



**APPEAL**  
*Integrated Planning Act 1997*

**File No. 03-06-102**

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## **BUILDING AND DEVELOPMENT TRIBUNAL - DECISION**

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**Assessment Manager:** Gold Coast City Council  
**Site Address:** *Withheld* – “the subject site”  
**Applicant:** *Withheld*

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### **Nature of Appeal**

Appeal under the *Integrated Planning Act 1997* against the decision of Gold Coast City Council to approve with conditions including a condition limiting the height of the carport to not exceed a height of 3.5 metres above natural ground level to the top of ridge at the road front boundary.

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**Date and Place of Hearing:** 3:00pm on Thursday 7th December 2006 at the offices of the Department of Local Government, Planning, Sport and Recreation, 41 George Street, Brisbane.

**Tribunal:** David Kay  
**Present:** “withheld” - Owner / Applicant  
“withheld” - Owner / Applicant

### **Decision**

The decision of Gold Coast City Council dated 24 October 2006 to approve with conditions an application for preliminary approval of building work relating to the siting of a carport (Preliminary Building Application No. 2617971) on Lot “withheld” at “the subject site” is **upheld**.

### **Background**

*Applicant’s submission to the tribunal.*

- The ground level of buildings was raised at the time the building was constructed in 1972 which makes this building higher than other buildings in the locality.
- This results in this site having a steeper driveway.

- There is a sewer main approximately 1.35m from the front boundary which restricts the building to being supported on brick piers of a limited size.
- This restricts the design to that of a gable roof design.
- The design proposed enhances the appearance of the dwelling and also the streetscape.
- With an eaves height of 2.7m and a ridge height of 4.28m the average roof height is 3.5m.
- Other buildings in the area do not meet this restriction of 3.5m in height. Photographs of various carports were provided.
- There is an existing dwelling in the street owned by one of the applicants father that was built between 1996-2000 that has a carport roof height of 3.9m.

*Gold Coast City Council submission to the tribunal.*

The representative of the Gold Coast Council was unable to attend however a written submission was provided. During the hearing telephone contact was made with Grant Harris of Gold Coast City Council to ask if there were any further submissions to be made and to also clarify the applicable scheme designation of the site.

- In the assessment of the application the Council officers believed that the proposed maximum height of 4.285m was excessive and the height of 3.5m was conditioned to improve the visual appearance of the city's residential streets by controlling the dominance of ancillary buildings within the front yard.
- The carport has already been constructed at a height of 4.285m.
- Precedent is a concern and officers consider that comparing to other properties, which may be historic or unapproved leads to "environmental creep" which only results in eroding the City streetscape amenity and the intent of the current Gold Coast Planning Scheme.
- Under the Gold Coast Planning Scheme the subject land is in the Detached Dwelling Domain and the siting requirements for carports are set out in Part 5 Division 2 Chapter 4 and Part 7 Division 2 Chapter 13. These become the alternate siting requirements under the *Building Regulation 2006*.

### **Material Considered**

- Material submitted by the applicant with the 'Form 10 – Notice of Appeal' to the Tribunal;
- Decision Notice dated 24 October 2006 arising from an application for preliminary approval of building work;
- Written submission from Gold Coast City Council at the hearing;
- The Gold Coast Planning Scheme;
- The *Integrated Planning Act 1997*;
- The *Building Act 1975*; and
- The *Building Regulation 2006*.

### **Findings of Fact**

- An application for preliminary approval for building work was made to the Gold Coast City Council.
- The application was approved with conditions by the Gold Coast City Council.
- The appeal to a Building and Development Tribunal was lodged within the required time.
- The Tribunal has jurisdiction to hear the appeal.

- The carport does not comply with the Acceptable Solutions AS3.1.3 of Part 7 Div 2 Chapter 13 Code for a detached dwelling which requires a maximum height of 3.5m and for the building to not be located within the frontage setback.
- The Performance Criterion “PC3” of Part 7 Div 2 Chapter 13 Code for a detached dwelling in the Gold Coast Planning Scheme contains the performance requirements for the assessment of the siting of the proposed carport.

### **Reasons for the Decision**

- The Gold Coast Planning Scheme Part 5 Division 2 Chapter 4 Detached Dwelling Domain Place Code Acceptable Solutions Criteria AS2 for Building Setback for buildings excludes a carport.
- The Gold Coast Planning Scheme Part 7 Division 2 Chapter 13 Detached Dwelling Code Acceptable Solutions Criteria AS3.13 for Covered Car Parking space/carport requires the carport to not be located within the frontage setback and to have a maximum height of 3.5m.
- The term frontage setback does not appear to be a defined term in the planning scheme. The actual frontage setback also does not appear to have a specified distance as an Acceptable Solution in the planning scheme. The 6.0m “setback from the frontage of the site” in AS2 of Part 5 Division 2 Chapter 4 does not apply to a carport as it is excluded.
- This raises the issue as to whether a carport is allowed to be constructed within the 6.0m front boundary setback under this clause, what is the frontage setback referred to in Part 7 Division 2 Chapter 13 AS3.1.3 or whether because no setback is specified for a carport then the setback provisions of the Queensland Default Code Part 12 apply as the default provisions for a carport.
- This issue does not need to be determined in this case as the Council have approved the location of the carport and this aspect is not in dispute.
- The issue of dispute is the height limitation of 3.5m imposed.
- The Performance Criteria PC3 for Covered car parking/Carport states that the carport “must be located and designed to:
  - (a) aesthetically complement the main dwelling;
  - (b) not dominate the street frontage;
  - (c) have minimal adverse effect on the amenity, likely amenity and character of the neighbourhood.”
- The applicants advised heights of 2.7m at the eaves and height of 4.28m at the peak would resulting a total height of 3.68m if an eaves height of 2.1m had been used.
- The actual height of 4.28m is 0.78m higher or approximately 22% higher than the approved height of 3.5m.
- In considering the height issue, a carport with a width of 6.0m, a roof pitch of 20 degrees, ceiling height of 2.4m will result in a total height of approximately 3.75m allowing 0.225m for the depth of the actual roof construction. The ceiling height of 2.4m would require a supporting beam to be located below this height, however a depth of 0.3m for a supporting beam would be sufficient and still give a head height clearance of 2.1m.
- To achieve the 3.5m height limitation it would be necessary to reduce the roof pitch or reduce the width of the carport or a combination of these.
- It is my opinion that the Council height requirement of 3.5m allowed the construction of a carport up to the road frontage whilst also achieving their performance criteria objectives of aesthetically complementing the main dwelling, not dominating the street frontage and has minimal adverse effect on the amenity and character of the area.
- There was adequate scope to design a carport to achieve the height limitation of 3.5m.

- The Council, in details of 4 approvals given to similar buildings in the locality, have conditioned the height limit to between 3.0-3.4 metres.
- A number of the buildings referred to by the applicant appear to have been constructed without an approval and the Council has advised that it will investigate the matter and issue show cause notices if appropriate.
- The location of the sewer main whilst constraining construction on the site does not, in my opinion and experience, have any affect on the height to which the building is constructed.
- The nature of the road levels and site levels and vehicular crossovers are such that this is a relatively level site and the levels can be adjusted to achieve height constraints and also vehicle access and footpath crossover gradients without difficulty.

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**David Kay**  
**Building and Development**  
**Tribunal Referee**  
**Date: 19 March 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:

The Registrar of Building and Development Tribunals  
Building Codes Queensland  
Department of Local Government, Planning, Sport and Recreation  
PO Box 15031  
CITY EAST QLD 4002  
**Telephone (07) 3237 0403: Facsimile (07) 3237 1248**