



**Building and Development Tribunals**

**Queensland Government**

Department of **Local Government and Planning**

**APPEAL**

*Integrated Planning Act 1997*

**File No. 03-07-032**

**BUILDING AND DEVELOPMENT TRIBUNAL - DECISION**

**Assessment Manager:** Gold Coast City Council

**Site Address:** *withheld*-“the subject site”

**Applicant:** *withheld*

**Nature of Appeal**

Appeal under section 4.2.9 of the *Integrated Planning Act 1997* against the decision of the Gold Coast City Council to refuse a Development Application for Preliminary Approval for Building Works – siting provisions – on land described as Lot 126 on RP130062 and situated at “the subject site”.

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**Date and Place of Hearing:** 10:30am on Thursday 21<sup>st</sup> June 2007  
at “the subject site”

**Tribunal:** Mr Chris Schomburgk – Chairperson  
Ms Liz Woollard – Member

**Present:** Applicants / Owners;  
Mr Grant Harris – Gold Coast City Council Representative.

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**Decision:**

The decision of the Gold Coast City Council as contained in its Decision Notice dated 10<sup>th</sup> May 2007, to refuse the application for siting variation of the “as constructed” shed is **confirmed** and **the application is refused**.

**Material Considered**

The material considered in arriving at this decision comprises:

- “Form 10” Building and Development Tribunals Appeal Notice, supporting plans and documentation;
- The relevant provisions of the Town Planning Scheme for Gold Coast City Council;

- The Council's Decision Notice dated 10<sup>th</sup> May 2007;
- The Queensland Development Code Part 12; and
- The *Integrated Planning Act 1997*.

### **Findings of Fact**

I make the following findings of fact:

- The site comprises *withheld* and is located at *withheld*. The site is a corner site, with a secondary frontage to *withheld*, a local street. *Withheld*, the primary road frontage for this site, is a busy arterial road servicing a wide catchment area.
- The subject application seeks approval for a shed, already constructed, located approximately 1.07m from the *withheld* alignment. The shed is attached to an open carport, also 1.07m from the *withheld* alignment and approximately 0.554m to the side/rear (north eastern) boundary. The open carport is not in contention in this appeal.
- The subject shed is an enclosed shed approximately 2.8m high to the pitch of the roof. It is constructed of colour bond steel and sits between the *withheld* alignment and the existing house which is set back approximately 6m from that alignment.
- Vehicular access to the property is achieved from *withheld* to a carport, and also from *withheld* to a second carport attached to the subject shed.
- The subject shed is not being used for car accommodation, but is used for storage and hobby activities of the owners and their family. In recent times, the owners have planted a row of trees in the narrow space between the shed and the *withheld* boundary. It is expected that these trees will grow to provide some visual screening of the shed when viewed from the street.
- The subject application arose from a Show Cause Notice and subsequent Enforcement Notice issued by the Council. The application was lodged and was the subject of an Information Request dated 12<sup>th</sup> December 2006. No formal response was ever received to that Information Request. The *Integrated Planning Act 1997* (IPA) provides, at section 3.2.12(2)(b)(i) that an application that arises from a Show Cause Notice or Enforcement Notice lapses if a response to an Information Request is not provided within three months of the request being made.
- From the information available to the Tribunal, this application may have lapsed on or about 13<sup>th</sup> March 2007. This is, however, a legal matter. The Tribunal notes that the Council has, nevertheless, made a decision about the application. It is that decision that is the subject of this appeal. Accordingly, the Tribunal has determined the matter as set out hereunder.
- The Council's Decision Notice provides its reason for refusal as being non-compliance with Performance Criterion PC1 – Building Setbacks - of the relevant Code, being the Detached Dwelling Domain Place Code. We note that PC2 is the relevant PC for Building Setbacks in the January 2006 version of the Code, not PC1 as indicated in the Decision Notice. The Decision Notice also confirms that the applicant has not responded to the Information Request as per the provisions of the IPA (see above).

- PC2 of the Detached Dwelling Domain Place Code provides that “*all buildings must provide for setbacks from the street frontage and side and rear boundaries, which are appropriate to the efficient use of the site and the streetscape character of this domain.*” The Acceptable Solution for this PC requires a minimum setback of 6m from the street frontage and a minimum of 1.5m for any side or rear boundary. The subject proposal does not comply with the Acceptable Solution, regardless of whether *withheld* is regarded as a street frontage or a side boundary, so it is relevant to consider the PC objective.
- As above, the subject site is on the corner of a local street and a busy major road. Accordingly, the site is not only obvious to main passers-by but requires at least the minimum sight distances for vehicles entering *withheld* from *withheld*. The proposed shed interferes with that sight distance to an even greater degree than does a complying fence or wall along that boundary. In that respect at least, the shed can be said to out of character with the streetscape of this domain.
- The applicants highlighted numerous other structures built close to street frontages. Neither the Council nor the applicants were able to say whether all or any of these were lawfully existing or, if lawful, were approved under the current Planning Scheme.
- The applicants provided letters of “no objection” from a number of nearby residents.

Based on our assessment of these facts, it is the Tribunals decision that **Council’s decision** to refuse the Application for siting variation is **confirmed** and **the application is refused**.

#### **Reasons for the Decision**

- The IPA provides that the subject application lapsed after three months from the date of receipt of the Information Request, as the application was in response to a Show Cause Notice and Enforcement Notice.
- As such, the Council and this Tribunal has no power to allow the application or this appeal to proceed.
- In the event that we are wrong on this point as a matter of law, it is the determination of the Tribunal that the appeal should not be allowed, as the proposal conflicts with the relevant Performance Criterion of the relevant Code. The proposed location of the shed is not appropriate for the streetscape character of this domain.

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**Chris Schomburgk - Chairperson**  
**Building and Development Tribunal**  
**Date: 20<sup>th</sup> July 2007**

## **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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