



APPEAL
Integrated Planning Act 1997

BUILDING AND DEVELOPMENT TRIBUNAL - DECISION

Assessment Manager: Queensland Building Approvals

Concurrence Agency: Gold Coast City Council

Site Address: *withheld*—‘the subject site’

Applicant: *withheld*

Nature of Appeal

Appeal against the decision of Queensland Building Approvals, dated 22 March 2008, to refuse a development application for a proposed carport. The decision was based on a concurrence agency response from Gold Coast City Council dated 11 March 2008.

Date and Place of Hearing: 11.00 am Monday 7 April 2008 at ‘the subject site’.

Tribunal: Mr Leo F Blumkie Chairperson
Mr Steve Adams General Referee

Present: Applicant/Owner
Mr Andrew Powell Gold Coast City Council Representative
Mr Jonathan Lee Gold Coast City Council Representative
Mr Patrick Giess Gold Coast City Council Representative
Mr Mark Perry Mark Perry Architects
Mr Darren Wright Queensland Building Approvals

Decision

In accordance with section 4.2.34 (2) (b) of the *Integrated Planning Act 1997* (IPA), the Tribunal **sets aside** the decision appealed against **and makes a decision to approve the siting of the proposed carport subject to the following conditions:-**

1. A written response being obtained from the adjoining owner on the western side of the property advising that they have no objection to the existing development within the 1500mm setback from the common side boundary. A copy of the response to be given to the assessment manager.
2. The existing solid panel lift door to the carport is removed and is replaced with a part transparent lift door (the door is at least 50% open when viewed from the horizontal position).

3. The colour of the solid portion of the lift door is to be approved by Council.
4. The above conditions are completed within 2 months of the date of this determination unless otherwise extended by Council before the expiry date.

Background

The property is a typical rectangular shaped residential block with a frontage of 18.288m and backs on to a canal.

The property was previously developed with a single storey residence. The residence has been altered internally, and amongst other things, the previous single garage forming part of the residence has been converted to habitable space and a double carport has been erected within the 6m road boundary frontage without a development approval.

There is no current development approval for the building work, as it is subject to a siting variation for a relaxation of the road boundary setback for the carport.

The carport is completed and is as follows:-

- 7.5m overall of brick piers
- has 600mm overhang on each side
- has a hip roof
- is less than 50% of the front alignment
- setback approximately 600mm from the front boundary
- 2700mm from ground line at the front boundary to top of gutter
- open on both sides
- has a solid panel lift door to the front elevation
- materials and colour scheme matching the residence
- 900mm from outermost projection to the western side boundary.

Application was made to Council on 3 December 2007 for a boundary relaxation for a double carport within the boundary setback on 'the subject site'

Council forwarded a request for further information (RFI) on 12 December 2007.

The applicant and architect made numerous calls to Council requesting discussion with Council officers. It would appear the request was not passed on to Council officers, as no return calls were made.

A written response from the applicant, dated 12 January 2008, was received by Council on 27 February 2008.

The applicant was not aware that the Council, in their RFI request, was asking for the carport to be reduced in overall width.

As no reductions in the width of the carport were made, Council refused the application on 11 March 2008 and advised the reasons for the refusal as follows:

"The application for encroachment within the 6.0m road front clearance does not satisfy the specific Development Code for Detached Dwellings PC3.

PC3 - The covered car parking space/carport must be located and designed to: aesthetically complement the main dwelling; not dominate the street frontage; have minimal adverse effect on the amenity, likely amenity and character of the neighbourhood.

Council considers the width of the carport along the road front property boundary to be dominant of the road front boundary; bulky; and intrusive to the character of the Domain."

An appeal was lodged with the Registrar on 26 March 2008.

The Applicant identified a number of properties within the neighbourhood, which had carports erected within the 6m front boundary clearance.

Material Considered

In coming to a decision, consideration was given to the following material:

- Council's refusal of the application dated 22 March 2008
- Queensland Building Approvals subsequently advised the applicant of the refusal on 22 March 2008
- 'Form 10 – Notice of Appeal' lodged with the Registrar on 26 March 2008 including grounds for appeal, drawings and correspondence accompanying the appeal
- Council's request for further information dated 12 December 2007
- Verbal submissions from the applicant, Architect and Building Surveyor
- Verbal submissions from Council's representatives
- Council's verbal response on nominated structures erected within the street setback within the neighbourhood
- Specific Development Code Part 7 - Division 2 - Chapter 13 of the Town Plan
- Inspection of the site and neighbourhood
- The *Building Act 1975*
- The *Building Regulation 2006*
- The Queensland Development Code Part 12
- The *Integrated Planning Act 1997*
- The Gold Coast City Council planning scheme.

Findings of Fact

The alterations to the house, including conversion of the single garage and construction of the double carport, within the required street setback, have been completed without a development permit.

The current Planning scheme came into effect on 18 August 2003.

Covered car parking space/carport is included in the plan under Part 7 - Division 2 - Chapter 13 and under PC3 requires as follows:

"The covered car parking space/carport must be located and designed to:

- a) aesthetically complement the main dwelling;*
- b) not dominate the street frontage;*
- c) have minimal adverse effect on the amenity, likely amenity and character of the neighbourhood."*

The streetscape of 'the subject site' when viewed from both directions is single and two-storey houses, some with solid fences to the maximum height and numerous carports within the street setback.

The adjoining property on the eastern side has an approved carport measuring approximately 6.7m overall, complete with a gate house erected within the 6m road boundary setback. It has a dutch gable roof and is approximately 2700mm above natural ground to gutter line.

The Council representative advised at the hearing that it was Council's policy to require double carports to be :-

- a maximum width of 6m overall of support posts
- an additional 600mm overhang was permitted
- height of 3m or 3.5m for a gable roof.

The 6m width was based on recommendations in building codes that a double car space be 5.4m, hence a further 600mm was considered adequate in width, especially when carports are required to be open on the sides.

Reasons for the Decision

The design of the existing carport aesthetically complements the main dwelling as required by the Performance Criteria of the Planning Scheme. The Tribunal agreed the carport, with an overall wall to wall width of 7.5m and a solid panel door to the street elevation, **dominated** the road front boundary.

The streetscape could be made acceptable and less dominant if the carport had a transparent door in lieu of the solid door.

The Tribunal considered the carport at 7.5m overall between posts, with a hip roof, not to be bulky.

This decision was arrived at by comparing a 6m wide gable roofed carport, as permitted under Council policy (i.e. erected on the front boundary, with the solid gable roof at maximum height of 3.5m and a solid door) to the existing carport. The existing carport has less bulk.

The calculated area of the elevation at a line 600mm back from front boundary of the existing proposal would be less than the elevation area of a carport on the alignment as permitted under the Council policy.

It was noted that the existing carport occupied less than 50% of the street frontage.

By changing the solid door to a part transparent door would, in the opinion of the Tribunal, make the carport non-intrusive to the character of the Domain, especially if the colour of the door was complementary to the streetscape and the main dwelling.

The Council representatives, under the circumstances, agreed that changing the solid door to a transparent door, especially with a complementary coloured door, would make the carport acceptable under the planning scheme.

Leo F Blumkie
Building and Development Tribunal Chairperson
Date: 9 April 2008

Appeal Rights

Section 4.1.37. of the IPA 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