



APPEAL
Integrated Planning Act 1997

File No. 03-06-020

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: 10:30am on Thursday 16th February 2006
at “the subject site”

Tribunal: Mr Chris Schomburgk

Present: Applicants
Mr Richard Prout – Caloundra City Council

Decision:

The decision of the Caloundra City Council as contained in its written Decision Notice dated 23rd January 2006 to approve, subject to conditions, an application for relaxation of the front boundary setback and a swimming pool, is **confirmed** and **the application is approved subject to conditions**.

Material Considered

The material considered in arriving at this decision comprises:

- The application and supporting plans and documentation;
- The relevant provisions of the Town Planning Scheme for Caloundra City Council;
- Council’s Decision Notice dated 23rd January 2006;
- A written statement of reasons provided by the Council officer;
- The Planning Scheme for the City of Caloundra;
- Verbal advice from the neighbour on the northern side;
- 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 is located at “the subject site” and has an area of approximately 780 m².
- The site currently contains a two-storey dwelling which is being renovated and extended. The site has a frontage (at the rear) to the canal, and is at the head of a “t-shaped” cul-de-sac. Surrounding houses are large and of varying age, some as old as the subject house, others more recent.
- The existing house was constructed in approximately 1985 and is set back approximately 6.3m from the street boundary.
- The applicant is undertaking a major renovation of the house. As part of that renovation, it is proposed to provide an enclosed double garage (existing, but to be modified with a new laundry and workshop area), and a two-car carport to 3.0m of the street boundary.
- In addition, the applicant seeks approval for a swimming pool to 0.4m of the side boundary and 1.5m from the canal (rear) boundary.
- The site has a sewer line that runs across the front of the property approximately 1.5m inside the front boundary. Council’s usual requirement is for any structure/s to be 1.5m clear of sewer lines.
- The Council has approved the proposed carport subject to it being setback a minimum of 4.5m from the street boundary, and has placed conditions on the swimming pool including a 1.8m high splash-back wall or fence along the side boundary. Both these conditions are the subject of this appeal.
- The applicant seeks an additional carport to provide covered off-street parking for work vehicles, in addition to the double garage – that is, covered car accommodation for 4 vehicles, at least two of which are likely to be larger (longer) than conventional vehicles. The existing garage is sought to be extended to include a new laundry and a workshop. It is these components of the proposal that cause the proposed new carport (which is to abut the garage) to be located closer to the street.
- The Council has approved the carport subject to it being no closer than 4.5m to the street boundary. This will necessitate some re-design of the internal building if the carport is to remain.
- Within the immediate locality, there is a small number of buildings with open carports close to the street, although the predominant setback is at least 6m.
- The subject site is at the end of a cul-de-sac and parking on-street and turning is difficult when only one extra vehicle is parked on the street. The applicant is a builder and has a number of trucks and utilities required for his work. On the site inspection, some of these were parked in the street.
- With respect to the swimming pool side fence, the neighbour on that northern side attended the hearing for a short time. The applicants have appealed against the condition requiring a splash-back wall or fence. Their preference is for an open pool fence to allow access to breezes and views to be maintained. The neighbour agreed that an open pool fence would be acceptable to him, despite the close proximity of the pool water’s edge to the common boundary.
- Council advised that amendments to the Planning Scheme are soon to be adopted that will allow carports to within 4.5m of the front boundary, subject to approval.

Based on my assessment of these facts, it is my decision that **the appeal is dismissed**. Council’s **decision** to approve the Application for Building Works - siting variation –is **confirmed**, subject to a revised condition relating to the swimming pool side fence.

Reasons for the Decision

- The proposed extension to the garage necessitates the proposed carport being closer to the front boundary. The garage extension includes a workshop that is approximately 1.6m deep, and a laundry that is approximately 2.0m deep. If the workshop is removed, the front part (garage and carport) of the building can “slide back” and would comply with the Council condition.
- The locality is an intact residential area with high quality homes. Storage of work vehicles (in addition to private use vehicles) and the inclusion of a workshop should not be taken as necessarily appropriate in such a location.
- The proposal is likely to unnecessarily impact on the streetscape of this cu-de-sac, and there is no compelling reason to allow the relaxation to the extent sought, when alternatives exist within the site for the features sought. The workshop or laundry could be located elsewhere in the building, or the workshop can be deleted.

Conditions of Approval:

Condition 9 of the Council’s Decision Notice of 23rd January 2006 is amended to read:

“A complying pool fence is to be erected along the side northern boundary and extended a minimum of 2metres past both ends of the pool.”

All other conditions, including those for the Siting Variation, contained in the Decision Notice dated 23rd January 2006 remain.

Chris Schomburgk
Building and Development Tribunal General Referee
Date: 23rd 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:

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