



**Building and Development Tribunals**

**Queensland Government**

Department of **Local Government and Planning**

**APPEAL**

*Integrated Planning Act 1997*

**File No. 3/05/077**

## **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**

The appeal is against the decision of the Caloundra City Council not to approve a request to vary the siting requirements for a garage as:-

- 1 *“The development does not comply with the Performance Criteria P1 of Part 12, Design and Siting Standards for single Detached Housing on Lots 450m2 and over, of the Queensland Development Code for the following:-*
  - a *The proposed structure will be inconsistent with the existing and proposed streetscape;*
  - b *The proposed structure will detract the outlook from the surrounding properties;*
  - c *The proposed structure will cause an over development of the site and an over crowding of the street frontage;*
  - d *The allotment has complying off street car parking; and*
  - e *An open carport could be located on the site with a 4.5 metre front road boundary setback sited in front of the existing dwelling on the northern side of the allotment.*
- 2 *There are no sufficient or substantial reasons for Council to grant a siting modification for this proposal.*
- 3 *The aesthetics of the building, if built in the form shown in the application, would be in extreme conflict with the character of the building’s neighbourhood.”*

**Date and Place of Hearing:** 9.00 am Friday 2 December 2005.  
Inspection of the site and neighbourhood.  
Hearing at “the subject site”.

<b>Tribunal:</b>	Mr L F Blumkie	Tribunal
<b>Present:</b>	<i>withheld</i>	Applicant/builder
	<i>withheld</i>	Owner
	<i>withheld</i>	Owner
	Mr R Pocock	Caloundra City Council representative
	Mr L Blumkie	Tribunal

### **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 11 November 2005 and grants a relaxation to allow a carport (in lieu of a garage) to be sited within the street setback, subject to the following conditions:-

1. One of the existing car accommodation spaces, currently located in the existing garage, being retained with suitable door access being provided.
2. The carport to be located 1500mm from the left side boundary when viewed from the street frontage.
3. The carport front support posts to be sited approximately 300mm from the street frontage and the roof overhang including the gutter being located within the property.
4. The carport to have a hip roof as shown.
5. The carport, from the under-side of roof trusses, to be a maximum height of 2600mm above the existing natural ground line when measured at the front street alignment.
6. The carport, choice of materials and colour scheme, to match that of the existing house.
7. The carport to remain open (except for security type infill i.e. maximum of 50% solid infill) on all sides and entrance.
8. The front fence to be a maximum of 1800mm high above the existing ground line.
9. The front fence to be modified from a solid wall (i.e. to include planting recesses approximately 600mm deep facing the street or open pool fence complying panels etc), to the satisfaction of the Caloundra City Council Principal Building Surveyor.
10. The front area, including driveway (i.e. from the existing house/garage to the front street alignment) to be suitably landscaped.

### **Background**

Application was made to the Caloundra City Council for a relaxation to erect a garage within the street setback and up to the side boundary and also to convert the existing garage to habitable space (rumpus room).

The owners require additional living space to accommodate their visiting children. No other space is available on the site to extend the existing house. Conversion of the existing garage is ideal as it makes the proposed rumpus room adjacent to the existing pool. New covered car accommodation is required to protect vehicles from possible hail damage.

The proposal included an 1800 high rendered wall on part of the front alignment to form a new

pedestrian entrance.

Council refused the application on 11 November 2005.

### **Material Considered**

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

1. Drawings Job number B/W-05 wd/1 - sheets 1 to 9 accompanying the appeal.
2. Copy of the Decision Notice dated 11 November 2005.
3. Copy of the Appeal Notice dated 25 November 2005.
4. Caloundra City Council minutes of meeting 18 September 2003 regarding Amenity & Aesthetics assessments.
5. Verbal submissions from Owners.
6. Verbal submissions from the Caloundra City Council representative.
7. Queensland Development Code.
8. *Standard Building Regulation 1993* (SBR)
9. *The Integrated Planning Act 1997*.
10. An inspection of the site and neighbourhood.
11. Detached House Code forming part of Caloundra City Plan 2004.

### **Findings of Fact**

#### *A Standard Building Regulation 1993 (SBR)*

The SBR 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 450m<sup>2</sup> and over.

#### *B Site*

The site is a typical rectangular shaped block and is developed with an existing class 1 building including a two car garage and swimming pool. The existing car accommodation is suitable for two vehicles.

#### *C Development in the neighbourhood.*

An inspection of the neighbourhood indicated the majority of properties were developed with Class 1 buildings and there were a number of examples of various style carports erected within the 6 metre street setback.

*withheld* Place has a majority of development beyond the 6 metre building line. However, the adjoining property and the property approximately opposite have a double carport built within the front 6 metre setback line. In both instances the carports are located a minimum of 1500mm from the side boundary.

The Council representative advised both properties have approval for the carports.

In addition to the carports mentioned above there are a variety of fence types on the property

alignments in *withheld* Place (some 1800mm high) and hence the open streetscape is somewhat reduced but these structures do afford privacy for the residence.

The development in adjoining streets within the neighbourhood has numerous types of front fences, which include solid panels combined with open security panels and/or recesses complete with landscaping.

This type of fencing assists in providing an open appearance and softens the streetscape.

#### *D Caloundra City Plan*

The acceptable solutions of the Detached House Code called up in the Caloundra City Plan state:-

“At least 2 on-site car parking spaces are provided, one of which is capable of being covered by a structure that complies with this code and the *Standard Building Regulation 1993*. The required parking spaces may be provided in tandem.

*(Standard Building Regulation 1993 alternative provisions).”*

The Council representative advised that the City Plan is currently under review and may be modified to require a minimum setback of 4.5 metres to the road boundary for buildings and structures.

#### **Reasons for the Decision**

This decision takes into account the particular circumstances of the site. Consideration has been given to the alternative proposals discussed and suggested by the owner and applicant and the comments made by the Council representative, which are documented as follows:-

- 1 The alternative carport option, suggested in the Council decision was obviously not possible due to the location of the existing pool and was a clearly a mistake made by the inspecting and reporting Council officer.
- 2 The owners agreed it was possible to re-plan the use of the existing garage and retain one car space and also achieve the additional habitable space required. With the selection of an appropriate door, the space could be used as either third car accommodation or rumpus room.
- 3 It was possible to achieve the intent of the proposed enclosed garage with an open carport provided security infill to all open sides could be included.
- 4 The proposed carport with minor reduction in width (approx 300mm) could be located 1500mm from the side boundary. This would still achieve access down the left side of the existing house and also achieve suitable pedestrian access between the pool and the proposed carport from the street to the front door of the residence.
- 5 The height of the carport could be reduced to 2500mm (i.e. between floor and under-side of roof trusses), and still achieve clearance for a 4WD with roof rack and surfboard attached (2200mm). A height of 2600mm between the underside of roof trusses and the existing natural ground line at the front alignment was achievable.
- 6 The front boundary wall including entrance could be modified in design to achieve a more open streetscape appearance.

The Tribunal considered the siting of the amended proposal against the performance criteria

established in the Queensland Development Code.

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 amended proposal including:-

- Open carport (50% maximum infill);
  - 1500mm from side boundary;
  - slightly reduced in height and width;
  - materials and colours matching the house;
  - and modified front boundary wall,
- in my opinion, does facilitate an acceptable streetscape.

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

Taking into account the setbacks of the adjoining neighbour's carport and that opposite (ie within 300mm of the *withheld* Place street alignment), the proposed carport, if located a similar distance from the street boundary, would create an acceptable streetscape.

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

The proposed carport would not have an unduly adverse effect on the outlook and views of neighbouring residents.

*(d) Nuisance and safety to the public*

The proposed carport 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 have limited effect on daylight and ventilation to existing and proposed habitable rooms.

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

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

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

The proposed carport allows for adequate space for recreation, service facilities and landscaping.

*P4 The height of a building is not to unduly-*

(a) *overshadow adjoining houses;*

The proposed carport does not unduly overshadow adjoining houses.

(b) *obstruct the outlook from adjoining lots*

The proposed carport 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 particularly with the 1800mm high fence erected on the street boundary.

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

The proposed carport 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 residences 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.*

With the retention of one existing car space in the existing garage the proposed carport accommodating two vehicles ensures adequate parking space is maintained on site.

Existing car accommodation.

Acceptable solutions (c), as contained in Part 12 of the Queensland Development Code, allows a carport to be located within the 6 metre setback when there is no alternative on-site location for a garage or carport, that can be located beyond the 6 metre building line.

In this instance, the existing garage, being beyond the 6 metre building line, satisfies these criteria.

Hence, in my opinion, under the code it is necessary for one space in the existing garage to be retained.

Provided a suitable door is maintained to the existing garage the space could be used as habitable space whilst still being available as a car space if required.

In my opinion, to convert the whole of the existing garage to habitable space would contravene Part 12 of the Queensland Development Code.

In the opinion of the Tribunal, after taking into account the particular circumstances of the site, the

existing development in the neighbourhood and the proposed changes to the Caloundra City Plan currently under consideration, it is possible to justify the location of the carport within the street setback as established under the performance criteria of the Queensland Development Code.

Hence, the Tribunal, in accordance with Section 4.2.34 (2) (b) of the Integrated Planning Act, changes the decision of the Caloundra City Council, dated 11 November 2005 and grants a relaxation to allow an open carport to be sited within the street setback, subject to the following conditions:-

1. One of the existing car accommodation spaces, currently located in the existing garage, being retained with suitable door access being provided.
2. The carport to be located 1500mm from the left side boundary when viewed from the street frontage.
3. The carport front support posts to be sited approximately 300mm from the street frontage and the roof overhang including the gutter being located within the property.
4. The carport to have a hip roof as shown.
5. The carport, from the under-side of roof trusses, to be a maximum height of 2600mm above the existing natural ground line when measured at the front street alignment.
6. The carport, choice of materials and colour scheme, to match that of the existing house.
7. The carport to remain open (except for security type infill i.e. maximum of 50% solid infill) on all sides and entrance.
8. The front fence to be a maximum of 1800mm high above the existing ground line.
9. The front fence to be modified from a solid wall (i.e. to include planting recesses approximately 600mm deep facing the street or open pool fence complying panels etc), to the satisfaction of the Caloundra City Council Principal Building Surveyor.
10. The front area including driveway (i.e. from the existing house/garage to the front street alignment) to be suitably landscaped.

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**Leo F Blumkie**  
**Building and Development**  
**Tribunal**  
**Date: 5 December 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  
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