



Building and Development Tribunals

Queensland Government

Department of Local Government and Planning

APPEAL

Integrated Planning Act 1997

File No. 03-07-057

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 a Development Application for Preliminary Approval for Building Works – carport siting - on land described as *withheld*.

Date and Place of Hearing: 8:00 am on Thursday 11 October 2007
at “the subject site”

Tribunal: Mr Chris Schomburgk – Chairperson

Present: Applicants;
Mr John Cooke – Applicant’s father;
Mr Ian Simpson – Caloundra City Council Representative

Decision:

The decision of the Caloundra City Council as contained in its Decision Notice dated 4 September 2007, to refuse the development application for Preliminary Approval for Building Work for a carport, is **set aside** and **the application is approved subject to the following conditions:-**

- i) The carport is to remain open-sided and open-fronted at all times;
- ii) No roof or other covering is to be erected between the carport and the southern boundary of the subject site;
- iii) Landscaping is to be provided along the southern boundary of the site to the satisfaction of the Council, to achieve a visual buffering of vehicles within the carport when viewed from the south. This landscaping is to be such that it achieves a minimum of 50% screen to a height of no less than 1.5m within 2 years of planting.

Material Considered

The material considered in arriving at this decision comprises:

- The application including the “Form 10 – Notice of Appeal” and supporting plans and documentation;
- Verbal submissions from the Applicant at the on-site hearing;
- Verbal submission from the Council representative at the on-site hearing;
- The relevant provisions of the Town Planning Scheme for Caloundra City Council;
- The Council’s Decision Notice dated 4 September 2007;
- The Queensland Development Code Part 12; and
- The *Integrated Planning Act 1997*.

Findings of Fact

I make the following findings of fact:

- “The subject site” is relatively flat and contains a single level dwelling house erected sometime prior to 1985 (according to Council’s records). The original single garage under the main roof has been converted into a habitable room. A carport structure has been built (the proposed carport) without the necessary approvals and is the subject of this application. The house and grounds are undergoing substantial renovations.
- The subject application seeks approval for a double carport to be located approximately 600mm from the front (*withheld*) boundary and approximately 2m from the southern boundary. The side boundary setback is not an issue in this appeal.
- The application arises from a Show Cause Notice issued by the Council in about August 2007.
- The structure is open sided and open fronted with a roof that slopes downwards to the south. The roof is relatively high in part – up to 3.4m – to allow for the owner’s high work vehicle to be parked underneath.
- The double carport replaces a single garage that was originally constructed under the main roof, but which has since been enclosed and converted into a habitable room. That is, car spaces were originally one in a garage and another in tandem within the 6m setback from the road. The original house was designed and sited such that side access for vehicles was not achievable and there was no opportunity for two complying undercover car spaces.
- It is relevant, to some degree, that the Planning Scheme changed in September 2004 and sought to prevent structures such as now proposed. It was acknowledged by the Council officer present that the applicants had made enquiries prior to that date but had not commenced construction until after that date. Had they applied prior to that date, it was accepted that the structure as it now exists would most likely have been approved.

- An inspection of the locality reveals a number of other carports (and some garages) constructed within the 6m front setback, although the Council officer advised that at least some of these were not approved in their present form, and that others would have been approved prior to the 2004 Planning Scheme. However, he acknowledged that some of the examples referred to by the applicants had indeed been approved since that time, but that the Council, quite properly, assessed each application on its merits.
- Of particular relevance to the streetscape issue is a double carport with a solid door built to the front boundary, directly across *withheld* from “the subject site”.
- This part of *withheld* is relatively short and there are only a very few examples of carport/garage structures built within the 6m setback in the immediate vicinity. However, other adjoining and nearby streets contain a substantial number of such structures, affecting the streetscape appearance of those streets and the neighbourhood generally.
- The Council’s decision to refuse the application is based on alleged conflict with the relevant Planning Scheme Code, being the Detached House Code (section 8.5 of Part 8). The only provisions of that Code with which conflict is alleged are Specific Outcomes O7 and O8, which state:
 - O7 Garages and carports do not dominate the streetscape and preserve the amenity of adjacent land and dwellings having regard to:*
 - *Building character and appearance;*
 - *Views and vistas;*
 - *Building massing and scale as seen from neighbouring premises.*
 - O8 Parking and access safely and efficiently meet the needs created by the detached house.*
- It was noted at the hearing that the Decision Notice refers to Specific Outcomes O8 and O10, but that these have been re-numbered in the current version of the Planning Scheme, as amended in June 2007.
- It was agreed at the hearing that O8 (parking and access) did not apply as the proposal does in fact safely and efficiently cater to the needs of the household. It was also accepted that the proposal did not affect views and vistas of nearby premises. The substantive issue in this appeal is whether the proposal dominates the streetscape.
- It was noted that the structure was well built, was structurally certified by an engineer, and was of high quality materials and construction, as part of an overall refurbishment and renovation of the premises.
- The fact that the structure is slightly higher than a conventional carport (to meet the owner’s requirements for a high vehicle), also means that the visual appearance from the street is less harsh, allows for breezes to circulate through the structure, and provides sunlight access into the house in the early mornings.

Based on my assessment of these facts, it is the Tribunal’s decision that **Council’s decision** to refuse the development application is **set aside** and **the application is approved, subject to the following conditions:-**

- i) The carport is to remain open-sided and open-fronted at all times;

- ii) No roof or other covering is to be erected between the carport and the southern boundary of the subject site;
- iii) Landscaping is to be provided along the southern boundary of the site to the satisfaction of the Council, to achieve a visual buffering of vehicles within the carport when viewed from the south. This landscaping is to be such that it achieves a minimum of 50% screen to a height of no less than 1.5m within 2 years of planting..

Reasons for the Decision

- The basis for Council's refusal is alleged non-compliance with the Specific Outcomes O7 and O8. It was agreed that O8 was not in contention in the appeal, and the Tribunal would not have accepted it as a legitimate ground for refusal if that agreement had not been reached, given that the proposal seeks to, and in the Tribunal's opinion does, achieve that very Outcome.
- The structure is well designed, well built and pleasant to look at. The Tribunal does not accept that it will "*dominate the streetscape*" – to the contrary, in the Tribunal's opinion it blends in well with the ongoing renovations of the subject site and with the ongoing renovations of many other houses in the street and the locality generally.
- The Specific Outcome also refers to "*preserving the amenity*" of adjacent land and dwellings. In a literal sense, any change will not "preserve" the amenity, but will change it to some degree. However, read sensibly, the tribunal takes this clause to refer to avoiding any appreciable impacts to the adjacent land and dwellings, taking into account the factors mentioned in the Specific Outcome. It is the Tribunal's opinion that the proposal will not affect views or vistas, will not have any negative impacts on building character and appearance in the street, and is proportionate in scale and massing to the neighbouring premises.
- In short, it is not out of place – rather it presents, in the Tribunal's opinion, a positive addition to the streetscape.

Chris Schomburgk
Building and Development Tribunal General Referee
Date: 17 October 2007

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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