



APPEAL
Integrated Planning Act 1997

BUILDING AND DEVELOPMENT TRIBUNAL - DECISION

Assessment Manager: Caloundra Building Approvals Pty Ltd

Concurrence Agency: Sunshine Coast Regional Council

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

Applicant: *withheld*

Nature of Appeal

Appeal under Section 4.2.9 of the *Integrated Planning Act 1997* against the decision of Caloundra Building Approvals, to refuse an application for a proposed carport at the subject site as directed by a concurrence agency response from Sunshine Coast Regional Council, pursuant to Section 9 (a), Schedule 2, Table 1 of the *Integrated Planning Regulation 1998*.

Date and Place of Hearing: 2.00 pm Wednesday 11 June 2008 at ‘the subject site’

Tribunal: Mr Paul Smith - Chairperson

Present: Applicant
Mr Richard Prout - Sunshine Coast Regional Council Representative

Decision

The Tribunal, in accordance with section 4.2.34 (2) (c) of the *Integrated Planning Act 1997*, **sets aside** the decision of Caloundra Building Approvals, dated 27 May 2008, to refuse the building development application because it was directed by Sunshine Coast Regional Council, acting as a concurrence agency, to do so **and replaces it with the following decision:-**

Caloundra Building Approvals is ordered to assess and decide the application, as shown on drawings by MRA Design (Job No 2008/028) sheets 1 to 3, dated 03/04/08:

- a. **disregarding the concurrence agency response that directed that the application be refused; and**
- b. **if the application is approved, imposing the following condition of approval:**

The enclosing gate to be no higher than fence height and is to be of a “see-through” construction when viewed by a person standing in the street. A construction that obstructs vision by no more than 50% when viewed by a person viewing the gate from any point on the street shall be deemed to be of “see through” construction.

Caloundra Building Approvals is ordered to decide that application within five business days of receipt of this decision.

Background

A development permit was issued by Suncert Pty Ltd on 14 February 2008 for the construction of a swimming pool.

A development permit was issued by Caloundra Building Approvals on 29 April 2008 for building alterations and additions which included the conversion of covered car accommodation to a habitable room.

Council advised Caloundra Building Approvals prior to the granting of the development permit of 29 April 2008 that, in its opinion, the application did not comply with its planning scheme. Council also advised the Applicant prior to the construction of the pool that, in its opinion, the application did not comply with its planning scheme.

Notwithstanding, this advice the Applicant proceeded to construct the pool and enclose the then existing covered car space in accordance with the approvals issued by the private certifiers.

The open carport, now the subject of this appeal, is proposed to be constructed on a slab that has been built in the only location accessible from the street.

The proposed location has a minimum distance from the street alignment varying from 200mm to around three metres.

Material Considered

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

1. 'Form 10 – Notice of Appeal' lodged with the Registrar on 29 May 2008 including grounds for appeal and correspondence included as Appendix 1 to the appeal.
2. Drawings by MRA Design (Job No 2008/028) sheets 1 to 3, dated 3 April 2008.
3. 'Form 18 – Notice of Election' received from Council on 6 June 2008.
4. Decision Notice from Caloundra Building Approvals Pty Ltd, dated 27 May 2008 refusing the development application.
5. Council's concurrence agency response dated 28 April 2008.
6. Verbal submission from the applicant at the hearing.
7. Council's verbal submission at the hearing and a written submission dated 11 June 2008.
8. Letters of support from two of the neighbours to the subject site.
9. *The Building Act 1975*.
10. *The Building Regulation 2006*.
11. *The Queensland Development Code Part 12*.
12. *The Integrated Planning Act 1997*.
13. Caloundra City Council planning scheme including the Detached Housing Code.

Findings of Fact

The subject site is close to the end of a cul-de-sac in which four out of nine houses have carports erected close to the street alignment.

The design of three of these carports erected close to the street alignment each presents a bold gabled roof which detracts from the otherwise small scale residential character of the immediate area.

All the existing carports have been approved although the enclosing roller doors have not.

The small scale residential character of the immediate area in which the subject land is located has been altered by the existing carports.

Reasons for the Decision

The Applicant took a significant risk proceeding with the construction of the pool and alterations to the dwelling in the face of advice from Council about its belief that the approvals did not comply with Council's planning scheme.

In the Tribunal's opinion the Applicant knew, or should have known, there was a significant issue in dispute which could have been resolved before work commenced and knew, or should have known, that had the Tribunal found that the proposed carport did not comply with Council's planning scheme, the Applicant may have had to demolish work already constructed in order to comply.

The Tribunal gave no consideration whatsoever to the fact that substantial work had been carried out in deciding this appeal.

The Tribunal inspected the adjacent land and formed the opinion that the proposed carport design would, if conditions aimed at preventing the installation of a solid front enclosing door/gate at the front alignment were imposed, not be out of character with neighbouring dwellings, would not dominate the streetscape and would preserve the amenity of adjacent land and dwellings having regard to the issues set out in Specific Outcome 07 of Council's Detached Housing Code.

Paul Smith
Building and Development Tribunal Chairperson
Date: 24 June 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