



Building and Development Tribunals—Decision

Integrated Planning Act 1997

Appeal Number:	03-09-063
Applicant:	John and Suzanne Hinds
Assessment Manger:	Caloundra Building Approvals
Concurrence Agency: (if applicable)	Sunshine Coast Regional Council (Council)
Site Address:	13 Coolahra Street, Warana and described as Lot 118 CP W95545 – the subject site.

Appeal

Appeal under Section 4.2.9 of the *Integrated Planning Act 1997* (IPA) against the decision of Sunshine Coast Regional Council, to refuse an application for a covered deck within the Coolahra Street road alignment setback.

Date of hearing:	Friday 21 August, 2009 at 10.00 am
Place of hearing:	13 Coolahra Street, Warana
Tribunal:	Dennis Leadbetter - Chairperson
Present:	John Hinds - Owner Chris van der Pol - Owner's representative Richard Pratt - Sunshine Coast Regional Council

Decision:

The Tribunal, in accordance with section 4.2.34 (2)(c) of the IPA, **sets aside** the decision of Caloundra Building Approvals dated May 26, 2009, to refuse the building development application, and replaces it with the following decision:-

The Assessment Manager, in accordance with section 4.2.34 (1), is **directed** to decide the development application for building works if the application complies with the following:-

1. The carport is located as indicated on the drawing numbered 0802-973-SK1, with a setback to Coolahra Street road alignment measured to the omp of 0.3 metres.

2. That the gate house be maximum 2.0 metres wide measured across the structure, in compliance with QDC MP 1.2 A1 (d) (iii) (B), and an overall height of 3.0 metres, in compliance with QDC MP 1.2 A1 (d) (iii) (C). The gate house to be set back from the Coolahra Street road alignment a distance of 1.8 metres measured to the omp as indicated on drawing numbered 0802-973-SK1.

Background

It is estimated that the existing detached dwelling would have been constructed around the late 1970 early 1980's as the area was developed at that time. The dwelling is a smallish low set brick veneer cottage, typical of that era. It contains a single car garage as part of the main structure.

The existing structure has a minimum 6 metre set back to the omp to the street boundary, and approximately 2.2 metre set back to wall to the eastern side boundary and approximately 2.1 metres from the western side boundary.

The applicant is desirous of reconfiguring the existing house to provide suitable accommodation for their permanent retirement residence, which includes inter alia a reasonable need to increase the existing small living area.

Council refused the application on the grounds that:

1. The development does not comply with Specific Outcome 07 (Garages and Carports) Code 8.5 Detached Housing Code of the Caloundra City Plan 2004 as:
 - The proposed carport and gatehouse 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 combination of the proposed carport and gatehouse constitute a development of more than 50% of the street frontage; and
 - The proposed carport and gatehouse will be inconsistent with the existing and proposed streetscape character; and
 - The carport and gatehouse will detract the outlook from surrounding properties due to the building massing and scale.
2. The Development does not comply with the Specific Outcome 08 (parking and Access) Code 8.5 Detached Housing Code of the Caloundra City Plan 2004. As the existing complying off street parking is proposed to be converted to habitable rooms.
3. The allotment is not constrained and has complying off street parking in accordance with the code; and
4. The location of the existing existing buildings onsite are such that an alternative design is available to both comply with the Planning Scheme provisions and to have covered car parking spaces which do not unduly impact upon the streetscape.

Material Considered

1. *Form 10 – Notice of Appeal* and grounds of appeal contained therein and attachments.
2. *Form 8 – Notice of Election* provided to the Registrar by the Council.
3. Drawings submitted with the appeal.
4. Verbal submissions from those attending the appeal.
5. Written submission from Sunshine Coast Regional Council presented to the Tribunal at the hearing.
6. *The Integrated Planning Act 1997*.
7. *The Integrated Planning Regulation 1998*.
8. *The Queensland Development Code (QDC) Part MP 1.2*.

9. An inspection of the site, including existing buildings on the site and adjoining sites.

Findings of Fact

The Tribunal made the following findings of fact:

1. The dwelling is a single storey brick veneer dwelling, set back approximately 6 metres to the omp to the street frontage;
2. The allotment is a regular rectangular allotment of area approximately 550 sq metres with an 18.5 metre frontage;
3. The site and surrounding area are substantially flat;
4. Dwellings on surrounding sites are of single storey;
5. There are developments in the immediate vicinity that have car accommodation built in close proximity to the road alignment within the nominated 6 metre setback, and which Council have indicated have been granted a relaxation;
6. That the side alignment setbacks are insufficient, in terms of the provisions of A1 (c) (ii) (B), to provide minimal vehicular access to the rear of the allotment.

Reason for the Decision

The Tribunal has carefully considered this application and the 7 specific factors that Council indicated were used to assess the development in its written submission to the Tribunal at the hearing. Those 7 factors were as follows:-

- *The existing allotment is not constrained in anyway and as such there is an obligation on the applicant to design in accordance with the applicable codes. In this instance the applicable code is Caloundra City Plan 2004 Detached Housing Code.*
- *As per Specific Outcome 07 (Garages and Carports) Code 8.5 Detached Housing Code of the Caloundra City Plan 2004 the minimum front road boundary setback for garages and carports is 6 metres.*
- *As per Specific Outcome 08 (Parking and Access) Code 8.5 Detached Housing Code of the Caloundra City Plan 2004. The applicant is required to provide two off street parking spaces one of which must have the ability to be covered ie at the 6 metre setback.*
- *The property is complying with this provision as the property has a complying single garage with a front road boundary setback of 6 metres.*
- *In general the allotments within the area of the subject site are complying with the setback requirements of the Caloundra City Plan and as such the proposed building would be inconsistent.*
- *In general the properties in the area of the subject site are complying with the requirements of the QDC and Caloundra City Plan. As such any reduction of the setback would cause a perceived over development of the street frontage.*
- *The allotment road frontage is 18.6 metres and the combined length of the proposed structures takes up 9.5 metres of the frontage which is 51% of the allotment frontage.*

Given the above the proposed buildings were considered to be out of character with the existing and proposed streetscape for the surrounding area.

The Tribunal has considered each of these 7 points and responds to each as follows:-

1. The Tribunal does agree with Council that, where possible and reasonably practical, designs should fit within the requirements of applicable legislation. However, the Tribunal is aware that there are circumstances where it is not practicable, nor would complying provide the best aesthetic outcome, and this is the reason why local government is provided with the authority to assess each application on its merits and accept alternative solutions. The Tribunal would strongly disagree with Council's determination that the site *is not constrained in any way*. There is approximately 30% of the site occupied by an existing approved dwelling, and there is no reasonable access (complying with the provision of 1A(c)(ii)(B) of the QDC Part MP1.2) to another part of the site where suitable vehicle accommodation may be provided.

2. Specific Outcome 07 of Caloundra City Plan states:

Garages and carports do not dominate the streetscape and preserve the amenity of adjacent land and dwellings having regard to:

- (a) *Building character and appearance;*
- (b) *Views and vistas; and*
- (c) *Building mass and scale as seen from neighbouring premises.*

The *Acceptable solutions for **self assessable** development* is listed as:

S7.2 The minimum road boundary setback for carports (other than in a Rural Precinct) is 6 metres.

Local government does have the authority to determine a lesser distance, where compliance with that provision is not possible. At the hearing Council indicated that they were considering introducing a 4.5 metre setback provision for self assessable development of garages and carports in their town plan review. This indicates to the Tribunal that adherence to their current legislation is perhaps regularly difficult, particularly where constrained by existing structures on a site, similar to the site of this appeal.

The provisions of the QDC Part MP1.2 does provide for local government to allow the construction of carports (not enclosed garages) within the road boundary setback, including up to the street alignment.

3. Specific outcome 08 of Caloundra City Plan states:

Parking and access safely and efficiently meet the needs created by the detached house.

The current economic status is that households regularly have at least two motor vehicles, and the Tribunal is of the view that, as these items usually form the second greatest investment for a household, it is reasonable that they be afforded reasonable protection in our climate – sun damage, storm/hail damage, and the provision of at **least** 2 covered car parking spaces should be encouraged, not discouraged or prevented.

The Tribunal also believes that tandem parking provides a less safe solution as it increases vehicle movements from the property to the carriageway with a corresponding increase in the potential for accident and injury.

4. The Tribunal agrees that the existing dwelling in its current form does have a compliant front alignment setback, but would question whether the actual garage is compliant with the provisions of the QDC MP1.2 A8 (a) (i) (C) which requires a minimum length of 6 metres and a minimum width of 3 metres for a single car garage. Scaling the drawing would indicate that the existing garage was less than 6 metres in length and therefore may not be compliant.

The applicant desires to carry out a reconfiguration of the layout of the existing dwelling to provide suitable accommodation. It is reasonable to be able to do that in a cost effective and efficient manner, and the proposed reconfiguration does provide for this. It is the Tribunal's opinion that Local Government should not prevent the alteration of properties to facilitate current living standards and lifestyles by imposing unreasonable and undue restrictions on development.

5. From the information supplied by Council at the hearing, on checking the list provided, there would appear to be several instances in the immediate area where carports and in fact garages have been built within the 6 metre road boundary setback, with relaxations granted by Council, including some post the introduction of the Caloundra Town Planning scheme. Of particular note are two properties on that list. The first at 156A Oceanic Drive (cnr Coolahra Street), which is clearly closer to the Oceanic Drive road alignment than the prescribed 6 metre setback, possibly 3 metres, and the structure facing Coolahra Street is extremely close to the alignment. The second at 4 Parari Street, approved in September 2006, to which Council's list notes *The allotment had a single lock up garage and no space for a complying carport.*

A property directly opposite also has an approved structure within the nominated setback.

6. The Tribunal will accept that development within the front road setback, if poorly designed and not sympathetic and integrated into the existing structure, and of an unacceptably large mass may cause detriment to the built environment. However the Tribunal is of the opinion that open structures such as a carport and a small gate house can be integrated successfully and cause little impact on the built environment, or in fact improve it.
7. The Tribunal finds little relevance in the calculation given. The *Acceptable solutions* suggest that garages and carports do not comprise more than 50% of the width of a site **where the particular site is up to 12 metres in width**. This site is over 18 metres, and as such that provision is not applicable.

In determining this appeal, as the development is not self assessable against the Caloundra City Plan, it is the Tribunal opinion that the provisions of the QDC shall prevail. In particular, that the Performance Criteria P1 of QDC MP 1.2 is applicable to this appeal.

The specific criteria of P1 are:

- (a) the bulk of the building or structure; and
- (b) the road boundary setbacks of neighbouring buildings or structures; and
- (c) the outlook and views of neighbouring residents; and
- (d) nuisance and safety to the public.

The Tribunal is of the opinion that the proposed carport is well integrated into and sympathetic with the existing structure and its overall scale will fit with the current and future streetscapes, which is of single story structures.

The Tribunal has considered the option of siting the carport to the eastern alignment, however it is the Tribunal's opinion that:-

- such a location may reduce the usability of the subject site, considering the proposed internal layout with the living areas to the east side of the dwelling and the integration of those living areas to external areas;
- the close proximity to the dwelling located on the site to the east would visually reduce the openness to that dwelling; and
- the siting of the existing structures to the adjoining property to the west ensures their visual outlook.

The Tribunal also considers a double carport offers better safety and less nuisance than the option of maintaining the existing single garage and providing a tandem carport to the existing driveway, as it lessens vehicle movements with the corresponding reduction in possible accidents and injuries.

It should also be noted that the *Acceptable Solution* listed in the QDC MP 1.2 is not the only solution and Local Government does have the jurisdiction to consider other solutions and make determinations accordingly.

Dennis Leadbetter

Dip Arch QUT, Grad Dip Proj Man QUT, METM UQ

Building and Development Tribunal Chair

Date: 8 September 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 grounds:

- (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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