



**Building and Development Tribunals**

**Queensland Government**

Department of **Local Government and Planning**

**APPEAL**

*Integrated Planning Act 1997*

**File No. 03-07-009**

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**BUILDING AND DEVELOPMENT TRIBUNAL - DECISION**

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**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 impose conditions on a Development Application for Preliminary Approval for Building Works – siting provisions - on land described as “the subject site”.

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**Date and Place of Hearing:** 12:00pm on Monday 12<sup>th</sup> March 2007  
at Gold Coast City Council offices, Nerang

**Tribunal:** Mr Chris Schomburgk

**Present:** Applicant  
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 31<sup>st</sup> January 2007, to include conditions dealing with the scale and roofing of elements of the proposal is **confirmed** and **the application is approved subject to the conditions included in the Council’s Decision Notice.**

**Material Considered**

The material considered in arriving at this decision comprises:

- The application and supporting plans and documentation;

- The relevant provisions of the Town Planning Scheme for Gold Coast City Council, in particular Part 7 Division 2 Chapter 13 – Detached Dwellings Code;
- The Council’s Decision Notice dated 31<sup>st</sup> January 2007;
- The Queensland Development Code Part 12; and
- The *Integrated Planning Act 1997*.

**Findings of Fact**

- The site comprises *withheld*. The site comprises an existing dwelling house, pool and outbuildings. The house includes a double garage under the main roof, and this garage is intended to remain. A sail-covered area in front of the house is proposed to be converted into the new garages/carports.
- The site is abutted on two sides by a canal. *Withheld* in this location is a busy street and the site is located immediately west of the bridge over the adjoining canal.
- The subject application seeks approval for an additional three-car garage within the front boundary setback as well as a roofed storage shed, also within this setback area.
- The Council included conditions in its Decision Notice (by way of amendments in red on the approved plans) requiring, amongst other matters,:
  - The garage to be an open-sided carport only, although a panel lift door to the front of the carport was allowed;
  - A maximum width of the carport of 7.2m to eaves, and 6.0m from outside pier to outside pier (that is, effectively only a two-car carport);
  - Entry to what was the third carport to be a gate that is at least 50% open structure;
  - The storage area to remain unroofed.
- It is these conditions that are the subject of this appeal.
- The applicants explained that the existing garage was inadequate for their purposes as they both owned 4WD vehicles that did not fit into the low-roofed garage. They also wanted covered storage for other vehicles and machines. Given the shape of the allotment and the existing swimming pool at the rear, there was no other practical space on the site for these additional covered areas. They also explained that there was no opportunity for on-street parking in front of their property due to the topography of the locality with the canal bridge at their front boundary.
- The Council was concerned that the streetscape of the area would be detrimentally affected by the proposal, which also included a 1.8m high solid block wall and renovated gatehouse along the front boundary.
- While the applicants pointed to some other similar-scale structures within the front setback area in the locality, the Council officer (Mr Harris) noted that some of these were not approved and others were approved prior to the current Planning Scheme coming into effect. Council was also concerned about the likely need for a wider crossover from the road if the tripe carport was allowed.

- The Planning Scheme includes a Code for Detached Dwellings, which includes Performance Criteria PC3 which provides “*The cover car parking space/carport must be located and designed to:*
  - (a) *aesthetically complement the main dwelling;*
  - (b) *not dominate the street frontage*
  - (c) *have minimal adverse effect on the amenity, likely amenity and character of the neighbourhood.”*
- The Acceptable Solutions for this Performance Criterion require the carport to be setback as per the normal frontage setback requirements. The proposal does not comply with these Acceptable Solutions, so regard must be had to the Performance Criterion.

Based on my assessment of these facts, it is the Tribunals decision that **Council’s decision** to impose conditions on the Application for siting variation is **confirmed** and **the conditions of the Decision Notice remain.**

### **Reasons for the Decision**

- The proposed structure would provide covered car accommodation for 5 vehicles, which is considered inappropriate in an urban setting such as this, especially when the additional vehicles require infringement into the front setback area.
- The front boundary wall and gatehouse already provide an imposing, although not necessarily unattractive, feature to the streetscape in the locality. A second panel lift door for a third carport is considered inappropriate in the circumstances, as is a roof over the front storage area.
- While the proposal as applied for would *aesthetically complement the main dwelling*, it will certainly *dominate the street frontage* in my opinion, and thus does not satisfy the Performance Criterion in the relevant Code in the Planning Scheme.
- The *Integrated Planning Act 1997* s3.5.13 (2) provides that a Code Assessable application must be approved if, inter alia, conditions can be imposed to achieve compliance with the relevant Code/s. In this case, conditions have been imposed which will, in my opinion, achieve that compliance but, without which, compliance would not be achieved.

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**Chris Schomburgk**  
**Building and Development Tribunal General Referee**

**Date: 19<sup>th</sup> March 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:

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