



Building and Development Tribunals—Decision

Integrated Planning Act 1997

Appeal Number:	3—09—092
Applicant:	Lindsey Paul Clifford
Assessment Manager:	Sunshine Coast Regional Council (Council)
Concurrence Agency: (if applicable)	N/A
Site Address:	117 Nicklin Way, Warana, and described as Lot 44 on W9551 — the subject site

Appeal

Appeal under section 4.2.9 of the *Integrated Planning Act 1997* (IPA) against the decision of Council to refuse a siting concession to enable a double carport to be constructed within one metre of the road boundary of the subject site.

Date of hearing:	9.50 am, Friday 22 January 2010
Place of hearing:	The subject site
Tribunal:	Geoff Cornish – Chair
Present:	Lindsey Clifford – Applicant Richard Prout – Council / Assessment Manager

Decision:

The Tribunal, in accordance with section 4.2.34 (2) (a) of the IPA, **confirms** the decision appealed against.

Background

The matter concerns the decision of Council not to grant a siting variation to enable the construction of a double carport within the prescribed road boundary setback at the front of the subject site. The existing dwelling on the site contains a section that was previously an enclosed garage and that has been converted to habitable space without referral to, or the approval of, Council.

A previous application, approved by Council for a substantial redevelopment of the dwelling, included a proposal for the original garage to be extended to the northern side boundary as a double garage complying with the prescribed boundary setbacks. The owner advised that this proposal was not proceeded with on the grounds of cost.

Material Considered

The material considered in arriving at this decision comprises:

1. 'Form 10 – Appeal Notice', grounds for appeal and correspondence accompanying the appeal lodged with the Registrar on 30 November 2009.
2. Verbal submission from the applicant at the hearing.
3. Written and verbal submissions from the Council representative at the hearing.
4. The IPA.
5. The *Building Act 1975* (BA).
6. The *Building Regulation 2006*.
7. The Queensland Development Code.
8. Caloundra City Plan 2004 and its included Codes, in particular Detached Housing Code 8.5.

Findings of Fact

The Tribunal makes the following findings of fact:

- The subject site does not currently have any remaining covered car accommodation.
- There is existing driveway access from the road to the subject site at both the northern and southern sides of the property.
- The minimum distance between the dwelling and the northern side boundary is 2.135 metres.
- The minimum distance between the dwelling and the southern side boundary is 2.460 metres.
- 2.460 metres is less than the minimum acceptable distance required for normal vehicular access to the rear of the property.
- At one time the dwelling contained a single enclosed garage. That has been converted to habitable space.
- Properties on the eastern side of Nicklin Way, adjacent to the subject site, are residential in nature.
- Properties on the western side of Nicklin Way, directly opposite the subject site, are commercial in nature.
- The subject site is located in close proximity to an intersection on Nicklin Way controlled by traffic lights.

Reasons for the Decision

The siting provisions relating to carports and garages on residential allotments in the vicinity of the subject site are contained in the Caloundra City Plan 2004, Code 8.5 Detached Housing Code, as alternative siting provisions to those contained in the Queensland Development Code.

The Detached Housing Code provisions, current at the time of application to Council, expressly require garages and carports on residential properties in this vicinity to be situated at least six metres from the road boundary of an allotment.

The Detached Housing Code requires that there be a minimum of two car parking spaces on site, one of which is capable of being covered by a structure that complies with the Code and the *Standard Building Regulation 1993* (which was replaced with the *Building Regulation 2006*). The Code also states that the spaces may be provided in tandem.

While the previously converted garage would have complied with the Code, the subject site still has adequate space at the southern side of the dwelling for the provision of a new complying covered car parking space between the dwelling and the side boundary. A second, uncovered, parking space could either be provided in tandem with that, or in front of the dwelling.

The existing driveway accesses at the northern and southern sides of the allotment enable egress from the property to be made in a forward direction.

Geoff Cornish
Building and Development Tribunal Chair
Date: 4 February 2010

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