



Building and Development Tribunals

Queensland Government

Department of **Local Government and Planning**

APPEAL

Integrated Planning Act 1997

File No. 3-03-078

BUILDING AND DEVELOPMENT TRIBUNAL - DECISION

Assessment Manager: Gold Coast City Council

Site Address: 9 Hood Court Mermaid Waters.

Nature of Appeal

An appeal under Section 4.2.9.(1) (d) of The integrated Planning Act 1997. against the decision of the Gold Coast City Council to approve an application for preliminary building work (Preliminary Application No 23/23556) to permit a minimum building setback of .015 metres to the outermost projection for a carport subject to conditions, and a minimum building setback of .105 metres to the outermost projection for a gatehouse subject to conditions, on land described as Lot 279 on RP No 159047 situated at 9 Hood Court Mermaid Waters.

Condition No 6 of the Council's decision notice required the overall carport width located within the road front boundary clearance shall not exceed 7.2 metres. Drawings submitted for approval showed a scaled width of 9 metres.

The appeal sought removal of condition No 6 to allow construction at the width shown.

Date and Place of Hearing: The hearing commenced at 3.0 PM on Friday February 6 2004, at 9 Hood Court Mermaid Waters.

Tribunal: Bert Dean

Present: Applicant

Mr Jake Storey – Gold Coast City

Applicant's father

Decision

The Council's decision to approve the application subject to the conditions stated, is **confirmed**.

Background

The applicant applied to Council for approval to construct an open carport and roofed gatehouse within the normal road boundary set back distance. It was proposed to make the overall width of the carport the same width as the dwelling. This produced an overall width of approximately 9.0 metres.

While this approach tended to simplify construction, the overall width produced exceeds the width of 7.2 metres currently approved by the Council for structures within the front setback distance.

Material Considered

1. Appeal documentation lodged by applicants, including architectural drawings numbered "job No 03359, BA 01 to BA 06 inclusive, and dated Sept 03 & Oct 03. In addition to other details these drawings showed the siting of the proposed gatehouse and carport in relation to the property boundaries and in relation to the existing dwelling.
2. Correspondence from the applicant dated December 23 describing the proposed development and setting out grounds for appeal
3. Correspondence from the Council being a decision notice dated 20 November 2003, approving the application subject to conditions and advising the applicants of appeal provisions. The decision notice did not state reasons the condition, which required a reduction in the width of the carport.
4. Council's planning scheme prescribing alternative siting requirements pursuant to Section 45 of the Standard Building Regulation.
5. The details of the alternative siting requirements prescribed by the local planning instrument.
6. The dwelling at 9 Hood Court was inspected in relation to the proposed development
7. Other properties in the area adjacent to the subject property were sighted during a drive by during the hearing.

Findings of Fact

1. The dwelling at 9 Hood Court is a single storey building with an open carport attached to its North--eastern side. Both the dwelling and carport are sited within normal boundary setback distances.
2. The proposal to site the dwelling within the front boundary setback distance is required to comply with the performance provisions of the Gold Coast City Council planning instrument. It is the opinion of the council that the proposal does not meet the performance provision relating to bulk and extent of the structure and its proximity to the streetscape.

3. The planning instrument does not specify a maximum width for carports within the road boundary setback. Council follows its advertised practice of limiting approvals to overall maximum width of 7.2 metres. Except in instances where extraordinary circumstances might exist.
4. Council has conducted information seminars for architects drafting agencies and designers where the alternative siting requirements and performance requirements were explained in detail. This included its intention to assess each application on its merits and to generally control bulk by limiting maximum width to 7.2 metres and maximum height to 2.5 metres at the property road boundary.

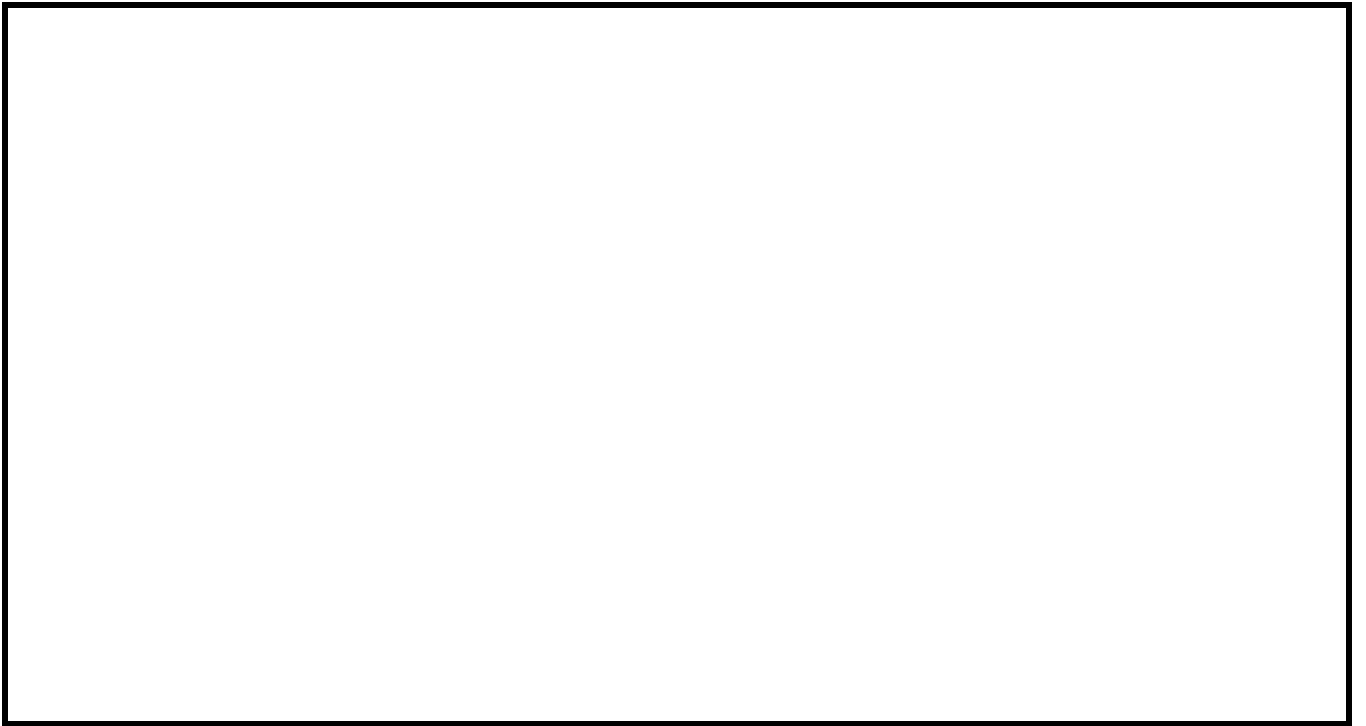
Reasons for the Decision

The total overall width of the carport exceeds the maximum of 7.2 width normally permitted as satisfying the performance requirements with regard to bulk and dominance of structures within the road boundary setback distance. A drive-by inspection of properties in the area of the subject site shows that the majority of carports within the road boundary setback distance do not exceed the 7.2 metre width. There are no extraordinary circumstances associated with the subject site, which would warrant relaxation of the council's policy guidelines to satisfying the performance criteria, as expressed during introductory seminars..

While the style and materials of construction are satisfactory and complements the streetscape the bulk proposed does not satisfy the objectives of the Council's planning scheme. Approval of the additional width would create an undesirable precedent and would provide further barriers to achievement of the planning scheme objectives.

The applicant applied to the Council for approval to construct an open carport and roofed gatehouse within the normal road boundary set back distance. It was proposed to make the overall width of the carport the same as the width of the existing dwelling. This produced an overall width of carport of approximately 9.00 metres. While this tended to simplify construction , the overall width produced exceeds the width currently approved by council for structures within the front setback distance.

Bert Dean
Building and Development
Tribunal Referee
Date: February 18 2004



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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