



Building and Development Tribunals

Queensland Government

Department of **Local Government and Planning**

APPEAL

Integrated Planning Act 1997

File No. 03/06/093 A & A

BUILDING AND DEVELOPMENT TRIBUNAL - DECISION

Assessment Manager: Caloundra City Council

Site Address: *Withheld* – “the subject site”

Applicant: *Withheld*

Nature of Appeal

The appeal is against the decision of the Caloundra City Council to refuse a siting variation application for building works on land described as “*withheld*” and situated at “the subject site” for the following reasons:-

- 1 *‘There are no sufficient or substantial reasons for Council to grant a siting modification for this proposal.*
- 2 *The building, if built in the form shown in the application, would have an extreme adverse effect on the amenity or likely amenity of the building’s neighbourhood.*
- 3 *The development does not comply with the Performance Criteria 1 of Part 12 (Design and Siting Standards for Single Detached Housing on Lot 450m2 and over) of the Queensland Development Code for the following:-*
 - (a) *the proposed structure will detract the outlook from the surrounding properties;*
 - (b) *the proposed structure will cause an over development of the site and an overcrowding of the street frontage; and*
 - (c) *The allotment has complying off street parking in accordance with A8 of Part12, Design and Sighting Standards for Single detached housing on Lots 450m2 and over, of the Queensland Development Code.*
- 4 *The allotment currently has complying off street parking in accordance with Specific Outcome 010, Parking and Access, Code 8.5 Detached Housing Code of the Caloundra City plan 2004.*
- 5 *The Development does not comply with the specific Outcome 010, Parking and Access, Code 8.5 Detached Housing Code of the Caloundra City Plan 2004. The existing complying off street parking is to be converted to habitable rooms without the required Development Approvals being obtained.*
- 6 *The development is in contravention with Part 4 of Caloundra City Council's Amenity and Aesthetics Resolution dated 22 September 2003.*

NOTES :-

- 1 Caloundra City Council's refusal of the application on the grounds of :-
 - (a) Amenity and Aesthetics and
 - (b) Siting relaxationare considered separately by different Tribunals. Both hearings were held at the same time and date.
- 2 The decision on the siting relaxation is considered separately and a copy of that Tribunal decision is attached.
- 3 The decision on the Amenity and Aesthetics issue is considered and responded to in this determination.

Date and Place of Hearing: 10.30 am Monday 6 November 2006.
Inspection of the site and hearing at
“the subject site”.

Tribunal:

Mr L F Blumkie	Tribunal Chairperson
Mr G Schonfelder	Tribunal
Mr P Breeze	Tribunal

Present:

“withheld”	Owner/Applicant
Mr Brett England	Suncert Certifiers
Mr R Prout	Caloundra City Council representative
Mr Gary Ingram	Caloundra City Council representative
Mr L Blumkie	Tribunal
Mr G Schonfelder	Tribunal
Mr P Breeze	Tribunal

Decision

The Tribunal, in accordance with Section 4.2.34 (2) (b) of the *Integrated Planning Act 1997*, changes the decision of the Caloundra City Council, dated 27 September 2006 and with the consent of the owner, allows a carport subject to the following conditions:

1. The carport is located 2.7m from the front street alignment.
2. It is a maximum of 6.6m in width and is located no closer than 200mm from the left-hand side boundary.
3. It has 600mm overhang to columns on both sides and front to match the overhang of the existing house.
4. It has a hip roof pitched to match that of the renovated house.
5. It has a "colorbond" roof matching that of the renovated house.
6. It is 100% open on all sides except where it abuts the renovated house.
7. It is supported on maintenance free block or brick columns (matching the renovated house) set back 600mm from the front fascia line.
8. It has a fascia and gutter at the same height as the fascia of the existing house ie approximately 2.3m above the ground at the existing house line.
9. Stormwater is connected to the street channel in accordance with Council requirements.
10. It has fascia, columns, roof and gutter etc in colours matching the renovated house.

11. A detailed building application being prepared and development approval obtained.
12. Trailer access is maintained to the rear of the property.
13. It is landscaped in a similar manner to match the existing streetscape to the satisfaction of Council.

This decision needs to be read in conjunction with the separate Tribunal decision on the siting of the carport.

Background

The current owner purchased the property in 2003 and at that time was not made aware that the property apparently had 3 modifications made without development permits being obtained.

Council identified the extensions (without an approval) from aerial photography.

In order to increase the floor area of the house, to accommodate his large family, the owner amongst other things, proposed to change the existing double carport to habitable space, add a second level and erect a double carport within the front boundary setback.

Application was made to the Caloundra City Council for a front boundary relaxation to allow a 6.6m wide carport to be sited 200mm from the front boundary and 200mm from left hand side boundary.

Council refused the application on the 27 September 2006.

Material Considered

In coming to a decision, consideration was given to the following material: -

- 1 Drawings accompanying the appeal;
- 2 Copy of the Decision Notice dated 27 September 2006;
- 3 Copy of the Appeal Notice dated 20 October 2006;
- 4 Two supporting letters from neighbouring residents;
- 5 Written submission from Caloundra City Council;
- 6 Verbal submissions from applicant;
- 7 Verbal submission from Mr Bret England;
- 8 Verbal submissions from the Caloundra City Council representatives;
- 9 Queensland Development Code - Part 12;
- 10 *The Building Regulation 2006*;
- 11 *The Integrated Planning Act 1997*;
- 12 *The Integrated Planning Regulation 1998*;
- 13 Caloundra City Council Resolution on Amenity and Aesthetics dated 22 September 2003;
- 14 Detached House Guide of the Caloundra City Plan 2004; and
- 15 An inspection of the site and neighbourhood.

Findings of Fact

- A *Building Regulation - Division 4 - Amenity and Aesthetics*

Caloundra City Council adopted an Amenity and Aesthetics policy, under Section 50(1) of the then *Standard Building Regulation 1993*, on the 24 January 2002 and amended that policy on the 22 September 2003.

The resolution, amongst other things, declared that all development applications for Class 10 Buildings located in Residential areas etc are to be subject to amenity and aesthetics assessment by the Caloundra City Council.

Section 50 (2) of the then *Standard Building Regulation 1993* states that applications mentioned in Section 50 (1) must be assessed by the local government for the amenity and aesthetics impact of the proposed building work.

Section 50 (3) states that the local government may refuse an application to which subsection (2) applies if the building, when built, would have an extremely adverse effect on the amenity or likely amenity of the building's neighbourhood etc.

B Site and development of the site

The site is located within a Low Density Residential Precinct as per the Caloundra City Plan 2004.

The site is a typical rectangular shaped block (approx 546m² in area) and is developed with an existing class 1 building (approximately 20 years old) which is set back approximately 6m from the front boundary.

During the 20 year period the following modifications appear to have been added to the development without any evidence of a development permit having been obtained:-

- (a) single car accommodation (garage) converted to habitable rooms;
- (b) double carport erected beyond the 6.0m street setback;
- (c) small habitable extension to the rear of the class 1 building; and
- (d) small roofed pergola to the right hand side of the class 1 building.

A council sewer crosses the rear of the property 1.5m from the rear boundary.

C Development in the neighbourhood.

An inspection of the neighbourhood indicated the majority of properties were developed with Class 1 buildings. There were a number of examples in the neighbourhood where the existing car accommodation had been converted to habitable space and a double carport erected within the street setback (many erected right up to the front boundary).

There were various styles of carports.

The council representatives acknowledged that these carports were an "as of right" under previous legislation.

Reasons for the Decision

Taking into account the following:-

1 Existing development on the site

In order to increase the floor area of the existing house and retain the existing perimeter walls, it was considered desirable to use the space of the existing carport as habitable space. This would allow, after taking into account the existing room locations, (eg kitchen) preferred room relationships for the family room, dining, living and kitchen.

2 Particular circumstances of the site

Suitable vehicle access is not available to the rear of the property. Vehicles are already parked in the front street setback.

3 Needs of the owner

The owner does not have sufficient habitable floor area (common in today's residential design) for his family.

4 Existing development within the neighbourhood

There are numerous examples within the neighbourhood (many of which are identified by photographs in the appeal submission) of double carports erected within the 6.0m street building setback. Many are located on the front boundary line.

The Tribunal considers the above reasons are sufficient grounds to consider a siting variation, which also satisfies Council's Amenity and Aesthetics policy.

The Tribunal considered the proposal, as submitted could have an increased setback from the front street boundary (i.e. 2.7m) and still meet the needs of the owner for vehicle accommodation.

The increased setback would have less impact on the streetscape and would be more in keeping with the preferred setback of Council (i.e. 4.5m).

In order for the carport to match the existing hip roof of the house and keep a balanced front elevation, it was considered necessary to locate the carport close to the left side boundary.

The amended proposal is considered acceptable under the performance criteria of Part 12 of the Queensland Development Code as documented in the Decision on the siting variation.

The Tribunal was of the opinion that a carport with the following conditions:

- 2.7m setback and 100% open on the front and both sides;
- a hip roof
- limited to 6.6m maximum width i.e. approximately 30% of the width of the allotment
- 200mm from the side boundary and maintenance free materials
- height aligning with the existing house eaves and gutter line

would not cause an "over-development" of the site nor would it have an **extreme** adverse effect on the amenity or likely amenity of the building's neighbourhood.

The specific details of the proposal were discussed and agreed to by the owner at the hearing and these details are documented in the decision.

Hence, the Tribunal, in accordance with Section 4.2.34 (2) (b) of the *Integrated Planning Act 1997*, changes the decision of the Caloundra City Council, dated 27 September 2006 and with the consent of the owner allows a carport subject to the following conditions:

1. The carport (closest point) is located 2.7m from the front street setback;
2. It is a maximum of 6.6m in width (overall) and is located no closer than 200mm from the left-hand side boundary;
3. It has 600mm overhang to columns on both sides and front to match the overhang of the existing house;
4. It has a hip roof pitched to match that of the renovated house;
5. It has a "colorbond" roof matching that of the renovated house;
6. It is 100% open on all sides except where it abuts the renovated house;
7. It is supported on maintenance free block or brick columns (matching the renovated house) set back 600mm from the front fascia line;
8. It has a fascia and gutter at a height in line with the fascia and gutter of the existing house ie approximately 2.3m above the ground at the existing house line;
9. Stormwater is connected to the street channel in accordance with Council requirements;
10. It has fascia, columns, roof and gutter etc in colours matching the renovated house;
11. A detailed building application being prepared and development approval obtained;
12. Trailer access is maintained to the rear of the property;
13. It is landscaped in a similar manner to match the existing streetscape to the satisfaction of Council.

This decision needs to be read in conjunction with the separate Tribunal decision on the siting of the proposal.

Leo F Blumkie
Building and Development
Tribunal Chairperson
Date: 20 November 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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