



**Building and Development Tribunals**

**Queensland Government**

Department of **Local Government and Planning**

**APPEAL**

*Integrated Planning Act 1997*

**File No. 3/03/075**

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

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**Assessment Manager:** Caloundra City Council

**Site Address:** 26 Coonang Crescent, Warana

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### **Nature of Appeal**

Appeal under Section 4.2.9 of the Integrated Planning Act 1997 against a decision of Caloundra City Council to refuse a development application for the siting of a carport, containing a solid panel lift door, within 6 metres of the road boundary of Lot 488 on Plan W 95526, situated at 26 Coonang Crescent, Warana.

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**Date and Place of Hearing:** 10.00 am Tuesday, 23 December 2003  
at 26 Coonang Crescent, Warana

**Tribunal:** Geoff Cornish

**Present:** Applicant  
Paul Bartley - Owner  
Steve Leece – Caloundra City Council

### **Decision**

In accordance with Section 4.2.34 [2] of the Integrated Planning Act 1997, I hereby set aside the decision of Caloundra City Council to refuse to grant a siting concession for a carport, fitted with a solid panel lift door, to be erected on the site and decide that the siting of the carport should be approved, subject to the following conditions:

1. The panel lift door shall be constructed of a suitable open security type grillage providing at least 50% openings across the full face of the doorway.
2. The carport shall remain open on the other two sides within the six metre setback area.
3. The aggregate perimeter dimensions of walls, solid screens and supports within the six metre setback shall not exceed 15% of the total perimeter dimension (along the line of supports) of that part of the carport within the six metre setback.

## **Background**

The matter concerns a decision by Caloundra City Council to refuse to approve a siting concession for a carport to be erected up to the road boundary of the property, with a panel lift door fitted to the front of the carport. The basis of the refusal was that the solid panel lift door, if fitted, would impact upon the amenity of the streetscape and would tend to overcrowd the front of the allotment. The Council also considered that there were not substantial reasons for Council to consider modifying Section 37 to allow the solid panel lift door to be fitted to the front of the carport.

## **Material Considered**

1. Letter of Caloundra City Council, dated 3 November 2003, refusing the siting concession sought.
2. Building and Development Tribunal Appeal Notice, dated 3 December 2003, appealing the Council's decision and setting out reasons for the appeal.
3. Verbal submission by the applicant on 23 December 2003 setting out why the appeal should be allowed.
4. Verbal submission by Steve Leece of Caloundra City Council on 23 December 2003 setting out Council's reasons for refusing the application.
5. Written submission by Caloundra City Council detailing statements made by Steve Leece.
6. Standard Building Regulation 1993.
7. Building Act 1975.
8. Integrated Planning Act 1997.

## **Findings of Fact**

I made the following findings of fact:

1. The existing dwelling has only single covered car accommodation.
2. The only location for the construction of further covered car accommodation on the site is between the dwelling and the road boundary of the property.
3. The application for the siting concession included a specific requirement for a solid panel lift door to be fitted to the front of the carport at the street alignment of the property.
4. The Council was prepared to grant a siting concession for an open carport in this location without a solid panel lift door fitted to the road boundary frontage of the carport.
5. The fitting of a solid door to the front of the proposed carport is not consistent with the definition of an open carport relied upon for the seeking of a siting concession.

6. The approval granted for the carport opposite to be fitted with a solid door was issued in error and not in accordance with the siting concession granted for that carport.
7. Other solid doors fitted to similar carports in the area have been installed without Council approval and are the subject of investigation for prosecution action.

### **Reasons for the Decision**

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

- An open security mesh type panel lift grill, with more than 50% openings, would meet the criteria for an open carport.
- An open security mesh type panel lift grill would meet the Council's requirement for maintaining streetscape amenity.
- An open security mesh type panel lift grill would meet the applicant's requirement for site security.

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**G.S.Cornish**  
**Building and Development**  
**Tribunal Referee**  
**Date: 20 January 2004**

## **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  
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