



Building and Development Tribunals

Queensland Government

Department of **Local Government and Planning**

APPEAL

Integrated Planning Act 1997

File No. 03/06/093 - Siting

BUILDING AND DEVELOPMENT TRIBUNAL - DECISION

Assessment Manager: Caloundra City Council

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

Applicant: *Withheld*

Nature of Appeal

The appeal is against the decision of the Caloundra City Council to refuse a siting variation application for building works on land described as “*withheld*” and situated at “the subject site” for the following reasons:-

- 1 *‘There are no sufficient or substantial reasons 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 the 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 detract the outlook from surrounding properties; and*
 - (b) *the proposed structure will cause an over development of the site and an overcrowding of the street frontage.*
 - (c) *The allotment has complying off street parking in accordance with A8 of Part12, Design and Sighting Standards for Single detached housing on Lots 450m2 and over, of the Queensland Development Code.*
- 4 *The allotment currently has complying off street parking in accordance with Specific Outcome 010, Parking and Access, Code 8.5 Detached Housing Code of the Caloundra City plan 2004.*
- 5 *The Development does not comply with the specific Outcome 010, Parking and Access Code 8.5 Detached Housing Code of the Caloundra City Plan 2004. The existing complying off street parking is to be converted to habitable rooms without the required Development Approvals being obtained.*
- 6 *The development is in contravention with Part 4 of Caloundra City Council's Amenity and Aesthetics Resolution dated 22 September 2003.*

NOTES :-

1. Caloundra City Council's refusal of the application on the grounds of :-
 - (a) Amenity and Aesthetics; and
 - (b) Siting relaxationare considered separately by different Tribunals. Both hearings were held at the same time and date.
2. The decision on the siting relaxation is considered and responded to in this determination.
3. The decision on the Amenity and Aesthetics issue is considered separately and a copy of that Tribunal decision is attached.

Date and Place of Hearing: 10.30 am Monday 6 November 2006.
Inspection of the site and hearing at
“the subject site”.

Tribunal: Mr L F Blumkie Tribunal Chairperson
Mr G Schonfelder Tribunal

Present: “withheld” Owner/Applicant
Mr Brett England Suncert Certifiers
Mr R Prout Caloundra City Council representative
Mr Gary Ingram Caloundra City Council representative
Mr L Blumkie Tribunal
Mr G Schonfelder Tribunal
“withheld” Observer

Decision

The Tribunal, in accordance with Section 4.2.34 (2) (b) of the *Integrated Planning Act 1997*, **changes** the decision of the Caloundra City Council, dated 27 September 2006 and grants a relaxation to allow a carport to be sited:-

- 2.7m from the street boundary (Baringa Street); and
- 200mm from the left side boundary

subject to the conditions established in the Amenity and Aesthetics Tribunal decision. (refer attached).

NOTE: This decision needs to be read in conjunction with the separate Tribunal decision on the affect the carport has on the amenity and aesthetics of the building’s neighbourhood. (copy attached).

Background

The current owner purchased the property in 2003 and at that time was not made aware that the property apparently had 3 modifications made without a development permits being obtained.

Council identified the extensions (without an approval) from aerial photography.

In order to increase the floor area of the house, to accommodate his large family, the owner amongst other things, proposed to change the existing double carport to habitable space, add a second level and

erect a double carport within the front boundary setback.

Application was made to the Caloundra City Council for a front boundary relaxation to allow a 6.6m wide carport to be sited 200mm from the front boundary and 200mm from left hand side boundary.

Council refused the application on the 27 September 2006.

Material Considered

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

- 1 Drawings accompanying the appeal;
- 2 Copy of the Decision Notice dated 27 September 2006;
- 3 Copy of the Appeal Notice dated 20 October 2006;
- 4 Two supporting letters from neighboring Residents;
- 5 Written submission from Caloundra City Council;
- 6 Verbal submissions from applicant;
- 7 Verbal submission from Mr Bret England;
- 8 Verbal submissions from the Caloundra City Council representatives;
- 9 The Queensland Development Code - Part 12;
- 10 *The Building Regulation 2006*;
- 11 *The Integrated Planning Act 1997*;
- 12 *The Integrated Planning Regulations 1998*;
- 13 Caloundra City Council Resolution on Amenity and Aesthetics dated 22 September 2003;
- 14 Detached House Guide of the Caloundra City Plan 2004; and
- 15 An inspection of the site and neighbourhood.

Findings of Fact

A *Building Regulation 2006 (BR)*

The BR calls up the Queensland Development Code (QDC). Part 12 of the QDC establishes Performance Criteria and Acceptable Solutions for the design and siting of buildings and structures on lots 450m² and over.

B *Site and development of the site*

The site is located within a Low Density Residential Precinct as per the Caloundra City Plan 2004.

The site is a typical rectangular shaped block (approx 546m² in area) and is developed with an existing class 1 building (approximately 20 years old) which is set back approximately 6.0m from the front boundary.

During the 20 year period the following modifications appear to have been made to the development without any evidence of a development permit having been obtained:-

- (a) single car accommodation (garage) converted to habitable rooms;
- (b) double carport erected;
- (c) small habitable extension to the rear of the class 1 building

(d) small roofed pergola to the right hand side of the class 1 building.

A council sewer crosses the rear of the property 1.5m from the rear boundary.

C Development in the neighbourhood.

An inspection of the neighbourhood indicated the majority of properties were developed with Class 1 buildings. There were a number of examples in the street where the existing car accommodation had been converted to habitable space and double carport erected within the street setback (many erected right up to the front boundary).

There were various styles of carports erected within the setback throughout the neighbourhood.

The council representatives acknowledged that these carports were an "as of right under" previous legislation.

Reasons for the Decision

This decision takes into account the particular circumstances of the site and needs of the owner.

- The owner wishes to extend the habitable space of the existing house to accommodate the needs of his family.
- This envisages changing the house from 1 to 2 storey with 3 new bedrooms and one new bathroom located on the upper level.
- The existing combined dining and living room is not adequate for the family.
- The most suitable location for a family room is the space occupied by the existing double carport.
- Trailer access is to be retained down the left-hand side of the house.
- The owner would prefer to have 6.0m protection for both vehicles.

To reinstate the original car accommodation and extend the existing dwelling to the rear is not considered a workable arrangement, as the room relationship would not be appropriate, let alone the increased costs.

The Tribunal considered the siting of the proposed carport against the performance criteria established in the QDC.

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;

The proposed carport with a 2.7m street setback, with the conditions nominated by the Amenity and Aesthetics Tribunal, and documented in that decision, created an acceptable streetscape within the existing neighbourhood. The bulk of the structure would, in the opinion of the Tribunal, not detract from the existing streetscape.

It is noted that:-

- There are a number of double carports erected within the 6.0m street setback in most streets within the immediate neighbourhood - many are erected with no setback front the street boundary line.
- In many of these instances existing car accommodation has been converted to habitable floor space.
- The heights, roof style, choice of materials, colour scheme etc varies considerably.
- Council would prefer a 4.5m setback, however in the opinion of the Tribunal, this would not allow an appropriately sized family room and a full 6m carport to meet the preferred needs of the owner.

The Tribunal recognises the previously approved boundary relaxations etc were an "as of right" under the previous siting requirements.

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

The amended proposal with a 2.7m setback and being 100% open was considered acceptable, after taking into account the setbacks of neighbouring buildings, existing fencing and the submissions of adjoining neighbours.

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

The proposed carport with a 2.7m setback would not unduly effect the outlook and views of neighbouring residents.

(d) *Nuisance and safety to the public*

The proposed carport with a 2.7m setback would not create a nuisance or be a safety hazard for the public.

P2 *Buildings and structures-*

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

The proposed carport would allow adequate daylight and ventilation to existing habitable rooms provided the proposed store room is not located between the carport and family room.

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

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

(c) *do not adversely impact on the amenity and privacy of residents on adjoining lots*

The proposed carport would not be within 1.5m of a window in a habitable room of an adjoining dwelling. It would not have an adverse impact on the amenity or privacy of residents on adjoining lots.

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

The proposed carport, with access to the rear of the property being maintained for trailer parking, allows for adequate space for recreation, service facilities and landscaping. It would have less than 50% of the site covered by impervious materials.

P4 The height of a building is not to unduly

(a) overshadow adjoining houses

The proposed carport does not unduly overshadow adjoining houses. The overall height of the carport would appear to be less than 4.0m in height.

(b) obstruct the outlook from adjoining lots

The proposed carport with a 2.7m setback 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

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

The proposed carport, with the nominated maintenance free materials, 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 residents 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 amended proposed carport with trailer access to the rear being maintained is in keeping with many other existing developments in the neighbourhood.

In the opinion of the Tribunal, after taking into account the particular circumstances of the site and the existing development in the neighbourhood, it is possible to justify the location of the carport within the street setback as established under performance criteria of the QDC.

Hence, the Tribunal, in accordance with Section 4.2.34 (2) (b) of the *Integrated Planning Act 1997*, changes the decision of the Caloundra City Council, dated 27 September 2006 and grants a relaxation to allow a carport to be sited:-

- 2.7m from the street boundary and
- 200mm from the left side boundary

subject to the conditions established in the Amenity and Aesthetics Tribunal decision. (refer attached).

JURISDICTION

- The Appeal Notice was against the refusal or/ the refusal in part of a Development Application made to Suncert (Building Certifiers).
- Caloundra City Council provided advice to Suncert on the application and in preparing this advice, referred to The Caloundra City Plan 2004, the QDC - Part 12 and the Council's Amenity and Aesthetics Policy.
- Section 4.2.9 of the *Integrated Planning Act 1997* provides power for an applicant to appeal the refusal or/ the refusal in part of development application.
- Section 10.2.(b) of the *Building Regulation 2006* provides power for Local Government to establish alternative provisions to the QDC Part 12 for criteria 4,5,6,8 and 9. In this appeal it was for Criteria P8 site carparking.
- Under the *Integrated Planning Regulation 1998* - Schedule 2 Item 17 identifies the Local Government as the concurrency agency who have referral jurisdiction as to whether the proposal satisfies the performance criteria established under Part 12 of the QDC.
- Therefore, the Tribunal believes it has jurisdiction to consider the parking requirements established in the Caloundra City Plan 2004, as the refusal was based on advice from Council (concurrency agency) to a Private Certifier on a Development Application which has appeal rights under Section 4.2.9 of the *Intergrated Planning Act 1997*.

This decision needs to be read in conjunction with the separate Tribunal decision on the affect the carport has on the amenity and aesthetics of the building's neighbourhood.

Leo F Blumkie
Chairperson
Building and Development Tribunals
Date: 20 November 2006

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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