



Building and Development Tribunals—Decision

Integrated Planning Act 1997

Appeal Number:	3—09—070
Applicant/Appellant:	Terry Haden
Assessment Manager:	Caloundra Building Approvals
Concurrence Agency: (if applicable)	Sunshine Coast Regional Council (Council)
Site Address:	14 Coraki Street Battery Hill and described as Lot 848 CP C92822 – the subject site

Appeal

Appeal under section 4.2.9 of the *Integrated Planning Act 1997* (IPA) against the decision of the assessment manager to refuse a siting variation for the proposed car port and gatehouse at the subject site. The decision was based on a concurrence agency response from Council.

Date of hearing:	Thursday 29 th October 2009 9.00am -10.00am
Place of hearing:	14 Coraki Street Battery Hill, the subject site
Tribunal:	Robin King-Cullen - Chair
Present:	Robin King-Cullen – Tribunal Chair Terry Haden - Appellant Narelle Haden – representing the Appellant Richard Prout – representing the Council

Decision:

The Tribunal, in accordance with section 4.2.34 (2) (a) **changes** the decision appealed against by refusing the siting variation for the proposed car port and “Bali hut” structure on the following grounds:

- (a) the proposed carport does not comply with Specific Outcome 07 (Garages and Carports) of Code 8.5 Detached Housing Code of the Caloundra City Plan 2004 as it would dominate the streetscape and adversely affect the amenity of adjacent land and dwellings having regard to:
- (i) building character and appearance;
 - (ii) views and vistas; and
 - (iii) building massing and scale as seen from neighbouring premises; and

- (b) the allotment has complying off street parking in accordance with Specific Outcome 08 (parking and Access) Code 8.5 Detached Housing Code of the Caloundra City Plan 2004; and
- (c) the proposed carport and “Bali hut” structure together do not comply with Performance Criteria MP1.2 (Design and Siting Standards for Single Detached Housing on Lot 450m² and over) Performance Criteria P1 and P2 of the Queensland Development Code (QDC) in that the proposed buildings/structures do not facilitate an acceptable streetscape appropriate for:
- (i) the bulk of the buildings/structures; and
 - (ii) the road boundary setbacks of neighbouring buildings or structure; and
 - (ii) the outlook and views of neighbouring residents.

Background

The Proposal

The matter concerns the decision of Council as concurrence agency to refuse a siting variation application to enable a double carport to be constructed within 1580 mm of the front road boundary setback and 200mm from the western side boundary and to enable a “gatehouse” (also described as a “Bali hut”) to be constructed within 1700 mm of the front road boundary setback and 400 mm from the eastern side boundary. Both structures already exist.

The subject site, having an area of 546 square metres, is located in Coraki Street, Battery Hill.

The subject site is relatively flat and contains a substantial two storey dwelling, a separate granny flat at the rear of the site, and a number of other carport/pergola/gazebo structures both at the front and rear of the property, including the carport and “gatehouse” (or “Bali hut”), at the front of the property and the subject of this appeal. The dwelling has been constructed with a front building setback of 5.880m from the Coraki Street frontage and side boundary setback of 1.778m from the side boundaries.

The history surrounding erection of structures currently on the site, including the proposed carport and “gatehouse” (or “Bali hut”), is relevant to the appeal. According to Council records summarised in the written submission by Mr Prout and supported by various aerial photographs from Council records provided at the Tribunal Hearing on 29th October:

- a single storey dwelling (including an enclosed single garage) was approved on site prior to 1985. Council has not retained any records of that approval;
- a single timber carport was apparently erected between the dwelling and the road frontage sometime between 1985 and 1999;
- A granny flat was approved to be erected at the rear of the site in 2004 and was constructed sometime between 2004 and 2005;
- A number of other structures were erected at the rear of the property at various times after 1999 without the necessary approvals having first been obtained. The Tribunal understands this refers to the “gatehouse” (or “Bali hut”), “spa gazebo”, “pergola” and “gazebo” shown on plan number 2088126, sheet 4 of 12 and sheet 12 of 12 dated October 2008 provided by facsimile to the Tribunal on 27 October 2009;
- The double carport, the subject of this appeal, was apparently erected sometime after 2005 (in place of the earlier single timber carport) without the necessary approvals having first been obtained;
- During processing of a 2008 building application for proposed extensions to the existing dwelling, the applicant stated that the double carport and “gatehouse” (or “Bali hut”), the subject of this appeal would be demolished. Demolition of these structures formed a condition of Development Approval BDD-0 4508;
- Despite the proposal to demolish the double carport as part of Development Approval BDD-0 4508, the applicant requested an extension of time to remove the carport so it could be used for the storage of building material for the dwelling alterations through the wet season. Council granted an extension

of time to remove the carport until 12 March 2009;

- In July 2009 Council received a new application seeking to retain the double carport and “gatehouse” (or Bali hut”), on site. Council’s referral agency response to this application dated 14 August 2009 directed refusal of the application.

In support of their application, the appellants state, among other things, that:

- “we asked and had a carport and rear patio included on the original plans”;
- “there are quite a lot of carports in our street and surrounding streets”;
- “the carport does not offend anyone in the area as we have signed letters from our neighbours stating exactly that”;
- “my immediate family and ourselves have a combined amount of (4) vehicles, (1) boat and (1) box trailer... surely we have a right to protect our vehicles against damage (storms) and theft if they are left out on the streets”; and
- The carport is “coloured and toned to blend in with the rest of the house”.

The “Gatehouse”

Part of the application subject to appeal is to enable a “gatehouse” (also described as a “Bali hut”) to be constructed within 1700 mm of the front road boundary setback and 400 mm from the eastern side boundary. Schedule 2 of the *Integrated Planning Regulation 1998* (IPR) states that Council’s jurisdiction as a referral agency is triggered if::

- (a) The Queensland Development Code (QDC) MP 1.2 applies for the building work; and
- (b) Under the part, the proposed building or structure does not include an acceptable solution for the relevant performance criteria under the part.

Council’s jurisdiction as a concurrence agency is limited to assessing whether the proposed building or structure complies with the performance criteria under the Queensland Development Code (QDC) (Schedule 2 Table 1 Item 17 of the IPR).

Acceptable solutions contained in MP 1.2 of QDC, provide an exemption for “roofed gatehouses” of a certain maximum area and height (Acceptable solution A1 (d) (iii)). There is no definition of “gatehouse” in any of the documents referenced as part of this appeal.

Therefore, the Tribunal relied on the dictionary definition of “gatehouse” being “a small building next to the gate of a park or at the entrance to the land surrounding a big house” (Longman Dictionary of Contemporary English). The structure in question does not meet the accepted definition of a “gatehouse” in that it is well removed from the entrance to the property and with no direct access from the road frontage. As a result, the structure is more accurately described as a “Bali hut” and does not qualify for the siting exemption under MP1.2 referred to above.

Therefore, the “Bali hut” is required to meet Performance Criteria MP1.2 (Design and Siting Standards for Single Detached Housing on Lot 450m2 and over) of the QDC.

Concurrence Agency Decision

The concurrence agency (Council) response to the application dated 14 August 2009 refused the application on the grounds that

1. The Development does not comply with Specific Outcome 07 (Garages & Carports) Code 8.5 Detached Housing Code of the Caloundra City Plan 2004 as:
 - The proposed buildings will have a dominating appearance when viewed from the street given that the building is located within the prescribed setback and located forward of the line of the

- dwelling; and
 - The buildings will be inconsistent with the existing and proposed streetscape character; and
 - The buildings will detract the outlook from surrounding properties due to the buildings massing and scale.
 - The combinations of the two buildings take up fifty seven percent of the allotments street frontage.
2. The allotment has complying off street parking in accordance with Specific Outcome 08 (parking and Access) Code 8.5 Detached Housing Code of the Caloundra City Plan 2004.
 3. The Development does not comply with Performance Criteria 2 of MP1.2 (Design and Siting Standards for Single Detached Housing on Lot 450m/2 and over) of the QD Code for the following:
 - The proposed buildings will affect the privacy of the adjoining property.
 - The proposed buildings will detract the outlook from the adjoining property.
 - The proposed buildings will affect light and ventilation to the adjoining property.
 4. The removal of the Carport and Bali Hut under assessment formed a condition of Development Approval BDD-0 4508;

The buildings/structures identified for demolition on the approved drawings shall be demolished and removed from site within forty (40) businesses days from the date of this decision notice.

The Tribunal considers that the concurrence agency (Council) response was in error in its grounds for refusing the siting variation application for the “Bali hut” by referring to Specific Outcome 07 (Garages & Carports) Code 8.5 Detached Housing Code of the Caloundra City Plan 2004 and by referring to “gatehouse” in the decision notice.

Material Considered

The material considered in arriving at this decision comprises:

1. Copy of the application dated 6 July 2009.
2. Copy of the Referral Agency Response dated 14 August 2009 from Council to Caloundra Building Approvals directing refusal of the application.
3. Copy of Development Application Decision Notice dated 24 August 2009 from Caloundra Building Approvals to Terry Haden stating that the application had been refused.
4. Form 10 – Building and Development Tribunals Appeal Notice received on 14 September 2009 against the refusal, including attachments.
5. Verbal submissions made by Terry Haden and Narelle Haden at the hearing.
6. Verbal submissions made by Richard Prout at the hearing.
7. Written submission by Richard Prout dated 28 October 2009 setting out reasons why the Council directed refusal of the application.
8. Letter of support from residents of 16 Coraki Street dated 8 July 2009.
9. Letter of support from owners of 12 Coraki Street dated 8 July 2009.
10. Code 8.5 Detached Housing Code of the Caloundra City Plan 2004.
11. The QDC.
12. The *Building Act 1975*.
13. The IPA.

14. The Building Code of Australia.
15. Longman Dictionary of Contemporary English.

Findings of Fact

The Tribunal makes the following findings of fact:

1. The proposed double carport and “gatehouse” or “Bali hut” already exist.
2. The allotment has complying off street parking in accordance with Specific Outcome 08 (parking and Access) Code 8.5 Detached Housing Code of the Caloundra City Plan 2004.
3. The structure described as “gatehouse” (or “Bali hut”) in the application and the concurrence agency decision does not meet the accepted (dictionary) description of a “gatehouse” for the purpose of assessing the structure against MP1.2 of the QDC.

Reasons for the Decision

The Tribunal considered that:

- the combined impact of the two storey dwelling, the double carport and the “Bali hut” constitutes an overdevelopment of the street frontage of the site in terms of bulk and scale;
- the proposed double carport does not comply with Specific Outcome 07 (Garages and Carports) of Code 8.5 Detached Housing Code of the Caloundra City Plan 2004 in that it dominates the streetscape;
- the reference to “gatehouse” in the application and the Concurrence Agency decision does not accurately describe the structure referred to as part of this appeal as it is well removed from the entrance to the property and has no direct access from the road frontage. A more appropriate description of this structure is considered to be “Bali hut” for the purpose of assessing the structure against MP1.2 of the QDC; and
- the proposed “Bali hut” does not comply with Performance Criteria MP1.2 (Design and Siting Standards for Single Detached Housing on Lot 450m² and over) Performance Criteria P1 and P2 of the QDC in that the proposed buildings/structures do not facilitate an acceptable streetscape.

Robin King-Cullen
Building and Development Tribunal Chair
Date: 20 November 2009

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:

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