



**APPEAL**  
*Integrated Planning Act 1997*

**File No. 3/03/048**

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

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**Assessment Manager:** Gold Coast City Council

**Site Address:** 33 Twelfth Avenue Palm Beach

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### **Nature of Appeal**

The appeal is against the decision of the Gold Coast City Council to impose the following conditions on Preliminary Building Application No 23/12156, Development Application No 23/02860, for the construction of a carport-

- The carport shall not exceed 2.9 metres at the road front boundary, to the top of the parapet.
- The carport width is not to exceed 6.8 metres along the road front boundary.

The carport is proposed to be erected on land described as Lot 28 on RP 107109 and situated at 33 Twelfth Avenue, Palm Beach.

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**Date and Place of Hearing:** 10.00am Friday 12 September 2003.  
33 Twelfth Avenue Palm Beach.

**Tribunal:**

Mr Phil Breeze	Tribunal member
Mr Mark Dawson	Tribunal member
Mr L F Blumkie	Tribunal Chairperson

**Present:**

Applicants / Owners	
Mr Jeremy Wagner	Gold Coast City Council representative
Mr Craig Tonkin	Gold Coast City Council representative
Mr L Blumkie	Tribunal Chairperson
Mr Mark Dawson	Tribunal
Mr Phil Breeze	Tribunal
Mr Keith Thomas	Adviser to applicant / Owner

## **Decision**

The Tribunal with the consent of the applicant varies the application and changes 'Part A Conditions of Approval' items 6 and 7 of the decision notice of the Gold Coast City Council to read as follows:-

- 6      *The carport height shall not exceed 3.3 metres at the road front boundary, to the top of the parapet.*
- 7      *The carport width is not to exceed 7.28 metres along the road front boundary.*

## **Background**

The appellant made a Preliminary Application to the Gold Coast City Council on the 23 June 2003 seeking a relaxation for a carport to be erected within the 6 metre road boundary clearance.

Council approved the application on 1 August 2003 subject to a number of conditions including:-

- The carport shall not exceed 2.9 metres at the road front boundary, to the top of the parapet.
- The carport width is not to exceed 6.8 metres along the road front boundary.

The applicant considered that such conditions were restrictive and would not satisfy their needs in relation to parking of vehicles.

Mr Keith Thomas confirmed by facsimile on the 3 September 2003 that the Gold Coast City Council had confirmed (verbally) that the proposal as submitted would have an extremely adverse effect on the amenity of the building's neighbourhood.

Mr Keith Thomas lodged an appeal on behalf of the applicant with the Department of Local Government and Planning on the 22 August 2003.

## **Material Considered**

In coming to a decision, consideration was given to the following material: -

1. Preliminary application dated 23 June 2003.
2. Drawings accompanying the application.
3. Copy of the Decision Notice dated 1 August 2003.
4. Copy of the Appeal Notice dated 20 August 2003.
5. Fax transmission dated 3 September 2003 from Thomas Independent Certification.
6. Copy of Council Meeting 15 May 1998 AGENDA.
7. Copy of Council Committee Recommendation.
8. Verbal submissions from the owners.
9. Verbal submissions from Mr Keith Thomas.
10. Verbal submissions from the Gold Coast City Council representatives.
11. The Standard Building Regulation.
12. The Integrated Planning Act.

## **Findings of Fact**

### *A Standard Building regulation - Division 4 - Amenity and Aesthetics*

Gold Coast City Council adopted an Amenity and Aesthetics policy under Section 50(1) of the Standard Building Regulation on the 15 May 1998.

The resolution amongst things declared that all development applications for carports within the 6 m road boundary clearance to be erected within the City of Gold Coast are subject to amenity and aesthetics assessment by the local government assessment manager.

Section 50 (2) of the Standard Building Regulation 1993 states that applications mentioned in Section 50 (1) must be assessed by the local government for the amenity and aesthetics impact of the proposed building work.

Section 50 (3) states that the local government may refuse an application to which subsection (2) applies if the building when built would have an extremely adverse effect on the amenity or likely amenity of the building's neighbourhood etc.

### *B Integrated Planning Act – Division 6 Tribunal process for appeals - Appeal Decision*

Section 4.2.34(2)(e) of the Integrated Planning Act grants power to an Amenity and Aesthetics Tribunal to vary applications with the consent of the appellant. The legislation appears not to grant power to a local government to vary applications by conditioning decision notices especially on amenity and aesthetics matters.

### *C Integrated Planning Act – Division 6 – Conditions*

Section 3.5.30.(1) of the Integrated Planning Act states that a condition must be relevant and not unreasonable etc. Conditions 6 and 7 applied in this instance because they relate to amenity and aesthetics (for which the local government does not have power to condition) are therefore in the opinion of the Tribunal not relevant as part of the Decision Notice.

### *D Site*

The site is vacant and the preliminary application is for a new class 1 building and attached carport within the 6 metre road boundary clearance.

The site is level, rectangular in shape and appeared to be one of the few vacant sites left in the neighbourhood.

### *E Development in the neighbourhood.*

An inspection of the neighbourhood indicated the majority of houses to be low set. There were numerous examples of carports (photos of same with height and width dimensions submitted with the appeal) within the 6 m setback found in most streets within the neighbourhood. Some were similar in height, width and style to that proposed in the application.

A check of Council records, at the hearing, indicated some of these similar examples had received Council approval since the introduction of the resolution. Others may have been built without an approval and may be subject to further investigation by Council.

*F Forms of buildings and Council policy.*

The local government representatives were unable to table a written policy on the forms of buildings, which the local government considered acceptable under their amenity aesthetics resolution.

**Reasons for the Decision**

In this instance the local government even though they, considered the application would have an extremely adverse effect on the amenity of the buildings neighbourhood, approved the application with conditions.

In the opinion of the Tribunal if the local government was of this opinion they should have **refused** the application as required by Section 50 (3) of the Standard Building Regulation.

The local government did not have power to impose conditions as a result of an amenity and aesthetic assessment. The application was either:-

- 1 acceptable and therefore approved or
- 2 in **extreme** conflict and refused.

Only the Tribunal has the power to vary the application and only then with the consent of the applicant.

The Tribunal in this instance decided to consider the appeal as though the local government had refused the application.

After considerable discussion at the hearing on the local governments assessment of the application, it appeared the main concern was with the mass and bulk of the proposal. The Council representatives were unable to satisfactorily demonstrate to the Tribunal that if the maximum height of 2.9m and maximum width of 6.8m were exceeded the proposal would have an **extremely** adverse effect on the amenity of the buildings neighbourhood etc. No evidence was produced as to how this height and width was established.

There were numerous existing examples of similar style carports some of which were greater in both width and height to the proposal. Some had received local government approval since the introduction of the resolution in May 1998.

After discussion on the applicant's requirements for the parking of vehicles, it was agreed the overall height of the carport could be reduced to 3.3 metres when measured at the street boundary.

This would allow for an opening height of 2.5m and 900mm for roof framing. This appeared reasonable to enable the entry and parking of a typical four-wheel drive vehicle with roof rack loaded.

The Tribunal considered the overall shape, size and siting of the proposal when compared with previous approvals of Council since 1998 was similar to many existing carports and would therefore **not** have an **extremely** detrimental effect on the amenity and/or aesthetics of the buildings neighbourhood.

Hence, in accordance with section 4.2.34(2) (e) of the Integrated Planning Act the Tribunal decided to vary the application and change '*Part A Conditions of Approval*' items 6 and 7 of the Decision Notice of the Gold Coast City Council to read as follows:-

- 6 The carport height shall not exceed 3.3 metres at the road front boundary, to the top of the parapet.
- 7 The carport width is not to exceed 7.28 metres along the road front boundary.

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**Leo F Blumkie**  
**Building and Development**  
**Tribunal Chairperson**  
**Date: 18 September 2003**

## **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 and Planning  
PO Box 31  
BRISBANE ALBERT STREET QLD 4002  
**Telephone (07) 3237 0403: Facsimile (07) 32371248**