

11. 04.12.07 – Letter sent by Council to the Assessment Manager advising them that a final inspection has not been carried out for the building works and that through an investigation of a complaint it is considered that the building work has been carried out in contravention of the development permit.
12. 23.04.08 – Email sent by Total Span to the Assessment Manager advising that the Applicants were refusing to pay the fee for the application for a concurrence agency response.
13. 22.05.08 – Decision Notice (Ref Number 2008/7355) issued by the Assessment Manager for the refusal of the construction of additions to the existing Class 10a Building.
14. 12.06.08 – ‘Form 10 – Notice of Appeal’ lodged by the Applicants with the Registrar of the Building and Development Tribunals seeking to overturn the decision of the building certifier.
15. 17.06.08 – ‘Form 18 – Notice of Election’ lodged by Council with the Registrar advising that it elects to be co-respondents to the appeal.
16. 19.06.08 – Written submission by Council outlining the basis of the decision of the concurrence agency to direct the Assessment Manager to refuse the application. This report outlines the proposal, characteristics of the site and surrounding Environment, Relevant Planning Scheme Codes and specifics relating to the additions which have been constructed to the building. (This report was emailed to the Registrar on 19 June 2008 and another copy was provided at the hearing).
17. 20.06.08 – Extract of part of Section 4.7 (Development Requirements – Residential Zones) of Council’s Planning Scheme specific to the subject site provided by Council at the hearing.
18. 20.06.08 – Additional material including aerial photographs and photographs of the additions to the existing building provided by Council at the hearing.
19. 20.06.08 – Verbal submissions from all parties at the hearing.
20. 20.06.08 – Site inspection of subject site and site inspection of the property adjoining the subject site.
21. *Integrated Planning Act 1997*
22. *Queensland Development Code (QDC) Part MP1.2*

## **Findings of Fact**

The Tribunal makes the following findings of fact:

- The Tribunal has jurisdiction to hear the appeal and the Applicants’ appeal to the Building and Development Tribunals was lodged within the prescribed timeframe. This appeal relates to the design and siting of additions to an existing class 10a building (shed) at the rear south west corner of the subject site.
- The subject site is part of a large lot subdivision with the majority of the buildings setback a considerable distance from the road boundary. The majority of the lots have extensive vegetation cover which generally creates a buffer from both the adjoining properties and the road. A consequence of this development is that the dwellings and associated outbuildings which have large floor areas are congregated near the rear and side boundaries of the lots.
- The subject site is a sloping from the rear (south) towards the road (north) and the height and colour of the existing shed make it visible from the road over the existing dwelling.
- The existing shed was constructed in accordance with Council’s A&A approval and the Assessment Manager’s building development approval, both which were issued in 2006. The additions to the rear and the side of the shed have been constructed without both Council’s and the Assessment Manager’s approval. There are internal changes to the shed which have not been shown on the approved plans.
- The Applicants, through their builder, applied for a variation to the siting requirement to allow the additions to the shed as it has been constructed. Council was the concurrence agency for the variation and directed the Assessment Manager to refuse the application. The building development application for the additions to the shed was refused by the Assessment Manager.

- The shed occupies a predominate position on the lot and the additions and rainwater tanks preclude the planting of screening vegetation to the southern and western boundaries adjacent to the building. The building work appears to be of a good standard and the additions are constructed of the same materials as the existing shed. The setbacks of the additions to the shed and the location of the rainwater tanks will make it difficult to adequately landscape these areas.
- The nature of the size, height, location and colour of the existing shed, shed additions and rainwater tanks is such that neighbouring property is one of the most affected by this building work.
- The Applicants are proposing to landscape the area to the north of the shed but only using low growing vegetation over the retaining walls.
- During the site inspection it became apparent that the two rainwater tanks also require Council approval and it was decided that this matter could be considered by the tribunal as part of this appeal.
- The design and siting requirements for the Class 10a shed are contained within Council's Planning Scheme and under the Nerang Local Area Plan (Precinct 10) the setback requirements are 3 m from the side and rear boundaries with a total 25% site cover.
- The design and siting requirements for the Class 10b rainwater tanks are contained in the QDC Part MP 1.2 and they are exempted from the setback stated in A2(a)(i) subject to the tank not being more than 2.4 m in height.
- Council's direction to the Assessment Manager to require refusal of the building development application was based on non compliance with performance criteria 4 of the Nerang Local Area Plan (Precinct 10) as follows:
  - effective separation from the neighbouring properties has not been satisfactorily achieved;
  - the 'as built' additions are seen as bulky and visually intrusive to the adjoining neighbours;
  - the accumulation of the development has diminished the local character of the area. (large lot residential); and
  - the 'as built' additions compromise the reasonable visual amenity expectations of the adjoining residential neighbours.

### **Reasons for the Decision**

- The fact that the additions to the building and the rain water tanks exist is no justification for their approval.
- *PC4 - Building setbacks must contribute to an interesting and attractive street perspective and to the visual amenity of Nerang.*

The buildings and structures are located in the south west corner of the lot behind the main dwelling. Although the main building (shed) can be seen over the dwelling the predominate views and vista along the roadway is of lawns and vegetation. Along the road, the majority of the dwellings with their associated outbuildings are located to the rear of the lots and this proposal on the subject site is in a similar location (rear of the lot) and of the same character (coloured steel clad shed) as outbuildings on the adjoining properties.

- *PC4 - Buildings must provide for setbacks from the street frontage and the side and rear boundaries of the site which are appropriate for the: efficient use of the site.*

The setback from the road boundary is not at issue. The location of the outbuilding at the rear of the property makes efficient use of the site in that the existing driveway is utilised, it shares a common area (turning circle) with the existing outbuilding, and is close to the dwelling for access and security.

- *PC4 - Buildings must provide for setbacks from the street frontage and the side and rear boundaries of the site which are appropriate for the: local character of the area.*

Council's approval required the use of colours of the buildings to be compatible with those of the surroundings. The colour of the wall and roof cladding and the proposed colour for the rendered north wall although approved is considered too light and makes the building stand out and impacts on the surrounding properties. The additional impact of the building additions is considered minor to the overall bulk and height of the main building.

To assist with the reduction of the impact of the northern and western walls to the adjoining property it is proposed to require the colour to be "Wilderness" (dulux colourbond shade).

- *PC4 - Buildings must provide for setbacks from the street frontage and the side and rear boundaries of the site which are appropriate for the: effective separation from the neighbouring properties and from frontages to roads.*

The separation distance of 3 m between the side and rear boundary and the existing building was specified in Council's approval. There was no requirement to landscape this area to provide a visual barrier for the adjoining properties and this should have been a condition on their approval. The additions to the shed and the rain water tanks encroach into these stated required setbacks. The impact of the existing shed is considered greater than the small additions and with appropriate fencing and landscaping the effect of the additions can be minimised. Although within the required setback this is not dissimilar to the type of development along the road with the majority of the dwellings or outbuildings situated close to the rear or side boundaries.

- To assist with the screening of the buildings it is proposed to erect fencing and landscaping as follows:
  - a new 1.8m high timber paling boundary fence shall be constructed along the western boundary;
  - landscaping to be carried out in the existing retaining wall terraces on the northern side of the shed as follows - terraces to be excavated and backfilled with topsoil to a minimum depth of 500 mm for a minimum distance of 4 m from the western property boundary. Terraces to be planted with screening plants which will grow to a height of 3 to 4 m (suitable species include Lilypillly and/or Golden Cane). Plants are to be a minimum of 1.5 m height at installation and be spaced maximum 1 m apart;
  - landscaping to be carried out to the west of the open carport in the south west corner of the property as follows - provision of minimum 300 mm depth topsoil and screening plants which will grow to a height of 5 to 6 m (suitable species include Lilypillly). Plants are to be a minimum of 1.5 m height at installation and be spaced maximum 1.5 m apart.

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**Greg Schonfelder**  
**Building and Development Tribunal Chair**  
**Date: 6 August 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  
Building Codes Queensland  
Department of Infrastructure and Planning  
PO Box 15009  
CITY EAST QLD 4002  
**Telephone (07) 3237 0403 Facsimile (07) 3237 1248**



