



**Building and Development Tribunals**

**Queensland Government**

Department of **Local Government and Planning**

**APPEAL**

*Integrated Planning Act 1997*

**File No. 03-07-028**

## **BUILDING AND DEVELOPMENT TRIBUNAL - DECISION**

**Assessment Manager:** Gold Coast City Council

**Site Address:** *withheld*—"the subject site"

**Applicant:** *withheld*

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### **Nature of Appeal**

Appeal against preliminary building application No. 2702424 against the decision of the Gold Coast Council to refuse an application for a double carport and gatehouse at "the subject site" frontage of the allotment.

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**Date and Place of Hearing:** 9 am Tuesday 24 April 2007  
at "the subject site"

**Tribunal:** Greg Rust - Chairperson  
John Panaretos - Tribunal Member

**Present:** Owners/Applicants  
Mr Andrew Powell Gold Coast City Council

### **Decision**

The Tribunal **sets aside** the decision of the Gold Coast City Council to refuse an application for a carport and gatehouse within the "the subject site" building setback and replaces the decision with the following:

**The application for the carport and gatehouse as depicted on the Bristow Architects Drawings, 2006.16 DA01, DA02 and DA04, be approved subject to the following requirements:**

- 1. The carport must remain open and the proposed solid garage door must be deleted and replaced by a timber open slat style door.**
- 2. The roof covering shall match the existing house.**
- 3. Materials, finishes and colours shall match the existing house.**
- 4. The carport shall be exclusively used for parking of vehicles only.**

## **Background**

An application was made by the applicant to the Gold Coast City Council for a carport and gatehouse to be sited within the building setback of “the subject site”.

In the letter dated 8 March 2007, Gold Coast City Council gave notice that the application was refused citing reasons that the application did not comply with PC 13 and PC 14 - Amenity Protection for the detached dwelling domain of the Gold Coast Planning Scheme. The letter also cited that the application did not comply with the plan of development building setback controls/requirements.

The applicant lodged an appeal with the Tribunal against the Gold Coast City Council’s decision, the application was received by the Registrar on 16 April 2007.

The applicants provided their grounds for appeal which are summarised as follows;

- *We have 3 young children that cannot use the yard;*
- *Not safe from traffic;*
- *No privacy;*
- *Side of house is seen from street;*
- *Afternoon sun is bad;*
- *Patio will provide shade area for house and family;*
- *Need carport to keep bricklaying trailer and tools stored out of sight;*
- *We would like permission to carry out building work as per plans;*
- *Our neighbours like the idea; and*
- *Other neighbours have extensions.*

The Tribunal conducted an on-site hearing on 24 April 2007. Both parties made verbal submissions and a site inspection was carried out.

During the course of the site hearing, additional information was requested from both the applicant and the Gold Coast City Council. This information has been provided to the Tribunal.

The applicant pointed out that a number of similar carports have been built within the vicinity. The Council officer responded by advising that a number of buildings were under investigation by Council for unauthorised work and these would be followed up as resources become available.

The applicant also believed that as part of the refused application, a retaining wall fence and patio had been considered. With further information at hand from Council, I can confirm that the refused application was for the carport and gatehouse only. Application for the retaining wall, fence and patio had not been submitted as part of the application.

## **Material Considered**

1. Letter of Gold Coast City Council dated 8 March 2007 Decision Notice to Applicant – refusal;
2. Building and Development Tribunal “Appeal Notice – Form 10” received by the Registrar on 16 April 2007;

3. Part 5 Division 2 Chapter 4 of the Gold Coast Planning Scheme;
4. Town Planning report prepared by Planit Consulting February 2007;
5. Building Envelope Plan prepared by Morton & Associates; and
6. Rezoning Application No 2903;
7. The *Integrated Planning Act 1997*;
8. The *Building Act 1975*; and
9. The *Standard Building By-Laws*.

### **Findings of Fact**

The matter for consideration under the application are Part 5 Division 2 Chapter 4 Detached Dwelling Performance Criteria PC13 & PC14 and the Plan of Development building setbacks.

#### **PC13**

The proposed use must not detract from the amenity of the local area, having regard, but not limited to the impact of:

- a) Noise;
- b) Hours of operation;
- c) Traffic;
- d) Lighting;
- e) Signage;
- f) Visual amenity;
- g) Privacy; and
- h) Odour and emissions.

#### **PC14**

The proposed development must take into account and seek to ameliorate any negative aspects of the existing residential amenity of the local area, having regard, but not limited to the existing impact of:

- a) Noise;
- b) Hours of operation;
- c) Traffic;
- d) Lighting;
- e) Signage;
- f) Visual amenity;
- g) Privacy; and
- h) Odour and emissions.

The Plan of development requires similar setbacks for buildings as the *Standard Building By-Laws* i.e. six metres, unless otherwise noted on the plan. I note that the bylaws at the time did make provision for carports within prescribed building setbacks. The amenity provisions relate to the width of the carport supports and the necessity to build an open carport in that location only.

A gatehouse less than two square metres in size would be exempt in this location.

Concerning the performance requirements of the provisions under the Gold Coast Planning Scheme, the criteria of visual amenity is the one most applicable to the refused application. The plans of the proposed carport and gatehouse show the buildings having roof pitches similar to the existing house, support columns of suitable proportions and compatible materials used in the construction. The solid door to the street elevation should be deleted and any such device in this location should be open style to maintain the carport open requirements.

It is not uncommon to expect open style carports within the front six metre setback. In more recent times the approval requirements improve the visual amenity of carports by requiring pitched roof lines and compatible materials used in construction.

### **Reasons for the Decision**

An open style carport and gatehouse in the proposed location with regard to the controls in place for this type of development, is not considered to be in conflict with the performance provisions of the Gold Coast Planning Scheme and therefore the decision of the Gold Coast Council to refuse the application is **set aside** due to the following reasons:

- The style of the carport will fit into the street scape;
- The carport will be compatible with the shape and form of the existing building;
- The carport will not dominate the appearance of the house when viewed from the street; and
- The carport has merit in respect of the planning controls in place.

The carport does not prejudice the achievement of desired environmental outcomes for the domain.



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**Greg Rust**  
**Building and Development**  
**Tribunal Referee**  
**Date: 19 June 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  
Building Codes Queensland  
Department of Local Government, Planning, Sport and Recreation  
PO Box 15031  
CITY EAST QLD 4002  
**Telephone (07) 3237 0403: Facsimile (07) 32371248**