



Building and Development Tribunals—Decision

Integrated Planning Act 1997

Appeal Number:	3—08—074
Applicant:	Tim and Sandra Edwards
Assessment Manager:	Stewart Magill for and on behalf of Building Surveying Professionals (Qld) Pty Ltd
Concurrence Agency: (if applicable)	Sunshine Coast Regional Council
Site Address:	34 Adaluma Avenue, Buddina and described as Lot 442 on RP118150 —the subject site

Appeal

Appeal under section 4.2.9 of the *Integrated Planning Act 1997* (IPA) against the decision of the assessment manager to refuse a development application about design and siting requirements of building work. The building work is for proposed alterations to the dwelling including an attached garage approximately 2.5 metres in height and sited 3.9 metres from the road boundary. The proposed building work does not comply with the Acceptable Solutions of the Caloundra City Plan Part 8.5 Detached House Code and was assessed under Specific Outcome 07 Garages and Carports and Specific Outcome 08 Parking and Access of Caloundra City Plan Part 8.5 Detached House Code.

Date of hearing:	3:00pm—Friday 31 October 2008
Place of hearing:	The subject site
Tribunal:	David Kay — Chair Chris Harris — Member
Present:	Sandra Edwards — Applicant/Owner Anthony Robinson — Applicants Architect Stewart Magill — Assessment Manager Scott Coleman — Building Surveying Professionals Representative Richard Prout — Sunshine Coast Regional Council Representative Gary Sheffield — Sunshine Coast Regional Council Representative

Decision:

The Tribunal, in accordance with section 4.2.34 (2)(c) of the IPA, **sets aside** the decision of the Assessment Manager dated 14 October 2008, and replaces it with the following decision:-

The Assessment Manager is **directed** to decide the Building Development Application if satisfied that the application complies with the following:-

1. The details contained in Sprout Architects drawings:-

“Ground Floor Plan” drawing number 08005 CD08 revision B dated Aug 08; and
“Elevations” drawing number 08005 CD15 revision B dated Aug 08.

These drawings show a setback of approximately 4.5 metres to the garage roof overhang extending along part of the garage front elevation, a setback of approximately 3.9 metres to the north west corner of the garage which is then stepped back a distance of approximately 1.0 metre; and

2. All other relevant building assessment provisions applicable to the Building Development Application.

Background

Applicant’s submission to the tribunal

The owners submitted reasons in the documents lodged with the appeal which included:-

- the proposed garage will not have a dominating appearance due to the existing building line
- the frontage is affected by a cul-de-sac
- the garage is consistent with the existing streetscape
- the proposed garage mass and scale does not detract from the outlook of the surrounding properties
- the proposed garage location will improve vehicular access to the site
- direct access to the existing garage will require removal of a mature poinciana tree.

The applicant’s architect submitted that existing garage location occupies the best north easterly aspect of the site and its proposed use as a rumps room takes full advantage of this aspect. The 90 degree turning movement into the current garage makes the garage difficult to access. Locating the proposed garage on the western side of the site with direct access from the road improves site access for vehicles. The proposed garage is not considered invasive and is located at a similar alignment to the carport on the adjoining lot to the west. An option to open the existing garage to the road frontage and locate the rumpus area on the western side will result in the garage entry predominating the streetscape and will not make use of the favourable north eastern aspect for residential purposes.

The assessment manager considered that the design is a favourable design that achieves compliance with the intent of the Councils planning scheme.

The applicant considered that the proposed garage would not extend beyond the alignment of the existing carport at adjoining site to the west and also said that a building in a near by street extended to within 1.5 metres of the road front boundary.

Council’s submission to the tribunal

The Council’s representatives submitted written documentation outlining the reasons for the refusal which included:-

- The existing allotment is not constrained in any way and there is an obligation to design to comply with the Detached House Code
- The Detached House Code road boundary setback for a garage is 6.0 metres
- One covered car park space must be located behind the 6.0 metre road boundary setback
- The proposed garage setback would mean that a car parked in the driveway would encroach onto the footpath
- The proposed garage will have a dominating appearance when viewed from the street
- The proposed garage will be inconsistent with the streetscape character
- The proposed development does not comply with the requirements for parking and access.

In addition it was advised that the adjacent carport on the adjoining lot to the west was approved by a private certifier under the earlier version of the Caloundra Planning Scheme which has since been amended to limit carports and garages from being able to be constructed within 6.0 metres of the road front boundary.

Material Considered

The material considered in arriving at this decision comprises:

- 'Form 10 – Notice of Appeal' lodged with the Registrar on 22 October 2008;
- Material submitted by the applicant accompanying the Notice of Appeal;
- Decision Notice from the Assessment Manager dated 14 October 2008;
- Concurrence Agency Response from Council, dated 2 October 2008, on siting matters under Part 8.5 Detached House of Caloundra City Plan 2004;
- Material submitted by Council at the hearing;
- Verbal submissions from the Applicant at the hearing;
- Verbal submission from the Applicants Architect at the hearing;
- Verbal submissions from the Council representatives at the hearing;
- The IPA;
- The Integrated Planning Regulation 1998;
- The *Building Act 1975* (BA);
- The Building Regulation 2006 (BR);
- The Queensland Development Code (QDC);
- Part 8.5 Detached House Code of Caloundra City Plan; and
- Neighbouring owners agreement and nearby residents letters of support.

Findings of Fact

The Tribunal makes the following findings of fact:

- An application for a concurrence agency response was made to Council by the assessment manager.
- The Council directed the Assessment Manager to refuse the application for the garage road front boundary clearance.
- The Assessment Manager issued a Decision Notice to the applicant, dated 14 October 2008.
- The appeal to a Building and Development Tribunals was lodged within the required time.
- The Tribunal has jurisdiction to hear and decide the appeal.
- This appeal relates only to the road front boundary clearance for the garage.
- The road front boundary setback of the garage proposed for this site does not comply with the Detached House Code Acceptable Solution 7.3 which requires a 6.0 metre road front boundary clearance.
- The Performance Criterion "07" and "08" of the Detached House Code in Council's Planning Scheme contains the performance requirements for the assessment of the application.

Reasons for the Decision

The relevant siting requirements are set out in Caloundra City Plan 2004 amended 27 July 2007_art8.5 Detached House Code. These are building assessment provisions for the purposes of section 30 of the BA.

The proposed garage does not comply with the acceptable solution S7.3 requiring a 6.0 metre setback from the road front boundary.

The related relevant Performance Criterion (referred to as the Specific Outcomes) of Council's Planning scheme is as follows:-

"07 – Garages and carports do not dominate the streetscape and preserve the amenity of adjacent land and dwellings having regard to :-

- a) *building character and appearance*
- b) *Views and vistas*
- c) *Building scale and massing as seen from neighbouring premises."*

The proposed north eastern section of the garage is setback 6.0 metres and there is sufficient length between this wall and the road front boundary to park a second vehicle in tandem to achieve compliance with the requirements of the QDC Part MP1.2 called up by the BR . This regulation replaced the Standard Building Regulation 1993 referred to in the Caloundra City Plan 2004. It is the Tribunals opinion that the parking and access requirements comply with the Detached Housing Code Acceptable Solution S8.1.

Building character and appearance

The proposed garage has the appearance of a single storey building and does not extend beyond the alignment of the current building. The character of existing dwellings in the street is a mix of highset two storey and lowset single storey dwellings. The proposed garage and other work shown on the plans is consistent with the character and appearance of the area.

Views and vistas

The view along the street when approaching the subject site gives the appearance of a continued straight street frontage and the carport on the adjoining lot to the west is not considered to be noticeable or project into the streetscape. Accordingly, any single storey lowset building in line with this carport and the existing garage on the subject site would not project into the streetscape. The presence of the poinciana tree in the road front enhances the streetscape and any proposed building work requiring the removal of this tree would be detrimental to the vista of the street.

Building scale and massing as seen from neighbouring premises

The view from neighbouring residents of the subject site is currently a lowset building along part of the site frontage and a highset building along the other part and also behind the lowset part. The proposed building work will present a similar outlook from the neighbouring premises. The portion of the proposed building work within the 6.0 metre front boundary setback is lowset and is not considered to add to the mass of buildings in the immediate neighbourhood.

It is the Tribunal's view that the proposed garage with a road front boundary setback of 3.9 metres (to the closest wall) and 4.5 metres (to the closest overhang) satisfies the relevant specific outcomes of "07 Garages and Carports".

David Kay
Building and Development Tribunal Chair
Date: 7 November 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
Building Codes Queensland
Department of Infrastructure and Planning
PO Box 15009
CITY EAST QLD 4002
Telephone (07) 3237 0403 Facsimile (07) 3237 1248