



Building and Development Tribunals – Decision

Integrated Planning Act 1997

Appeal Number:	3—09—008
Applicant:	Anthony Russell
Assessment Manager:	Sunshine Coast Regional Council – ‘Council’
Concurrence Agency: (if applicable)	N/A
Site Address:	6 Canmaroo Avenue, Nambour and described as Lot 34 on RP125414 – the subject site

Appeal

Appeal under Section 4.2.9 of the *Integrated Planning Act 1997* (IPA) against the decision notice issued by the Sunshine Coast Regional Council to refuse a Development Application for Preliminary Approval; (Building Siting) relating to a proposed Class 10a Carport within the front boundary setback for the subject site.

Date of hearing:	8:30am – Tuesday, 10 February 2009
Place of hearing:	The subject site
Tribunal:	Mr Chris Schomburgk – Chair
Present:	Mr Anthony Russell – Applicant Mr John Dunn – Sunshine Coast Regional Council Representative

Decision:

The Tribunal, in accordance with section 4.2.34 (2) (a) **confirms** the decision of the Sunshine Coast Regional Council to refuse a Building Development Application for a Class 10a Carport within the front boundary setback, and the **appeal is dismissed**.

Material Considered

The material considered in arriving at this decision comprises:

- The application, including ‘Form 10 – Notice of Appeal’, supporting plans and documentation;
- Council’s Decision Notice, dated 19 December 2008;

- Verbal and written submissions from both parties at the hearing;
- The Maroochy Shire Planning Scheme (in particular, Code 4.1, the Detached Houses and Display Homes Code);
- The Queensland Development Code (“QDC”) – Part MP1.2; and
- The IPA;
- The Integrated Planning Regulation 1998.

Findings of Fact

The Tribunal makes the following findings of fact:

- The subject site is an older house within a short cul-de-sac. The property contains an existing double garage with roller doors, accessed from the street by a pair of parallel driveways, and located towards the northern side of the site.
- The subject site is generally flat and unconstrained. Existing landscaping and low brick wall are located on the southern part of the front of the site.
- The applicant seeks to erect a double carport accessed directly from the street in front of the existing double garage, so that the existing garage can be lined and used for a rumpus room and additional car accommodation.
- The applicants, through their certifier, applied for a Preliminary Approval seeking a variation to the front setback to allow the carport to be constructed. Council refused the application by its Decision Notice dated 19 December 2008.
- Council’s refusal is based on alleged non-compliance with provisions of the Maroochy Plan Code for Detached Houses and Display Homes, particularly provisions of Element 1, Performance Criterion P2 of the Code which states:

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

 - a) ...
 - b) *Building character and appearance;*
 - c) ...
 - d) ...
- The applicant provided written statements of support from the affected neighbours. The applicant also relied upon other structures within the locality that were within the front setback. However, Council provided a statement to the effect that, of the 12 other structures relied upon by the applicant, only a shade sail was approved by the Council under the current 2000 Planning Scheme, and 6 of the structures had no approvals. An inspection of Canmaroo Avenue reveals that the cul-de-sac is generally homogenous in its built form with respect to the front setback area. The only exception is No 11, which has a side access carport within the front setback, but this was approved prior to the current Planning Scheme.
- It emerged at the hearing that the applicant and Council officers had had a number of discussions regarding the proposal, and the Council had offered a compromise that would allow a carport on the southern part of the front setback approximately 2.0 metres from the front boundary and with side access, rather than direct reversing onto the street. That offer was not accepted by the applicant.
- The applicant has offered to landscape the premises to whatever reasonable requirement might be forthcoming, including constructing a new wall to screen the balance of the front yard.

Based on an assessment of these facts, it is the Tribunal's decision that **the appeal is dismissed**, and the **application for a Class 10a Carport within the front boundary setback is refused**.

Reasons for the Decision

- The applicant seeks the construction of a new carport so that the existing garage can be used for a rumpus room and additional car accommodation when required.
- The Council's offer of a compromise that would allow a new carport in a different location has not been accepted by the applicant. That offer would allow side entry to the carport, thereby allowing vehicles to enter and exit the site in a forward gear, and it would be screened from the street by existing landscaping.
- The street / cul-de-sac is relatively homogenous in its built form with respect to buildings or structures within the front setback area, and the proposal would be out of keeping with that streetscape.
- While the proposed structure could be treated and finished in appropriate colours and materials, it would nevertheless not "*maximise community safety*" nor "*maintain the amenity of adjacent land and dwellings*" having regard to the existing and anticipated building character and appearance of this cul-de-sac.

Chris Schomburgk
Building and Development Tribunal Chair
Date: 24 February 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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