



Building and Development Tribunals

Queensland Government

Department of **Local Government and Planning**

APPEAL

Integrated Planning Act 1997

File No. 3-05-060

BUILDING AND DEVELOPMENT TRIBUNAL - DECISION

Assessment Manager: Toowoomba City Council
Site Address: *withheld* – “the subject site”
Applicant: *withheld*

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 requiring the removal of the panel lift door installed to the front of the carport located within the six metre front boundary setback distance as presently constructed on land described as Lot *withheld* and situated at “the subject site”.

Date and Place of Hearing: 2.30 PM, Wednesday November 16 2005 at “the subject site”

Tribunal: Bert Dean.

Present: *withheld*, owners of the property.
withheld (observers).
Mr Bob Orr Acting Senior Building Surveyor, representing Toowoomba City Council.

Decision:

The Council’s decision to require removal of the panel lift door to the carport is changed to require that the door be modified to ensure that the opaque door panelling does not exceed two metres in height above the ground at the bottom of the door. Removal of the top panel of the door would satisfy this requirement. The area above the line of the top of the door panelling and the underside of the fascia may have open mesh (not less than 50% open, e.g. amplimesh) added to assist with structural integrity of the door.

It is also the decision of the tribunal to approve the mounting of the modified panel lift door as presently constructed; that is, mounted on and between the carport posts.

It is required that modification of the door as set out above be completed within 30 business days of the date of receipt of this determination.

This determination does not remove the enforcement notice however it does change the requirements of the notice. Additional time for compliance has been provided. The work must be completed within the time specified and Toowoomba City Council must be notified when the modifications have been completed.

Background

A development permit approving construction of the carport was issued by a private certifier on 11/07/99.

A certificate of completion was issued by the private certifier on 26/10 99 with a notation advising that “*Although some aspects of the project are not in accordance with the approved plans and decision notice, the completed work is within the intent of the legislation.*”

The dimensions shown in the approved drawings were not achieved in the finished carport resulting in the carport panel lift door contravening the requirements of the Standard building Regulation in relation to limitation of enclosure of the carport.

Council considers that the panel lift door ;

- a) encloses the open carport to an extent exceeding the 10% of perimeter permitted by the Standard Building Regulation in force at the time of construction, and
- b) contravenes a Council requirement that any door or gate incorporated in any front fence across the front of an open carport must not be carried by the carport or constructed as part of the carport.

The applicants purchased the property 11/02/005, and were surprised when Council advised that their carport roller door did not comply with Council regulations relating to open carports and open streetscape. Council also advised that a large number of other non-complying carports had been drawn to attention and similar notices had been served in relation to their non-compliance.

Council advised the decision to serve an enforcement notice was based on the following :-

1. The panel lift door to the carport fronting *withheld* Street contravenes the siting provisions of division 2 Section 37{a} of the Standard Building Regulation 1993.
2. The carport Does not comply with Part 12 of the Queensland Development Code, Where by a siting relaxation has not been approved by the Toowoomba City Council.

Material Considered

- (1) Appeal documentation
- (2) Letters of explanation of the grounds of appeal lodged by the applicants, and accompanying photographs.
- (3) Verbal submissions from the owners.
- (4) Verbal submissions and explanation of Councils assessment of the carport and supporting Council’s refusal of the applicants’ verbal request for siting relaxations.
- (5) The Building Act 1975, Standard Building Regulation 1993, the Integrated Planning Act 1997 7 Part 12 of the Queensland Development Code.
- (6) An inspection of the carport and door installation, and the site was carried out in the company of those present.

(7) Similar carports in the neighbourhood were viewed from the road.

Findings of Fact

- (1) The carport is constructed within the normal six metre setback distance. It is setback a distance of 2450 mm from the front boundary and 1500mm from the side boundary. The carport has a total height of 2750mm. The panel lift door extends 2200mm above ground, up to the underside of the carport fascia.
- (2) The panel lift door is mounted on and attached to the carport posts. When the door is fully opened the carport roof structure supports the door panels.
- (3) The carport was constructed following the issue of a development permit for building work by a private certifier. The certifier later issued a completion certificate. However the certificate carried a notation that the finished carport had had not been completed in accordance with the approved plans. No action was taken by the certifier to have the matter rectified. The private certifier has left the country and now resides in the USA.
- (4) Close inspection is necessary to determine whether the panel lift door is mounted separately from the carport structure.
- (5) A masonry block fence generally 1800mm high extends from the eastern side boundary along the front boundary and at the carport location is returned into the property to abut the carport. The masonry fence also extends past the carport to the side boundary, where it joins the western side boundary fencing. The door across the front of the carport completes the separation of the property from the street.

Reasons for decision

It is considered that regulations restricting the aggregate perimeter dimension of walls, solid screens, and supports located within the setback to not more than 15% of the total perimeter dimension of that part of the carport within the setback, cannot reasonably be seen as prohibiting fencing less than 2.0 metres in height passing in close proximity to the support columns. Particularly on the street elevation.

Further it is seen as reasonable that such columns could be attached to or form part of such fencing less in height than 2.0 metres. The installation will reasonably satisfy the requirements of the performance criteria of Part 12 Section P1 of the Queensland Development Code, given the existing circumstances of the development.

Hinged gates in front boundary fencing are not permitted to open across the footpath and usually cannot open inwards due to vehicles within the carport. Alternatives to ensure security or continuity of fencing are;

- (1) Sliding gates, or
- (2) Gates operating overhead and opening back into the property.

Provided such gates or overhead opening doors do not have solid height exceeding 2.0 metres it is considered the object of the regulations is reasonably satisfied.

Where the total height of an overhead opening door exceeds 2.0 metres it is considered that open mesh (e.g. amplimesh) may be installed above 2.0 metres to assist in preserving the structural integrity of the door.

It is considered that to require that gates or doors in fencing passing an open carport within the 6.0 m setback be separate structures from the carport, would result in unnecessary additional expense and hardship to the owners. There would also be little or no additional benefit to the streetscape.

This determination does not remove the enforcement notice however it does change the requirements of the notice. Additional time for compliance has been provided. The work must be completed within the time specified and Toowoomba City Council must be notified when the modifications have been completed.

The determination applies only to the carport constructed at “the subject site” and cannot be applied to any other carport structure.

**Bert Dean
Building and Development
Tribunal Referee**

Date: 29 November 2005

