



Building and Development Tribunals

Queensland Government

Department of **Local Government and Planning**

APPEAL

Integrated Planning Act 1997

File No. 3-05-083

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 refusing an application for Preliminary Building Works in relation to the siting of a carport on land described as Lot *withheld* and located at “the subject site”.

Date and Place of Hearing: 10:00am on Thursday 2nd February 2006
at “the subject site”

Tribunal: Gregory Rust

Present: *withheld* - Applicant
Roger Sharpe - Gold Coast City Council
Rod Davie - Gold Coast City Council

Decision

The decision of Gold Coast City Council as contained in it’s written Decision Notice dated 24th November 2005, to refuse an Application for a Preliminary Approval for an existing carport, is **set aside, subject to the following conditions;**

- (1) That the structure not be enclosed and shall remain open;
- (2) That the shade sail material used as roof covering shall be maintained in good condition.

Background

Council on the 4th June 2003 gave preliminary approval for a metal roof carport in the same location as the “as constructed carport” subject to conditions. At some point in time after the approval the applicant changed their intention and erected a curved roof shade sail structure in lieu of the metal carport, however neglected to amend the approval with the Council prior to commencing work.

A second application was made to the Gold Coast City Council for the “as constructed carport” and was refused on the 24th November stating the carport does not comply with the Southport Local Area Plan, seven of the nine characteristics of the code had not been achieved.

Material Considered

- Decisions of the Gold Coast City Council dated 4th June 2003 & 24th November 2005
- Appeal lodged by Applicant dated 13th December 2005
- Verbal submissions made by Applicant & Officers of the Gold Coast City Council at appeal
- *Integrated Planning Act 1997*

Findings of Fact

The “as constructed carport” having a shade sail roof covering could more appropriately be described as a shade structure. The roof covering is not fully impervious to water and its purpose, as informed by the owner it is to protect his vehicles from the sun and falling debris from the large tree which over hangs the “as constructed carport”.

During verbal submissions the Council representatives voiced their support for the Applicants Appeal, subject to conditions, that the roof covering be maintained in a good condition and the structure remain unenclosed and open.

Reasons for the Decision

The performance Criteria of the Southport Local Area Plan provides that “new buildings must respect and complement the local streetscape character of the Suburban Residential area. New buildings, and extensions to existing buildings, will be designed to be compatible with the form of the existing dwellings or where appropriate, effect an attractive transition from such dwellings to the new buildings”

Having regard to the “as constructed carport” the building does not detract from the streetscape and provides compatible form to other buildings in the vicinity. Council supports the appeal subject to conditions.

Greg Rust
Building and Development
Tribunal Referee
Date: 6th March 2006

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
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