



Building and Development Tribunals

Queensland Government

Department of **Local Government and Planning**

APPEAL

Integrated Planning Act 1997

File No. 3/07/001

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 to refuse a development application requiring a siting concession necessary for the erection of a double carport within the prescribed road boundary setback on land described as “the subject site”.

Date and Place of Hearing: 9.00am Wednesday 24 January 2007
at Caloundra City Council Chambers

Tribunal: Geoff Cornish – Tribunal Chair
Chris Schomburgk – Tribunal Member

Present: Geoff Cornish – Tribunal Chair
Applicants
Richard Prout – Caloundra City Council

Decision

The decision of the Caloundra City Council, as contained in its written Decision Notice dated 15 December 2006, to refuse an application for relaxation of the boundary setback, is **set aside** and **the application is approved**, subject to the following conditions:

- 1. The outermost point of the fascia of the proposed carport is to be no closer than 1.78 metres from the front boundary alignment.*
- 2. The width of the proposed carport roof is to be reduced to 6.26 metres to match the line of the outer faces of the side walls of the existing garage.*
- 3. The carport roof shall have a hip or Dutch gable end facing the street.*

4. *The roofing material shall be tiles to match the existing roof of the dwelling and garage as closely as possible.*
5. *The carport shall comply with the requirements of A1(c)(i) of Part 12 of the Queensland Development Code in respect of the aggregate perimeter dimensions of any walls, solid screens and supports located within 6 metres of the road boundary.*

Background

The matter concerns the refusal of an application made to Caloundra City Council for a siting concession necessary to enable a new double carport to be erected within the space between the existing double garage and the road boundary of this property. The application was made on the basis of being the most appropriate space on the allotment for this additional car parking requirement and the existence of several other similar structures on properties in the immediate vicinity.

Material Considered

1. Copy of the application made to Caloundra City Council on 8 December 2006 for a siting variation;
2. Letter dated 15 December 2006 from Caloundra City Council to the applicants stating that the application for a siting variation had been refused;
3. Form 10 – Building and Development Tribunals Appeal Notice and attachments, dated 2 January 2007, against the decision of Council to refuse the application and setting out the grounds of the appeal;
4. Verbal submissions made by the applicants on 24 January 2007 setting out why they believed the appeal should be allowed;
5. Verbal and written submissions made by Richard Prout of Caloundra City Council setting out why the application had been refused and why the appeal should not be allowed;
6. Copy of the Detached House Code, Section 8.4 of the Caloundra City Plan 2004.
7. The *Building Act 1975*;
8. The Queensland Development Code Part 12; and
9. The *Integrated Planning Act 1997*.

Findings of Fact

I made the following findings of fact:

1. The property in question contains an established dwelling and has restricted access (less than 2.5 metres in width) for a vehicle to the area at the rear and right hand side of the dwelling.
2. There is a Council sewer main located within the rear of the property which imposes further restrictions on the construction of any structures in this vicinity.

3. The dwelling has an existing double garage that meets the minimum on-site car parking requirements of the Queensland Development Code. The garage is sited in accordance with the Code's requirements.
4. The Queensland Development Code does not require that any on-site car parking space be covered.
5. Caloundra City Council's circular "**Carports within Front Boundary Setbacks**", issued on 9 January 2006, states that the following Caloundra City Plan 2004 requirement must be met. *"At least 2 on-site car 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."*
6. The site currently has 2 covered and 2 uncovered on-site car parking spaces. The structure over the covered car parking spaces complies with the requirements of Caloundra City Plan 2004.
7. The applicant is seeking permission to have all 4 on-site car parking spaces covered.
8. The Queensland Development Code states that an open carport may be sited within 6 metres of the road boundary of the property provided that certain criteria are met.
9. The siting provisions of the Code do not apply if there are **alternative siting provisions** for such structures set out in the Planning Scheme for the local government.
10. Caloundra City Council has a valid amenity and aesthetics resolution, made under Section 50(1) of the SBR, relating to such structures that are proposed to be erected within 6 metres of the road boundary and within 1.5 metres of the side boundary of a property. The carport in question is not captured by this resolution as it is not less than 1.5 metres from the side boundary of the property.

Reasons for the Decision

1. **In the Tribunal's view**, the **current** provisions of the Caloundra City Plan 2004 do not contain any **alternative siting provisions** that would take precedence over those set out in the Queensland Development Code. Whilst the impending changes to the Plan will, in the Tribunal's view, change this situation, the Tribunal's decision must be based on the **current** siting provisions of the Queensland Development Code, as these are what applied at the time of the application being made to Council for a siting concession.
2. The proposed location of the additional covered parking spaces complies with one of the provisions of the Code in as much as access to the area at the rear of the dwelling, down the right hand side of the property, is less than 2.5 metres in width, thus eliminating any alternative complying on-site location from consideration.
3. The current Code provisions for on-site parking require that space be provided for the parking of two vehicles on the lot, but do not restrict the total number of on-site parking spaces provided to this figure.

4. Whilst the intention of the current wording of section 8.5 of the Detached House Code included in Caloundra City Plan 2004 was to control the building of any such structures within 6 metres of the road boundary of a property, the Tribunal is of the view that the wording is not in the form required to constitute **alternative siting provisions**. Therefore the Tribunal can only give consideration to the Detached Housing Code in terms of minimising the impact of any concession granted under the Queensland Development Code criteria.
5. In accordance with the above, the proposed carport could be decreased in length to 5 metres from the face of the brickwork of the existing garage, thus providing the minimum length required for a covered car parking space under the Queensland Development Code. This would result in a setback of 1.78 metres from the road boundary of the property.
6. To minimise the impact of the carport on the streetscape, the original gable end should be replaced by a hip or Dutch gable end and the overall carport roof width reduced to 6.26 metres to correspond with the line of the outer faces of the garage walls. The roofing material should be retained as tiles to match the existing roof of the dwelling and garage as closely as possible.
7. With a setback of 1.78 metres from the road boundary, the carport may be considered to be open on that face. If required, gates may then be fitted to the proposed front fence for security purposes, without compromising the openness of the carport.
8. The carport should be made to comply with the requirements of A1(c)(i) of Part 12 of the Code in respect of the aggregate perimeter dimensions of any walls, solid screens and supports located within 6 metres of the road boundary.

Geoff Cornish
Building and Development
Tribunal Chair
Date: 27 February 2007

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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