



Building and Development Tribunals

Queensland Government

Department of **Local Government and Planning**

APPEAL

Integrated Planning Act 1997

File No. 03-05-091

BUILDING AND DEVELOPMENT TRIBUNAL - DECISION

Assessment Manager: Caloundra City Council

Site Address: *withheld* – “the subject site”

Applicant: *withheld*

Nature of Appeal

Appeal under Section 4.2.9 of the *Integrated Planning Act 1997* against the decision of the Caloundra City Council to refuse an application for Building Works – siting variation - on land described as Lot *withheld* and situated at “the subject site”.

Date and Place of Hearing: 8:30am on Thursday 16th February 2006
at “the subject site”

Tribunal: Mr Chris Schomburgk

Present: *withheld* – Applicant;
withheld – Builder
Mr Richard Prout – Caloundra City Council
Mr Ian Simpson – Caloundra City Council.

Decision:

The decision of the Caloundra City Council as contained in its written Decision Notice dated 16th November 2005, to refuse an application for relaxation of the boundary setback, is **set aside**. The application for relaxation is approved, **subject to the following conditions:**

1. The proposed carport is to be open on all sides and no front door/gate is to be fitted.
2. The carport roof material is to match, as close as is practical, to the colour and material of the existing dwelling roof.
3. The existing garage on the site is to remain as car accommodation only.

Material Considered

The material considered in arriving at this decision comprises:

- The application, supporting plans and documentation, including plans by Chevron Building Design dated 4 October 2005 and referred to as drawing numbers 4-01, 4-03, 5-01, 2-05, and 2-04;
- The relevant provisions of the Town Planning Scheme for Caloundra City Council;
- Council's Decision Notice dated 16th November 2005;
- A written statement of reasons provided by the Council officer;
- Aerial photographs of the site and the locality provided by the Council officer;
- The *Queensland Development Code*; and
- The *Integrated Planning Act 1997*.

Findings of Fact

I make the following findings of fact:

- The site comprises Lot *withheld*, is located at "the subject site", and has an area of approximately 584 m².
- The site currently contains a dwelling house which is proposed to be renovated and extended, as well as a swimming pool. The site is relatively flat and there are no known underground or overhead services that constrain the proposal.
- The house is currently set back from the street boundary approximately 4.77m, as was the norm for this locality when the house was constructed (approximately 1978).
- The applicant sought Council approval to construct a gatehouse and carport within the front setback, as part of a major refurbishment to the existing dwelling. The gatehouse has been approved, but the carport was refused. The applicant intends constructing a solid block wall along the street boundary approximately 1.8m high, as has been done for several other houses in the immediate locality.
- The proposal seeks to provide a carport in front of the existing double garage to provide covered off street parking for additional vehicles. The existing garage is to remain as car accommodation.
- The Council has refused the carport component of the subject application on the basis that the proposed siting does not comply with the performance Criteria 1 of Part 12 of the QDC for the following:
 - *The proposed structure will be inconsistent with the existing and proposed streetscape;*
 - *The proposed structure will detract from the outlook from the surrounding properties;*
 - *The proposed structure will cause an over-development of the site and an overcrowding of the street frontage;*
 - *The allotment has complying off street car parking; and*
 - *The proposed dimensions of the carport within the allotment boundary do not comply with the minimum length required by ... the QDC.*
- The site is on a wide bend in the road such that the property boundary is set well back from the actual road pavement. There is presently no constructed footpath on this side of the road.

- The property adjoining to the south has recently undertaken a major refurbishment, similar to what is proposed here. That building offers an attractive addition to the streetscape. I was advised by the Council that there are different circumstances for that property, although I note that the end result to the streetscape is very similar to what is proposed here.
- The proposed carport will have a length of approximately 5.37m from the front boundary to the existing garage wall, but only 4.8m to the eaves. However, a conventional vehicle could easily fit under the eaves.
- The carport is not proposed to be enclosed or have a front gate. The roof of the carport is proposed to match the existing dwelling roof in colours, material, height and slope.

Based on my assessment of these facts, it is my decision that **the appeal is upheld**. **Council's decision** to refuse the Application for Building Works - siting variation - is **set aside** and the application is approved, **subject to conditions**.

Reasons for the Decision

- The proposed carport structure will not present as a bulky structure when considered in context with the two storey building and the proposed block wall and gatehouse along the street frontage.
- The proposed carport, when considered in context with the other improvements to the property, will have, in my opinion, a positive impact on the streetscape.
- The proposal will not impact on the views, light or breezes of the surrounding properties.
- The proposed carport complies with the length requirements for a carport, as per the QDC, to the existing wall.
- The proposal will provide a visual improvement to the current situation where vehicles are parked in the setback area without cover.
- There is not likely, in my opinion, to be any traffic problem caused by vehicles reversing out of the structure, provided it is kept open and has no sides or front door.

Chris Schomburgk
Building and Development
Tribunal Referee
Date: 28th February 2006

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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