



Building and Development Tribunals – Decision

Integrated Planning Act 1997

Appeal Number:	3–09–002
Applicant:	Barry James Reynolds
Assessment Manager:	Sunshine Coast Regional Council ('Council')
Concurrence Agency: (if applicable)	N/A
Site Address:	10 Jacaranda Drive, Parklands and described as Lot 2 on RP89309 –the subject site

Appeal

Appeal under section 4.2.9 of the *Integrated Planning Act 1997* (IPA) against the decision of Council to refuse a preliminary building application for a proposed garage that required a siting variation in relation to the road boundary setback.

Date of hearing:	10.00am – Wednesday, 28 January 2009
Place of hearing:	The subject site
Tribunal:	Debbie Johnson – Chair John Gillespie – Member
Present:	Barry James Reynolds – Applicant Janette Reynolds – Applicant's representative Fred Vicary – Council representative

Decision:

The Tribunal, in accordance with section 4.2.34 (2) (a) of the IPA, **confirms** the decision appealed against and the appeal is dismissed.

Background

The subject site falls away from the road and is rectangular in shape with a total site area of 1093sq/m.

The lot has a street frontage of approximately 18.0m and an allotment depth of 60.0m which effectively runs east – west. The dwelling sits below street level and is situated 10.0m back from the road boundary alignment leaving a large garden area to the east or rear of the dwelling. This backyard area is approximately 40.0m deep and 18.0m wide.

The dwelling is rectangular in shape and positioned lengthwise across the entire available width of the subject site, affording limited access to the rear. There is not sufficient width available to permit vehicular access to the rear of the allotment as a result.

There are existing dwellings on similar sized allotments on either side of the subject site, that is, to the north and south. The applicant's single storey home is thought to have been erected around the 1970's along with some of the neighbouring homes. Others in the immediate vicinity appear to have been built up to 20 years earlier.

The applicant wishes to build a steel framed, steel clad double garage at the front of the allotment, that is, in part within the road boundary setback. 'Titan', as the manufacturer and supplier of the garage has prepared working drawings that were submitted as part of the preliminary building application material. In this instance, a development permit could not be issued without a siting variation being granted by the Council as the proposed siting for the garage was 3.0m from the road boundary alignment. The local planning scheme, Maroochy Plan 2000 and the Queensland Development Code (QDC) each prescribe a minimum 6.0m road boundary setback for garage structures.

The applicant prepared and lodged a preliminary building application with the Council on the 18 November 2008. Council's representative attended the subject site after receiving the application and noted that:-

- some earthworks would be required to facilitate the development as it had been proposed;
- an existing single bay garage had been modified without appropriate approvals to be used as part of the existing dwelling;
- other building works had been undertaken on neighbouring allotments in the street within the road boundary setback;
- the proposed garage would be a higher structure than the associated dwelling and that this would be exacerbated by the topography of the site.

The Council sent an information request on the 26 November 2008, stating that the applicant was to provide:-

- additional justification to demonstrate compliance against the performance provisions of the Maroochy Plan 2000, specifically, Code 4.1, Element 1 P2;
- comprehensive details of proposed earthworks associated with the development;
- considering the proposed location for the garage, demonstrate how the existing dwelling would comply with the Building Code of Australia (BCA) 2008 Part 3.8.4 Light and Part 3.8.5 Ventilation requirements.

The applicant responded to council's information request on the 2 December 2008 stating:-

- the garage structure was required for the security and general protection of their vehicles and other possessions such as their boat;
- the garage would provide a tidier streetscape than is possible without having a garage and that they were prepared to landscape the area between the proposed garage and the street frontage to minimize the potential visual impacts as a result of a reduced setback;
- vehicular access is not available at the rear of the site;
- fill to a depth of 1m would be required to facilitate the development and all work was to be carried out by tradesmen;
- the living areas would not be adversely affected by the proposed siting of the garage as the affected wall faced West and the garage would shade these rooms and that adequate ventilation was available through windows in other walls of the home.

The Council issued a decision notice to the applicant on 12 December 2008, refusing the application as proposed, citing the development does not comply and cannot be conditioned to comply with the Maroochy Shire Planning Scheme performance requirement of Code 4.1, Element 1, P2 of the Detached Houses and Display Homes Code which states:-

Buildings and structures are sited to contribute positively to the streetscape, maximise community safety, and maintain the amenity of adjacent land and dwellings by having regard to the following:-

- (a) views and vistas;*
- (b) building character and appearance*
- (c) casual surveillance; and*
- (d) an adequate area suitable for landscaping being provided for at the front of the lot.*

The applicant lodged an appeal with the Registrar on the 9 January 2009 following receipt of the council's decision notice.

Material Considered

The material considered in arriving at this decision comprises:

- 'Form 10 – Notice of Appeal' lodged with the Building and Development Tribunals on 9 January 2009.
- Council's preliminary building application decision notice, dated 12 December 2008.
- Property details, including mapping as available through PD Online; Council's website.
- The application material including drawings detailed by 'Titan'.
- The applicant's grounds for appeal against the Council's reasons for refusal submitted with the application.
- Verbal submissions made at the hearing by the applicant and representative.
- Verbal submissions made at the hearing by the Council's representative.
- Written submission of support for the application by the applicant provided at the tribunal hearing.
- Written submission outlining the timeline and progress of Council's assessment pertaining to the application provided at the hearing.
- Written submission in support of the application by a neighbouring property owner.
- Relevant sections of the Maroochy Plan 2000 including amendments.
- The IPA.
- The *Building Act 1975*.
- The *Building Regulation 2006*.
- The QDC.
- The BCA.

Findings of Fact

The Tribunal makes the following findings of fact:

As noted above, Council's reason for refusing the application was that it did not satisfy the Maroochy Plan's relevant Performance Criteria with respect to:-

- a) views and vistas;
- b) building character and appearance
- c) casual surveillance; and
- d) an adequate area suitable for landscaping being provided for at the front of the lot.

The relevant acceptable measures proposed by the planning scheme that are deemed to satisfy these criteria include garage setbacks of 6.0m from the street or property boundary. This is consistent with most local authorities throughout Queensland.

The character of the street in this instance, particularly on the eastern side i.e. the subject side, is well established – mixed 1970's style one and two storey houses of various cladding set well back from the street frontage with well-established street trees and shrubbery and a back-drop of large eucalypt forest trees.

Given the garage finished floor level will be determined by the height of the existing driveway and despite the potential softening afforded by new landscaping, the construction of a 3.0m high 6.0m square gable roofed garage will impact on adjoining properties. When looking north along Jacaranda Drive, the proposed garage will completely obscure any view of the adjoining house to the north of the subject land if it is situated 3.0m from the road boundary alignment. Similarly, no views south along Jacaranda Drive will be available from this adjoining residence.

Consequently the Tribunal agrees with Council's reasons for refusal in so far as amenity and character are concerned.

It is noteworthy that an alternative location is available on the site for a double lock-up garage i.e. the existing enclosed garage attached to the house could be-reconverted to a garage and extended another 2.0m (approximately) to the side boundary. It could also be extended forward from the current 10.0m setback to the lawful 6.0m setback. This construction would comply with Council and QDC setback rules.

Under definitions in the QDC, a *building* has the same meaning as in the BA. The dictionary of the BA states:-

- a) a *building* is a fixed structure that is wholly or partly enclosed by walls and is roofed.
- b) the term includes a floating building and any part of a building.

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 of its perimeter open.

Garage means an enclosed class 10a building, providing covered vehicular parking.

The QDC does not qualify the properties of a screen or fence. The QDC makes no distinction about the placing of screens or fences within the road setback.

Further the QDC cites Acceptable Solution A1(c) which states:

For open carports, the minimum road setback may be less than 6.0m if –

- i. the aggregate perimeter dimension of 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) could achieve the 6.0m setback; and
 - b) will allow vehicular access having a minimum width of 2.5m; and
 - c) has a gradient of 1 in 5.

In considering alternative locations for garaging on the subject site the QDC offers concessions for structures along the side and rear boundaries.

QDC Acceptable Solution A2 (d) states –

Class 10a buildings (this includes both carports and garages) or parts may be within the 1.5m side boundary clearances where –

- i. the height of a part within the boundary clearance is not more than 4.5m and has a mean height of not more than 3.5m; and
- ii. the total length of any buildings or parts, of any class, within the boundary clearance is not more than 9.0m along any one boundary; and
- iii. the class 10a buildings or parts within the boundary clearance are located no closer than 1.5m to a required window in a habitable room of an adjoining dwelling.

Council's representative stated at the hearing, that in accordance with the Maroochy Plan 2000 and within the scope of QDC A2 (d), a double carport could be accommodated 4.5m back from the road boundary. Further, he stated that council would consider a variation to 3.0m for a carport acceptable in this instance. At the hearing this idea was discussed at length with the applicant. Similarly, the option of a single garage with a single width carport adjacent set 3.0m from the road boundary was also discussed and the possibility of locating an integrated double garage along the side boundary. The applicant however expressed the view that these options were not satisfactory from his perspective.

Reasons for the Decision

The proposed siting for the garage structure does not afford the best outcome given the likely detracting to the established local street's amenity. The tribunal found that there were several other acceptable and also compliant design options that might accommodate the applicant's needs for the security and general protection of their vehicles and other possessions.

Debbie Johnson
Building and Development Tribunal Chair
Date: 16 February 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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