



Building and Development Tribunals

Queensland Government

Department of **Local Government and Planning**

APPEAL

File No. 3-04-015

Integrated Planning Act 1997

BUILDING AND DEVELOPMENT TRIBUNAL - DECISION

Assessment Manager: Noosa Shire Council

Site Address: 7 Adams Street, Sunshine Beach

Nature of Appeal

Appeal under section 24 of the Building Act 1975 against the decision of the Noosa Shire Council to issue an enforcement notice requiring the removal of a carport erected on land described as Lot 546 RP 48112 situated at 7 Adams Street, Sunshine Beach.

Date and Place of Hearing: 10.00am on Monday 5 April 2004.

At the office of the Department of Local Government and Planning,
Level 25, Mineral House, 41 George Street, Brisbane.

Tribunal: Gregory Schonfelder

Present: Owner of the land
Clay Anderson, Noosa Shire Council

Decision

I determine that the Enforcement Notice issued by the Noosa Shire Council dated 5 March 2004 requiring the owner to remove the Class 10a Carport from the property at 7 Adams Street, Sunshine Beach is **set aside** and approval is granted for:-

- (i) the existing Class 10a Carport to remain in its present location at 7 Adams Street, Sunshine Beach.

Subject to:

- (i) A Development Approval being obtained for the existing Class 10 Carport and Class 1a Patio Cover buildings.
- (ii) The carport shall not be enclosed and will remain open.
- (iii) A garage door shall not be installed to the building.
- (iv) Extensive landscaping shall be planted between the carport and the southern boundary of the site, and this shall be maintained.
- (v) Any change of the existing attached garage (Class 10a) to a habitable room (Class 1a) shall involve a separate application to the Noosa Shire Council.
- (vi) This ruling of the tribunal to allow the carport to remain in its present location does not bind the Council to approve an application for a change in use of the existing garage.

Note:

- (i) It is considered the existing use as an Art Studio of the attached garage is compatible with the classification of this section of the building as a Class 10a and is for hobby purposes only. If the scope of the activity changes to a commercial nature then compliance with “home business” or equivalent provisions of the relevant planning scheme would need to be addressed.

Background

The applicant explained the basis for the application to the Council for a variation for siting for the existing carport and the subsequent appeal against Councils’ decision to issue an Enforcement Notice to remove the building:-

- The builder was contracted to obtain all the relevant approvals and the owner was unaware when the buildings were constructed that both Council Approval and Building Approval had not been granted.
- Precedents exist in the area especially in the same street for buildings to be sited within the front road boundary setback.
- The building has been built now for over one year and there have been no complaints from adjoining owners.
- The existing building benefits from this building (carport) which acts as a sunshade to the west elevation.
- A vacant block adjoins the property and would be the property with the most direct effect.
- Needed additional space for an art studio for the owner.

With regard to Noosa Shire Councils' Enforcement Notice the applicant gave these additional reasons:-

- The existing garage has been converted into a studio for the owner's hobby of painting, and the floor sealed for ease of cleaning. There is no other area of the existing house for the painting hobby.
- Due to the positioning of the existing house, there is insufficient space (approximately two metres) at either side of the property to provide covered car space six metres back from the property line.
- The carport is situated on the western side of the house and this has made a remarkable difference to the heat entering the house. He claimed that they were now able to open the garage doors in the afternoon and not have the heat reflecting from the concrete driveway. Previously they even had to keep the door from the house to the garage closed in the afternoon. The carport's effect will probably mean they will not have to air-condition the "studio" (previous garage) as had been planned.
- The only neighbour affected by the carport (next door) has no problems with it, and is prepared to submit this in writing.
- The carport does not detract from the outlook of other properties on either side of the street. This statement is in direct contrast to the Council Inspector's opinion. He respectfully suggested that the inspector included this statement in his report as a matter of course rather than a statement of fact. Neighbours across the street have favourably commented of the appearance of the carport.
- The carport is simply covering a pre-existing, concreted double driveway.
- The carport is attached to the fascia board of the original roof and so has only two supports, one metre in from the property line.
- It is the same color-bond as the original roof and blends in so well that it does not even appear to be an add-on.
- The carport has no detrimental effect on any part of the property in regard to landscaping, building maintenance, or car-parking (either on or off the street).
- In talks with Council it has become apparent that they are concerned that allowing our application for relaxation will cause a precedent. He felt that other structures of this quality and appearance, and having such a beneficial environmental effect, should be encouraged, and see no harm if a precedent results.
- The carport has not harmed the streetscape; in fact he thought the streetscape has been enhanced. Of the 31 properties in Adams Street, ten properties or 31% have part of the dwelling or carports within the front road boundary setback.

The Council's representative in his response stated:-

- The application for a siting variation was made after building work had been started and was complete.
- The applicant is relying on precedents set in the area.
- The application for a siting variation for the carport within the front road boundary setback was refused by Council.
- The applicant through their representative did not appeal this decision of Council to refuse the application.
- No enforcement action appears to have been taken by the Building Certifier for the work.
- Council was denied input into the design and siting of the building. If the building had not been already constructed they could have influenced the design, colour schemes used, and siting to maintain the desired buffer within the (6.0m) road boundary setback.
- The reduction of vehicle accommodation within the (6.0m) road boundary setback is desirable to maintain and enhance the buffer zone which is an objective of the Planning Scheme.
- The Enforcement Notice was issued to enforce Planning Scheme provisions.
- The building is illegal because it has been constructed without Council Approval for siting in accordance with the alternative provisions of the Planning Scheme and without a Development (Building) Approval issued by a Building Certifier.
- Just because the adjoining neighbour may have given their approval for the already constructed building, Council must take into account the public interest and the interests of future property owners.
- Council assesses each application on its merits but is concerned about implied precedents being set where applications are made for already constructed buildings on the basis that other buildings in the area are similar.
- Some buildings and structures in the street have been built prior to the requirements of the Building Act and Planning Scheme requirements.

Material Considered

1. Document: Copy of Application for Development Approval
From: Better Patios & Decks (Clinton Hetherington)
To: Country Coastal Certifiers
Dated: 15 March 2003
Detail: Forms A & B, A4 Sheet Plans, Better Patios & Decks Quoting Contract No 0097
Sheet with plans and specifications.

2. Document: Copy of Letter
From: Better Patios & Decks (Clinton Hetherington)
To: The Owner
Dated: 18 March 2003
Detail: Advice on intention to undertake contract to construct home addition.
3. Document: Copy of Letter
From: Better Patios & Decks (Clinton Hetherington)
To: The Owner
Dated: 25 March 2003
Detail: Same letter as above but attached was the payment schedule also dated 25 March 2003.
4. Document: Copy of Facsimile
From: Better Patios & Decks (Clinton Hetherington)
To: Caloundra Council (Building Dept.)
Dated: 22 April 2003
Detail: Application lodgement for Development Approval (Carport and Patio addition) for the Owner at 7 Adams Street, Sunshine Beach.
5. Document: Copy of Facsimile
From: Country Coastal Certifiers (Steve Leece)
To: Better Patios and Decks (Clinton Hetherington)
Dated: 28 May 2003
Detail: Request for information to applicant. Plans require more information including site plan and construction details. Siting variation required to be obtained from Noosa Shire Council.
6. Document: Copy of Letter of Application
From: Better Patios & Decks (Clinton Hetherington)
To: Noosa Shire Council (Building Department)
Dated: 24 July 2003
Detail: Application for siting variation to site carport within the from 6.0m road boundary setback. Reason given were precedents within the street, no obstruction to natural light of adjoining properties, will not restrict landscaping, no effect on off street parking etc.
7. Document: Copy of Letter of Refusal.
From: Noosa Shire Council (CW Anderson)
To: Better Patio & Decks
Dated: 10 November 2003
Detail: Delegated decision to refuse application for siting variation. Basis given were street impacts, unacceptable precedent for area, does not satisfy Clause 8.10.2 of the Noosa Planning Scheme, adequate covered car accommodation exists on site.
8. Document: Copy of Show Cause Notice.
From: Noosa Shire Council (CW Anderson)
To: The Owner
Dated: 10 November 2003

Detail: Owner requested to Show Cause why building work (carport) was erected at 7 Adams Street, Sunshine Beach without the approval of Local Government over the Councils' sewer line. There is a requirement to remove/demolish the building within 20 business days.

9. Document: Copy of Letter

From: Better Patios & Decks (Owner)

To: Noosa Shire Council (Manager Building Services)

Dated: 9 December 2003

Detail: Letter of appeal against the Councils' Shown Cause Notice after representations had been made in person with the Council. Reasons given no objections from neighbours, not over sewer, carport is an open structure and will remain open. The garage is to be converted to be an art studio for the Owner.

10. Document: Copy of Letter

From: Noosa Shire Council (CW Anderson)

To: The Owner

Dated: 23 December 2003

Detail: Advising owner that an application for appeal can be made to the Registrar, Building and Development Tribunal. The Council will not reverse its decision to refuse your application for siting variation. A new Show Cause Notice will be issued to correctly reflect the situation.

11. Document: Copy of Show Cause Notice pursuant to Section 22 of the Building Act 1975.

From: Noosa Shire Council (CW Anderson)

To: The Owner

Dated: 23 December 2003

Detail: Owner requested to show cause why building work (carport) was erected at 7 Adams Street, Sunshine Beach without the approval of Local Government. There is a requirement to remove/demolish the building within 20 business days.

12. Document: Copy of Enforcement Notice pursuant to Section 22 of the Building Act 1975.

From: Noosa Shire Council (CW Anderson)

To: The Owner

Dated: 30 January 2004

Detail: As building work (carport) was erected at 7 Adams Street, Sunshine Beach without the approval of Local Government the owner is required to remove/demolish the building within 20 business days.

13. Document: Copy of Facsimile

From: Noosa Shire Council (R Bromhead)

To: The Owner

Dated: 9 February 2004

Detail: Advice that the appeal to an enforcement notice can be made to Department of Local Government. Address and phone details given.

14. Document: Copy of Letter

From: Noosa Shire Council (CW Anderson)

To: The Owner

Dated: 24 February 2004

Detail: Advice that Enforcement Notice issued by Council on 30 January 2004 has been lifted pending further investigation by Council.

15. Document: Copy of Letter

From: Noosa Shire Council (C Anderson)

To: The Owner

Dated: 4 March 2004

Detail: Discussions with the Registrar of the Building and Development Tribunal have confirmed that this tribunal has jurisdiction to hear an appeal against the enforcement notice issued for breach of siting requirements of the Noosa Planning Scheme. A new enforcement notice will be issued to allow the appeal period to be current.

16. Document: Copy of Enforcement Notice pursuant to section 22 of Building Act 1975

From: Noosa Shire Council (C Anderson)

To: The Owner

Dated: 5 March 2004

Detail: As building work (carport) was erected at 7 Adams Street, Sunshine Beach without the approval of Local Government and an application to vary the siting provisions was subsequently refused by Council, the owner is required to remove/demolish the building within 20 business days.

17. Document: Copy of Appeal Notice – Form 10

From: The Owner

To: Registrar, Building and Development Tribunal

Dated: 19 March 2004

Detail: Group E appeal against an Enforcement Notice.

18. Document: Copy of Letter with attached 12 colour photographs

From: The Owner

To: Registrar, Building & Development Tribunal

Dated: 19 March 2004

Detail: The letter details the chronological events leading up to this appeal. The reasons for appealing the Enforcement Notice and justifying the building's retention were then detailed. The photographs were provided to show the existing structure in relation to the street and adjoining properties and also showed the other existing structures within the street.

19. Document: Copy of Facsimile

From: Noosa Shire Council (R Bromhead)

To: Noosa Shire Council (C Anderson)

Dated: 5 April 2004

Detail: Report dated 19 August 2003 from the Council Officer who carried out the assessment of the application for siting variation for the carport at 7 Adams Street, Sunshine Beach. The recommendation provided by the Officer is the same as that provided in the Councils' letter of refusal dated 10 November 2003

20. Document: Copy of sewer plan for 7 Adams Street, Sunshine Beach.
From: Noosa Shire Council
To: Referee, Building and Development Tribunal
Date: N/A
Detail: Plan shows the previous septic tank location and the sewer pipe-work to the north of the property.
21. Document: Report on streetscape of Adams Street, Sunshine Beach
From: The Owner
To: Referee, Building and Development Tribunal
Dated: N/A
Detail: Descriptions of the streetscape of 15 adjacent properties compiled by the applicant.
22. Document: 4 colour photographs
From: The Owner
To: referee, Building and Development Tribunal.
Dated: N/A
Detail: Additional details of streetscape and buildings within the road boundary setback.
23. The Standard Building Regulation 1993
24. The Integrated Planning Act 1997

Findings of Fact

I made the following findings of fact:

1. The Class 10a carport is constructed within the road boundary clearances prescribed under the alternative siting provisions established by Clause 8.10 of the Schedule to the Shire of Noosa Planning Scheme.
2. The Class 1a patio cover has been constructed to the rear of the existing dwelling.
3. Both these buildings do not have a Development Approval for building work.
4. An application to the Noosa Shire Council to vary the alternative siting requirements to allow the existing Class 10a carport to remain has been considered and refused.
5. No enforcement action has been undertaken against the builder or the owner for illegal building work (both the carport and patio cover) by the Building Certifier.
6. An Enforcement Notice has been issued by the Noosa Shire Council to the owner for constructing a Class 10a Carport within the front road boundary setback without Local Government approval. This is the subject of this appeal.
7. Under section 48 of the Standard Building Regulation 1993, a local government may vary how division 2 applies to the application after considering under section 48.(3), the following points-

(a) *The levels, depth, shape or conditions of the allotment and adjoining allotments.*

The allotment is rectangular in shape and of a size and dimensions at least equal to or greater than the average for those in the general area. It is located on a straight section of the street and this allotment is almost level as are the adjoining allotments. The site is not constrained in any way by service easements, width, depth, slopes or shape.

(b) *The nature of any proposed building or structure on the allotment.*

The site contains an existing Class 1a two storied dwelling, setback the regulation distance from the front road boundary and contains an attached Class 10a double garage. The two covered vehicle spaces comply with the Town Plan and two uncovered spaces are between the garage and the site boundary.

(c) *The nature of any existing or proposed buildings or structures on the adjoining allotments.*

According to the photographs provided, the adjacent property to the south is a vacant lot. The building on the adjoining property to the north is setback approximately 4.0m from the side boundary due to the existence of a sewerage easement in this location.

(d) *Whether the allotment is a corner allotment.*

The allotment is not a corner allotment.

(e) *Whether the allotment has 2 road frontages.*

The allotment has only one (1) road frontage.

(f) *Any other matter considered relevant.*

There are no other relevant matters to consider.

8. In varying the siting requirements, the local government must be satisfied that the building or structure, built on the allotment in the way proposed, would not **unduly:-**

(a) *Obstruct the natural light or ventilation of the adjoining allotment.*

The adjacent allotment is vacant and as the carport is setback at least 2.0m from the (southern) boundary, this would allow for adequate natural light and ventilation to this allotment.

(b) *Interfere with the privacy of the adjoining owner.*

The structure provides a privacy screen on the subject property and the area adjacent would have minimal use because of the proposed landscaping to be provided.

(c) *Restrict the areas of the allotment suitable for landscaping.*

Approval of the application for a variation to the siting would not restrict the areas of the allotment suitable for landscaping. It covers an existing paved double driveway.

(d) *Obstruct the outlook from the adjoining property.*

The carport does not unduly obstruct the outlook from the adjoining property. There is some obstruction but as the carport has a low flat roof not much higher than the existing fence and only two posts it is not considered excessive.

(e) *Overcrowd the allotment.*

The total of all the existing buildings is within the allowable site coverage and the light structure and low design of the carport diminishes any visual effect of over crowding.

(f) *Restrict off street parking for the allotment.*

The carport will not affect off-street parking.

(g) *Obstruct access for normal building maintenance.*

The carport will not affect access for normal building maintenance. The structure is colorbond to match the dwelling and has good access.

Reasons for the Decision

An assessment of section 48. (3) and (4) of the SBR indicate that, subject to the conditions imposed, the siting requirements under section 2 of the SBR may be varied.

The 'as constructed' carport because of the lightness of construction, materials used, design and colour does not unduly impact on the streetscape or adjoining properties.

Appropriate landscaping which is a condition of this decision will subdue the effect of the siting of the building from the streetscape.

The setback from the south boundary is greater than the existing dwelling and will allow screening by the proposed landscaping to the adjoining property.

The tribunal decision in this case to allow the existing building to remain does not condone the practice of illegal building work and subsequent applications to formalise the situation.

Enforcement action should have been instigated by the Building Certifier when this breach of the regulation was first brought to their attention.

Gregory Schonfelder
Building and Development
Tribunal Referee
Date: 23 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:

The Registrar of Building and Development Tribunals
Building Codes Queensland
Department of Local Government and Planning
PO Box 31
BRISBANE ALBERT STREET QLD 4002
Telephone (07) 3237 0403: Facsimile (07) 32371248