



**Building and Development Tribunals**

**Queensland Government**

Department of **Local Government and Planning**

**APPEAL**

*Integrated Planning Act 1997*

**File No. 03-05-039**

---

**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 approve, subject to conditions, an application for relaxation of boundary setbacks on land described as Lot *withheld* and situated at “the subject site”.

---

**Date and Place of Hearing:** 10:00am on Thursday 28<sup>th</sup> July 2005  
at the Building and Development Tribunal Offices,  
Level 25, 41 George St, Brisbane

**Tribunal:** Mr Chris Schomburgk

**Present:** *withheld*– applicant’s representative;  
Mr Jack Matijevic – Gold Coast City Council; and  
Mr Roger Sharpe – Gold Coast City Council

**Decision:**

The decision of the Gold Coast City Council as contained in its written Decision Notice dated 15<sup>th</sup> June 2005, to approve an application for relaxation of the front and side boundary setbacks, subject to conditions, is **upheld** and **the application is approved, subject to conditions, including the conditions imposed by the Council in its decision Notice of 15<sup>th</sup> June 2005. The appeal is therefore dismissed.**

**Material Considered**

The material considered in arriving at this decision comprises:

- The application and supporting plans and documentation;
- Additional material provided by the applicant and the Council at the hearing;
- The relevant provisions of the Town Planning Scheme for Gold Coast City Council;
- The Queensland Development Code;
- Council’s Decision Notice dated 15<sup>th</sup> June 2005; and
- The Integrated Planning Act 1997.

## Findings of Fact

I make the following findings of fact:

- The site comprises Lot *withheld*, with frontage to *withheld* St. I am advised that *withheld* St is a busy road, with two lanes in each direction and a median strip.
- The applicant has sought to enclose the existing double garage and erect a new double carport within the front setback area.
- The applicant seeks a larger-than-normal carport in order to accommodate two cars, one being a large 4WD with rear opening door, as well as a trailer.
- The house is set back more than the usual 6m from the front boundary – being approximately 11.27m on the northern side and approximately 9.9m on the southern side of the proposed structure.
- The applicant seeks a carport that is 7.99m long in order to accommodate the three vehicles (two cars and a trailer). The Council’s decision approved the erection of a carport, but limited its length to 7.61m, still longer than the usual 6.0m for such a structure.
- A further condition was the subject of this appeal, being the height of the retaining wall along the front and southern boundary of the property, as part of the proposed renovations. The applicant sought a height of 1.2m above a proposed fill level, which in turn was to be 1.0m above the existing ground level on the street side of the proposed retaining wall – that is, a total wall height when viewed from the street of 2.2m. The Council approved the wall, but limited its height to a total of 2.0m, and imposed a condition that the volume of fill material was not to exceed 40m<sup>3</sup> (as per the Planning Scheme requirements).
- At the hearing, the applicant’s representative conceded that the applicant was prepared to accept the amended height of the wall.
- The proposed carport is to be open on both sides (apart from low stepped retaining walls) and have a roller door at its frontage (street).
- I was provided with plans that accompanied the application. The plans show, *inter alia*, the intended location of the 3 vehicles within the carport. The trailer is shown at right angles to the cars and in front of (house side) the 4WD vehicle. The plan shows that the rear-opening door of the 4WD would, when fully opened, intrude beyond the carport frontage if the reduced length is applied. It is this issue that has triggered the application for the extra length.
- Inspection of the plan shows that the trailer could, as an option, be parked in front of the sedan car, rather than the 4WD, thus providing some additional space within the carport for the 4WD.
- Even with the reduced length proposed by the Council, the parking of the trailer as shown in the plan provided to me is achievable, but the rear door of the 4WD will only be able to be opened if the roller door of the carport is up.
- At the hearing, Mr Denning advised that he had not yet bought a trailer, but intended doing so in the near future.
- The Council advised that the applicant had previously lodged an application seeking an even longer carport, but had been advised to reduce the length because of Council’s concerns. I was provided with copies of that previous application.
- The need for a carport within the front setback is a result of the applicant enclosing the existing carport/garage to provide additional internal living space.
- The applicant does not want to park the trailer on the street (for security reasons), and the Council indicated that it does not want that situation either (for aesthetic and traffic reasons).
- The applicant provided a photograph of one other carport within the front setback area in the locality. The Council was not able to confirm whether that structure was approved.

### **Reasons for the Decision**

- The proposed carport will be longer than structures that are usually approved within the front setback area of a residential allotment.
- The need for this larger-than-normal carport is a result of the applicant seeking to accommodate two cars, one being a large 4WD, as well as a trailer within the structure.
- It seems likely that the trailer could be accommodated within the carport by re-arranging the parking of the three vehicles. It is only the rear opening of the particular 4WD vehicle that creates the desirability of the extra length, and even this can be achieved in the reduced length provided the roller door is up at the time of opening the rear door.
- In any event, there is space within the frontage of the subject property, outside of the carport, to accommodate a trailer.
- The need for the extra accommodation arises from the enclosing of the existing double garage under the main roof.
- The Council has already conceded some additional length for the proposed structure, in recognition of the greater-than-normal setback from the house to the front boundary.
- While the extent of difference between the proposal and the approval is not great (approximately 0.3m), it needs to be acknowledged that the structure as approved is still considerably greater than is usually permitted in the front setback area.
- In my opinion, there are no overwhelming reasons for the additional carport length as proposed.
- The retaining wall can be built to a total height of 2.0m and still provide the appropriate screening from the street and allow for some filling of the subject property to create a less-steep front yard.

### **Conditions of approval:**

In addition to the conditions set out in the Decision Notice of 15<sup>th</sup> June 2005, the following conditions apply:

- The length of the proposed carport is to be a maximum of 7.61 metres.
- The height of the retaining wall along the front boundary is to be a maximum of 2.0 metres from the existing footpath level.
- The volume of fill is to be limited to a maximum of 40m<sup>3</sup> unless a separate application for filling is approved by the Council.

---

**Chris Schomburgk**  
**Building and Development Tribunal General Referee**  
**Date: 29<sup>th</sup> July 2005**

## **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 and Planning  
PO Box 15031  
CITY EAST QLD 4002  
**Telephone (07) 3237 0368: Facsimile (07) 32371248**