



APPEAL

Integrated Planning Act 1997

File No. 03-06-101

BUILDING AND DEVELOPMENT TRIBUNAL - DECISION

Assessment Manager: Gold Coast City Council

Site Address: *Withheld* – “the subject site”

Applicant: *Withheld*

Nature of Appeal

Appeal against condition 8 of preliminary building application 2522310 requiring that the proposed carport be offset from the side boundary to the outermost projection of 0.5 metres.

Date and Place of Hearing: 9am Tuesday 5 December 2006 at
Gold Coast City Council Chambers, Southport

Tribunal: Mr Greg Rust

Present:	“withheld”	Owner/Applicant
	Mr Grant Harris	Gold Coast City Council Representative
	Mr Patrick Giess	Gold Coast City Council Representative

Decision

In accordance with Section 4.2.34 of the *Integrated Planning Act 1997*, I dismiss the appeal and **confirm** the decision of the Gold Coast City Council contained in Decision Notice dated 27 October 2006 to approve the application for the carport with the requirement that the carport be offset from the boundary 0.5 metres.

Background

Plans for the carport in question were prepared on the owner’s behalf dated 9 November 2005 after the owner had made preliminary enquiries with the Gold Coast City Council counter staff. The owner’s enquiries had indicated that the plan prepared would be acceptable to the Council upon the application being made.

The application was made to the Gold Coast City Council however the Council imposed a condition that the carport be set back 0.5 metres from the side boundary of the property.

The Council cites that generally carports located within the road boundary clearance will be required to be set back from the side boundaries. No policy guideline exists at Council to assist prospective applicants with guidance in respect to these applications. Similarly, no definition of a carport exists within the Gold Coast Planning Scheme.

The Gold Coast Planning Scheme performance criteria for building setback “all buildings must provide for setbacks from the street frontage and side and rear boundaries, which are appropriate to the efficient use of the site and the street scape character of this domain”. The Council’s assessment of the performance criteria has resulted in the condition that the carport be setback 0.5 metres from the side boundary.

Material Considered

1. Plans prepared by David Horne dated 9 November 2005 Sheet 1 & 2;
2. Preliminary Building Application No 2522310 dated 27 October 2006;
3. Submission of applicant received by Registrar 20 November 2006;
4. Verbal submissions taken during appeal hearing 5 December 2006; and
5. Gold Coast Planning Scheme Part 5 Division 2 Chapter 4.

Findings of Fact

- The applicant consulted with the Gold Coast City Council prior to lodgement of his application and was given contrary advice.
- The application, whilst approved by the Gold Coast City Council, required that the carport be setback 0.5 metres which was contrary to the applicant’s previous enquiries.
- Planning guidelines prepared by Council for such applications would give applicants a greater ability to prepare acceptable applications.

Reasons for the Decision

Having regard to the location of the driveway of the adjoining property, the pedestrian crossing and the location of the proposed carport, the potential for future carport approvals could have a dominating effect on the streetscape should this proposed carport not be setback from the side boundary in this case.

Generally, carports should present an open style and should not create an accumulative effect to the street. Whilst the adjoining driveway and pedestrian crossing are not part of this application, they must be taken into consideration when assessing the proposed carport.

It is therefore considered reasonable that the carport in this appeal be setback by 0.5 metres from the side boundary.



Greg Rust
Building and Development
Tribunal Referee
Date: 22 December 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
Building Codes Queensland
Department of Local Government, Planning, Sport & Recreation
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