



Building and Development Tribunals

Queensland Government

Department of Local Government and Planning

APPEAL

Integrated Planning Act 1997

File No. 3/06/030

BUILDING AND DEVELOPMENT TRIBUNAL - DECISION

Assessment Manager: Caloundra City Council

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

Applicant: *withheld*

Nature of Appeal

Appeal under Section 4.2.9 of the *Integrated Planning Act 1997* against the decision of the Caloundra City Council in relation to not granting an approval for the siting of an extension of an existing roof verandah with a proposed new roofed verandah area to be located within the prescribed setback from the canal rear boundary alignment, on land described as “the subject site”.

Date and Place of Hearing: 2.00 pm on Friday, 7 April, 2006 at “the subject site”

Tribunal: Georgina J Rogers

Present: Owner
Applicant
Architect
Mr Richard Prout – Building Certifier, Caloundra City Council representative

Decision

The decision of the Caloundra City Council as contained in its letter dated 15 February 2006 (Reference: BDD-03220 (PROP16815)) refusing the application to construct a proposed new roofed verandah, within the prescribed setback from the canal rear boundary alignment of the site is **set aside** and **is replaced with the following decision:**

The proposed new roofed verandah may be constructed within the prescribed setback from the canal rear boundary alignment subject to the following conditions:-

1. The proposed new roofed verandah is to be constructed with a minimum 3.000m setback from the canal rear boundary alignment to its outermost projection, in lieu of the required 6.000m setback;
2. The proposed new roofed verandah is not to be enclosed at any stage within the prescribed 6.000m canal rear boundary alignment; and
3. The roof structure is to match the existing roof structure over the existing verandah and not to be any higher than the existing verandah roof.

Background

The meeting was held on site. The opportunity was taken to view the development and character of the neighbourhood from the canal vista line.

The site appeared to be regular in shape. The existing dwelling has been constructed approximately 7.500m setback from the canal rear boundary alignment. A swimming pool and deck have been constructed between the dwelling and the canal with the deck overhanging the canal retaining wall.

The canal gently curves which softens the visual impact of the residential developments along the canal embankment.

Dense and high vegetation currently exists between the proposed new roofed verandah and the adjoining neighbour and will suffice to minimize any impact by building of the roofed verandah extension within this location.

Material Considered

1. Appeal documentation including drawings indicating the location of the proposed new roofed verandah and the existing dwelling in relation to the canal rear boundary alignment;
2. Site plan, plans and elevations of the proposed new roofed verandah;
3. Aerial photographic submission by Caloundra City Council showing location of existing dwelling in relation to neighbourhood on canal;
4. Verbal submission by the applicant and reasons for provision of new roofed verandah to be located within the canal rear boundary alignment;
5. Correspondence from the Caloundra City Council dated 15 February 2006, not granting approval for the siting of the new roofed verandah within the canal rear boundary alignment;
6. Verbal submissions by the representative of the Caloundra City Council outlining the Council's assessment of the application;
7. The *Standard Building Regulation 1993*; and
8. The Queensland Development Code (QDC), Part 12.

Findings of Fact

I made the following findings of fact:

1. The Caloundra City Council wrote to the applicant on 15 February 2006 (Reference: BDD-03220 (PROP16815)) not allowing the relaxation for the proposed new roofed verandah to be constructed within 6.000m of the canal rear boundary alignment.
2. An on site visit was undertaken and plans provided showing the location of the proposed new roofed verandah, being an extension to the existing roofed verandah on site. The following was able to be determined. The site is regular in shape and has a site area of approximately 800sq.m. Vehicle access is via *withheld* to the south, a canal to the north and has a frontage of approximately 20m. The site consists of one lot and the existing dwelling has been constructed parallel to the southern road boundary alignment.
3. The plans indicate that the proposed new roofed verandah would be setback 2.700m from the canal rear boundary alignment and 2.000m from the western side boundary alignment.
4. The neighbourhood has been constructed within the past 20 years and is well established. The dwellings are generally rendered masonry construction with tile roofs. The majority of the existing residential dwellings appear to be minimum 6.000m from canal rear boundary alignment with pools and decks and recreation areas constructed within this setback area. The area is flat and the roads meander in line with the canal.
5. The Caloundra City Council provided aerial photographs of the canal neighbourhood, however these were not of sufficient detail to be able to determine setback distances from the canal rear boundary alignments.
6. The Caloundra City Council provided a copy of their Development Policy of 12 April 1988. The policy allows a 'boatport' to be erected within 4.500m of the boundary, provided the total width of supports located within the 4.500m clearance area, does not exceed 10% of the perimeter of that position of the boatport that is located within 4.500m of the boundary'. It would appear from discussions that a boatport would not be dissimilar to a carport, which is in turn a similar structure to a roofed verandah.

Reasons for the Decision

1. Part 12 of the QDC, sets out Performance Criteria (P1-P8) in relation to siting requirements which a local government must consider and be satisfied that the application meets the intent of each criteria for that application, and that the development does not unduly conflict with the intent of each of the Performance Criteria:

P1 The Location of a building or structure facilitates an acceptable streetscape, appropriate for –

(a) the bulk of the building or structure

From the plans provided the new roofed verandah is proposed to be setback 2.700m from the canal rear boundary alignment and 2.000m from the western side boundary alignment. The location of the proposed new roofed verandah is in line with the western wall of the existing dwelling. The overall height of the proposed new roofed verandah is in line with and of the same design as the existing verandah on the dwelling, of which this is an extension.

The bulk of the building would not appear to increase in dominance nor character when constructed in its proposed location and design as it will blend in with the existing dwelling.

The proposed new verandah to be constructed within the canal rear boundary alignment does not appear to be inconsistent with the bulk of the surrounding neighbourhood.

(b) the road boundary setbacks of neighbouring buildings or structure

The proposed new roofed verandah will not impact on the existing road boundary setbacks of the neighbouring buildings or structure. However in relation to the canal boundary setbacks it is difficult to determine whether it will be inconsistent. The applicant's representatives have provided evidence of a similar structure within the neighbourhood. A site visit was not available but viewing it from the canal it did not appear to have any significant impact on the neighbourhood.

(c) the outlook and view of neighbouring residents

No feedback was received from the adjoining neighbours. Generally within the neighbourhood the canal meanders and the impact of the neighbouring dwellings, outdoor recreation areas and structures have minimal impact on each other. Each canal dwelling has taken advantage of the area between the dwelling and the canal to develop significant outdoor recreation areas. With the intensity of the Queensland sun and awareness of its impact, shade structures of both temporary and permanent nature have been erected in these areas. Therefore the construction of a roofed verandah within this outdoor recreation area would have minimal impact on the neighbouring residents outlook and view.

Significantly the canal dwellings have been well developed and are landscaped and fenced between creating minimal affect on outlook and internal privacy.

(d) nuisance and safety of public

The proposed new roofed verandah would not appear to cause any nuisance nor increased safety issues to the public as it is located within the existing property.

P2 Buildings and structures–

(a) provide adequate daylight and ventilation to habitable rooms

The location of the proposed new roofed verandah would have minimal impact on the extent of daylight and ventilation to habitable rooms within the existing dwelling, based on the evidence provided.

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

The location of the proposed new roofed verandah would have minimal impact on the extent of daylight and ventilation to habitable rooms of neighbourhood dwellings, based on the evidence provided. There is significant existing vegetation between the adjoining property to the west and high fencing between each adjoining property.

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

The location of the proposed new roofed verandah would have minimal impact upon the usable open space provided for recreation, service facilities and landscaping for the dwelling. It would be a condition that the proposed new roofed verandah could not be enclosed within the 6.000m required setback from the canal boundary alignment at any stage.

P4 The height of a building is not to unduly–

(a) overshadow adjoining houses

The proposed new roofed verandah would not appear to unduly overshadow the adjoining houses, as it would be located directly in line with the western wall of the existing dwelling. There is significant existing vegetation between the adjoining property to the west and high fencing between each adjoining property.

(b) obstruct the outlook from adjoining lots

The proposed new roofed verandah would have minimal impact upon the outlook of the adjoining allotments as the canal meanders which diffuses the direct vista lines from each and every allotment. There is significant existing vegetation between the adjoining property to the west and high fencing between each adjoining property.

P5 Buildings are sited and designed to provide adequate visual privacy for neighbours–

The proposed new roofed verandah would not appear to overlook the adjoining neighbour and therefore would have minimal affect on the privacy of the neighbourhood. There is significant existing vegetation between the adjoining property to the west and high fencing between each adjoining property.

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

The proposed new roofed verandah would not impact on the access for normal building maintenance onto the site as access is via the existing driveway and these setbacks will not be affected.

P7 The size and location of structures on corner sites provide for adequate sight lines–

This site is located adjacent to the bend in the canal and therefore would have minimal impact upon sight lines of others. The location of the new roofed verandah within the required 6.000m of the rear canal boundary alignment will not affect on site traffic vision as it is to the rear of the site.

P8 Sufficient space for on-site carparking to satisfy the projected needs of residents and visitors, appropriate for–

(a) the availability of public transport

The availability of public transport is not relevant to this hearing, as provision has been made by exiting on-site carparking which is not proposed to be changed.

(b) the availability of on-street parking

The availability of on-street parking would not be affected by the proposed development. The nature of the neighbourhood would not require significant on-street carparking generally.

(c) *the desirability of on-street parking in respect to the streetscape*

On-street car parking would not be reduced nor affected by the proposed development.

(d) *the residents likelihood to have or need a vehicle*

The residents need for a vehicle will not be affected by the proposed development and is therefore not relevant to this hearing.

2. Based on the above facts it is considered the appeal is proven.
3. QDC provides Performance Criteria and some Acceptable Solutions. The Acceptable Solutions are guidelines to provide reasonable and achievable outcomes. The local government is in a position to vary the Acceptable Solutions in relation to an application for siting requirements and to assess the application based on its merits.
4. In assessing the criteria from this part of the Code in relation to the proposed new roofed verandah to be constructed within the required 6.000m required setback from the canal boundary alignment, the Tribunal found that there were grounds to allow for the extension of the existing roofed verandah in the location shown.
5. An assessment of Part 12 of the QDC did not identify any valid reason for refusing the application for the extension of the existing roofed verandah setback 3000mm from the on the canal boundary alignment.

GEORGINA J ROGERS
Building and Development
Tribunal Referee
Date: 9 May 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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