



**Building and Development Tribunals**

**Queensland** Government

Department of **Local Government and Planning**

**APPEAL**

*Integrated Planning Act 1997*

**File No. 3-06-051**

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

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**Assessment Manager:** Toowoomba City Council

**Site Address:** *withheld*-“the subject site”

**Applicant:** *withheld*

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### **Nature of Appeal**

An appeal under Section 24 of the *Building Act 1975* against the serving of an Enforcement Notice by the Toowoomba City Council. The notice requires the removal of a panel lift door, installed to the front of an existing carport. The carport is situated within the six metre, road setback, on land described as “the subject site”.

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**Date and Place of Hearing:** 10.00am, Thursday the 22<sup>nd</sup> June 2006 at “the subject site”

**Tribunal:** Debbie Johnson

**Present:** Applicants  
Robert Orr - Toowoomba City Council  
Ross Ford - Toowoomba City Council.

### **Decision**

The decision of the Toowoomba City Council to request the removal of an existing panel lift door, as contained in an Enforcement Notice, dated 15<sup>th</sup> May 2006, is **set aside**. The existing panel lift door, as fixed, may remain in place.

### **Background**

On the 7<sup>th</sup> January 1994, the Toowoomba City Council approved a dwelling, and an ‘open’ carport, within the 6m street or road setback, for construction.

At this time, under the *Standard Building Regulation 1993*, in Part 2 Boundary Clearances, Section 37 Concession for Open Carport,

an open carport may have less than a 6m road boundary clearance if:-

- (a) the total width of the open carport supports located within the 6m clearance does not exceed 10% of the perimeter of the portion of the open carport located within the 6m clearance; and
- (b) it is necessary or expedient to build the carport in that location.

The home was built, and some years later, subsequently purchased by *withheld*. *Withheld* and her parents, *withheld*, currently live there. At the time of their purchase, the carport was 'open' with the roof supported on seven brick columns. A photograph, provided to the tribunal, indicates that some balustrading was fixed to the rear of the carport as the finished surface level of the surrounding ground is well below that of the finished slab level in the carport.

The current owners have installed a panel lift door at the opening of the carport, between the front brick columns, therefore rendering the carport 'enclosed', on that side. In addition, some balustrading has been removed from the sides of the carport and random widths of treated timber battens have replaced it. The battens are fixed from the slab up to the lintel height along the entire Southern side, and half of the Northern side.

Recently, acting on a verbal complaint, Toowoomba City Council inspected the carport at "the subject site". As the carport had been enclosed on one side, by the installation of a panel lift door, it was considered to be contravening the building approval, issued on the 7<sup>th</sup> January 1994. Toowoomba City Council, therefore sent both a Show Cause Notice, dated 8th March 2006 and then an Enforcement Notice, dated 15<sup>th</sup> May 2006, to the owners of the property.

Upon receiving the Show Cause Notice, *withheld* contacted Robert Orr, Senior Building Surveyor with Toowoomba City Council and a meeting was arranged between the parties. No agreement was reached between the parties at this meeting.

*Withheld* were further advised by council staff, that an application by them, for a siting variation relating to their carport with one side 'enclosed', would likely be refused, as it didn't meet with council's current policies relating to carports, built within the 6m street or road frontage setback area.

Robert Orr explained to the tribunal, that council's preference is for carports located within the street or road frontage area to remain 'open', with up to 15% of the dimension of the perimeter, measured at the line of supports, able to be enclosed. The councillors have conveyed this preference to council staff, for amenity and aesthetics reasons, as Toowoomba is known as the 'Garden City'

### **Material Considered**

1. The original building approval for *withheld*, dated 7<sup>th</sup> January 2004, provided by Robert Orr, from Toowoomba City Council;
2. Written joint submission from *withheld*, being their record of the meeting with Robert Orr on 9<sup>th</sup> March 2006;
3. Photographs of the carport in question and many others in the neighbouring community;
4. Written submission by *withheld*, outlining the grounds for this appeal application;
5. Signed petition in support of the carport being left as it is, currently. This petition was signed by 34 residents living in *withheld*;
6. Verbal representations, on site, by the applicants;
7. Verbal representations, on site by Robert Orr and Ross Ford of the Toowoomba City Council;

8. The *Standard Building Regulation 1993*; and
9. Part 12 of the Queensland Development Code;

### Findings of Fact

The following points are considered as findings of fact:

1. Adjoining property owners, most likely to be affected by the existing 'enclosed' carport have signed a petition in support of the carport as it is.
2. The subject site falls away from the street with a reasonable slope. The carport, that measures 6m x 6m at the external face of the brick column supports, is therefore appropriately positioned close to the street frontage.
3. The residence and carport are situated on a section of *withheld* that is effectively a fork in the road. The width of the road is at its widest point adjacent to the front of the carport. (See aerial photograph attached.)
4. Part 3 Section 34, of the *Standard Building Regulations 1993*, stipulates the siting provisions for Class 10 buildings and structures, in the Queensland Development Code (QDC), Part 12, to the extent that the planning scheme does not identify or state alternative provisions for boundary clearances.

Element 1 of the QDC Part 12 - Design and Siting of Buildings and Structures, states:

A1 (a) For a dwelling, *garage* or a *carport* the minimum *road setback* is:-

- (i) 6m;

A1 (c) For *open carports*, the minimum *road setback* may be less than required by A(i)(a) if-

- (i) the aggregate perimeter dimension of the walls, solid screens, and supports located within the setback does not exceed 15% of the total perimeter dimension (along the line of supports) of that part of the *carport* within the same *setback*; and
- (ii) There is no alternative on-site location for a *garage* or *carport* that:-
  - (A) complies with A(i) (a); and
  - (B) will allow vehicular access having a minimum width of 2.5m; and
  - (C) has a maximum gradient of 1 in 5.

A1 (d) For *structures* the minimum *road setbacks* are as for A1(a),(b), and(c) except for-

- (iii) screens / fences not more than 2M high.

Under Definitions in the QDC:-

a *carport* is defined as a class 10a building, other than a *garage*, providing covered vehicular parking; an *open carport* is defined as a *carport* with:-

- (a) two sides or more open, and a side is also considered open where the roof covering adjacent to that side is not less than 500mm from another *building* or a side or rear allotment boundary; and
- (b) not less than one-third or its perimeter open.

5. The existing carport is therefore an 'open carport' as defined in the QDC.
6. As the perimeter of the existing carport is 24m, only 3.6m of the perimeter of the carport may be enclosed, as it has been built within the 6m road setback. The seven brick supports of the carport have a face dimension of 350mm each, therefore the allowable distance that may be enclosed in addition to these supports is only 1.15m. This is considerably less than the panel lift door width of 4.8m.

7. The QDC, does however, permit a screen or a fence up to 2m high within the road setback. The QDC makes no distinction about the placing of screens or fences within the road setback. The QDC does not qualify the properties of a screen or fence.
8. The Performance Criteria, P1, of Element 1- Design and Siting of Buildings and Structures states:-  
The location of a *building* or *structure* facilitates an acceptable streetscape, appropriate for:-
  - (a) the bulk of the *building* or *structure*; and
  - (b) the road boundary *setbacks* of neighbouring buildings or *structure*; and
  - (c) the outlook and views of neighbouring residents; and
  - (d) nuisance and safety to the public.

### **Reasons for the Decision**

1. A site visit to “the subject site” demonstrated that the existing carport, situated adjacent to the road boundary, has been very attractively integrated into the streetscape with open timber screening, adjacent planting and potted landscaped features.
2. Almost every resident in *withheld*, has made a submission in support of the carport as it stands. It should also be noted that *withheld* is not a through road, therefore only these immediate residents could be affected by the carport.
3. Should the panel lift door, that measures 2040mm high, have to be removed, the front of the carport could then have a solid fence erected, up to 2000mm high, in its place. This would appear to be nonsensical.
4. Toowoomba City Council is justifiably keen to preserve the visual amenity of their streetscape and maintain their reputation as the ‘Garden City’. In this instance, the local community have a high standard of living, with all homes and gardens being very well maintained. The residents are obviously proud of their street and they are clearly supportive of their neighbours, the *withheld*. I can only draw the conclusion that *withheld’s* residence is offering the very same qualities to this street, that the council is seeking to preserve.
5. The performance criteria offered in P1 of the QDC enables each application to be considered uniquely. In this instance the bulk of the building or structure is effectively reduced by the adjacent landscaping, and the neighbouring residents have expressed strong support. The roadway adjacent to the carport is forked, providing additional road width. There are no nuisance or safety issues to the public as a consequence of the carport having a panel lift door fitted.

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**Debbie Johnson**  
**Building and Development**  
**Tribunal Referee**  
**Date: 12<sup>th</sup> July 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  
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