



Building and Development Tribunals
Queensland Government
Department of **Local Government and Planning**

APPEAL
Integrated Planning Act 1997

File No. 3-06-001

BUILDING AND DEVELOPMENT TRIBUNAL - DECISION

Assessment Manager: Gladstone City Council
Site Address: *withheld*-“the subject site”
Applicant: *withheld*

Nature of Appeal

Appeal under Section 22 of the *Building Act 1975* against the Gladstone City Council to issue an Enforcement Notice for carrying out building works without a development permit. The building work relates to the provision of two carports.

The Enforcement Notice requires that:-

1. The carport on the Eastern side (referred to as the Southern side) be removed, and;
2. The carport on the Western side (referred to as the Northern side) be brought back to the original size.

The Council verbally agreed at the hearing that the aspects referred to in the Enforcement Notice are incorrect and have confirmed this by letter dated 15th March 2006.

This Tribunal will address the siting issues only. All other matters will be considered by Council on the development approval.

Date and Place of Hearing: 1.00pm, Wednesday 8th March 2006
at “the subject site”

Tribunal: Raymond W Rooney

Present: Applicant / Owner
M. Rice – Gladstone City Council
A. Kearns – Gladstone City Council

Decision

Taking into consideration the relevant facts and circumstances, the Tribunal **sets aside** the Gladstone City Council's Enforcement Notice dated 7 December 2006, where the owner was required to;

- (a) remove the carport from the Eastern side; and
- (b) return the carport on the Western side to its original size.

and the Tribunal **decides** that:-

- (a) The siting of the carport on the Eastern side satisfies the performance criteria of the Queensland Development Code (Part 12) and may remain; and
- (b) The carport on the Western side shall not be required to be brought back to its original size, but may remain as constructed.

Background

The owners purchased the property December 2004. The owners stated that the western carport, as existing, was in place at the date of purchase.

Council carried out a 'Compliance Search' prior to purchase for the owners and did not alert the owners of any unauthorised or unlawful building work in respect to this carport at that time.

The carport on the Eastern side was under construction in May 2005, when council became aware the work did not have building approval.

Subsequently the owner submitted plans to council for approval.

Material Considered

1. Form 10 – Building and Development Tribunal, Appeal Notice dated 5 January 2006 with attached photos showing existing carports, and adjoining property on Eastern side;
2. Plans (Job No 0-167) dated June 2005, sheets 1 to 4;
3. Show cause notices dated 6 May and 26 May 2005;
4. Letter from Gladstone City Council dated 22 July 2005;
5. Enforcement Notice dated 7 December 2005;
6. Photo taken 13 March 2003 of "the subject site" from the street;
7. Further verbal submissions by the applicant and Mr Kearns and Mr Rice;
8. The Building Act 1975, referencing the Standard Building Regulation 1993, referencing the Queensland Development Code.

Findings of Fact

1. The carport on the Western side;
 - The Council 'compliance search' did not reveal as being unauthorised or illegal building work. The carports 'original size' referred to in the Enforcement Notice is not able to be accurately determined, as approvals prior to 1975 have not been archived.
 - The existing carport abuts the boundary, not 1.5m clearance as shown on Plan Sheet 1 - No.0-167 and is approximately 9.5m long.

2. The carport on the Eastern side;
 - The structure was under construction in May 2005 without building approval which takes into account the siting requirements under the Standard Building Regulation.
 - Council requested the owner to stop work and issued Show Cause Notices, followed by an Enforcement Notice dated 7 December 2005.
 - Despite the Patio notation on the plan, the space formally used to cover a caravan, is used as a covered area for children and for additional vehicle parking. That is, may be classified as a Class 10a Structure.

Reasons for the Decision

1. The *Standard Building Regulation 1993* (SBR) requires that building work must comply with each part of the Queensland Development Code (QDC) mentioned in Schedule 13 to the extent the part applies to the work.
2. Schedule 13 of the SBR nominates Part 12 – Design and Siting Standards for single detached housing on Lots 450m² and over, in Table 2: Local Government.
3. Part 12 of the QDC is a performance based code giving the performance criteria to be met and acceptable solutions as “deemed-to-satisfy” the requirements.
4. The performance criteria may also be satisfied by other than the deemed-to-satisfy solutions listed. Alternative solutions would be acceptable provided the intent of the performance criteria is met.
5. In this instance, the performance the performance criteria for carports as Class 10a structures satisfies the performance requirements P1 for the minimum road setback in accordance with the acceptable solutions A1.
6. The performance requirements P2, Building and Structures in respect to side and rear boundary clearances are:-
 - (a) provide adequate daylight and ventilation to habitable rooms; and
 - (b) allow adequate light and ventilation to habitable rooms of buildings on adjoining lots.
7. I am of the opinion that the carports satisfy the performance criteria P2 as acceptable solutions A2 (d) (i) (iii) have been achieved. Although the structures exceed the total 9m length along any one boundary under A2 (d) (ii), there remains adequate light and ventilation to the adjoining houses, the house on the Eastern side being approximately 12m from the boundary.

Mr Ray Rooney
Building and Development
Tribunal Referee
Date: 16/03/2006

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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