



Building and Development Tribunals—Decision

Integrated Planning Act 1997

Appeal Number: 3—09—039
Applicant: Cameron Rolfe
Assessment Manger: Darren Wright for and on behalf of Queensland Building Approvals
Concurrence Agency: Gold Coast City Council – ‘Council’
(if applicable)
Site Address: 24 Saint Martin Place Clear Island Waters described as Lot 343 RP
844999—the subject site

Appeal

Appeal under section 4.2.9 of the *Integrated Planning Act* (IPA) against the decision of the Assessment Manager to refuse a development application for building works, namely carport within the Saint Martin Place alignment. The decision was based on a concurrence agency response from Council.

Date of hearing: Friday – 10:00am, 12 June 2009
Place of hearing: The subject site
Tribunal: Dennis Leadbetter – Chairperson
Peter Nelson – Member
Present: Cameron Rolfe – Applicant and Builder
Shane O’Donnell – Owner
Rex Young – Building Designer
Darren Wright – Assessment Manager
Peter Krook – Gold Coast City Council Representative

Decision:

The Tribunal, in accordance with section 4.2.34 (2)(c) of the IPA, **confirms** the decision of the Assessment Manager, dated 22 April 2009, in reliance upon advice from Council as concurrence agency to refuse the development application for portion of the building work, namely the carport to the street alignment in excess of the 3.5 metre maximum height and 3 metre mean height of the roof to the Saint Martin Place alignment.

Background

The applicant submitted drawings to the Assessment Manager for a substantial renovation to an existing dwelling, which included inter alia a carport attached to the dwelling projecting into the road boundary setback to within approximately 0.250 metres of the alignment to the south western side and approximately 1.500 metres to the north eastern side of the carport. The Assessment Manager referred the application to the Council, who assessed the application and approved the development of the carport, **subject to the roof line being no greater than 3.5 metres above natural ground level and having a mean height of 3.0 metres above natural ground height.**

The Owner then submitted amended drawings showing a reduced roof slope to achieve the lowered roof height and maximum and mean heights above natural ground, as requested by Council. The Assessment Manager issued the appropriate approvals to allow construction.

The building is now substantially completed and the carport roof height adjacent to the road frontage ranges from 3.2 metres high to 4.2 metres above the natural ground level, in contravention of the approval issued by Council and the Assessment Manager. The Assessment Manager requested an amended to the original approval of Council requesting they reconsider the roof heights as built. Council refused the application, on the basis that the structure did not conform to the requirements of part a, b and c of Performance Criteria P1 of QDC MP1.2, in that:-

- The current height of the carport dominates the frontage and diminishes the existing streetscape amenity.
- The subject site has already been given an approval for a carport to be built within the 6 metre road front property boundary. It should be noted that when the original application was lodged for the proposed carport and portico, the carport height was originally 4 metres to the top of the parapet, an information request dated 15 October 2008 requesting the height to be reduced. Council received revised drawings showing the carport height at the top of the parapet to be 3.5 metres with a mean height of 3 metres and proceeded to approve the application.

The applicant lodged an application for a proposed deck/patio within the waterfront property boundary these plans once again showed the top of the parapet of the carport being 3.5 metres.

Due to the carport height been (sic) increased within the road front setback the area has been over developed, when viewed from the street and is inconsistent with the existing amenity and surrounding neighbouring road frontages.

- Council considers that the streetscape will be adversely affected by the current carport height.

Material Considered

1. 'Form 10 – Notice of Appeal' and grounds of appeal contained therein lodged with the Registrar on 14 May, 2009;
2. 'Form 8 – Notice of Election' provided to the Registrar by the Council on 27 May, 2009;
3. Drawings submitted with the appeal application;
4. Verbal submissions from those attending the appeal hearing;
5. The IPA;
6. The Integrated Planning Regulation 1998;
7. The Queensland Development Code MP1.2
8. An inspection of the subject site; and
9. Additional drawings supplied and viewed at the hearing.

Findings of Fact

The Tribunal makes the following findings of fact:

- That the building had been substantially constructed prior to the request to Council to change their response;
- The roof line of the carport ranged from approximately 3.2 metres to approximately 4.2 metres above natural ground;
- The carport was set back from the road frontage a distance ranging from approx 0.260 m to the left side and approx 1.5 mm to the right side.

Reason for the Decision

The Tribunal is of the opinion that the Council's determination in relation to requesting a reduced height to the carport roof was fair, equitable and achievable. This would present a more appropriate scale to the St Martin Place streetscape, having due consideration of the dimension of the road reserve, surrounding structures and the impact the proposal may have on the built environment.

The revised drawings prepared by Exel Design Pty Ltd, and submitted to Council for their initial approval, nominate a reduced height conforming to Council's request to reduce the roof height, which would indicate to the Tribunal that the Designers determined that the reduced height was achievable, having cognizance of natural ground levels, existing floor levels, minimum ceiling heights etc, which would influence the final roof line and that would need to be addressed as part of the design process.

The Tribunal can see no extenuating circumstances that would impact post the design process and result in an error of the magnitude evident in the structure as built, viz 0.7 metre, and are of the opinion that alternative solutions would have been available at the design stage, to enable a structure to comply with the height limitations imposed by Council's original determination.

The Tribunal is of the opinion that specific criteria P1 is relevant to this appeal and supports Council's determination.

Dennis Leadbetter

Dip Arch QUT, Grad Dip Proj Man QUT, METM UQ

Building and Development Tribunal Chair

Date: 16 June 2009

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 grounds:

- (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