



Building and Development Tribunals—Decision

Integrated Planning Act 1997

Appeal Number:	3–08–060
Applicant:	Michael McMillan and Kismet Russell-Jones
Assessment Manger:	Tanya Smith for and on behalf of GMA Certification Group Pty Ltd
Concurrence Agency: (if applicable)	Gold Coast City Council
Site Address:	126 Sundance Way Runaway Bay and described as Lot 593 RP 220716—the subject site

Appeal

Appeal under section 4.2.9 of the *Integrated Planning Act 1997* (IPA) against the decision of the assessment manager to refuse a development application for building works, namely a carport to a detached dwelling located within the road boundary set back.

Date of hearing:	9.00am—Thursday 4 September 2008
Place of hearing:	The subject site
Tribunal:	Dennis Leadbetter – Chair Greg Rust – Member
Present:	Michael McMillan – Applicant/Owner Tanya Smith – Assessment Manager, GMA Certification Group Pty Ltd Neal Redpath – GMA Certification Group Pty Ltd Representative Patrick Giess – Gold Coast City Council Representative Peter Krook – Gold Coast City Council Representative

Decision:

The assessment manager is **directed** to reassess and decide the building development application, subject to compliance with all other relevant building assessment provisions, including the following conditions:

- The carport can be erected to within 100 mm of the road boundary; and
- The width of the support columns to the road façade, above the level of a 2 metre high fence, must be a maximum of 450 mm.

Background

The proposal was for the development of an open carport attached to a single story detached dwelling, located between the dwelling and the road boundary.

The assessment manager lodged an application for a boundary relaxation with Gold Coast City Council.

Gold Coast City Council responded by letter dated 3 July 2008, which was outside the prescribed time limit provided within the IPA, and hence it was a deemed refusal.

The assessment manager issued a decision notice, dated 12 August 2008, refusing the application.

The applicant lodged an appeal with the Building and Development Tribunals on 26 August 2008 against the decision of the assessment manager to refuse the application.

Material Considered

1. 'Form 10 – Notice of Appeal' and grounds of appeal contained therein;
2. Drawings submitted with the appeal application;
3. Development application decision notice, dated 12 August 2008, from the Assessment Manager;
4. Information request to applicant from Gold Coast City Council, dated 3 July 2008;
5. 'Form 8 – Notice of Election' provided by Gold Coast City Council, dated 3 October 2008;
6. Verbal submission from the applicant at the hearing;
7. Verbal submission from the assessment manager at the hearing;
8. Verbal submissions from the Gold Coast City Council Representatives at the hearing;
9. The IPA;
10. The Integrated Planning Regulation 1998;
11. Part 12 of the Queensland Development Code; and
12. The relevant sections of the Gold Coast City Council Planning Scheme.

Findings of Fact

The Tribunal made the following findings of fact:

- The correspondence from Gold Coast City Council was outside the prescribed time limit provided for in the IPA, and a deemed refusal was the correct course of action by the assessment manager;
- The existing detached dwelling was built on a canal block, which restricted the positioning of any carport within the road alignment setback;
- That there was an existing gate house that was to be incorporated within the proposed carport to form a totally integrated structure;
- There were several other instances where carports were erected within the road boundary set back in the immediate area;
- The design of the proposed carport was sympathetic with the existing detached dwelling in terms of materials, roof lines, roof pitches and proposed finishes;
- The proposed carport was part of the detached house, and under the Gold Coast City Council Planning Scheme, such development is self assessable.

Reason for the Decision

The Gold Coast City Council Planning Scheme, under Part 5 Division 2 Chapter 4 – Domains Detached Dwellings, indicates that Detached Dwellings are self assessable, hence the provisions of the QDC part MP 1.2 apply, the site being over 450 m² in area.

MP 1.2 of the QDC provides Performance Criteria and an Acceptable Solution, which the local government may vary to take account of alternative solutions, topography and other matters.

Council's representatives at the hearing were concerned about the impact of the wide columns of the structure would present to the streetscape, and indicated that they would be supportive of the application if those columns were reduced in width.

The site, with a canal frontage to the rear alignment, provided no alternative position on the site for the proposed carport, other than within the 6 metre road boundary setback.

The Tribunal also considered the potential impact on traffic and safety, and is of the opinion that the positioning of the carport, over what is currently the driveway to the existing garage, will cause no change to the traffic or safety situation.

The Tribunal also considered the streetscape, and being cognizant of the surrounding developments where carports have been erected up to the road alignment, are of the opinion that the proposed carport is sympathetic to the existing detached dwelling and the existing estate's built environment.

Dennis Leadbetter
Building and Development Tribunal Chair
Date: 31 October 2008

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 grounds:

- (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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Department of Infrastructure and Planning
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