



**APPEAL**  
*Integrated Planning Act 1997*

**File No. 3-05-052**

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

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**Assessment Manager:** Maroochy Shire Council  
**Site Address:** *withheld* – “the subject site”  
**Applicant:** *withheld*

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### **Nature of Appeal**

Appeal under Section 21 of the Standard Building Regulation 1993 against the decision of the Maroochy Shire Council to refuse an application for a siting concession for the conversion of part of a building from a carport to a garage on land described as Lot *withheld*, situated at “the subject site”.

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**Date and Place of Hearing:** 3.00pm, Friday 14 October, 2005  
at “the subject site”.

**Tribunal:** Geoff Cornish  
**Present:** *withheld* - Applicant  
*withheld* - Observer  
Steven Tucker – Maroochy Shire Council  
Councillor Jenny McKay - Observer  
Councillor Paul Tatton - Observer

### **Decision**

In accordance with Section 4.2.34 [2] of the *Integrated Planning Act 1997*, I hereby set aside the decision of Maroochy Shire Council to refuse a siting variation for the conversion of a carport to an enclosed garage and grant siting variations comprising a setback of 5.1 metres from the road boundary of the property and a zero setback from the south western side boundary of the property, to permit the conversion of an open carport to an enclosed garage, subject to compliance with the following conditions:

1. An Identification Survey is to be undertaken to verify that all structures are, and will remain after conversion, wholly contained within the Real Property boundaries of the site. This instruction applies both to the carport as previously approved and to the retaining wall supporting the driveway.

2. The existing sheeting to the outer wall of the structure adjacent to the side boundary is to be removed and replaced by complying fire rated sheeting fixed to the outer face of the structure to provide the necessary internal clearance of 3.0 metres within the converted garage while providing an FRL of 60/60/60 at the boundary.
3. The applicants are to provide a letter of agreement from the owners of the adjoining property to the south west indicating that they have no objection to the converted structure existing at its proposed height and proximity to the side boundary.
4. The existing front wall enclosing the structure to form an office is to be removed and replaced by a conventional form of garage door.
5. The garage is not to be utilised as habitable space.

Failure to comply with any or all of the above conditions will result in the structure requiring to be reconverted to its originally approved form as an open carport.

### **Background**

The matter concerns the unapproved conversion of a previously approved carport, constructed to a zero setback from the side boundary of this property, for use as an office for one of the applicants. This conversion was apparently reported to Council by a concerned ratepayer and, upon inspection, Council determined that the conversion could not be approved. Various applications were made to Council by the applicants in an endeavour to obtain approval for the structure as converted, but without success.

### **Material Considered**

1. Letter dated 11 March 1998 from Maroochy Shire Council to the previous owners of the property granting front and side boundary setback variations, subject to conditions, for the construction of a carport extension to the then existing dwelling.
2. Letter dated 21 February 2005 from Maroochy Shire Council to the applicants advising that the carport had been enclosed and that it therefore no longer complied with the approval that had been given for its construction.
3. Letter dated 29 March from the applicants to Maroochy Shire Council stating the carport had been enclosed to provide an office for the use of one of the applicants in her profession as a teacher, in the belief that no approval was required for this work.
4. Letter dated 28 April 2005 from Maroochy Shire Council to the applicants advising of the refusal of a siting variation for the conversion and enclosing a copy of Council's Decision Notice.
5. Letter dated 11 August 2005 from Maroochy Shire Council to the applicants advising of the refusal of an application to convert the carport to an enclosed garage and enclosing a copy of Council's Decision Notice.
6. Notice of Appeal and attachments, dated 7 September 2005, against the decision of Council to refuse the application and setting out the grounds of the appeal.
7. Verbal submissions made by one of the applicants on 14 October, 2005, setting out why the appeal should be allowed.

8. Verbal submissions made by Steven Tucker of Maroochy Shire Council on 14 October, 2005, setting out why the applications had been refused and the appeal should not be allowed.
9. Building Act 1975.
10. Standard Building Regulation 1993.
11. Queensland Development Code Part 12.
12. Integrated Planning Act 1997.
13. Maroochy Plan 2000.

### **Findings of Fact**

I made the following findings of fact:

1. An application was made to Council in 1998, by previous owners, for a siting concession for the construction of an open carport to within 5.1 metres of the road boundary and to a zero setback from the south western side boundary of the property.
2. Council approved the requested siting concessions subject to conditions, including the requirement for an identification survey to be carried out to re-establish the boundaries of the property from which the setbacks were to be measured.
3. The subsequent application for a development permit for building work was made to, and approved by, a private certifier. The building file lodged with Council by the private certifier for retention does not contain any evidence of an identification survey having been undertaken as required.
4. The existing location of the structure as built, with respect to the side boundary in particular, is not certain. There is no evidence on site of any re-established property pegs that could be utilised to determine the exact location of the structure.
5. The carport has been converted to habitable space for use as an office and has not been converted to a garage as applied for.
6. The structure, if contained within the property boundaries of the site, is capable of being converted to a garage subject to certain changes being made. These include the provision of suitable fire rated wall sheeting to the outer face of the structure and the removal of the front wall of the office which is to be replaced by a standard form of garage door.
7. The Queensland Development Code grants certain siting concessions to Class 10 portions of dwellings that are not normally available to habitable portions of the same dwelling.
8. The Building Code of Australia sets out uniform fire separation criteria for Class 10 and Class 1 portions of buildings from boundaries that are applicable in all States and Territories.

### **Reasons for the Decision**

After assessing the facts and the submissions of the parties, I have reached the following conclusions:

- The applicants mistakenly believed that they had a right to enclose the existing structure without the need for building approval.
- The applicants did not understand that conversion of the use of the carport to habitable space constituted an offence and that different concessions applied to structures of differing uses.
- As the original carport was approved prior to the introduction of Maroochy Plan 2000, it would have been approved as a garage at that time at its existing setback from the road boundary of the property. As it also does not project closer to the road boundary than the remainder of the dwelling, the impact of its being converted from a carport to a garage is not substantial. Requiring a garage conversion to be set back 6.0 metres from the road boundary, when the remainder of the dwelling and an existing approved carport are setback only 5.1 metres from the same boundary, would not significantly lessen the overall structure's impact on the streetscape.
- Providing there is no objection from the owners of the adjoining property on the grounds of undue impact on their amenity, given the slope of the land it is reasonable that an approval be given for a garage in the proposed location.

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**G.S.Cornish**  
**Building and Development**  
**Tribunal Referee**  
**Date: 7 November 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  
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