



Building and Development Tribunals

Queensland Government

Department of **Local Government and Planning**

APPEAL

Integrated Planning Act 1997

File No. 3-04-012

BUILDING AND DEVELOPMENT TRIBUNAL – DECISION

Assessment Manager: Toowoomba City Council

Site Address: 160 Hill Street, Toowoomba.

Nature of Appeal: Appeal under Section 4.2.9 of the Integrated Planning Act 1997, against the decision of the Toowoomba City Council not to approve an application for an elevated deck to be sited 800 mm from the street boundary as the deck will:

- Interfere with the privacy of the adjacent properties; and
- Create a high visual impact on the streetscape; and
- Adversely affect the amenity of the area.

The proposed deck is to be erected on land described as Lot 8 on RP No. 108577 located at 160 Hill Street, Toowoomba.

Date and Place of Hearing: 10:30 am on Monday 15 March 2004 at 160 Hill Street, Toowoomba.

Tribunal: B J Williamson

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|-----------------|----------------|---------------------------|
| Present: | B J Williamson | Tribunal Referee |
| | A Finney | Fima & Associates Pty Ltd |
| | J Clancy | Toowoomba City Council |
| | R E Orr | Toowoomba City Council |

Decision:

The decision of the Toowoomba City Council in its letter dated 5 February 2004 (Reference: DISBLD/2004/398) not to approve an application for an elevated deck to be sited 800 mm from the street boundary **is changed** to allow the construction of an elevated unroofed deck on top of the replacement carport subject to the following conditions:

- (a) The outermost projection of the elevated unroofed deck is to have a 3.65 metre street boundary clearance as illustrated on Appendix A; and
- (b) The floor level of the unroofed deck is to be the same level as the existing deck over the existing carport; and
- (c) The balustrade is to be an open metal balustrade (similar to the existing balustrade) or a clear glass balustrade; and

- (d) The height of the handrail is not to exceed the minimum height required by the Building Code of Australia; and
- (e) The eastern side of the deck is to be parallel with the dwelling; and
- (f) The replacement carport is not to exceed the area and location of the site occupied by the existing carport.

Background:

The existing dwelling is located at an angle and is not parallel to the streets. Currently there is a substandard carport that extends out from the dwelling and is 800 mm at its closest point to Devon Street boundary. Extending out from the dwelling over the carport is a deck approximately one metre wide. The owner proposes to erect a replacement carport and have a deck on top of the total area of the carport.

Material Considered

1. Copy of the Refusal of Application for Siting Variation from the Toowoomba City Council dated 5 February 2004.
2. Copy of submission in support of an appeal lodged by the owner.
3. Copy of Form 10 Building and Development Tribunals Appeal Notice dated 11 February 2004.
4. Copy of sewerage site plan showing the location of carport to dwelling and Devon Street.
5. Copy of perspective sketch showing the proposed deck on top of the carport.
6. Copy of email from the owner appointing Mr Finney to act on his behalf.
7. Verbal submission at the hearing by Mr Finney outlining the owner's reasons for the proposed work.
8. Verbal submission at the hearing by the representatives of Toowoomba City Council outlining the reasons stated on the Council's letters.

Finding of Fact

I made the following findings of fact:

1. The proposed deck arrangement does not comply with the acceptable solutions outlined in Part 12 of the Queensland Development Code (QDC). As the height of the floor of the existing one metre wide deck over the existing carport is approximately 2.3 metres (as advised by the applicant), Table A1 of Part 12 of QDC would require for this site a road boundary clearance of 4.8 metres* for the proposed deck with a one metre high handrail. Because of the angle the building is to Devon Street, compliance with the 4.8m road clearance would only result in a small increase in the area of the existing deck area if the eastern side is parallel to the dwelling. If the eastern side of such a deck was parallel to Devon St it would increase the area of the deck but result in a restriction in the use of a section of the deck due to the angular floor plan.
(* This dimension from Table A1 of Part 12 of QDC, was supplied by the council officers at the hearing.)
2. If the deck was allowed to extend the full area of the carport roof as requested, then deck furniture could be placed very close to the boundary of the site which would have a significant effect on the streetscape.
3. The existing carport is substandard and is in need of early replacement.
4. Between the existing carport and the adjacent southern neighbour there is a tree and a high metal sheet fence that hides a garden shed.
5. The proposal was discussed with the adjacent neighbour who raised no objection to the proposal.
6. The proposal would not be easily visible from the neighbour's property due to the large tree and the existing high sheet metal fence and therefore, it would not affect the outlook from the neighbour's property.
7. There was an agreement on site by all parties that the replacement carport could be the exact size of the original carport.

Reasons for the Decision:

1. The dominate feature of the site will be the replacement carport and a deck covering the whole carport roof would adversely affect the streetscape.
2. An unroofed deck covering only the rear half of the flat carport roof would have less impact on the streetscape than a 3.5 metre high gable roof carport.
3. By limiting the deck to the rear half of the carport roof, the visual impact of the deck will be reduced by the carport roof sight lines (see Appendix B) and any nuisance noise resulting from the use of the deck would be greatly reduced due to the increased distance to the street boundary.
4. At the southern end the impact of the deck will be masked by the tree and the high sheet metal fence and at the northern end the deck will be more than 4.8 metres from the road boundary. (4.8 metres is the boundary clearance required by Table A1 of Part 12 of QDC.)
5. The impact of the deck located at the rear half of the carport on the streetscape will be low due to the deck being at an angle to the street and the deck having an open metal balustrade (or glass balustrade).
6. With regard to the deck extending half the distance requested, an assessment of Performance Criteria P1 of Part 12 of the Queensland Development Code concerning streetscape is as follows:
 - *The bulk of the structure* – The carport will have a flat roof and the structure above the roof would be an open metal balustrade (or glass balustrade) and possible deck furniture. With the deck floor at the same level as the existing deck, at an angle to Devon Street and being set back at the mid-point of the carport the effect on the streetscape will be minimal. In fact the replacement carport extending to 800 mm of the road boundary will have a greater impact on the streetscape.
 - *Road boundary setbacks of neighbouring buildings* – The existing buildings in the area are setback the traditional setback distance from the street boundaries. However, in this case with the replacement carport allowed to extend to 800 mm of the street boundary, the dwelling set at an angle to Devon Street and a large tree between the deck and the adjacent dwelling, the deck setback 3.65 metres (minimum) to the street boundary will not be viewed in conjunction with the adjacent dwelling on the southern boundary.
 - *Outlook and views of neighbouring residents* – An inspection made on the adjacent southern property revealed that because of the large tree and the high sheet metal fence, the deck set back at the mid-point of the carport will not restrict the outlook and views of the southern adjoining neighbour.
 - *Nuisance and safety to the public* – By setting the deck back at mid-point of the carport it is considered that this will not result in adverse nuisance and safety issues for the public walking on the footpath or neighbours in the area.
7. An assessment of the issues raised by the Toowoomba City Council to the original proposal applied to the reduced deck size (deck setback at mid-point of the carport) is as follows:
 - *Interfere with the privacy of the adjacent properties* – An inspection on the southern adjoining property showed the existing large tree would provide privacy between the reduced deck and the adjacent dwelling.
 - *Create a high visual impact on the streetscape* – By setting the deck back to the mid-point of the carport, the visual impact on the streetscape is greatly reduced.
 - *Adversely affect the amenity of the area* –By setting the deck back to the mid-point of the carport and being at an angle to Devon Street, it is considered that it will not adversely affect the amenity of the area.

8. I am of the opinion that because of the features of this site (dwelling not parallel to the streets, wide open area at the corner of the two street frontages and an existing carport extending to 800 mm of Devon Street boundary), an unroofed deck covering the rear half of the replacement carport roof would not adversely affect the streetscape, the privacy of the adjoining property and the amenity of the area.

B J Williamson
Building and Development
Tribunal Referee
Date: 13 April 2004

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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