

**APPEAL**
*Integrated Planning Act 1997***BUILDING AND DEVELOPMENT TRIBUNAL - DECISION****Assessment Manager:** The Certification Professionals**Concurrence Agency:** Caloundra City Council**Site Address:** *withheld*—‘the subject site’**Applicant:** *withheld***Nature of Appeal**

Appeal against the decision of The Certification Professionals dated 10 December 2007 to refuse a Preliminary Development Application for Building Works, namely a proposed carport at ‘the subject site’. The decision was based on a concurrence agency response from Caloundra City Council, dated 30 November 2007 (reference number BDD-09094).

Date and Place of Hearing: 2.00 pm Monday 21 January 2008 at “the subject site”**Tribunal:**
Mr L F Blumkie Chairperson
Mr Steve Adams General Referee**Present:**
Applicants/Owners
Mr Ian Simpson Caloundra City Council Representative**Decision**

The Tribunal, in accordance with section 4.2.34 (2) (b) of the *Integrated Planning Act 1997* (IPA), **changes** the decision of The Certification Professionals dated 19 December 2007, by directing the Local Government to approve the Preliminary Application for Building Works; subject to the appellant complying with the following:-

A. PORCH

- The porch retains the same design as shown on the initial application including materials and colour scheme matching that of the existing house.

B. CARPORT

- The carport is changed to a tandem carport.

- The carport portion within the front setback is a single carport and is a maximum width of 4m..
- The carport is setback from the front alignment a minimum distance of 1500mm.
- The carport remains the same distance or greater from the side boundary.
- The carport is 2400mm above the natural ground line when measured at the front to underside of ceiling.
- The carport has a gable roof matching the house.
- The carport is open on all sides for at least 50% of the area including the side facing the front alignment.
- The carport has materials and colour scheme to match the house.

C. CARPORT and PORCH

- The existing concrete driveway is removed and the area landscaped to the satisfaction of the Caloundra City Council.
- A new driveway is installed a maximum width of 4m to the satisfaction of the Caloundra City Council.
- Stormwater is piped to the street channel to the satisfaction of the Caloundra City Council.
- A Development Approval is obtained for the tandem carport and porch.

Background

The property is a 525m² residential block, and is located within a Low Density Precinct as per the Caloundra City Plan 2004.

The site is located on the corner of *withheld* and is opposite a commercial shopping centre, multi storey Housing Commission residential units and a two-storey ambulance station.

The front alignment to *withheld* and portion of *withheld* is fenced with a solid block and 50% open panel fence. The remainder is open for the existing driveway portion.

A single storey gable roofed dwelling is located on the property approximately 6m from the front alignment and approximately 4.5m from the *withheld* boundary and approximately 5m from the Eastern side boundary.

There is currently no under cover car parking on the property. The previous undercover double garage was converted to habitable living area under an approval obtained on 15 October 2007.

The applicant applied directly to Council on 21 August 2007 for a boundary relaxation for a double carport within the *withheld* boundary setback. Council refused this application.

The applicant then applied through The Certification Professionals who sought Concurrence Agency advice on 26 November 2007 for the subject carport and a 1.5m x 3m gable roofed porch within the *withheld* boundary setback.

The Concurrence Agency (Caloundra City Council) refused the application on 30 November 2007 and advised the reasons for the refusal as follows:-

- 1 *There is no sufficient or substantial reason for Council to grant a siting modification for this proposal.*

- 2 *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.*
- 3 *The Development does not comply with Performance Criteria 1 of Part 12 (Design and Siting Standards for Single Detached Housing on Lot 450m² and over) of the Queensland Development Code for the following:-*
 - (a) *The proposed structure will be inconsistent with the existing and proposed street-scape;*
 - (b) *The allotment has complying off-street parking in accordance with Acceptable Solutions A8 of part 12; and*
 - (c) *The location of the existing buildings on site are such that an alternative design is available to both comply with the Planning Scheme provisions and to have covered car parking spaces which do not unduly impact upon the street-scape.*
- 4 *The Development does not comply with Specific Outcome 08 (Parking and Access) Code 8.5 Detached Houses Code of the Caloundra City Plan 2004. As the existing complying off-street car parking has been converted to habitable rooms.*
- 5 *The Development does not comply with Specific Outcome 07 (Garages and Carports) Code 8.5 Detached Houses Code of the Caloundra City Plan 2004. As the proposed carport will have a dominating appearance on the street given that the building is located within the prescribed setback and located forward of the line of the building.*

The Certification Professionals advised the applicant of the refusal on 10 December 2007. An appeal was lodged with the Registrar on 20 December 2007.

The Applicant identified a number of properties within the neighbourhood which had carports erected within the 6m front boundary clearance.

Material Considered

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

1. Caloundra City Council refusal of the application dated 30 November 2007;
2. The Certification Professionals subsequently advised the applicant of the refusal on 10 December 2007;
3. 'Form 10 – Notice of Appeal' lodged with the Registrar on 20 December 2007 including grounds for appeal and correspondence accompanying the appeal;
4. Verbal submissions from the applicants;
5. Verbal submissions from the Caloundra City Council representative;
6. Written Submission from Caloundra City Council dated 21 January 2008 provided at the hearing;
7. Council response on nominated structures erected within the street setback within the neighbourhood;
8. Detached House Code of the Caloundra City Plan 2004 - as amended 27 July 2007.
9. The *Building Act 1975* (BA).
10. The *Building Regulation 2006*.
11. The Queensland Development Code (QDC) Part 12.

12. The *Integrated Planning Act 1997*.

13. The Caloundra City Council planning scheme.

Findings of Fact

The site is on the edge of the residential zone and is opposite a commercial shopping centre, Housing Commission units and an ambulance station. The streetscape when viewed from *withheld* approaching *withheld* is dominated by the commercial zone shopping centre, Housing Commission units and the ambulance station

The streetscape of the subject site when viewed from the opposite end of *withheld* is also dominated by the commercial zone shopping centre, housing commission units and the ambulance station.

The streetscape of the subject property is not considered to typical of that found in the middle of a residential area.

Three properties in the block face *withheld* - the site two up from the subject site is a duplex and is setback only 2m from *withheld*. The middle property has the required 6m setback.

The Council representative advised, at Council Chambers after the hearing, that of all the properties identified at the hearing with carports within the 6m setback, only one had been given a relaxation for setback clearances after the amended Town Plan came into effect after on 29 September 2004. This relaxation allowed a single carport 1.5m from the side boundary and 1m from the front boundary.

The Council representative advised at the hearing that Council had no objection to the porch as shown in the application. Hence it was agreed at the hearing that the porch should be approved in the appeal decision.

Reasons for the Decision

The Caloundra City Council in its reasons for the decision state under

A Item 1

"There are no sufficient or substantial reasons for Council to grant a siting modification for this proposal."

The Tribunal disagrees with Council and believes there are sufficient and substantial reasons to grant a siting modification for the following reasons:-

- The site is on the edge of the residential zone and, in fact, is opposite the commercial shopping centre, multi residential units and an ambulance station, which have a dominating effect on the streetscape.
- The site two properties east of the subject site is a duplex which has a setback of approximately 2m from the *withheld* frontage.

B Item 2

"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."

The Tribunal agrees with this decision however it could be modified to meet the needs of the applicant and achieve an acceptable impact on the amenity or likely amenity of the building's neighbourhood.

A tandem carport would meet the needs of the applicant for covered car accommodation. It is possible to have one car space beyond the 6m street setback along side the house, however the second carport, because of the outdoor entertainment area and in order to meet the requests of the neighbour, would need to be located within the street setback.

In this regard, a street setback of 1.5m is achievable and is more in keeping with the setback of the development on the property two sites east of the subject block.

In relation to the design proposed, the Tribunal believes it would be more aesthetical acceptable if the carport had a gable roof matching that of the house and proposed porch. The hip roof proposed is not in keeping with the aesthetic design of the existing house.

The bulk of the proposal needs to not dominate the streetscape, hence the carport within the setback should be at least 50% open on all sides.

C Item 3

"The Development does not comply with Performance Criteria 1 of Part 12 (Design and Siting Standards for Single Detached Housing on Lot 450m² and over) of the Queensland Development Code for the following:-

- (a) The proposed structure will be inconsistent with the existing and proposed street-scape;*
- (b) The allotment has complying off-street parking in accordance with Acceptable Solutions A8 of part 12; and*
- (c) The location of the existing buildings on site are such that an alternative design is available to both comply with the Planning Scheme provisions and to have covered car parking spaces which do not unduly impact upon the street-scape.*

The Tribunal believes Performance Criteria 1 of Part 12 calls for the building to "*facilitate an acceptable street-scape*" appropriate for sub headings (a) to (c).

In relation to (a) - the Tribunal believes a carport reduced in width (maximum 4m) and setback 1.5m from the front alignment could hardly be said to be inconsistent with the existing or proposed streetscape, as the streetscape is dominated by the commercial shopping centre, multi residential units and an ambulance station opposite the subject property.

In relation to (b) - the Tribunal believes it is not logical to say that because the allotment has complying off-street parking in accordance with Acceptable Solutions A8 of part 12, then the proposal does not facilitate an acceptable streetscape. Granting a relaxation to allow a 1500mm setback also provides for complying parking in accordance with A8 and creates an acceptable streetscape.

In relation to (c) - the owner would prefer not to have a car space replace the outdoor entertainment area, nor impact on the adjoining neighbour. The Tribunal believes it is possible to comply with the Planning Scheme provisions (Refer comments under item 5 below) and to achieve covered parking spaces, which do not unduly impact upon the streetscape with a relaxation of the setback to 1500mm.

D ITEM 4

"The Development does not comply with Specific Outcome 08 (Parking and Access) Code 8.5 Detached Houses Code of the Caloundra City Plan 2004. As the existing complying off-street car parking has been converted to habitable rooms.

The Tribunal believes a tandem carport can meet the specific outcome called for under 08. The fact that the previous double garage has been converted to habitable rooms is not considered a logical reason to refuse the application. Other options are available for it to comply with Specific Outcome 08.

E ITEM 5

"The Development does not comply with Specific Outcome 07 (Garages and Carports) Code 8.5 Detached Houses Code of the Caloundra City Plan 2004. As the proposed carport will have a dominating appearance on the street given that the building is located within the prescribed setback and located forward of the line of the building."

The Detached Houses Code of the Caloundra City Plan under 8.5.1 - Overall Outcomes, calls for under "(c) *detached houses and associated buildings are sited and designed to protect residential amenity and maintain streetscape character.*"

Sub clause 07 calls for *Garages and carports not to dominate the streetscapeetc.*

The Tribunal believes the carport when set back 1500mm (and occupying less than 50% of the frontage), will **not** dominate the streetscape and will preserve the amenity of adjacent land and dwellings having regard to:

- building character and appearance;
- views and vistas; and
- building massing and scale as seen from neighbouring premises;

provided:

- the overall width is not greater than 4m.
- The carport is 2400mm above the natural ground line when measured at the front to underside of ceiling.
- The carport has a gable roof matching the house.
- The carport is open on all sides for at least 50% of the area including the front alignment.
- The carport has materials and colour scheme to match the house.
- The existing concrete driveway is removed and the area landscaped to satisfaction of the Caloundra City Council.
- A new driveway is installed a maximum width of 4m to the satisfaction of the Caloundra City Council.

Leo F Blumkie
Building and Development Tribunal Chairperson
Date: 5 February 2008

Appeal Rights

Section 4.1.37. of the IPA 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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