



Building and Development Tribunals

Queensland Government

Department of Local Government and Planning

APPEAL

Integrated Planning Act 1997

File No. 3-07-029

BUILDING AND DEVELOPMENT TRIBUNAL - DECISION

Assessment Manager: Caloundra City Council

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

Applicant: *withheld*

Nature of Appeal

An appeal under Part 2, Section 4.2.9 of the *Integrated Planning Act 1997* against the decision by Caloundra City Council not to approve a siting variation for a *structure* being a roofed patio. The application for concession being required to build a structure within 1.5m of the side boundary, on “the subject site”.

Date and Place of Hearing: 8.30 am Tuesday 22nd May 2007
at “the subject site”

Tribunal: Debbie Johnson - Chairperson
Don Grehan – General Referee

Present: Applicant / Owner
Ian Simpson - Caloundra City Council Representative

Decision

The decision by Caloundra City Council to refuse a preliminary application for building works of an existing *structure* being a roofed patio built within the 1.5m side boundary setback, as contained in its written notice No. BDD-03778 dated 24th April 2007, is **set aside**. The siting for the *structure*, as built, being setback 960mm from the side boundary is **approved**.

Background

The applicants purchased their home at “the subject site” in August 2003.

Prior to their purchase, whilst the property was under contract, searches revealed that an attached carport, approved for construction by Caloundra City Council had not had a final inspection.

This carport is sited within 1.5m of the side boundary for a distance of approximately 10m and extends beyond the frontage of the dwelling by an additional 5.5m making the street boundary setback approximately 500mm in part. Country and Coastal Certifiers duly approved a final inspection relating to the carport on the 24th July 2003. Council records indicate that the entire *structure* was not covered by this final inspection although the applicants are satisfied that this is not the case, as it was a condition of their contract to purchase the site.

There was also a roofed patio structure attached to the rear of the home at the time of purchase. Council records suggest that this *structure* appears to have been built with approval.

At the start of this year the applicants determined that this structure was inappropriate for their needs and subsequently engaged contractors to remove it and erect a new roofed patio to ensure satisfactory shading from the summer sun onto their living room walls. No building approval was sought at this time, as the applicants were misinformed about their obligations to obtain a siting and subsequent building approval for this building work.

The applicants realised that this was incorrect shortly after the structure was completed and a preliminary building application was made to the Caloundra City Council for a siting variation pertaining to the *structure*, being an existing covered patio, on the 18th April 2007. The application, No. BDD-03778, to permit the existing *structure* to be built within the 1.5m side boundary setback was refused on the 24th April 2007.

Material Considered

1. The applicants outlined their needs relating to the *structure* and argued against Caloundra City Council's reasons for refusal, in their written submission to the Building and Development Tribunals;
2. Ian Simpson, Caloundra City Council representative, provided further written information to the Tribunal, outlining their concerns relating to the application and reasons for refusal;
3. Statutory Declaration and statement of support for the application by the adjoining property owners were provided;
4. At the hearing, verbal submissions were made by the applicants and Ian Simpson from Caloundra City Council.
5. Photographs of the site and *structure* were supplied to the Tribunal by the applicants and Caloundra City Council.
6. The *Building Regulation 2006*; and
7. The Queensland Development Code, Part 12.

Findings of Fact

The site is slightly irregular but essentially rectangular in shape with a wide frontage. The site is basically level and situated on the Southern side of the Street.

The existing dwelling is situated approximately 12m from the street, on the Eastern side and 500mm to the double carport on the Western side of the street frontage. This information is gleaned from council's written submission and evidence provided by an aerial photograph of the site. No carport structure is indicated on the sketched site plan provided by the applicants. The roofed patio *structure* is 6m in length and is sited at 960mm from the Western side boundary.

Siting for Class 10 buildings and structures is determined by the Queensland Development Code (QDC) Part 12, to the extent that the planning scheme does not identify or state alternative provisions for boundary clearances.

Under Definitions in the QDC:

Setback means:

- (a) for a building or structure other than a swimming pool, the shortest distance measured horizontally from the *outermost projection* of the *building* or *structure* to the vertical projection of the boundary or the lot.

Side and rear boundary clearance means:

- (a) for a building or structure other than a swimming pool, the shortest distance measured horizontally from the outermost projection of the buildings or structure to the vertical projection of a boundary of the lot.

Structure includes a wall or fence and anything fixed to, or projecting from, a building, wall, fence or other structure. (Ref: *The Building Act 1975*)

Element 1 Design and Siting of Buildings and Structures

A2 (a) The *side and rear boundary clearance* for a part of the building or structure is-

- (i) where the *height* of that part is 4.5m or less- 1.5m; and
- (ii) where the height of that part is greater than 4.5m but not more than 7.5m- 2m; and
- (iii) where the height is greater than 7.5m – 2m plus 0.5m for every 3m or part exceeding 7.5m.

1. The Performance Criteria, P2, of Element 1- Design and Siting of Buildings and Structures states:

Buildings and *structures*-

- (a) provide adequate daylight and ventilation to *habitable* rooms; and
- (b) allow adequate light and ventilation to habitable rooms on adjoining *lots*; and
- (c) do not adversely impact on the amenity and privacy of residents on adjoining lots.

Reasons for the Decision

The neighbouring residence is positioned such that it is set back adjacent to the roofed patio owned by the applicants. The neighbours double garage abuts the common fence line, between the two homes. The neighbours have submitted both a statement of support for a siting variation to be approved and also a Statutory Declaration.

The relevant performance criteria stipulates that buildings and *structures provide* adequate daylight and ventilation to habitable rooms on the site or any adjoining allotments.

The applicants have erected this *structure* specifically to achieve cover to their living areas without compromising their ventilation needs.

Their neighbours are unaffected by this proposal as their living areas are well clear of the covered patio. They are unaware of any adverse impact to them as a result of the siting for the roofed patio. The *structure* was erected several months ago allowing the neighbours sufficient time to realise any concerns as a result.

Debbie Johnson
Building and Development
Tribunal Chair
Date: 29th May 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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