



**Building and Development Tribunals**

**Queensland Government**

Department of **Local Government and Planning**

**APPEAL**

*Integrated Planning Act 1997*

**File No. 03-05-004.**

## **BUILDING AND DEVELOPMENT TRIBUNAL - DECISION**

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**Assessment Manager:** Caloundra City Council

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

**Applicant:** *withheld*

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### **Nature of Appeal**

An appeal under Section 4.2.9 of the Integrated Planning Act 1997 against the decision of the Caloundra City Council to refuse a siting variation for a garage to be constructed on land described as Lot *withheld* and situated at “the subject site”.

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**Date and Place of Hearing:** 8.30am, Friday/ 28<sup>th</sup> January 2005  
at “the subject site”

**Tribunal:** Debbie Johnson

**Present:** *withheld* - Applicants  
Richard Prout – Caloundra City Council

### **Decision**

The decision of the Caloundra City Council to refuse a siting variation for construction of garage within the street setback, as contained in its written notice dated 13<sup>th</sup> January 2005, is confirmed.

### **Background**

A written application dated 16<sup>th</sup> November 2004 was made by *withheld* to Caloundra City Council for a boundary relaxation. The letter outlined their plans to erect a double garage to be situated 300mm from the Southern boundary and 4M from the street setback. Drawings submitted with the application, illustrated a floor plan of both the existing and the proposed residence. The application indicated that the proposed garage was to be part of an overall renovation and extension of the

existing residence. Further the applicants outlined their intention to enhance their outdoor living areas at the rear of the site, whilst providing for both trailer and boat access to the rear yard, via the existing driveway on the Northern side of the frontage. Similarly this would provide extra room for other vehicles. The applicants indicated the best alternative for them was to locate the proposed double garage in the front of the residence, being the Western side of the allotment.

Caloundra City Council responded to the application with an information request dated 14<sup>th</sup> December 2004. The information request asked for amended drawings to show the existing garage as an open carport, with side access to the carport from the existing driveway.

The applicants subsequently responded with a covering letter, photographs of a neighbouring garage and a letter of support for their building works from the adjoining property owner, who resides at *withheld*. Their letter of response, stipulated that the whole Southern side of the residence (other than the concrete floor slab) was to be demolished and rebuilt to include the proposed double garage at the front and a covered outdoor area and pool at the rear. The remaining bedroom and bathroom area of the residence was also to be renovated.

Caloundra City Council considered all the material and refused the application, issuing the Siting Variation Advice dated 13<sup>th</sup> January 2005.

### **Material Considered**

Standard Building Regulation 1993, specifically,

- Part 3 Requirements for Siting, Amenity and Aesthetics, Clause 34.
- Part 12 of the Queensland Development Code

Verbal submissions by Richard Prout of Caloundra City Council on the 28<sup>th</sup> January 2005.

Verbal submissions by the applicants, on the 28<sup>th</sup> January 2005.

Written submission by the applicants dated 16<sup>th</sup> November 2004.

Written submission by the applicants submitted in response to the Information Request.

Written submission by the applicants dated 31<sup>st</sup> January 2005, submitted in response to discussions at the tribunal hearing.

Copy of site detail survey prepared by Chambers Surveys.

Letter of support by neighbour submitted to Caloundra City Council.

Photographs of the site and neighbouring allotments taken at the tribunal hearing.

### **Findings of Fact**

The existing residence at “the subject site” is set well back from the street frontage. Survey information indicates the street setback is 9.335. There is also 8.38M clearance from the residence to the rear boundary. There is currently a single garage located along the Northern boundary at the rear of the residence. Access to this garage is via an existing driveway from the Northern side of the allotment. The site is bounded by existing dwellings on all sides except the street frontage. Setbacks on both the adjoining lots appear to be 6M.

At the hearing Richard Prout informed us that neighbours in *withheld*, only two doors North of the subject site are currently constructing a double garage within the street frontage. They are doing so without council approval. The applicants had provided photographs of this construction as part of their information response.

The Queensland Development Code Part 12, defines a Garage as –  
an enclosed class 10a building, providing covered vehicular parking.

Further the Queensland Development Code stipulates;

Element 1- DESIGN AND SITING OF BUILDINGS AND STRUCTURES  
ACCEPTABLE SOLUTIONS

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 set back from the road between 3M and 6M, and the difference between their road setbacks is-
  - (A) not more than 2M a distance between the dwellings; or  
more than 2M the average of the road setbacks of the adjacent dwellings.
  - (B) The PERFORMANCE CRITERIA states;
    - P1 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 performance criteria must be satisfactorily addressed to permit siting variations, being setbacks less than 6M, to be approved.

If the development, as built, were to be given approval there would be no loss of views, however the neighbouring vista is always impacted upon when the building line is within the street setback, as the area available for landscape is reduced. Neighbourhood amenity is of particular concern if the structure is a garage facing the street. This is generally considered undesirable unless site conditions determine that no other option exists.

The site is to be substantially redeveloped, as indicated by information supplied the applicants. This will afford an opportunity to locate the garage within the required street setbacks as the site has an appropriate depth with which to design in accordance with the current regulations.

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**Debbie Johnson**  
**Building and Development**  
**Tribunal Referee**  
**Date: 6<sup>th</sup> February 2005**

## **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  
Department of Local Government and Planning  
PO Box 31  
BRISBANE ALBERT STREET QLD 4002  
**Telephone (07) 3237 0403: Facsimile (07) 32371248**