



Building and Development Tribunals

Queensland Government

Department of **Local Government and Planning**

APPEAL

Integrated Planning Act 1997

File No. 3-07-013

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 of Coastal Building Certifications not to approve a siting variation for an *open carport*.

The application for concession being required to build an *open carport* within 6.0m of the street boundary of “the subject site”.

Date and Place of Hearing: 2.00 pm, Wednesday 4th April 2007
at “the subject site”

Tribunal: Debbie Johnson

Present: Applicant
Michael Bowcock - Coastal Building Certification
Richard Prout - Caloundra City Council Representative

Decision

The decision by Coastal Building Certification, to refuse a building application for an *open carport*, to be built within the 6m street setback, as contained in its written notice, Development Permit No. 26492, dated 20th February 2007, is **confirmed**.

Background

- The building application for an *open carport*, as proposed, required a concurrence agency approval for a siting variation from Caloundra City Council;
- Coastal Building Certification lodged an application for a siting variation with the Caloundra City Council, on the 15th December 2006;

- The application, No. BDD-03654, to permit the *open carport* to be built within the 6m street setback was refused on 27th December 2006;
- Coastal Building Certifications subsequently refused the building permit application made by the applicant on the 20th February 2007.

Material Considered

1. 'Form 10 – Notice and Appeal' and supporting documentation made to the Building and Development Tribunals;
2. The applicant outlined his needs relating to the '*open carport*' and offered examples of other similar structures in the street and immediate vicinity in his written submission to the Building and Development Tribunals.
3. Mr Richard Prout from Caloundra City Council supplied the tribunal with further written information outlining their concerns relating to the application and reasons for the refusal.
4. Mr Michael Bowcock advised at the hearing on-site that it was his first attendance to the site.
5. Verbal representations made by the applicant at the hearing.
6. Verbal representations made by Mr Richard Prout, Caloundra City Council, at the hearing.
7. Verbal representations made by Mr Michael Bowcock, Coastal Building Certifications, at the hearing.
8. The *Building Regulation 2006*; and
9. Part 12 of the Queensland Development Code (QDC).

Findings of Fact

The site is rectangular in shape, basically level and situated near an intersection

The existing dwelling is situated 12.5m from the street or Southern boundary and the existing double garage is forward of the dwelling situated approximately 6.0m from the street boundary.

Three additional structures were observed on site. These structures were not shown on the site plan submitted to Coastal Building Certifications for the building application. These structures have been built without an application for building approval and include:

1. An additional garage fronting the street and is built on the Western wall of the double garage. This garage has been built to the Western boundary, without any fire separation;
2. An extensive covered area used as a patio at the rear or Northern facade of the dwelling. It is within 1.5m of the Northern boundary and situated over an existing sewer line; and
3. An enclosed lightweight roofed structure adjacent to the dwelling situated within 1.5m of the Western boundary that is used as a greenhouse.

Siting for Class 10 buildings and structures is determined under Part 12 of the QDC, to the extent that the planning scheme does not identify or state alternative provisions for boundary clearances.

Part 12 of the QDC - Design and Siting of Buildings and Structures, states:

A1 (a) For a dwelling, *garage* or a *carport* the minimum *road setback* is-

- (i) 6m;
- (ii) where there are existing dwellings on both adjoining *lots* and at least one of the dwellings is *setback* from the road between 3m and 6m, and the difference between their *road setbacks* is-
 - (A) not more than 2m - a distance between the two dwellings; or
 - (B) more than 2m - the average of the *road setbacks* of the adjacent dwellings.

Under Definitions in the QDC:

a *carport* means a class 10a building, other than a *garage*, providing covered vehicular parking;

an *open carport* means a *carport* with-

- (a) two sides or more open, and a side is also considered open where the roof covering adjacent to that side is not less than 500mm from another *building* or a side or rear allotment boundary; and
- (b) not less than one-third of its perimeter open.

The proposed structure is therefore best described as an '*open carport*' as defined in the QDC.

1. The Performance Criteria, P1 of Element 1- Design and Siting of Buildings and Structures states:

The location of a *building* or *structure* facilitates an acceptable streetscape, appropriate for-

- (a) the bulk of the *building* or *structure*; and
- (b) the road boundary *setbacks* of neighbouring buildings or *structure*; and
- (c) the outlook and views of neighbouring residents; and
- (d) nuisance and safety to the public.

Reasons for the Decision

The site visit indicated that there is both a double garage and a single garage available for the occupants on this site. The site accommodates several buildings and structures, being:

1. The dwelling;
2. A double garage;
3. An attached single garage;
4. An attached greenhouse; and
5. A covered patio.

The proposed '*open carport*' if built would cause an unacceptable bulk of buildings or structures on this site.

Debbie Johnson
Building and Development
Tribunal Referee
Date: 21st 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:

The Registrar of Building and Development Tribunals
Building Codes Queensland
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