



## Building and Development Tribunals – Decision

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### *Integrated Planning Act 1997*

<b>Appeal Number:</b>	3—08—080
<b>Applicant:</b>	John Erskine Donald Atkinson & Jill Francis Atkinson
<b>Assessment Manager:</b>	Sunshine Coast Regional Council
<b>Concurrence Agency:</b> (if applicable)	N/A
<b>Site Address:</b>	3 Park Street, Caloundra and described as Lot 122 on RP56889 – the subject site

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### Appeal

Appeal under section 4.2.9 of the *Integrated Planning Act 1997* (IPA) against the decision of the Sunshine Coast Regional Council, dated 15 October 2008, to refuse a preliminary development application for building works, namely a carport to be located in the front boundary setback on the subject site.

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<b>Date of hearing:</b>	10:30am – Friday, 21 November 2008
<b>Place of hearing:</b>	The subject site
<b>Tribunal:</b>	Mr Chris Schomburgk – Chair
<b>Present:</b>	Mr John and Mrs Jill Atkinson – Applicants Mr Richard Prout – Sunshine Coast Regional Council Representative

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### Decision:

The Tribunal, in accordance with section 4.2.34 (2)(c) of the IPA, **sets aside** the decision appealed against; and in accordance with section 4.2.34 (1) of the IPA, **directs** the assessment manager to approve the preliminary development application for the relaxation of the front boundary setback as shown on Linea Design and Drafting Drawing No. 2008154, dated September 2008, subject to the following conditions:

1. The proposed carport is to be open on all sides and no front door or gate is to be fitted; and
2. The carport roof material is to remain as shade cloth material at all times. No permanent, impervious material is to be used for the roof.

## Background

- The subject site comprises Lot 122 on RP56889, is located at 3 Park Street, Caloundra, and has an area of approximately 610m<sup>2</sup>. The site is only 15.9m wide but is relatively long.
- The subject site is within a mixed residential area where industrial land abuts to the north. However, Park Street itself is relatively homogenous in its single detached housing form.
- The subject site currently contains an older, two-storey dwelling house and a run-down garage structure towards the rear of the property. The subject site is relatively flat and there are no known underground or overhead services that constrain the proposal.
- A single carport on the western side of the house has been converted into habitable space. That carport space was narrow and did not allow sufficient width for car doors to open if it had been walled.
- The applicant seeks Council approval to construct a carport within the front setback area, to approximately 100mm from the front boundary. Side boundary clearance was not an issue as it was approximately 2.8m – the same as the existing house.
- Council refused the preliminary development application for building works and issued a decision notice dated 15 October 2008.
- The Applicants appealed the decision of Council to the Building and Development Tribunals on 11 November 2008.

## Material Considered

The material considered in arriving at this decision comprises:

- ‘Form 10 – Notice of Appeal’ and grounds for appeal lodged with the Registrar on 11 November 2008, including supporting plans, documentation and photographs of the subject site and surrounding properties;
- Council’s Decision Notice dated 15 October 2008;
- A written statement of support from a number of neighbours in the immediate locality;
- Verbal submission from the Applicants at the on-site hearing;
- Verbal submission from the Council representative at the hearing;
- The IPA; and
- Relevant provisions of the Town Planning Scheme for the former Caloundra City Council – in particular, the Detached House Code.

## Findings of Fact

The Tribunal makes the following findings of fact:

- The proposal is for, in effect, a shade structure as opposed to a carport. However, the structure has been built and has 200mm x 200mm block pillars at the front, and connects to existing block pillars at the rear where it joins to the existing house. The nature of the structure is such that it is perhaps more accurately defined as a carport, as opposed to a shade structure. The roof of the structure is shade cloth, as opposed to any more-permanent, impervious material as might normally be expected of a carport.
- Council’s refusal was based, in part, on their preference for the applicant to use the existing or a new garage at the rear of the property, to be accessed either side of the existing house. The applicants explained that the eastern side of the house was constrained by an existing staircase and that, while access to the rear down the western side was feasible, it would mean reversing a longer distance to the road or alternatively taking up a large part of the back yard for turning space. From inspection, the existing garage in the backyard would require a major renovation, or replacement, if it was to be used for car accommodation.
- The applicant has provided signed statements from neighbours on both sides of Park Street expressing support for the proposal.

- The existing houses in Park Street all generally comply with the front setback requirements. However, in nearby streets, a number of carports or structures were obviously within the front setback area. Council was not able to advise whether they were all approved.
- The Council has refused the carport component of the subject application on the grounds that:
  1. *The Development does not comply with Specific Outcome 07 (Garages and Carports) Code 8.5 Detached Housing Code of the Caloundra City Plan 2004 as:*
    - *The proposed carport will have a dominating appearance when viewed from the street given that the building is located within the prescribed setback and located forward of the line of the dwelling;*
    - *The carport will be inconsistent with the existing and proposed streetscape character; and*
    - *The carport will detract from the outlook from surrounding properties due to the building's massing and scale.*
  2. *The Development does not comply with Specific Outcome 08 (Parking and Access) Code 8.5 Detached Housing Code of the Caloundra City Plan 2004 as the existing complying off-street carparking is proposed to be converted to habitable rooms.*
  3. *The allotment is not constrained and has:*
    - *Complying off-street parking in accordance with the Code; and*
    - *The location of the existing buildings on site are such that an alternative design is available to both comply with the Planning Scheme provisions and to have covered car parking spaces which do not unduly impact upon the streetscape.*

### **Reasons for the Decision**

- The open nature of the proposed carport is such that it will not present as a bulky structure and will not, in the Tribunals opinion, have a dominating appearance on, and will not detract from, the existing or proposed streetscape.
- While there are potential alternatives available on the site, that is not the application at hand and those alternatives are likely to involve considerable inconvenience to the landowners/occupiers in achieving ingress and (especially) egress to and from the property.
- The letters of support from affected neighbours suggests that any impacts on their outlook and their impression of the streetscape are not likely to be negative.
- The conditions imposed as part of this decision will ensure that the structure remains unobtrusive and continues to have minimal, if any, impacts on the streetscape.
- It is clear that Council's primary concerns are the effect on the streetscape, and that there are alternatives available on site for off-street parking.

Based on the assessment of these facts, it is the Tribunals decision that the appeal is upheld. Council's decision to refuse the preliminary development application for building works - siting variation - is set aside and the application is approved, subject to conditions.

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**Chris Schomburgk**  
**Building and Development Tribunal Chair**  
**Date: 17 December 2008**

## **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 Infrastructure and Planning  
PO Box 15009  
CITY EAST QLD 4002  
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