



**APPEAL**  
*Integrated Planning Act 1997*

**File No. 3-02-042**

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

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**Assessment Manager:** Gold Coast City Council

**Site Address:** 115 Albatross Avenue, Mermaid Beach

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### **Nature of Appeal**

Appeal under Section 4.2.9 of the Integrated Planning Act 1997 against the decision of the Gold Coast City Council in varying the application of Division 2 – Boundary clearances, as provided for under Section 48 of the *Standard Building Regulation 1993* (SBR) for a Carport to a detached house on land described as Lot 40 RP 909450 and situated at 115 Albatross Avenue, Mermaid Beach.

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**Date and Place of Hearing:** 12 noon on Monday 4 November 2002  
At 115 Albatross Avenue, Mermaid Beach

**Tribunal:** Dennis Leadbetter

**Present:** Applicant  
Applicant's representative  
Brian Gobie - Gold Coast City Council

### **Decision**

The decision of the Gold Coast City Council as contained in its letter dated 26 September, 2002, reference DA 22/04534 BA 22/19803, not to grant approval to permit the erection of a Carport to a detached house within the road alignment setbacks is **set aside**. The Carport may be erected with a road boundary clearance of 0.1 and 0.983 metres to Albatross Avenue, Mermaid Beach as indicated on drawing number 2002-13/WD01, dated September 2002 prepared by Greg Kearney Architects.

### **Background**

The application was for permission to erect a triple carport within the 6 metre road boundary clearance to an existing detached house.

The Gold Coast City Council had refused the application on the grounds

- it would excessively overcrowd the road frontage setback, and
- that it was not necessary to provide for the parking of in excess of two vehicles on the site.

There is provision for parking of two vehicles in an existing garage on the site.

### **Material Considered**

- 1 Appeal notice and grounds of appeal contained therein;
- 2 Drawings submitted to Gold Coast City Council;
- 3 Letter from Gold Coast City Council not to approve the Carport;
- 4 Verbal submission by Mr Greg Kearney, architect for the applicant and owner explaining the reasons why the relaxation should be granted;
- 5 Verbal submission by Mr Brian Gobie, Gold Coast City Council, explaining the reasons why the relaxation should not be granted;
- 6 The Standard Building Regulation 1993;
- 7 Gold Coast City Council extract of town planning provisions, as provided by Mr Gobie at the hearing;
8. The applicant has a growing family, with one of those already having a motor vehicle, making a total of three vehicles currently parked on site and wishing to protect that investment from the elements;
9. The nature of the proposed structure, in terms of bulk, size, height, materials and degree of enclosure; and
10. The impact on and changes to existing structures and landscaping on site by the proposal.

### **Findings of Fact**

I made the following findings of fact:

1. The site, although being of around 800 m<sup>2</sup> in area, has a frontage of approximately 12.5 metres.
2. The adjoining lots are of similar dimensions and area.
3. There are multiple dwellings in the area.
4. The house has minimal boundary clearances, not allowing vehicular access to the rear of the site within the site boundaries.
5. The availability of on street parking is minimal, because:

- Narrow frontage of the allotment;
- Gold Coast City Council's installation of a bike way, removing on street parking to the total length of the eastern side of Albatross Street;
- The location of the site in close proximity to a popular beach, and an access to that beach and the demands for parking by non residents travelling to the beach.

6. The site and surrounding areas are flat.

7. There are several instances in the surrounding area where similar structures have been erected.

8. The views from neighbouring properties would not be impaired by the proposed structure, because of other existing structures and the fact the primary view is to the east over the ocean.

9. The site development is currently around 44% and the addition of the carport will increase that to around 51% of the site area.

10. The Council requirement is for the provision of a minimum of two (2) car parking spaces;

11. While there is no definition for *carport* in the BCA or the Shorter Oxford Dictionary, it is my opinion that, contrary to the view put forward at the hearing by Mr Gobie that a carport was only to accommodate one vehicle, a carport may accommodate more than one motor vehicle. I have arrived at this opinion after considering the following. The Building Code of Australia, under the definition of a class 10A building, includes *private garage, carport, shed* thus indicating these items are of a similar genre, and the Oxford Dictionary definition of a *garage* is *building or shed for storing ..... of motor vehicles*;

12. Under Section 48 of the SBR, a local government may vary how Division 2 applies to the application after considering under Section 48(3), the following points:-

a. *The level, depth, shape or condition of the allotment and adjoining allotments.*

The allotment and the adjoining allotments are predominantly flat and narrow frontage. Buildings on both adjoining allotments generally comply with the siting requirements under Division 2 of the SBR.

b. *The nature of any proposed building or structure on the allotment.*

The allotment currently has a detached two storey dwelling and existing two car garage, similar to that of its neighbours.

c. *The nature of any existing or proposed building or structure on the adjoining allotments.*

The surrounding residences are detached, generally two storey, and include high fences of both solid and semi solid construction. There is a large multiple dwelling opposite.

d. *Whether the allotment is a corner allotment.*

The allotment is not a corner allotment.

e. *Whether the allotment has 2 road frontages.*

The allotment has only one road frontage.

f. *Any other matter considered relevant.*

The provision of off street parking for two vehicles is required under the Gold Coast City

Council town planning provisions.

The applicant's household currently has three motor vehicles and is desirous of providing off street parking and some degree of weather protection for those vehicles.

The availability of on street parking is almost non existent because of:

- The bike way running the full length of Albatross Avenue, prohibiting parking to the eastern side of the street;
- The narrow frontage of the allotments to the area, reducing the on street parking per allotment ratio to 1:1;
- The location of the site in relation to a popular beach and access to that beach, and the parking demands that would impact on the area.

The relationship of the proposed structure to the existing structures and streetscape is sympathetic, and retains a substantial portion of the existing landscaping fronting Albatross Avenue.

13. In varying the siting requirements, the local government must be satisfied that a building or structure, built on the allotment in the way proposed, would not **unduly** –

a. *Obstruct the natural light and ventilation of an adjoining allotment.*

The proposed carport is on the western side of the site, and thus will have minimal impact on natural light or ventilation to the adjoining allotments.

b. *Interfere with the privacy of an adjoining owner.*

The proposed Carport will not impact on the privacy of adjoining owners.

c. *Restrict the areas of the allotment suitable for landscaping.*

The area of the site to the streetscape for landscaping is limited because of the width of the allotment and the Carport will reduce this, however the design has retained a substantial portion of the existing hard and soft landscaping.

d. *Obstruct the outlook from the adjoining property.*

The proposed Carport, being of single storey in height would not unduly obstruct the outlook from the adjoining property, as the existing residence is two storey and the major views are to the ocean to the east/ The adjoining properties are generally fenced with fences up to 2 metres in height, with significant solid panels; this would reduce outlook to a greater degree than the Carport. The outlook from the adjoining properties, because of the topographical characteristics of the surrounding area, the narrow lot frontage is not further affected by the development.

e. *Overcrowd the allotment.*

The existing structure, and the Carport is approximately 52%.

f. *Restrict off-street parking for the allotment.*

The proposal is to provide for greater off street parking than formerly available, to compensate for the limited on street parking available.

g. *Obstruct access for normal building maintenance.*

The development will not impact on access for maintenance as there is adequate access and space for maintenance operations, and the proposed materials are of a low maintenance nature.

## **Reasons for the Decision**

Sections 48 (3) and (4) of the SBR allows for local government to vary the application of siting requirements. In assessing the criteria from this part of the legislation and considering the nature and use of the proposed structure and existing structures and their siting on the adjoining allotments, and the limited impact the Carport would have on the amenity and streetscape, the Tribunal found that there was reasonable grounds to vary the road alignment setback to allow the Carport to be constructed within the 6 metre road boundary set back.

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**Dennis Leadbetter**

Dip. Arch. QUT; Grad. Dip Proj. Man. QUT; METM UQ

**Building and Development**

**Tribunal Referee**

**Date: 12 November 2002**

## **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  
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