



APPEAL
Integrated Planning Act 1997

File No. 03-05-008

BUILDING AND DEVELOPMENT TRIBUNAL - DECISION

Assessment Manager: Gold Coast City Council

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

Applicant: *withheld*

Nature of Appeal

Appeal under Section 21 of the Standard Building Regulation 1993 against the decision of the Gold Coast City Council to refuse a Development application for a carport within the three metre building setback required by the Southport Local Area Plan Place Code acceptable solution AS6.4 on land described as Lot *withheld* and situated at “the subject site”.

Date and Place of Hearing: 10am Monday, 7 March 2005
“the subject site”

Tribunal: Greg Rust

Present:

<i>withheld</i>	Owners
Jack Matijevic	Gold Coast City Council
Roger Sharpe	Gold Coast City Council

Decision

In accordance with Section 4.2.34 of the Integrated Planning Act 1979, I **set aside** the decision of the Gold Coast City Council contained in Decision Notice dated 21 January 2005 to refuse application for a proposed carport and replace it with the following decision.

The application for a carport shown on drawings prepared by South Architecture Sheet SK01, SK02-04 be approved subject to the following modifications and conditions:

1. The one metre (1m) side setback be changed to five hundred millimetres (500mm).
2. The overall front elevation dimension be reduced to five point two metres (5.2m) width.
3. The carport must be open in accordance with the Building Code of Australia Part 3.7.
4. No further enclosure, screening, or enclosed covering is to be placed or attached to the left and right-hand sides of the carport.

5. If the existing driveway crossover is altered in any way, the applicant is advised that an application for a vehicle crossing permit is required to be obtained in accordance with the requirements of Local Law No 11.
6. The carport must be exclusively used for the parking of vehicles.
7. The carport is to be constructed of compatible materials, patterns, texture and colours in keeping with the main building
8. Responsibility for the correct siting of the structure rests with the owner of the property.
9. The construction of all works to be carried out between the hours of 6.30am and 6.30pm Monday to Saturday inclusive.

Background

The proposed carport has been the subject of two refusals of the Gold Coast City Council. A site meeting was held having regard to the applicants proposal in respect of the submitted drawings SK01-04, SK02-04. As a result of some changes to the proposal offered by the applicant in respect of the position and width of the carport, common ground was generally achieved. These changes i.e side setback, front elevation width, are included in the conditions of the decision 1 & 2 and were agreed to by both the applicant and Council.

Further discussion regarding moving the garage wall to the zero lot line was also suggested however, as this appeal is the subject of the carport, the applicant should satisfy themselves that the garage complies with the Local Area Plan.

Material Considered

- 1 Plans prepared by South architecture numbered SK01 -04, Sk02 -04 dated 16/11/04.
- 2 Decision notices from the Gold Coast Council dated 7 April 2004 and 21 January 2005.
- 3 Submission of applicant "Re: Appeal under section 21 of the Standard Building Regulation" undated.
- 4 Gold Coast Planning Scheme, Southport LAP Place Code.
- 5 Verbal submissions received from the owners in respect the side setback, and width of the front elevation of the carport.
- 6 Verbal submissions received from the officers of the Gold Coast City Council.

Findings of Fact

The application had been twice considered and refused by the Gold Coast City Council.

The house has been designed in two sections so as to avoid building over the Council sewer that crosses the property at approximately the midway point. This restricts the possible location of the proposed carport.

The land is at present vacant and the carport is part of the redevelopment of the site.

The land is located within Precinct 9 of the Southport Local Area Plan for which compliance with the acceptable solutions AS6 is self assessable. The performance criteria PC6 of the Southport Local Area Plan is assessable.

Compromise was reached in terms of the carport at the site meeting between the applicant and Council

Pursuant to Section 4.2.34 of the Integrated Planning Act 1997 the tribunal may make orders in respect of an appeal against a decision

Reasons for the Decision

According to the building setback of the Local Area Plan performance criteria, all buildings must ensure that the resulting built form is not bulky or visually intrusive.

PC6 provides as follows

“The setback of development must be in accordance with the function of the precinct. All buildings may provide for setbacks from the street frontage and the side and rear boundaries of the site, which are appropriate to the efficient use of the site and streetscape character of the precinct. The setback of all buildings must ensure that the resulting built form is not bulky and visually intrusive.”

It is my view that the height, width and open grill door complemented with the proposed landscaping, will not detract from the streetscape of the allotment. Positioning of the carport close to one side boundary will allow for visual entry to the front door of the premises. Whilst the non-enclosed sections of the carport will allow persons to partly see through the structure. The hip roof will also provide for reduction to bulk. The resultant setbacks provided by the modification proposed by the applicant will allow for a more efficient use of the site.

Therefore, these design issues provide reasonable grounds for my decision to approve the application.

Greg Rust
Building and Development
Tribunal Referee
Date: 18 March 2005

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
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