



Building and Development Tribunals

Queensland Government

Department of **Local Government and Planning**

APPEAL

Integrated Planning Act 1997

File No. 03-06-007

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 an application for Building Works – siting variation - on land described as “the subject site”.

Date and Place of Hearing: 1:00pm on Thursday 14th February 2006
at “the subject site”

Tribunal: Mr Chris Schomburgk

Present: Applicants
Mr Ray Trinder – Building designer
Mr Richard Prout – Caloundra City Council

Decision:

The decision of the Caloundra City Council as contained in its written Decision Notice dated 16th November 2005, to refuse an application for relaxation of the boundary setback, is **set aside**. The application for relaxation of the front and side boundary setback as shown on Drawing No. 25072/1 is approved, **subject to the following conditions:**

1. The proposed carport is to be open on all sides and no front door / gate is to be fitted;
2. The carport and porch roof material is to match, as close as is practical, the colour and material of the existing dwelling roof;
3. The proposed porch is to be provided with privacy screening on its eastern side to provide a minimum of 50% screen (eg: by lattice or horizontal or vertical battens or fixed louvres);
4. This approval is limited to the siting approval, and is not an approval for the building works for the construction of the carport or the conversion of the existing garage into habitable rooms. Separate building approval is required.

Material Considered

The material considered in arriving at this decision comprises:

- The application, supporting plans and documentation, including plans by Trinder Drafting and Design dated 16th December 2005 and referred to as drawing numbers 25072 /1 to 25072/9 inclusive;
- The relevant provisions of the Town Planning Scheme for Caloundra City Council;
- Council's Decision Notice dated 21st December 2005;
- A written statement of reasons provided by the Council officer;
- The *Queensland Development Code*; and
- The *Integrated Planning Act 1997*.

Findings of Fact

I make the following findings of fact:

- The site comprises *withheld* and has an area of approximately 540m².
- The site currently contains a dwelling house which is proposed to be renovated and extended. The site is relatively flat and there are no known underground or overhead services that constrain the proposal.
- The existing house was constructed in approximately 1980 without any formal front door. Entry is via a rear/side door only. The dwelling has a single enclosed garage.
- The applicant seeks Council approval to construct a carport within the front setback area, to approximately 0.45m from the front boundary and 0.2m from the side boundary. In doing so, the applicant proposes to enclose the existing garage and convert it to habitable rooms, although that is not part of the subject application. The subject application includes a small covered porch over what is intended to be the new front entry to the house.
- The Council has refused the carport component of the subject application on the grounds that:
 1. *The building, if built in the form shown in the application, will have an extreme adverse effect on the amenity or likely future amenity of the building's neighbourhood;*
 2. *The Development does not comply with Performance Criteria 1 of Part 12 ... of the QDC for the following:*
 - a) *The proposed structures will be inconsistent with the existing and proposed streetscape;*
 - b) *The proposed structure will detract from the outlook from the surrounding properties;*
 - c) *The proposed structure will cause an over-development of the site and an overcrowding of the street frontage;*
 3. *The Development does not comply with Specific Outcome 010 (parking and access) Code 8.5 Detached Housing Code of the Caloundra City Plan 2004 as the existing off-street car parking is proposed to be converted to habitable rooms.*

- Within the immediate locality there are numerous examples of carports (and some garages) located within the front setback. The Council officer was not able to confirm how many of those were lawfully constructed. Some were evidently many years old, while many others are more recent. Two adjoining carports located up to the front boundaries exist on properties directly across *withheld* from the subject site.
- At the hearing, the Council officer offered a compromise of a single carport in the same location. He noted that the proposed patio/porch cover was not a concern.
- I was advised at the hearing that neighbours on both sides had expressed support for the proposal. I was provided with a signed letter of support from one of those neighbours.
- The carport is not proposed to be enclosed or have a front gate. The roof of the carport is proposed to be integrated into the existing roof in terms of colour, material, height and slope.

Based on my assessment of these facts, it is my decision that **the appeal is upheld. Council's decision** to refuse the Application for Building Works - siting variation - is **set aside** and **the application is approved, subject to conditions.**

Reasons for the Decision:

- The proposed carport structure will not present as a bulky structure and will not, in my opinion, detract from the existing streetscape.
- The proposal will not impact on the views, light or breezes of the surrounding properties.
- The open nature of the proposed carport is such that it will not, in my opinion, cause an "over-development" of the site.
- The unusual circumstances of the current house not having any front door, and the renovations seeking to provide that entry have meant that the existing garage is to be converted to habitable rooms to make up for the loss of a bedroom (for the entry), mean that no undesirable precedent should arise as a result of this approval.

Chris Schomburgk
Building and Development Tribunal General Referee
Date: 27th February 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:

The Registrar of Building and Development Tribunals
Building Codes Queensland
Department of Local Government and Planning
PO Box 15031
CITY EAST QLD 4002
Telephone (07) 3237 0403: Facsimile (07) 32371248