



Building and Development Tribunals – Decision

Integrated Planning Act 1997

Appeal Number: 3–08–043

Applicants: *withheld*

Assessment Manager: Stewart Magill for and on behalf of Building Surveying Professionals

Concurrence Agency: Sunshine Coast Regional Council
(if applicable)

Site Address: *withheld*–the subject site

Appeal

Appeal under Section 4.2.9 of the *Integrated Planning Act 1997* against the decision issued on 19 June 2008 by the Assessment Manager to refuse a building development application relating to a new open carport within the required front boundary alignment setback for the subject site, as directed by Sunshine Coast Regional Council's concurrence agency response issued on 28 April 2008.

Date of hearing: 9.30 am on Friday, 4 July 2008

Place of hearing: The subject site

Tribunal: Georgina J Rogers - Chair
Phil Dance -Member

Present: Owners & Applicants
Stewart Magill – Building Surveying Professionals
Brian Benporath– Building Certifier, Sunshine Coast Regional Council representative

Decision:

The Tribunal, in accordance with section 4.2.34(2)(c), **sets aside** the appeal and dismisses the concurrence agency response of Sunshine Coast Regional Council to direct the refusal of a building development application for an open carport to be constructed within the required front boundary setback.

The Tribunal **directs** the Assessment Manager to approve the development application **subject to the following conditions.**

The proposed new open carport may be constructed within the prescribed 6 m setback from the road boundary alignment subject to the following conditions:

1. The proposed new open carport is to be constructed a maximum length of 6 m from the wall of the existing dwelling with an additional maximum of 300 mm overhanging eaves and therefore achieving greater than 2.5 m setback from the road boundary alignment;
2. The maximum length of the proposed open carport is to be 6 m;
3. The minimal overhangs adjacent to the side boundary alignment may be reduced sufficiently to allow construction, but is otherwise to be maintained and not increased;
4. The proposed new open carport is not to be enclosed at any stage;
5. The construction is to colour match the existing building in relation to roof, gutters, eaves, downpipes and columns;
6. The decision held in this application is separate to any other applications which may be made over the property;
7. The driveway crossover width is to be less than 5.4 m;
8. Existing vegetation between the proposed new carport and road and side boundary alignments may be pruned sufficiently to allow construction but is otherwise to be maintained and upgraded as this will reduce the impact of the open carport construction within this location.

Background

The tribunal hearing was held on site. The opportunity was taken to view the development and character of the neighbourhood.

The neighbourhood has low traffic volume and is well established with vegetation. The character of the immediate neighbourhood is low density residential.

Material Considered

The material considered in arriving at this decision comprises:

- The application, including "Form 10 – Notice of Appeal";
- Site plan, plans and elevations of the proposed new open carport;
- Verbal submission by the Applicants and reasons for provision of new open carport to be located within the required 6 m setback to the road boundary alignment;
- Verbal submission by the Assessment Manager and reasons for the provision of the new open carport to be located within the required 6 m setback of the road boundary alignment;
- Correspondence from Sunshine Coast Regional Council as the concurrence agency, dated 28 April 2008, refusing approval for the siting of the proposed new open carport within the 6 m setback from the road boundary alignment;
- Verbal submissions by Sunshine Coast Regional Council's representative outlining Council's assessment of the application;
- Correspondence from Sunshine Coast Regional Council as the concurrence agency, dated 7 July 2008, requiring a condition be put on the appeal result that any concession given to the siting requirements of the Planning Scheme will become null and void if the building is demolished;
- The Building Regulation 2006;
- The *Queensland Development Code* (QDC);
- Relevant sections of the former Maroochy Shire Council's planning scheme;
- The *Integrated Planning Act 1997*.

Findings of Fact

The Tribunal makes the following findings of fact:

- Sunshine Coast Regional Council, as the concurrence agency, wrote to the Applicants on 28 April 2008, (Reference: fcv:LXW:RAB08/0079) refusing the application for relaxation for the proposed new open carport to be constructed within 6 m of the road boundary alignment.

- An on-site visit was undertaken and plans provided showing the location of the proposed new open carport, being an addition to the existing dwelling on site. The following was able to be determined:
 - The site is regular in shape.
 - Vehicle access is via *withheld* to the south-west, and the property has a frontage of approximately 18.105 m.
 - The site consists of one lot and the existing dwelling has been constructed parallel to road boundary alignment.
- The plans indicate that the proposed new open carport would be setback 1.85 m from the road boundary alignment to the columns, excluding a proposed 600 mm overhang. The carport is to be setback approximately 300 mm from the south-east (right) side boundary alignment.
- The neighbourhood is well established with a mix of older, refurbished and new dwellings. The majority of the existing residential dwellings appear to be minimum 6 m from road boundary alignment. The area has substantial mature existing vegetation. The street has no formed kerb and channel.
- The site appeared to be regular in shape. There is no other reasonable location on the site for the proposed open carport to be located.
- Dense and high vegetation currently exists adjacent to the proposed new open carport and the adjoining road and side boundaries. This vegetation is being retained.

Reasons for the Decision

1. Part MP1.2 of the QDC sets out Performance Criteria (P1-P3 and P6) in relation to siting requirements which a local government must consider and be satisfied that the application meets the intent of each criteria for that application, and that the development does not unduly conflict with the intent of each of the Performance Criteria:

P1 The location of a building or structure facilitates an acceptable streetscape, appropriate for–

(a) the bulk of the building or structure

From the plans provided the new open carport is proposed to be setback 1.85 m from the front road boundary alignment and 0.3 m from the eastern (right) side boundary alignment.

The bulk of the building would not appear increase in dominance or character when constructed in its reviewed location.

The proposed new open carport is to be constructed within front road boundary alignment and would not appear to be inconsistent with the bulk of the surrounding neighbourhood.

(b) the road boundary setbacks of neighbouring buildings or structure

The proposed new open carport will not have an adverse impact on the existing road boundary setbacks of the neighbouring buildings or structures. The Applicants' representatives have provided evidence of a similar structure within the neighbourhood.

(c) the outlook and view of neighbouring residents

Evidence was provided in the form of a signed petition from the immediate adjoining neighbours indicating that there was no objection to the proposal. The impact of the neighbouring dwellings, outdoor recreation areas and structures has minimal impact on the adjoining neighbourhood. Therefore the construction of an open carport within this location would have minimal impact on the neighbouring residents' outlook and view.

Significantly the neighbourhood residences have been well developed and are landscaped and fenced between, creating minimal effect on outlook and internal privacy.

(d) nuisance and safety of public

The proposed new open carport would not appear to cause any nuisance nor increased safety issues to the public as it is located within the existing property.

P2 Buildings and structures–

(a) provide adequate daylight and ventilation to habitable rooms

The location of the proposed new open carport would have minimal impact on the extent of daylight and ventilation to habitable rooms within the existing dwelling, based on the evidence provided.

(b) allow adequate light and ventilation to habitable rooms of buildings on adjoining lots

The location of the proposed new open carport would have minimal impact on the extent of daylight and ventilation to habitable rooms of neighbourhood dwellings, based on the evidence provided and from on site observation. There is significant existing vegetation between the adjoining properties.

P3 Adequate open space is provided for recreation, service facilities and landscaping–

The location of the proposed new open carport would have minimal impact upon the usable open space provided for recreation, service facilities and landscaping for the dwelling. It is conditional that the proposed new open carport could not be enclosed within the 6 m required setback from the front road boundary alignment at any stage.

P4 The height of a building is not to unduly–

(a) overshadow adjoining houses

The proposed new open carport would not appear to unduly overshadow the adjoining houses. There is substantial mature vegetation between the adjoining properties and it is conditional that this vegetation be maintained.

(b) obstruct the outlook from adjoining lots

The proposed new open carport would have minimal impact upon the outlook of the adjoining allotments. There is significant existing vegetation between the adjoining property and high fencing between each adjoining property.

P5 Buildings are sited and designed to provide adequate visual privacy for neighbours–

The proposed new open carport would not appear to overlook the adjoining neighbour and therefore would have minimal effect on the privacy of the neighbourhood. There is significant existing vegetation between the adjoining properties and fencing between each adjoining property.

P6 The location of a building or structure facilitates normal building maintenance–

The proposed new open carport would not impact on the access for normal building maintenance onto the site as access is via the existing driveway and this will not be impeded nor encroached upon.

P7 The size and location of structures on corner sites provide for adequate sight lines–

The location of the proposed new open carport within the required 6 m setback to the front road boundary alignment will not affect on-site traffic vision.

P8 Sufficient space for on-site carparking to satisfy the projected needs of residents and visitors, appropriate for–

(a) the availability of public transport

The availability of public transport is not relevant to this hearing, as provision has been made by existing on-site carparking which is not proposed to be changed.

(b) the availability of on-street parking

The availability of on-street parking would not be affected by the proposed development. The nature of the neighbourhood would not require significant on-street carparking generally. It is a condition that the driveway crossover width be less than 5.4 m.

(c) the desirability of on-street parking in respect to the streetscape

On-street car parking would not be reduced nor affected by the proposed development.

(d) *the residents likelihood to have or need a vehicle*

The resident's vehicle needs will not be affected by the proposed development and is therefore not relevant to this hearing.

2. Section 4 of the former Maroochy Shire Planning Scheme includes a code for the development of detached houses. The code should be read broadly, taking into account the overall purpose as well as the more specific Performance Criteria and Acceptable Measures. The new carport, when designed to comply with the conditions applying to this decision, will integrate into the overall character and amenity level of the surrounding premises.

The Performance Criteria P2 will be achieved by the new carport, as modified by conditions, notwithstanding the adoption of an alternate acceptable measure.

The decision held in this application is separate to any other applications which may be made over the property.

3. Based on the above facts it is considered the appeal is upheld.
4. QDC provides Performance Criteria and some Acceptable Solutions. The Acceptable Solutions are to provide reasonable and achievable outcomes. The local government is in a position to vary the Acceptable Solutions in relation to an application for siting requirements and to assess the application based on its merits.
5. In assessing the criteria from this part of the Code in relation to the proposed new open carport to be constructed within the required 6 m setback from the front road boundary alignment, the Tribunal found that there were grounds to allow for the addition of the new open carport in the location shown, with amendments to size.
6. The extent of non-compliance with the QDC Acceptable Solution of 2.5 m is minimal and does not, in the Tribunal's opinion, detract from the achievement of the relevant Performance Criteria. In addition, the purpose of the QDC is to provide good residential and neighbourhood design and acceptable amenity to resident is not compromised.

Georgina Rogers
Building and Development Tribunal Chair
Date: 5 August 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:

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