



APPEAL
Integrated Planning Act 1997

File No. 3-03-019

BUILDING AND DEVELOPMENT TRIBUNAL - DECISION

Assessment Manager: Gold Coast City Council

Site Address: 17 Alkira St, Tugun (Lot 12 RP 91419)

Nature of Appeal

Appeal against the decision of Gold Coast City Council to refuse an application for preliminary approval for building works for a garage to permit a minimum building setback of zero metres within the road boundary setback and a minimum building setback of 0.3 metres within the northern side boundary setback (siting variation Class 10a garage).

Date and Place of Hearing: 3:00 pm on Monday 7 April 2003 at
17 Alkira St, Tugun.

Tribunal: David Kay

Present:

Owner	
Sonia Macourt	- Building Designer
John Sutcliffe	- Builder
David Hood	- Gold Coast City Council
Sarah Farrelly	- Gold Coast City Council

Decision

The decision of Gold Coast City Council dated 19 February 2003 to refuse an application for preliminary approval for building works (siting variation – Class 10a garage) Preliminary Building Application No. 22/25991 on Lot 12 RP 91419 at 17 Alkira St, Tugun is set aside and is replaced by the following decision.

The preliminary building work application for a garage containing parking for 3 vehicles having a zero road boundary clearance to Alkira Street and a 0.3 metre northern side boundary clearance is approved subject to :-

(1) The garage being limited to an external length of 8.5 metres within the 6.0 metre road boundary clearance with the adjacent 1.2 metre walkway to the dwelling not being covered by any structure.

(2) The removal of the proposed storage room area above the garage with the roof level of the garage being limited to a height of 4.5 above the road frontage level within the 6.0 metre road boundary clearance.

(3) The vehicular access being constructed to the requirements of the Gold Coast City Council which will limit the crossover to serving only 2 of the 3 vehicle spaces.

Background

Gold Coast City Council submission to the tribunal.

Part 4.11 of the City of Gold Coast Planning Scheme 1994 (referred to as the “planning scheme”) sets out the requirements for a dwelling house which would include a garage associated with a dwelling house.

The application was assessed against the siting requirements of the Standard Building Regulation. Carports require an Amenity and Aesthetics decision under a policy adopted by resolution of council.

It is considered that the building is not a carport due to the enclosure of the building.

The 3 vehicle garage within the 6.0metre road boundary setback is considered to dominate the streetscape with a length of 10.2 metres and a height exceeding 4.5 metres.

The planning scheme requires 2 car parking spaces with one covered space no closer than 6.0 metres to the road alignment and the second may be uncovered and located within the front 6.0 metre area.

A 2 vehicle garage may be considered suitable in this location but not the 3 vehicle garage with a storage room as an additional storey above the garage.

The approval of the vehicular crossover on the road reserve is considered outside the jurisdiction of the tribunal and the length of crossovers with one for the 3 vehicle garage and one to access the lower boat storage area considered excessive.

The site cover may exceed 50% based on the site area of 574 sq metres. There may be a difference in records as to the actual site area which the applicant considers to be 576 sq metres.

Applicant’s agent submission to the tribunal.

The applicants stated that they had attempted to produce a design that satisfied Council through meetings and discussions.

The lower level area designated as boat storage is intended to store surf skis and the like and is not intended for motor boat storage .Equipment in this area could be carried in from the road . A vehicular crossover and access to this level is not required and all that is intended is a 1.2 metre wide graded path for pedestrian access.

The ground level area at road level is intended to accommodate 2 cars and a motor boat with a covered path leading to the dwelling. The ceiling height of the garage is to be only 2.1 metres at the rear with the storage room above. The owners desire to have a secure lock up garage to house their vehicles off street. The road and parking on the street is unsuitable because of the traffic island and intersection. The parking of their vehicles off street would also be safer from a traffic aspect

The storage area above the garage was proposed to store equipment and the like that could be susceptible to moisture and vermin if stored below the ground floor level.

It was considered that the proposed building would be suitable for the locality when considering the existing buildings and streetscape.

Material Considered

Material submitted with the appeal notice to the Tribunal.

Part 4.11 of the City of Gold Coast Planning Scheme 1994

Gold Coast City Council Amenity and Aesthetics resolution regarding carports dated 15 May 1998
Integrated Planning Act 1997.

Building Act 1975 and Standard Building Regulation 1993.

Findings of Fact

- An application for preliminary approval for building work and a siting variation was made to the Gold Coast City Shire Council.
- The application was refused by Gold Coast City Council.
- The appeal to a Building and Development Tribunal was lodged within the required time.
- The Tribunal has jurisdiction to hear the appeal.
- The proposed building is a garage and not a carport as defined in the Standard Building Regulation.
- Part 4.11.2 of the planning scheme limits site cover for a dwelling house to 50% which is identical to the Standard Building Regulation.
- Part 4.11.3 of the planning scheme calls up the Building Act as the criteria for building setbacks for a dwelling house. The provisions of the Standard Building Regulation would include any siting variation determined under the Standard Building Regulation.
- Part 4.11.4 of the planning scheme sets out the requirement for 2 car parking spaces to be provided on site. This is an additional requirement not included in the Standard Building Regulation. Part 4.11.5 sets out a height limit of 2 storeys for a dwelling house. This is a control that limits the application of Section 38(b)&(c) of the Standard Building Regulation

Reasons for the Decision

Jurisdiction

As the building is enclosed it does not satisfy the criteria for an open carport and the amenity and aesthetic provisions do not apply.

The building is located within the 6.0metre road boundary setback.

The planning scheme refers to the Building Act (and Standard Building Regulation) which establishes the requirements for road and side boundary clearances.

Variations to the boundary clearances are determined under section 48 of the Standard Building Regulation.

Accordingly the Tribunal is considered to have jurisdiction.

In addition the Gold Coast City Council has acknowledged this by referring any appeal against their decision to the Building and Development Tribunal in the decision notice.

Siting Considerations

It is therefore necessary to assess the reduced road boundary and side boundary clearances against the criteria contained in Section 48 of the Standard Building Regulation.

- (a) *The level, depth, shape or conditions of the allotment and adjoining allotment.*

The allotment has a frontage of 14.198 metres to Alkira Street .The land has a slope of 1 in 4 or 2.5 metres fall across the front 6.0 metre road boundary clearance. The slope of the

allotment makes vehicle access to any part of the site beyond the 6.0 metre road boundary clearance extremely difficult.

(b) *The nature of any proposed building or structure on the allotment.*

There is an existing garage approximately 4.5 m wide located within the 6.0 metre road boundary setback. The existing two storey dwelling is located approximately 7.0 metres from the road boundary. The original approval of the dwelling effectively limited car parking access and structures containing car parking to that area within 6.0 metres of the road front. The proposed car accommodation .The proposed storage area above the proposed garage would exceed 4.5 metres in height and this is considered to add height to any car accommodation structure that would normally be expected to be erected within the 6 .0 metre road boundary clearance. The proposed width to accommodate 3 car spaces, if reduced to 8.5 metres, would not be detrimental to the streetscape given the proximity of other buildings to the road frontage in the street.

(c) *The nature of any existing or proposed buildings or structures on adjoining allotments.*

The adjacent site at 19 Alkira Street has an existing 2 car garage located approximately 2.0 metres from the road boundary. A number of dwellings on the opposite side of Alkira Street are constructed within the 6.0 metre road boundary clearance

(d) *Whether the allotment is a corner lot or has two road frontages.*

This is not applicable to this site

(e) *Other relevant matters.*

The location of the subject allotment fronts an intersection and a traffic island in the intersection. The need to limit drive way crossover widths in this street to maximise on road parking is also recognised.

In conclusion, it is my view that the proposed garage, modified by removing the storage area above the garage within the 6.0 metre road boundary clearance and reducing the width to 8.5 metres when built on the allotment with a zero road boundary setback from Alkira Street and a northern side boundary setback of 0.3 metres to the outermost projection, would not unduly –

(a) Obstruct the natural light or ventilation of the adjoining allotment at 15 Alkira Street as this is located to the south of the adjacent property and the extent of the proposed garage building elevation adjacent to this side boundary is almost identical to the existing structure. It would have no affect on 19 Alkira Street.

(b) Interfere with the privacy of an adjoining allotment as the overlooking of adjacent allotments would not be increased by the proposed garage providing the storage area with windows proposed as a second level above the garage is not included as part of the proposal.

(c) Obstruct the outlook from adjoining allotments as the significant outlook from these sites is eastwards towards the water views. In any case the outlook to the west away from the sea view would not be obstructed any more than it currently would be by the existing structure.

(d) Overcrowd the allotment as approximately 50% of the site is not covered by the existing and proposed building structure. Reduction of the width of the proposed 10.2 metre wide

garage structure to a width of 8.5 metres overall would reduce the appearance of overcrowding from the street.

- (e) Restrict off-street parking for the allotment and would improve off street parking as there is currently limited parking on site for 2 vehicles. This proposal would provide additional parking for a boat which is currently parked in the road reserve and would compensate for the lack of vehicle access to this site due to the steep slope at the front of the site.
- (f) Obstruct access for normal building maintenance

David Kay
Building and Development
Tribunal Referee
Date: 21 April 2003

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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