



Building and Development Tribunals

Queensland Government

Department of **Local Government and Planning**

APPEAL

Integrated Planning Act 1997

File No. 03-07-067

BUILDING AND DEVELOPMENT TRIBUNAL - DECISION

Assessment Manager: Total Building Consult Pty Ltd, Licence A41498

Concurrence Agency: 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 refusal of an application for a Building Work Development Permit – siting variation – for a carport and gatehouse, on “the subject site”.

Date and Place of Hearing: 1:00pm on Friday 9th November 2007
at “the subject site”

Tribunal: Mr Phil Dance – General Referee
Mr Chris Schomburgk – Chairperson

Present: Applicant
Mr Andrew Powell – Gold Coast City Council
Mr Wiremu Cherrington – Gold Coast City Council

Decision:

The decision of Total Building Consult Pty Ltd, dated 15th October 2007, based on a concurrence agency response from Gold Coast City Council to refuse a siting variation for a carport and gatehouse, **is upheld.**

Material Considered

The material considered in arriving at this decision comprises:

- The application, including “Form 10 – Notice of Appeal”, supporting plans and documentation;
- The relevant provisions of the Town Planning Scheme for Gold Coast City Council;
- The Queensland Development Code (“QDC”);
- Concurrence Agency Response from Gold Coast City Council dated 1 October 2007;
- “Form 18 – Notice of Election” from Gold Coast City Council; and
- The *Integrated Planning Act 1997*.

Findings of Fact

I make the following findings of fact:

- The subject application seeks a siting variation to allow a carport and gatehouse to be built adjacent to the front (street) boundary, and allow the carport to be built to a height of 3.7metres.
- A carport and gatehouse were approved by an earlier approval, however the carport has been constructed to an alternative design, with a higher top of roof level than authorized by the earlier approval.
- The house on the same allotment is a two-storey house of brick construction. The applicant states that he intends to renovate the house, so that in texture and colour it will match the constructed gatehouse and carport.
- The locality is one containing mostly older dwellings, some of which have been renovated. It is reasonable to conclude that many dwellings in the local area will be renovated over time.
- The Council relies on Performance Criterion (PC) PC8 of the Detached Dwelling Domain – Part 6, Division 2, Chapter 4 of the Planning Scheme. PC8 says:
“All buildings must be designed and constructed to a high aesthetic standard, and complement or enhance the character of the local area.”
Acceptable Solution AS8.1 for this PC states:
“The massing and proportions of new buildings are consistent with those of adjoining or neighbouring buildings”.
- The Council relies on Performance Criteria PC13 and PC14 of the Detached Dwelling Domain – Part 5, Division 2, Chapter 4 of the Planning Scheme, which state:
(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;*
h) *Odour and emissions.”* ;and
(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;*
h) *Odour and emissions.”*
- No acceptable solutions are given for the PC, however at the hearing, Mr Powell stated that the Council had considered the impact of the height of the carport on the visual amenity of the local area. Mr Powell says that the height of the carport is an aspect that gives rise to the Council’s view that it has an unacceptable impact on the visual amenity of the local area.

- The location of the carport adjacent to the front (street) boundary of the allotment is not of itself a matter of concern.
- The development application indicated a “timber slat tiltadoor” was to be fitted, whereas a solid type tiltadoor is fitted, which contributes to the apparent bulkiness of the carport.

Based on an assessment of these facts and the material considered, it is the decision of the Tribunal that **the appeal be dismissed**. The decision of the assessment manager, made on the direction of the Gold Coast City Council as a concurrence agency **is upheld**.

Reasons for the Decision

- The carport has a bulky appearance which is attributable to its height, which in the Tribunal’s opinion, is excessive.
- The bulk of the carport or its “massing and proportions” (AS8.1), is not consistent with that of adjoining or neighbouring buildings, and therefore does not achieve PC8 of Part 5, Division 2, Chapter 4 of the Planning Scheme.
- The fact that the carport has been constructed, is not justification to allow the structure, which is contrary to relevant provisions of the Planning Scheme.
- In this part of the street, there are no other structures that are as visually dominant within the front setback.

Chris Schomburgk
Building and Development Tribunal Chairperson
Date: 20 November 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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