



## Building and Development Tribunals—Decision

---

### *Integrated Planning Act 1997*

<b>Appeal Number:</b>	3—09—035
<b>Applicant:</b>	Raymond Malcolm LeGassick
<b>Assessment Manager:</b>	Tanya Smith for and on behalf of GMA Certification Group
<b>Concurrence Agency:</b> (if applicable)	Gold Coast City Council
<b>Site Address:</b>	25 Andrea Avenue Broadbeach Waters, described as Lot 181 RP 124339 – the subject site

---

### Appeal

Appeal under section 4.2.9 of the *Integrated Planning Act 1997* (IPA) and section 9(a) of the *Integrated Planning Regulation 1998* (IPR) against the decision of GMA Certification Group to refuse a Development Application for Building Work, namely a Class 10 Garage.

---

<b>Date of hearing:</b>	10:45am Tuesday 19 May 2009
<b>Place of hearing:</b>	The Subject Site
<b>Tribunal:</b>	John Panaretos - Chair
<b>Present:</b>	Raymond Le Gassick – Applicant Tanya Smith – GMA Certification Group Peter Crook – Gold Coast City Council Jonathon Lee – Gold Coast City Council

---

### Decision:

The Tribunal, in accordance with 4.2.34(2)(c) of the IPA, **sets aside** the decision of the Assessment Manager, dated 9 April 2009, regarding a concurrence agency response of Gold Coast City Council to direct the refusal of a Building Development Application for enclosure of a carport within 6m of the front alignment and **directs** the Assessment Manager to assess and decide the application with a front alignment of 2.4 metres.

### Background

Approval was issued for construction of a carport with panel lift door within 6m of the front alignment on the subject site, in association with a house and garage. The carport was constructed and, approximately 6 years ago, enclosed with side walls of rendered masonry, with timber louvred openings running the length of the upper parts of both side walls. The structure is set back approximately 2.4m from the front

alignment and flanked by an approved gatehouse and 1.8m high front boundary walls with approximately 2m piers. The site rises very gradually from the front alignment to the rear.

When Council issued first a Show Cause Notice and then an Enforcement Notice, the applicant responded by seeking approval to legitimise the unauthorized work. Refusal of that application has resulted in the current appeal.

Council's Information Request pointed out that as a result of the physical changes made to the structure, the building no longer falls within the definition of 'carport' and offends against PC2 and PC3 of the Detached Dwelling Domain Place Code and the Detached Dwelling Code respectively. Council representatives at the hearing held differing opinions as to the extent to which the structure achieves Council's aesthetic objectives.

### **Material Considered**

The material considered in arriving at this decision comprises:

1. The application, including 'Form 10 – Notice of Appeal' lodged 24 April 2009, statement of grounds for appeal, Decision Notice issued by the assessment manager dated 9 April 2009, plans drafted by Robin Butt Design;
2. Show Cause Notice issued on 18 December 2007, Enforcement Notice issued on 8 May 2008 and Information Request issued by Council on 8 August 2008;
3. Gold Coast City Council online Property Enquiry and Google Maps;
4. Verbal submissions from the applicant, the assessment manager and Council at the on-site hearing;
5. The Detached Dwelling Domain of the Gold Coast Planning Scheme;
6. The QDC – Part MP1.2;
7. The IPA; and
8. The IPR.

### **Findings of Fact**

The Tribunal makes the following findings of fact:

- Council is relying on relevant Code provisions of the planning scheme to justify its refusal of the application, which supersede the provisions of the QDC.
- Although the structure falls into the QDC's definition of 'garage', the planning scheme provides no similar definition of carport and garage.
- The relevant planning scheme codes are concerned with the streetscape character of the domain and integration of structures into both this character and the aesthetics of the dwelling on site.
- The character of the area is characterized by masonry walls on the front alignment and vehicle parking structures within the front setback of the main dwellings.
- The garage is approximately one third the width of the allotment with a setback of approximately 2.4m

### **Reasons for the Decision**

The work has been completed to a high standard, with the combination of materials (masonry and timber), colour and style of the carport complementing the house, gate house and front wall. The structure is also well integrated with appropriate landscaping, with the front wall stepping back to incorporate landscaping that softens the wall and structure.

The structure is set back from the front alignment approximately 2.4m, allowing the gatehouse, front wall and landscaping, both at the front of the site and the side of the structure, to form the primary elements in, and dominate the streetscape.

The structure is largely hidden behind the front wall, the visible parts being the timber finish garage door and timber louvred upper side walls, which are aesthetically attractive and complement the house.

The structure has a minimal adverse effect on the amenity of the area and the streetscape.

---

**John Panaretos**  
**Building and Development Tribunal Chair**  
**Date: 15 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**