



Building and Development Tribunals – Decision

Integrated Planning Act 1997

Appeal Number:	3–09–078
Appellant:	ABD Developments Pty Ltd
Assessment Manager:	Suncert Building Consultants
Concurrence Agency: (if applicable)	Sunshine Coast Regional Council (Council)
Site Address:	81 Broadsea Avenue, Maroochydore and described as Lot 48 on RP181389 – the subject site

Appeal

Appeal under section 4.2.29 of the *Integrated Planning Act 1997* (IPA) against the concurrence agency response of Council dated 13 October 2009 to refuse a development application for siting of a carport.

Date of hearing:	Wednesday 28 October 2009 at 10.00am
Place of hearing:	81 Broadsea Avenue, Maroochydore
Tribunal:	Mr Chris Schomburgk – Chairperson Mr Malcolm Edmiston – General Referee
Present:	Mr Richard Prout – Council representative Mr Tony Norman (ABD Developments) – Appellant Mr Scott Rushton – Suncert Building Consultants

Decision:

The Tribunal, in accordance with section 4.2.34 (2) (c) **sets aside** the decision of Council to direct the refusal of a development application for siting of a carport; and replaces it with the following decision:-

The Tribunal, in accordance with section 4.2.34 (1), **directs** the Assessment Manager to **approve** the development application, subject to compliance with the following conditions:-

1. Amended plans are to be submitted to Council for checking of compliance with these conditions. The amended plans are to include compliance with the requirements of conditions 2-4 below.
2. The carport is to remain open-sided on three sides at all times.
3. The front boundary wall is to be redesigned to give a more “open” appearance. In this regard, the wall is to comprise of horizontally-separated sections. Each section of wall is to be no more than 2.0 metres in the horizontal plane, and each section is to be separated by an open wall/fence with a minimum horizontal dimension of 2.0 metres. These open wall/fence sections may comprise horizontal or vertical slats where the appearance is “open” for at least 50% of the area of that

section.

4. Landscaping is to be provided on the site to comply with Council's Code for Landscaping Design. Trees and shrubs are to have a minimum height of 1.0 metres at planting, and be of a type/species to achieve visual screening of those parts of the wall within 5 years. Additional landscaping on the road reserve may be included, subject to Council approval.

Background

A development application for carrying out building work under the IPA was received by the assessment manager for the proposed construction of a carport as part of the overall renovation of the existing house located on the subject site.

The assessment manager lodged an application with Council for concurrence agency response. Council refused the application as the proposed development was deemed to not comply with performance criteria in Code 4.1 of the Maroochy Plan 2000. The relevant provisions of the Maroochy Plan are extracted below in the 'findings of fact'.

The assessment manager refused the development permit for building works based on the response from Council.

The applicant lodged an appeal against the decision to the Building and Development Tribunals on 20 October 2009.

Material Considered

The material considered in arriving at this decision comprises:

1. 'Form 10 – Notice of Appeal', grounds for appeal, supporting plans and documentation received by the Registrar on 20 October 2009.
2. A site inspection of the site and the locality, undertaken by the Chairperson and General Referee.
3. The concurrence agency response from Council, dated 13 October 2009.
4. Verbal and written submissions from the parties at the hearing.
5. The 2000 Planning Scheme for the former Maroochy Shire Council – in particular, Code 4.1 Code for Development of Detached Houses and Display Homes.
6. The Queensland Development Code (QDC) – Part MP1.2.
7. The *Integrated Planning Act 1997*.
8. The *Integrated Planning Regulation 1998*.

Findings of Fact

The Tribunal makes the following findings of fact:

1. The subject site is currently occupied by a single-storey dwelling, and is in an area of generally established single detached houses, some of which are currently undergoing, or have recently undergone, renovation.
2. The subject site is generally flat, and is irregularly-shaped, having a relatively narrow street frontage but widening out towards the rear. The site has an area of approximately 904m² with a frontage of 14.018 metres. The site is bounded on two sides by detached houses and a parkland on the rear boundary.
3. The proposed carport is part of the overall renovation of the existing house. The renovation includes

the conversion of the existing double garage into habitable rooms, creation of a new entry, and erection of a new front boundary wall with gates and landscaping. The existing house is located approximately 1.5 metres from the eastern boundary and, due to the shape of the allotment, is within approximately 1.5 metres (to the eaves) from the western boundary at the closest point. This current location means that vehicular access to the site behind the front setback is not possible.

4. The proposed carport is to be open on three sides, and abuts the existing building on the other (southern) side. It is intended to be 600 mm from the proposed new front boundary wall, which is to be rendered block up to 2.0 metres high, but “broken up” into sections with landscaping and indentations.
5. Council’s decision to refuse the application is based on alleged non-compliance with provisions of the Code for the Development of Detached Houses and Display Homes, in particular Element 1, Performance Criterion P2, which states:

P2 Buildings and Structures are sited to contribute positively to the streetscape, maximise community safety, and maintain the amenity of adjacent land and dwellings by having regard to the following:

- a) views and vistas;*
- b) building character and appearance;*
- c) casual surveillance; and*
- d) an adequate area suitable for landscaping being provided for at the front of the lot.*

6. At the hearing on site, the Council provided a written statement, and the applicant provided a letter of no objection from the neighbour to the immediate west, being the neighbour most likely to be affected by the proposed carport.
7. Some concerns were expressed by the Council representative about the ability of vehicles to manoeuvre on the site to enter and exit the proposed carport. A test conducted by the Tribunal showed that manoeuvrability was likely to be satisfactory.
8. Council offered the option of a single carport that could be located in a position further removed from the front boundary than the current proposal, but this option was not considered satisfactory by the applicant.
9. The site is located at a right-hand bend in the road, so that it is visible from persons travelling south down Tana St. Along the eastern boundary there is advanced landscaping on the adjoining property, which effectively screens the proposal from persons travelling westwards along Broadsea Avenue.
10. The proposal includes a block wall along the frontage of the property. It was advised that the detail of the wall was open to change if the appearance was of concern. Additional landscaping could be provided which would help soften the appearance when viewed from Tana St.
11. An inspection of the locality shows that there are only a few intrusions into the front boundary setback. The lawfulness or otherwise of these examples was not able to be verified.

Reasons for the Decision

Based on an assessment of these facts, it is the Tribunal’s decision that the decision notice being appealed against be set aside and that the application for Siting of a Carport be approved, subject to compliance with the following conditions:

1. Amended plans are to be submitted to Council for checking of compliance with these conditions. The amended plans are to include compliance with the requirements of Conditions 2-6 below.
2. The carport is to remain open-sided on three sides at all times.

3. The front boundary wall is to be redesigned to give a more “open” appearance. In this regard, the wall is to comprise of horizontally-separated sections. Each section of wall is to be no more than 2.0 metres in the horizontal plane, and each section is to be separated by an open wall/fence with a minimum horizontal dimension of 2.0 metres. These open wall/fence sections may comprise horizontal or vertical slats where the appearance is “open” for at least 50% of the area of that section.
4. Landscaping is to be provided on the site to comply with Council’s Code for Landscaping Design. Trees and shrubs are to have a minimum height of 1.0 metres at planting, and be of a type/species to achieve visual screening of those parts of the wall within 5 years. Additional landscaping on the road reserve may be included, subject to Council approval.

The conditions as set out above will ensure that the carport is not intrusive into the streetscape.

No detrimental impacts are likely to be caused to views and vistas or casual surveillance. Indeed, the latter is likely to be improved as a result of this renovation.

Landscaping can be provided on site (and in the road reserve if Council agrees, although this is not part of the approval), and the general building character and appearance will, in the opinion of the Tribunal, be substantially improved by the totality of the proposed renovations.

The proposal, as amended by these conditions, will comply with the Purpose and relevant Performance Criteria of the Planning Scheme Code for Detached Houses and Display Homes.

Chris Schomburgk
Chairperson, Building and Development Tribunal
Date: 20 November 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 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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