



APPEAL
Integrated Planning Act 1997

File No. 03/08/015

BUILDING AND DEVELOPMENT TRIBUNAL - DECISION

Assessment Manager: QPDB Pty Ltd
Concurrence Agency Toowoomba Regional Council
Site Address: *withheld*—‘the subject site’
Applicant: *withheld*

Nature of Appeal

Appeal under Section 4.2.7(2)(b) of the *Integrated Planning Act 1997* (IPA) against the decision of QPDB Pty Ltd to approve with conditions an application for building works at ‘the subject site’.

Date and Place of Hearing: 1.00 pm Wednesday 2 April 2008 at ‘the subject site’

Tribunal: Dr Peter Matthews Chairperson
Present: Applicant
Applicant’s Representative
Mr Robert Orr Toowoomba Regional Council Representative

Decision

In accordance with Section 4.2.34 (2)(a) of IPA, the Tribunal **confirms** the decision of QPDB Pty Ltd appealed against, dated 4 March 2008.

Background

The property is a 647m² residential block, and is located within a Mixed Housing Precinct as per the Toowoomba Planning Scheme 2003.

The site is located on the corner of *withheld* facing *withheld*, which is a short street with only three residential homes to one side and across the road is a house and a medium density residential development. The homes opposite on the western side of *withheld* overlook ‘the subject site’ on *withheld*.

The existing highset chamferboard home with brick base has been built in underneath although *withheld* advised only 1800mm high to the majority therefore unusable. There is an existing garage to the rear of the home with access through a colorbond fence with gates facing *withheld* which is currently being used for storage.

Downs Window Renewals, made an application to QPDB Pty Ltd for the carport mentioned herein which required a "Siting Variation" from Toowoomba Regional Council.

Council refused the siting variation on 19 July 2007 and advised the reasons for the refusal as follows:-

(a) *The proposed location of the carport will:-*

- *Create a high visual impact on the streetscape located on the street corne; and*
- *Obstruct the outlook from the adjoining property.*

(b) *The proposed location of the structure does not meet the performance criteria P1 of Part MP 1.2 (formerly Part 12) of the Queensland Development Code.*

An appeal was lodged with the Registrar on 14 March 2008.

The Applicant identified a number of properties with photos 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:

1. 'Form 10 – Notice of Appeal' lodged with the Registrar on 14 March 2008 including grounds for appeal and correspondence accompanying the appeal.
2. Photographs of the subject property and existing neighbourhood streetscape.
3. Photographs of existing carports built within the 6m setback within the neighbourhood.
4. Verbal submissions from the applicant and applicant's representative.
5. Verbal submissions from Council representative.
6. QPDB Pty Ltd Decision Notice Approval dated 4 March 2008 with Concurrence Agency Siting Variation Refusal dated 19 July 2007.
7. Site plan, floor plan and construction details.
8. *The Building Act 1975.*
9. *The Building Regulation 2006.*
10. The Queensland Development Code Part MP 1.2.
11. *The Integrated Planning Act 1997.*
12. Toowoomba Planning Scheme 2003.

Findings of Fact

The street comprises mixed residential with only three residential dwellings on the southern side of the road which includes the subject site. The adjoining property is separate by a 2.5m hedge and two large pencil pine trees.

However, there is existing car accommodation used for storage to the rear of the property with access through 2m high colorbond fence and gates to *withheld*. The current owner has the property rented out and is using the abovementioned garage for storage for personal belongings. The garage is fenced off from the home by a low timber fence. This does not form part of the lease to the current tenant. Therefore the current owner has proposed to erect a carport to the front of the premises for ease of access into the home for the tenant. This tenancy agreement however has no bearings on building legislation and siting provisions. There is ample room in two locations for a carport or garage to be erected on site and comply with the Queensland Development Code.

Reasons for the Decision

Toowoomba Regional Council in its reasons for the decision state:-

Item (a)

(a) *The proposed location of the carport will:-*

- *Create a high visual impact on the streetscape located on the street corner, and*
- *Obstruct the outlook from the adjoining property.*

The **Performance Criteria** of buildings and structures under the QDC Part MP 1.2 P1 is as follows:

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

- the bulk of the building or *structure*; and
- the road boundary setbacks of neighbouring buildings or *structure*; and
- the outlook and views of neighbouring residents; and
- nuisance and safety to the public.”

(QDC, Part MP 1.2-Design & Siting Standard for Single Detached Housing, P1, p6)

The Tribunal agrees that the adjoining neighbour on *withheld* would not be impacted due to the existing hedge and pencil pine trees. However, the Tribunal believes that residents facing east on *withheld* may be impacted by a reduction of views by the erection of the carport in such a location.

Item (b)

(b) *The proposed location of the structure does not meet the performance criteria P1 of Part MP 1.2 (formerly Part 12) of the Queensland Development Code.*

There are two locations on the site that an additional carport could be located that comply with the QDC as an acceptable solution. The Tribunal believes it would be more in keeping with the streetscape to accommodate vehicles to the rear of the property facing *withheld* either in front of the existing garage or in the house yard in between the house and the dividing fence to the existing garage.

Dr Peter Matthews
Building and Development Tribunal Chairperson
Date: 15 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
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