



## Building and Development Tribunals — Decision

---

### *Integrated Planning Act 1997*

<b>Appeal Number:</b>	<b>3—08—065</b>
<b>Applicant:</b>	Melanie Georgina Gibbs
<b>Assessment Manager:</b>	Gerard Leddin for and on behalf of Noosa Building Certifiers
<b>Concurrence Agency:</b> (if applicable)	Sunshine Coast Regional Council
<b>Site Address:</b>	50 Myles Street, Tewantin and described as Lot 2 on RP181840 — the subject site

---

### **Appeal**

Appeal under section 4.2.9 of the *Integrated Planning Act 1997* (IPA) against the decision of the assessment manager to refuse an application in part for a carport. The decision was based on a concurrence agency response from the Sunshine Coast Regional Council (formerly the Noosa Shire Council), that had refused a siting concession as it applied to the proposed carport.

---

<b>Date of hearing:</b>	8.30am — Thursday, 20 October 2008
<b>Place of hearing:</b>	2/44 Petrie Avenue, Marcoola Beach
<b>Tribunal:</b>	Debbie Johnson — Chairperson Robin King Cullen — Member (not present at the hearing)
<b>Present:</b>	Melanie Georgina Gibbs — Applicant John Brough — Applicant Representative Gerard Leddin — Assessment Manager Don Grehan — Sunshine Coast Regional Council Representative Mark Lewis — Sunshine Coast Regional Council Representative

---

### **Decision:**

The Tribunal, in accordance with section 4.2.34 (2) (a) of the IPA, **confirms** the decision appealed against, dated 27 August 2008, and the appeal is dismissed.

## **Background**

The subject site is a corner lot with an area of 497sq/m. To the north it is bound by George Street and to the East, Myles Street.

The existing single storey two bedroom dwelling on the subject site is thought to have been erected around 1950. The current owners have elected to renovate and extend their home to suit the needs of their family.

Architectural plans for the building works have been prepared to the applicant's satisfaction and subsequently approved by the relevant authorities, save that part which relates to a proposed open carport.

The development application for building works involved a variety of siting concessions to be approved prior to the assessment manager being able to consider the building works associated with the application.

The application was referred to the Noosa Shire Council (now Sunshine Coast Regional Council) as the concurrence agency on the 28 February 2008.

Council's written Response (Ref 2008/0337) issued on 19 March 2008, approved a 2.086 metre setback for a Verandah to Myles Street road boundary and also reduced the setback from George Street road boundary to 5.489 metres for the dwelling. A further siting variation of 1.5 metres was approved in regards to the side or Southern boundary setback, where the building height proposed was 4.712 metres in lieu of the specified maximum height of 4.5 metres. No setbacks were approved for the carport and Council cited that:

*"The location of the proposed carport is not consistent with the performance criteria set out in MP1.2 of the Queensland Development Code (QDC)."*

The assessment manager subsequently proceeded to assess the application for building works and issued a Development Application Decision Notice approval number 20080417, on 27 August 2008. Condition 33 within the Decision Notice stated:-

*"Note refusal of carport on Concurrence Agency Response reference No 2008/0337."*

The applicant was dissatisfied with the assessment manager's decision notice and lodged an appeal with the Building and Development Tribunals on 11 September 2008.

## **Material Considered**

The material considered in arriving at this decision comprises:

- 'Form 10 – Notice of Appeal' lodged with the Building and Development Tribunals on 11 September 2008.
- 'Form 8 – Notice of Election' lodged with the Building and Development Tribunals from the Council on 19 September 2008.
- Noosa Building Certifiers Development Application Decision Notice 20080417, dated 27 August 2008.
- Sunshine Coast Regional Council's Concurrence Agency Response, dated 19 March 2008.
- Property details, including mapping as available through PD Online; Sunshine Coast Regional Council's website.
- The application material including cadastral survey prepared by LAU Surveys and architectural drawings stamped as certified and prepared by Mountain Ridge Design. Drawings are identified as Ref No 21062005 dated 12 August Sheets 1-15 Amendment 2a.
- The applicant's grounds for appeal against the Sunshine Coast Regional Council's reasons for refusal submitted with the application to the Tribunal.
- Verbal submissions made at the hearing by the applicant and the applicant's representative.
- Verbal submissions made at the hearing by the assessment manager.

- Verbal submissions made at the hearing by the Council’s representatives detailing their concerns relating to the application and the reasons for refusal.
- Written comments and amended drawings sent by the applicant via mail on 16 October 2008 to the Building and Development Tribunals, in response to the verbal request by the tribunal at the hearing.
- Letter from the applicant, dated 11 November 2008 with accompanying site plan by Mountain Ridge Design, dated 14 October 2008 and site survey produced and signed by David Lau of Lau Surveys on 10 November 2008.
- Relevant sections of the Noosa Plan including amendments.
- The IPA.
- The *Building Act 1975* (BA)
- The Building Regulation 2006.
- MP1.2 of the Queensland Development Code (QDC).

### **Findings of Fact**

The Tribunal makes the following findings of fact:

The subject site is a corner lot and basically rectangular with a typical truncation at the street intersection. To the North, the site may be accessed via George Street and to the east the site may be accessed from Myles Street as there are existing vehicular crossovers from both roads. It should be noted however that neither crossover is linked to the site via a sealed driveway. The nature strip along George Street is 8.5 metres wide whilst the nature strip to Myles Street is only 4.5 metres as measured from the existing crossovers.

The existing single storey dwelling sits predominately in the south western corner of the site. The approved plans indicate that once completed, the dwelling will offer considerably more living area incorporating a generous verandah and patio spaces that will utilize almost the full width of the site, (running east west). Similarly it is apparent that there will be three separate open areas available on the subject site after the building works are completed for the proposed extensions to the dwelling.

To the south east corner of the site an area of 30sq/m is available, to the north west corner 80sq/m and to the north east corner 60sq/m. The applicant is proposing that a double carport being approximately 36sq/m be located within the north eastern corner.

Effectively this is considered by council to be the least desirable location within the subject site as this area is adjacent to the street intersection. The 80sq/m area to the north western corner of the subject site is currently fenced and utilized by the owners as a safe play area for their young children. The remaining area on the south eastern corner is also situated completely within the road boundary clearance area and appears to be too small an area to accommodate two vehicles.

The Noosa Plan Schedule 1 Table 1-1 stipulates that a Detached House is to be sited as follows:-

*Frontage setback – 6m*

*Other boundaries –*

- a) *1.5m setback up to 4.5m height;*
- b) *2m setback between 4.5m - 7.5m height; and*
- c) *2m plus 0.5m for every 3m or part thereof above 7.5m height*

Under Definitions in the QDC:

A *building* has the same meaning as in the BA. The dictionary of the BA states:

1. A building is a fixed structure that is wholly or partly enclosed by walls and is roofed.
2. The term includes a floating building and any part of a building.

A *carport* is defined as a class 10a building, other than a garage, providing covered vehicular parking;  
An *open carport* is defined as a *carport* with –

- a) two sides or more open, and a side is also considered open where the roof covering adjacent to that side is not less than 500 mm from another building or a side or rear allotment boundary; and
- b) not less than one-third of its perimeter open.

The carport structure proposed by the applicant is therefore an 'open carport' as defined in the QDC.

With reference to the architectural working drawings provided, it appears that the perimeter of the proposed open carport is to be approximately 25.0 metres. The southern wall of the proposed open carport is deemed to be closed for a length of 5.0 metres as it abuts the dwelling, similarly it does in part along the western side, 3.0 metres. However, even taking into account the post supports for the open carport that appear to have a face dimension of approximately 100mm each, the carport may still be classified as an open carport under MP1.2 of the QDC. The QDC, does however, permit a screen or a fence up to 2.0 metres high within the road setback. The QDC makes no distinction about the placing of screens or fences within the road setback. The QDC does not qualify the properties of a screen or fence.

Further the QDC cites Acceptable Solution A1(c) which states:-

For open carports the minimum road setback may be less than 6.0 metres if –

1. the aggregate perimeter dimension of walls, solid screens, and supports located within the setback does not exceed 15% of the total perimeter dimension (along the line of supports) of that part of the carport within the same setback; and
2. there is no alternative on site location for a garage or carport that:
  - a) could achieve the 6.0 metre setback; and
  - b) will allow vehicular access having a minimum width of 2.5 metres; and
  - c) has a gradient of 1 in 5.

In this instance, the open carport is shown as being totally open, however it is considered as being closed in part where the carports aligns with the dwelling. The 'closed' areas though are clear of the 6.0 metre setback and do not affect the perimeter to be considered with reference to A1(c) (i).

The perimeter of the supports as indicated on the drawings is calculated to demonstrate that they will not exceed 15% of the overall perimeter of the carport as taken at the support line.

However in addition to the elements above, QDC A1 (b) states:

For a corner lot, the minimum setbacks are –

(C) no building or structure over 2.0 metres high is built within 9.0 metre x 9.0 metre truncation at the corner of the two road frontages.

In this instance the drawings indicate that approximately a third of the proposed carport would sit within the 9.0 metre x 9.0 metre truncation if it were to be situated in the north eastern corner of the site as proposed. Similarly it appears that even a single bay carport in this area would not comply.

In considering alternative locations for garaging on the subject site the QDC offers concessions for structures along the side and rear boundaries.

QDC Acceptable Solution A2 (d) states –

Class 10a buildings or parts may be within the 1.5 metre side boundary clearances where –

1. the height of a part within the boundary clearance is not more than 4.5 metres and has a mean height of not more than 3.5 metres; and
2. the total length of any buildings or parts, of any class, within the boundary clearance is not more than 9.0 metres along any one boundary; and

3. the class 10a buildings or parts within the boundary clearance are located no closer than 1.5 metres to a required window in a habitable room of an adjoining dwelling.

Council's representatives have suggested that in accordance with QDC A2 (d), a double garage or carport might be accommodated 4.5 metres back from the George Street frontage, along the western side site boundary i.e. the north west corner and therefore be considered favourably against local planning and QDC requirements. The applicant expressed the view that this option was not satisfactory, particularly as it was fenced as a play area for their children. Further it would mean additional costs to remove the relatively new fencing and the cost of any future driveway would be more expensive given the width of the nature strip at this point.

The applicant also expressed that their southern neighbour was not at all in favour of a wall, which could be up to 3.5 metres high along their common boundary as this would almost certainly interfere with the northern light afforded to their yard at present.

### **Reasons for the Decision**

The Tribunal finds that the proposed siting for the carport on the north east corner of the site is unacceptable and that there is an alternative location within the subject site that could provide a suitable alternative in this instance.

The detail survey confirms that mature palms will be lost from the streetscape as a result of the carport being located within the south east corner of the subject site and that any subsequent driveway crossover would need to be inappropriately positioned across the nature strip to accommodate the location of the carport as proposed.

Where it can be easily demonstrated that alternative locations are available to accommodate the use proposed it is unreasonable to make concessions to the extent required in this instance.

The Tribunal notes that the alternative locations for car accommodation are not preferred by the applicant however given the extent of building works being undertaken in this instance, consideration could have been given to the compliant siting for the car accommodation from the outset. Council have conceded three other siting variations relating to the proposed works to facilitate a satisfactory outcome for the applicants.

---

**Debbie Johnson**  
**Building and Development Tribunal Chair**  
**Date: 1 December 2008**

## **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 Infrastructure and Planning  
PO Box 15009  
CITY EAST QLD 4002  
**Telephone (07) 3237 0403 Facsimile (07) 3237 1248**