



**Building and Development Tribunals**

**Queensland Government**

Department of **Local Government and Planning**

**APPEAL**

*Integrated Planning Act 1997*

**File No. 3-05-075**

## **BUILDING AND DEVELOPMENT TRIBUNAL - DECISION**

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**Assessment Manager:** Caloundra City Council

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

**Applicant:** *withheld*

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### **Nature of Appeal**

The appeal is against the decision of the Caloundra City Council not to approve a request to vary the siting requirements for a carport and a swimming pool as:-

- 1 *“The development does not comply with the Performance Criteria P1 of Part 12, Design and Siting Standards for single Detached Housing on Lots 450m2 and over, of the Queensland Development Code for the following:-*
  - a *The proposed structure will be inconsistent with the existing and proposed streetscape;*
  - b *The proposed structure will detract the outlook from the surrounding properties;*
  - c *The proposed structure will cause an over development of the site and an over crowding of the street frontage;*
  - d *The allotment has complying off street car parking; and*
  - e *The proposed carport can be located on the northern side of the property with a 4.5 metre front road boundary setback.*
- 2 *There are no sufficient or substantial reasons for Council to grant a siting modification for this proposal.*
- 3 *The building, if built in the form shown in the application, would have an extreme adverse effect on the amenity or likely amenity of the building’s neighbourhood.”*

**Date and Place of Hearing:** 9.30 am Thursday 24 November 2005.  
Inspection of the site and hearing at  
“the subject site”.

<b>Tribunal:</b>	Mr L F Blumkie	Tribunal
<b>Present:</b>	<i>withheld</i>	Owner/Applicant
	<i>withheld</i>	Owner
	Mr R Pocock	Caloundra City Council representative
	Mr L Blumkie	Tribunal
	Mr G Johnston	Observer (Builders representative)

### **Decision**

The Tribunal, in accordance with Section 4.2.34 (2) (b) of the Integrated Planning Act, changes the decision of the Caloundra City Council, dated 3 November 2005 and grants a relaxation to allow a carport to be sited within the street setback, subject to the following conditions:-

1. The existing car accommodation being retained;
2. The carport to be reduced in length to approximately 5.6 metres and remain 6 metres wide as shown in the application;
3. The carport to be sited approximately 1m from the street frontage at it nearest point ie in line with the existing carport on the adjoining allotment;
4. The carport to have a hip roof as shown;
5. The carport fascia and gutter to align in height with the existing house;
6. The carport, choice of materials and colour scheme, to match that of the existing house;
7. The carport to remain open (except for security type infill) on all sides and entrance;
8. The front fence to be reduced in height to a maximum of 1800mm above existing ground line;
9. The front fence to be modified to include planting recesses approximately 600mm deep facing the street, to the satisfaction of the Caloundra City Council Principal Building Surveyor;
10. The front area (ie from the existing house to the front street alignment) to be suitably landscaped;
11. The footpath vehicle crossing to be a single width driveway (approximately 3.5 metres) and be splayed at the alignment to the carport;

### **Background**

Application was made to the Caloundra City Council for a relaxation to erect a double carport within the street setback and up to the side boundary.

Additional covered car accommodation is required as the owners currently have two vehicles and the existing car accommodation is only suitable for one vehicle. Covered accommodation is required to protect vehicles from possible hail damage.

The proposal included conversion of the existing single garage to habitable area, the construction of a swimming pool and 2 metre high rendered wall on the alignment and returning on both ends of the pool area.

Council refused the application on the 3 November 2005.

## Material Considered

In coming to a decision, consideration was given to the following material: -

1. Drawings numbered 2005/076 sheets 1 to 3 accompanying the appeal.
2. Copy of the Decision Notice dated 3 November 2005.
3. Copy of the Appeal Notice dated 17 November 2005.
4. Caloundra City Council minutes of meeting 18 September 2003 regarding Amenity & Aesthetics assessments.
5. Verbal submissions from applicants and Mr G Johnston.
6. Verbal submissions from the Caloundra City Council representative.
7. Queensland Development Code.
8. *Standard Building Regulation 1993 (SBR)*
9. The Integrated Planning Act 1997.
10. An inspection of the site and neighbourhood.
11. Detached House Code forming part of Caloundra City Plan 2004.

## Findings of Fact

### *A Standard Building Regulation 1993 (SBR)*

The SBR calls up the Queensland Development Code (QDC). Part 12 of the Code establishes Performance Criteria and Acceptable Solutions for the design and siting of buildings and structures on lots 450m<sup>2</sup> and over.

### *B Site*

The site is a typical rectangular shaped block and is developed with an existing class 1 building. The existing car accommodation is suitable for only one vehicle.

### *C Development in the neighbourhood.*

An inspection of the neighbourhood indicated the majority of properties were developed with Class 1 buildings and there were a number of examples of various style carports erected within the street setback.

*withheld* Avenue has a majority of development beyond the 6 meter building line. The adjoining property has a single carport built within approximately 1 m of the front alignment.

There are very few fences to the *withheld* Avenue alignment and hence the streetscape currently provides an open view for the full length of the street.

The development in adjoining streets has numerous front fences, which include solid panels combined with open security panels and/or recesses complete with landscaping.

This type of fencing assists in providing an open appearance and softens the streetscape.

The council representative was able to confirm that a private certifier had approved a similar type of development in *withheld* Parade. This was possible as the carport was 1.5 metres from the side boundary and the existing car accommodation had been retained.

*D Caloundra City Plan*

The acceptable solutions of the Detached House Code called up in the Caloundra City Plan state:-

“At least 2 on-site car parking spaces are provided, one of which is capable of being covered by a structure that complies with this code and the Standard Building Regulation 1993. The required parking spaces may be provided in tandem.

(Standard Building Regulation 1993 alternative provisions).”

The Council representative advised that the City Plan is currently under review and may be modified to require a minimum setback of 4.5 metres to the road boundary for buildings & structures.

**Reasons for the Decision**

This decision takes into account the particular circumstances of the site. Consideration has been given to the alternative car accommodation option suggested by Council and also the owners’ comments regarding the suitability of the alternative proposal, which are documented as follows:-

- 1 To achieve the 4.5 meter setback suggested by Council vehicles would need to drive in under the existing verandah roof. This would eliminate its use as a verandah.
- 2 The pool would need to be relocated and with a similar pool length, direct pedestrian access to the front door would not to be achievable.
- 3 The main objective of the proposed wall to the front boundary is (in addition to providing pool fencing) to stop vehicle lights shining into the lounge/living room. This proposed wall would need to be moved and therefore lights from vehicles in the street opposite would still shine directly into the lounge/living room.
- 4 It would not enable direct access from the kitchen to the pool entertainment area.
- 5 The vehicular driveway would be over water service lines.
- 6 The remaining area of land to the front would not be as useful.
- 7 The change room in order to be suitably located, (ie adjacent to the pool) would need to be relocated. The falls to the sewer line do not allow any further distance than as shown on the plan.
- 8 The existing driveway and crossover would not be suitable. Hence, additional costs would be incurred.

The Tribunal considered the siting of the proposed carport against the performance criteria established in the Queensland Development Code.

The opinion of the Tribunal, in satisfying the performance criteria, is documented as follows:-

- P1 The Location of a building or structure facilitates an acceptable streetscape appropriate for*
- (a) *the bulk of the building or structure;*

- 1 The proposal, (2m high fence and carport) in my opinion, does not facilitate an acceptable streetscape. The proposed fence in particular, creates a solid appearance, which would be in extreme conflict with *withheld* Avenue streetscape and the other streets in the neighbourhood.
- 2 It is possible to modify the wall to achieve a more open appearance by including recesses (complete with landscaping) similar to those constructed on other properties in the neighbourhood.

*(b) The road boundary setbacks of neighbouring buildings or structure:*

Taking into account the setbacks of the adjoining neighbour's carport (ie approximately 1m from the *withheld* Avenue street alignment), the proposed carport, if located the same distance from the street boundary, would create an acceptable streetscape.

*(c) The outlook and views of neighbouring residents*

The proposed carport would not have an unduly adverse effect on the outlook and views of neighbouring residents. The adjoining development, being a 2 storey residence, would still have a view over the roof of the proposed carport.

*(d) Nuisance and safety to the public.*

The proposed carport would not create a nuisance or be a safety hazard for the public. In fact to locate the carport, as suggested by Council, may create a hazard, as vehicles exiting would be reversing directly into the street opposite.

*P2 Buildings and structures-*

*(a) provide adequate daylight and ventilation to habitable rooms;*

The proposed carport would have no effect on daylight and ventilation to existing habitable rooms. If the carport were to be relocated as suggested by Council, light and ventilation would be reduced to the existing lounge/living area.

*(b) allow adequate light and ventilation to habitable rooms of buildings on adjoining lots.*

The proposed carport would have almost negligible effect to light and ventilation to habitable rooms of buildings on adjoining lots.

*P3 Adequate open space is provided for recreation, service facilities and landscaping.*

The proposed carport allows for adequate space for recreation, service facilities and landscaping and in fact, maintains trailer access to the rear of the property.

*P4 The height of a building is not to unduly*

(a) *overshadow adjoining houses;*

The proposed carport does not unduly overshadow adjoining houses.

(b) *obstruct the outlook from adjoining lots.*

The proposed carport does not unduly obstruct the outlook from adjoining lots.

P5 *Buildings are sited and designed to provide adequate visual privacy for neighbours.*

The proposed carport would not interfere with visual privacy for neighbours particularly with the 1800mm high fence erected on the street boundary and returning on both ends of the proposed pool.

P6 *The location of a building or structure facilitates normal building maintenance.*

The proposed carport would not interfere with normal building maintenance.

P7 *The size and location of structures on corner sites provide for adequate sight lines.*

The site is not a corner site.

P8 *Sufficient space for on-site carparking to satisfy the projected needs of residences and visitors, appropriate for-*

(a) *the availability for public transport; and*

(b) *the availability of on-street parking; and*

(c) *the desirability of on-street parking in respect to the streetscape; and*

(d) *the residents likelihood to have or need a vehicle.*

The proposed carport is necessary to provide a second covered space for the owner's vehicles.

Existing car accommodation.

Acceptable solutions (c), as contained in Part 12 of the Queensland Development Code, allows a carport to be located within the 6 metre setback when there is no alternative on-site location for a garage or carport that can be located beyond the 6 metre building line.

In this instance, the existing garage being beyond the 6 metre building line satisfies the criteria.

Hence, in my opinion, under the code it is necessary for the existing garage to be retained.

It should be noted that if the owners require additional habitable space there are alternative locations on site to construct additional habitable space.

Removing the existing garage door and installing a sliding glass door would preclude the existing garage from being used as car space.

In my opinion, this change would contravene Part 12

However, keeping the existing garage door does not preclude the space being used as additional play space or rumpus room. It is suggested that, with suitable security being installed on the carport, the existing garage door could be left open for light and ventilation when the space is being used as play space.

In the opinion of the Tribunal, after taking into account the particular circumstances of the site, the existing development in the neighbourhood and the proposed changes to the Caloundra City Plan currently under consideration, it is possible to justify the location of the carport within street setback as established under performance criteria of the Queensland Development Code.

Hence, The Tribunal, in accordance with Section 4.2.34 (2) (b) of the Integrated Planning Act, changes the decision of the Caloundra City Council, dated 3 November 2005 and grants a relaxation to allow a carport to be sited within the street setback, subject to the following conditions:-

1. The existing car accommodation being retained;
2. The carport to be reduced in length to approximately 5.6 metres and remain 6 metres wide as shown in the application;
3. The carport to be sited approximately 1m from the street frontage at its nearest point ie in line with the existing carport on the adjoining allotment;
4. The carport to have a hip roof as shown;
5. The carport fascia and gutter to align in height with the existing house;
6. The carport, choice of materials and colour scheme, to match that of the existing house;
7. The carport to remain open (except for security type infill) on all sides and entrance;
8. The front fence to be reduced in height to a maximum of 1800mm above existing ground line;
9. The front fence to be modified to include planting recesses approximately 600mm deep facing the street, to the satisfaction of the Caloundra City Council Principal Building Surveyor;
10. The front area (ie from the existing house to the front street alignment) to be suitably landscaped;
11. The footpath vehicle crossing to be a single width driveway (approximately 3.5 metres) and be splayed at the alignment to the carport;

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**Leo F Blumkie**  
**Building and Development**  
**Tribunal**  
**Date: 28 November 2005**

## **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  
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