



## Building and Development Tribunals – Decision

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### *Integrated Planning Act 1997*

**Appeal Number:** 3–08–053  
**Applicant:** *Withdrawn*  
**Assessment Manager:** Darren Wright for and on behalf of Queensland Building Approvals  
**Concurrence Agency:** Gold Coast City Council  
**Site Address:** *Withdrawn* – the subject site

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### Appeal

Appeal under section 4.2.7(b) of the *Integrated Planning Act 1997* (IPA) and section 9(a) of the Integrated Planning Regulations 2006 against the decision of the Assessment Manager issued 4 July 2008 as directed by Gold Coast City Council's concurrence agency response of 26 June 2008.

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**Date of hearing:** 10am – Friday, 8 August 2008  
**Place of hearing:** The subject site  
**Tribunal:** Mr Paul Smith – Chair  
Dr Rami Hughes – Member  
**Present:** *Withdrawn* – Appellant  
Mr Darren Wright – Queensland Building Approvals representative  
Mr Wayne Glachen – Gold Coast City Council representative  
Mr Peter Krook – Gold Coast City Council representative  
Mr Craig Tomkin – Gold Coast City Council representative

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### Decision:

The Tribunal, in accordance with section 4.2.34(1) of the IPA, **directs the Assessment Manager to assess and decide the application**, the subject of this appeal, subject to the condition that the width of the carport within 6 m of the street alignment does not exceed 6 m measured to the outside of the supporting columns.

### Background

The development application, the subject of the appeal, is an application for a development approval of the building work as shown on Berger Rogers drawings No. 1.10(B) and 2.101(B) dated February 2008, as submitted with the notice of appeal and includes an application:

- a. to enclose of an existing double garage; and
- b. to erect a double carport within 6 m of the road alignment.

The aspect of the development application, which forms the grounds for Council's direction to the Assessment Manager to refuse the application, is the size and bulk of the proposed double carport. In particular its proposed width which exceeds 6 m.

Work has commenced on the carport, the subject of this appeal, by the erection of the supporting columns.

### **Material Considered**

The material considered in arriving at this decision comprises:

1. 'Form 10 – Notice of Appeal' received by the Registrar on 28 July 2008 including grounds for appeal and correspondence accompanying the appeal.
2. Copies of plans showing details of the proposed carport.
3. 'Form 18 – Notice of Election' from Gold Coast City Council.
4. Development Application Decision Notice from the Assessment Manager dated 4 July 2008.
5. Gold Coast City Council's Concurrence Agency Response dated 26 June 2008.
6. Verbal submission from the Applicant at the hearing and a written submission from the Assessment Manager advising that, but for the direction given by Gold Coast City Council to refuse the application, the Assessment Manager would have approved the application subject to reasonable and relevant conditions.
7. Gold Coast City Council's verbal submission at the hearing and a letter dated 8 August 2008.
8. The *Building Act 1975*.
9. The Building Regulation 2006.
10. The Queensland Development Code (QDC).
11. The *Integrated Planning Act 1997*.
12. The Integrated Planning Regulation 1998.
13. Gold Coast City Council's planning scheme.

### **Findings of Fact**

The Tribunal makes the following findings of fact:

- The proposed double carport extends from the existing house to, or close to, the street alignment and is over 7 m wide measured to the outside of the supporting columns.
- By consent of the parties, the QDC Design, MP 1.2 Design and Siting Standard for Single Detached Housing on Lots 450 m<sup>2</sup> and over is the relevant code.
- The relevant element of the code is Element 1 – Design and Siting of Buildings and Structures.
- The relevant performance criteria is P1 and the relevant acceptable solutions are (a) and (c).
- The development application does not comply with acceptable solution (a) because it is closer than 6 m to the road alignment.
- The development application does not comply with acceptable solution (c)(i) because the aggregate perimeter dimension of the walls exceeds 15%.
- The development application does not comply with (c)(ii) because there is an alternative on-site location for a garage or carport, namely the existing garage proposed to be enclosed.

- Because the development application does not comply with acceptable solution (c), it must be assessed for compliance with performance criteria P1.
- In accordance with item 17 of Schedule 2, Table 1 of the Integrated Planning Regulation 1998, Council is a concurrence agency with jurisdiction to decide whether the proposed development complies with performance criteria P1.
- The only issue in dispute is whether the location of the proposed carport facilitates an acceptable streetscape appropriate for the bulk of the building, as set out in P1(a).
- Council is of the opinion that an open carport within 6 m of the road alignment may comply with performance criteria P1 subject to certain conditions.
- For present purposes, the only issue which Council believes prevents the proposed carport from meeting performance criteria P1 is its width.
- Council is of the belief that a carport that exceeds 6 m in width would present an unacceptable streetscape. However, if the width was 6 m or less, it would be acceptable.

### **Reasons for the Decision**

The subject site is located in a pleasant low rise residential street. There are a number of houses nearby in the street that have had carports approved and built within 6 m of the street alignment, some extending to, or close to, the front street alignment. Some of these carports exceed 6 m in width.

The Tribunal was advised that these carports were approved with a maximum width of 6 m, although they have been constructed of a greater width.

There was no documentary evidence of the approval tendered to the Tribunal, although Council's representative gave oral evidence that a search of Council's records showed that none of the carports, approved after the introduction of its current planning scheme, were approved to be in excess of 6 m measured to the outside of the enclosing columns. Council's conclusion was that they were not constructed in accordance with the approval.

Council's representative advised that it was Council's policy that for a carport to be erected within 6 m of the street alignment, it must not exceed 6 m in width measured to the outside of the columns, for it to comply with acceptable solution P1.

No policy was tendered at the hearing.

No evidence was tendered to show that such a policy has been approved by Council or that it was readily available to the public.

No documentary evidence was tendered to show that it is uniformly applied, although Council's representative gave oral evidence to this effect.

The Tribunal considers the Council representative to be a reliable and credible witness and has concluded that Council's policy is not a planning scheme policy or other instrument that is given the force of law under the IPA.

The Tribunal, when assessing whether the bulk of the particular carport facilitates an acceptable streetscape, must consider each case on its merits taking into account the particular circumstances of the site, the proposed carport and the streetscape in which it is located. In doing so, it is not bound by a prescriptive maximum width. In a particular case, a width in excess of 6 m may be acceptable. In another case, a width of 6 m may be unacceptable.

However the Tribunal is of the opinion that the more a carport exceeds 6 m in width the more likely it will have an adverse effect on a residential streetscape.

The Tribunal has accepted Council's submissions that the other carports in the street that were approved after the introduction of Council's current planning scheme, which exceed 6 m in width, were not built in accordance with a valid approval. The Tribunal has not taken into account the effect of the as-built width of the existing carports in its determination. Instead it has assessed the streetscape as if those carports were built in accordance with the relevant approval.

In determining an acceptable bulk, regard must be given to character of the residential area in which the subject site is located.

In short, the particular carport should be of a residential size, scale and character (namely bulk) and, for this particular proposed carport in this particular streetscape, a width not exceeding 6 m would be acceptable.

While the Tribunal believes that there is no certainty that a 6 m maximum width is determinate of whether the bulk is acceptable or not, it is of the opinion that Council's "policy" of requiring a 6 m maximum width is reasonable in the particular street dominated by low rise single detached dwellings on flat lots in excess of 450 m<sup>2</sup>.

The Tribunal believes that, in the interest of certainty for the building industry and the general public, it is reasonable for a consistent maximum width to be required when assessing performance criteria P1 of the QDC when, such as is presently the case, there are no particular circumstances, including unusual topographic or other features, to demonstrate that a wider construction is reasonable or appropriate.

The Tribunal is of the opinion that it is Council's responsibility to represent the residents of its area and without evidence that Council's policy is unreasonable, its policy should be upheld. The Tribunal accepts that the disadvantage of this approach may lead to inconsistencies between different Local Government Areas and even between different precincts within a Local Government Area. However this disadvantage is balanced against the right of individual communities, represented through its Local Government, to have a say over the residential character of their area. This is a right that the legislature must have intended by including Local Government as a concurrence agency under the IPA.

While the Tribunal accepted the Council representative's hearsay evidence about Council's consistent application of the 6 m maximum width policy, the Tribunal expresses concern that the "policy" may not have the benefit of the consultation and public availability associated with a formal planning scheme policy, code or the like and, if that is the case, recommends Council take immediate steps to seek to formalise and publish the "policy."

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**Paul Smith**  
**Building and Development Tribunal Chair**  
**Date: 20 August 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 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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