



Building and Development Tribunals—Decision

Integrated Planning Act 1997

Appeal Number:	3—08—046
Applicant:	<i>Withdrawn</i>
Assessment Manager:	BCERT Consulting P/L
Concurrence Agency: (if applicable)	Toowoomba Regional Council
Site Address:	<i>Withdrawn</i> —the subject site

Appeal

Appeal under section 4.2.9 of the *Integrated Planning Act 1997* (IPA) against the decision of the private certifier to refuse a development application for building work based on the concurrence agency response of Toowoomba Regional Council to direct the building certifier to refuse an application about the design and siting requirements of building work. The proposed building work is a 6 m by 6 m carport approximately 2.4 m in height immediately in front of the existing dwelling and to be sited within the prescribed 6 m road boundary clearance under P1 and A1 of the Queensland Development Code (QDC) Part MP1.2.

Date of hearing:	3:40pm, Friday, 11 July 2008
Place of hearing:	Groom Room, Toowoomba City Hall
Tribunal:	David Kay - Chairperson
Present:	<i>Withdrawn</i> - Applicant and owner Bob Orr - Toowoomba Regional Council representative Ross Ford - Toowoomba Regional Council representative

Decision:

In accordance with section 4.2.34 (2)(c) of the IPA the Tribunal **sets aside** the decision of the private certifier dated 23 June 2008, and replaces it with the following decision:-

The Assessment Manager is directed to decide the Building Development Application subject to -

1. the carport having maximum dimensions of 6 m by 6 m and approximately 2.4 m in height;
2. the carport having a flat roof profile and being colour matched to dwelling;
3. the carport being sited against the overhang of the existing dwelling;
4. the proposed location of the 6 m by 9 m shed on a building line of 0.5 m from the side and rear property boundaries;
5. the location of the shed and carport being in accordance with drawing number 29121;
6. compliance with all other relevant building assessment provisions applicable to the Building Development Application.

Background

Applicant's submission to the tribunal -

The Applicant submitted reasons in the documents lodged with the appeal which included that natural ground level between the dwelling and the western side boundary has been raised by 0.6 to 0.8 m approximately above the natural ground level. The ground level is unstable and would require substantial retaining walls to be constructed for safe driving access. The slope of the ground is one criterion for the property that does not satisfy the QDC. The proposed carport roof line has a flat roof profile and the proposed location will not unduly affect the amenity of the streetscape. Other reasons included the use of the site at the rear for child care and pet management purposes, access to covered parking in the wet weather and location of Council services in the rear of the allotment.

At the hearing the Applicant expressed the opinion that there was no realistic access to the rear of the site due to the slope and when the dwelling was constructed the site was supposed to be cut , not cut and filled, and the failure by the builder to do this has increased this problem.

When asked to address the performance requirements P1 at the hearing the Applicant considered that the carport would not be considered to be bulky due to the flat roof and four supporting columns, neighbouring setbacks were not adversely affected, outlook and views of the neighbourhood would not be affected and there is no public safety issue. The location would not be a nuisance as the site is not a corner site.

Toowoomba Regional Council submission to the tribunal -

Council's decision was based on the reasons that there is alternate access and siting to the rear of the property under the acceptable solutions of Part MP1.2 A1 (c) of the QDC for the carport to be sited.

At the hearing it was advised that if the width of access between the dwelling and the side boundary was 2.4 m or less Council would have been obliged to approve the carport. The actual width on site is 3.3 m.

The use of the site for childcare purposes should not form part of any reasons for the decision.

Council officers were asked to address the Performance Requirements P1 of Part MP1.2 at the hearing as these did not appear to have been addressed in the decision.

In its opinion the appearance of the carport with no other carports or buildings within the front boundary setback would not provide an acceptable streetscape and the bulk of the carport would be detrimental to the amenity of the locality. Consideration should also be given to the setback of adjoining buildings. Outlook and views of adjoining was not considered to be an issue for this site.

The proposal does not meet all of the performance criteria of P1 .

Material Considered

- Form 10 appeal notice and attachments submitted by the Applicant on 30 June 2008;
- Concurrence agency response of 3 June 2008 for decision on siting matters under the QDC Part MP1.2;
- *Integrated Planning Act 1997*;
- Integrated Planning Regulation 1998;
- *Building Act 1975 (BA)* and Building Regulation 2006;
- QDC Part MP1.2- Design and Siting Standard for Single Detached Housing on Lots 450 sq.m and over.
- Letters from residents and property owners who are neighbours to the subject site.

Findings of Fact

The Tribunal makes the following findings of fact:

- An application for a concurrence agency decision was made to the Toowoomba Regional Council.
- The application was refused for the carport road boundary clearance and approved for the shed side boundary clearance by Toowoomba Regional Council.
- The appeal to a Building and Development Tribunal was lodged within the required time.
- The Tribunal has jurisdiction to hear the appeal.
- This appeal relates only to the road front boundary clearance for the carport.
- There is a fall of approximately 0.7 m across the 3.3 m side boundary clearance.
- The Performance Criterion "P1" of the QDC Part MP1.2 contains the performance requirements for the assessment of the application.

Reasons for the Decision

The relevant acceptable solution for a carport within the road setback is A1(c) :-

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

There is an almost level area with a width of 2.4-2.5 m between the dwelling and the side boundary. However this area of the site has been filled as part of the dwelling construction and is adjacent to a retaining wall on the neighbouring boundary.

The soil on site is clay. In the Building Code of Australia (BCA) Volume 2 Table 3.1.1. the gradient for firm clay on a fill embankment that does not require retaining is 1:2 .This means that to comply with the BA and the BCA the fill of 0.7 m needs to be battered over a distance of 1.4 m. This reduces the available width of level ground between the dwelling to the side boundary to a distance of 1.9 m.

For this site the fall of 0.7 m across 3.3 m equates to a gradient of 1 in 4.7 which is more than 1 in 5.

It is the Tribunal's opinion that if the site was to comply with the BA for earthworks, the Acceptable Solutions would apply to this site. The Tribunal does not consider it reasonable to make the Applicant construct a retaining wall to achieve an area with a gradient of less than 1:5 and then require a carport to be constructed at the rear of the site.

Despite the applicability of the Acceptable Solutions the Tribunal has also carried out an assessment against the performance Criterion P1.

The QDC Part MP1.2 under Element 1 – Design and Siting of Buildings and Structure -

Building and Structures, Performance Criteria P1 requires that:

- 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.

Bulk of the building or structure -

The height of the carport will extend to just above the gutter level of the existing dwelling but will be significantly lower than the roof ridge line. The existing dwelling has a roof level significantly higher than the roof level of the proposed carport. It is considered that the location of the patio facilitates an acceptable streetscape appropriate for the bulk of the building.

Road boundary setbacks of neighbouring buildings -

The carport will project in front of the existing front boundary setbacks of the existing dwellings on both sides of the site. The normal sight lines along a street are not available at this location due to the site and adjacent sites being at the head of a cul de sac. The location at the end of a cul de sac does not present a clear sight line defining a 6 metre building setback. It was also observed that a neighbouring dwelling to the subject site does not have a 2.5 m width between the dwelling and side boundaries and may, at some future time, become eligible to erect a carport within the 6 m road boundary setback. Owners of any site may erect a 2 m high fence along the side or front boundaries in this location without requiring any building approval or siting consideration. It is considered that the location of the carport facilitates an acceptable streetscape appropriate for the road boundary setbacks of neighbouring properties when compared to a 2 m high fence allowed as of right.

Outlook and views of neighbouring residents -

The neighbouring dwelling to the subject site has the garage located adjacent to this site and is elevated 1-2 m above this site. The entry door is recessed behind the garage. It is considered that the outlook and views of residents from this dwelling would not be adversely affected. The adjacent dwelling to the subject site also has the garage located adjacent to this site and is 2 m below this site. The outlook and views of this property would be obstructed by the existing retaining wall on this site. It is considered that the outlook and views of residents from this dwelling would not be adversely affected. Letters have been submitted from both property owners indicating that they have no concerns with the proposed carport. It is considered that the location of the carport patio facilitates an acceptable streetscape appropriate for the outlook and views of neighbouring residents.

Nuisance and safety to the public -

The proposed carport will cover an existing driveway that may have cars parked on it at any time. Vehicles would reverse from the site whether or not the carport is constructed. The carport will be an open structure and will not provide hidden space that would compromise public safety. The site is not a corner site. The proposed carport will not affect the visibility of vehicles entering or exiting this site or adjoining sites. It is considered that the location of the carport facilitates an acceptable streetscape that does not create issues relating to nuisance and safety to the public.

It is my view that the proposed carport satisfies the relevant performance criteria of P1.

David Kay
Building and Development Tribunal Chair
Date: 23 July 2008

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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