



**Building and Development Tribunals**

Queensland Government

Department of Local Government and Planning

**APPEAL**

*Integrated Planning Act 1997*

**File No. 3/05/073**

## **BUILDING AND DEVELOPMENT TRIBUNAL - DECISION**

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**Assessment Manager:** Caloundra City Council

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

**Applicant:** *withheld*

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### **Nature of Appeal**

Appeal under Section 4.2.9 of the Integrated Planning Act 1997 against the decision of the Caloundra City Council in relation to not granting an approval for the siting of a proposed new carport to be located within the prescribed boundary setback from the front boundary alignment, on land described as Lot *withheld*, and situated at “the subject site”.

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**Date and Place of Hearing:** 9.00 am, 21 November, 2005  
At the office of the Department of Local Government, Planning Sport and Recreation, Level 25, 41 George Street, Brisbane.

**Tribunal:** Georgina J Rogers

**Present:** *Applicant* – (Owner)

**Absent:** Caloundra City Council representative

### **Decision**

The decision of the Caloundra City Council as contained in its letter dated 13 October 2005 (Reference: BDD-03036 Richard Prout) Siting Variation Advice – BDD-3-036 condition (1) advising variation approval for the carport to have a setback of 1m from Campbell Street road frontage is **set aside** with the following condition:

1. The proposed carport is to be constructed and located with a minimum 50mm setback from the front boundary alignment to the outermost projection of the carport.

## **Background**

The meeting was not commissioned to allow for an on site visit, however photographic evidence was provided by the applicant. The Caloundra City Council were not represented at the meeting and advised they would provide a written submission after the meeting.

From the photographic and verbal report it would appear that there is an existing dwelling on site. Further photographic evidence was provided by the applicant of similar carports allegedly constructed recently within a three block distance of this property. From the photographs it would appear the construction of a carport to the front boundary alignment is a regular occurrence.

The site appears to be regular in shape, and is a corner lot located on the corner of *withheld* and *withheld* Streets, *withheld*. The site has a 40.233m length and 10.058 depth of site facing *withheld* Street. The new carport is proposed to be located well away from the corner of the site on the 40.233m length of the site, being approximately 6.92m from the side boundary alignment and therefore approximately 29.713m from the street corner.

The proposed carport incorporates an external ensuite which is desirable for the use of the residents as the site is adjacent to the beach.

Due to the depth of the site being only 10.058 there are constraints for access around the site with the proposed depth of the combined carport and ensuite being approximately 7.84m overall.

## **Material Considered**

1. Appeal documentation including drawings indicating the location of the proposed carport, dwelling and on site structures in relation to the front and side boundary alignments;
2. Site plan, plans and elevations of the proposed carport and structures;
3. Photographic submission by applicant showing proposed location of carport;
4. Verbal submission by the applicant and reasons for location of the carport in it proposed location in relation to the *withheld* Street road boundary alignment;
5. Additional documentation received from the applicant after the meeting;
6. Correspondence from the Caloundra City Council dated 13 October 2005, not granting approval for the siting of the proposed carport within the required *withheld* Street road boundary setback;
7. Written submission by the Caloundra City Council outlining the Council's assessment of the application, dated 21 November 2005 and reasons for not allowing the carport to be constructed any closer than 1m from the front road boundary alignment;
8. The Standard Building Regulation 1993; and
9. The Queensland Development Code, Part 11.

## Findings of Fact

I made the following findings of fact:

1. The Caloundra City Council wrote to the applicant on 13 October 2005 (Reference: BDD-03036 Richard Prout) Siting Variation Advice – BDD-3-036 condition (1) not allowing the relaxation for the proposed carport to be constructed within 1.0m *withheld* Street road boundary setback.
2. No site visit was undertaken during the tribunal; however from the plans provided, the following was able to be determined. The site appears from documentation to be regular in shape and has a site area of approximately 404sq.m. The site is located on the corner of *withheld* and *withheld* Streets. *withheld* Street has a frontage of approximately 40.233m and *withheld* Street has a frontage of approximately 10.058m. The site consists of one lot and the existing dwelling has been constructed parallel to the road alignments.
3. The plans indicate that the proposed carport would be constructed in line with the Campbell Street road boundary alignment.
4. From the additional documentation received from the applicant it is noted that the pedestrian footpath width in *withheld* Street is 6.2m wide.
5. The Caloundra City Council has advised that two off street carparking spaces are to be provided on site, one of this is to be covered. There is an existing carport on site between the existing workshop and the northern alignment. This location would provide the second carparking space. The Council has advised that other similar structures within the *withheld* Street generally comply with the required Codes being Part 11 of the QDC and the Caloundra City Plan 2004 Detached Housing Code.
6. The Caloundra City Council has expressed concern that as there is an existing workshop between the existing carport and proposed new carport there will be two separate driveways on to the site within approximately 5m of each other. As there does not appear to be an alternate location available on site to allow for a double carport which would allow for one double width driveway, this would appear to be the most acceptable outcome.
7. No substantiative evidence in the form of plans or photographs, has been provided by the Caloundra City Council to be able to assess the surrounding neighbourhood and determine whether the proposed carport is
  - substantially inconsistent with the existing and proposed streetscape;
  - the proposed structure will detract the outlook from surrounding properties;
  - the proposed structure will cause an over development of the site and an overcrowding of the street frontage.

## Reasons for the Decision

1. Part 11 of the QDC, sets out Performance Criteria (P1-P8) in relation to siting requirements which a local government must consider and be satisfied that the application meets the intent of each criteria for that application, and that the development does not unduly conflict with the intent of each of the Performance Criteria:

***P1 The Location of a building or structure facilitates an acceptable streetscape, appropriate for –***

***(a) the bulk of the building or structure***

From the plans and photographic evidence provided by the applicant it would appear that the width of the proposed carport which is shown to be located on the *withheld* Street road boundary alignment would be 3.6m overall. The overall height of the proposed carport appears to be consistent with the existing structures on site.

The proposed carport does not appear from the above evidence provided, to present a dominant building bulk to the existing character of the site, nor from the photographic evidence provided, appear to be uncharacteristic to similar structures constructed within the neighbourhood.

It would therefore appear that the proposed location of the carport would facilitate an acceptable streetscape which is appropriate for the bulk of the structure.

***(b) the road boundary setbacks of neighbouring buildings or structure***

The proposed carport appears, from the photographic evidence given, to be of a similar setback from the *withheld* Street front road boundary to similar structures, namely carports, within the neighbourhood. There appears to be no evidence that the structure would have an unusual or adverse impact on the neighbourhood in this regard.

***(c) the outlook and view of neighbouring residents***

No information has been provided from the adjoining neighbours as to whether there will be an adverse impact on their outlook or view. However, it is noted that the proposed carport is setback significantly from the northern side boundary alignment in *withheld* Street and is of a comparative height to the existing structures on site. Therefore it would appear that the outlook from the neighbouring residents would not be adversely affected beyond what currently exists on site.

***(d) nuisance and safety of public***

The proposed carport would not appear to significantly impact on the safety of the public as it is proposed to be located within the existing property. The proposed carport is to be located well setback from the side boundary alignment and corner of *withheld* and *withheld* Streets.

***P2 Buildings and structures–***

***(a) provide adequate daylight and ventilation to habitable rooms***

The location of the garages appears to have minimal impact on the extent of daylight and ventilation to habitable rooms within the existing dwelling, based on the evidence provided.

***(b) allow adequate light and ventilation to habitable rooms of buildings on adjoining lots***

The location of the garages would appear to have minimal impact on the extent of daylight and ventilation to habitable rooms of neighbourhood dwellings, based on the evidence provided.

***P3 Adequate open space is provided for recreation, service facilities and landscaping–***

The location of the carport in the proposed location will allow for greater open space for recreation, service facilities and landscaping on site. To setback the carport further away from the road boundary alignment in *withheld* Street would greatly diminish the usable open and access space available on site with the only significant impact being a greater amount of driveway.

***P4 The height of a building is not to unduly–***

***(a) overshadow adjoining houses***

The carport would not appear to unduly overshadow the adjoining houses, as it is located adjacent to an existing workshop on site. To locate the carport away from the rear western boundary will further diminish any impact from overshadowing which may have occurred over that adjoining property.

***(b) obstruct the outlook from adjoining lots***

The carport would not appear to significantly impact upon the outlook of the adjoining allotments as it has been setback from the side boundary alignment to the south of the existing workshop on site.

***P5 Buildings are sited and designed to provide adequate visual privacy for neighbours–***

The carport would not overlook the adjoining neighbour and therefore will not significantly affect the privacy of the neighbourhood.

***P6 The location of a building or structure facilitates normal building maintenance–***

The carport will not impact on the access for normal building maintenance onto the site as access is able to be achieved between the workshop and the northern side boundary alignment. Further access is able to be achieved, should it be required from the southern road boundary alignment of *withheld* Street.

***P7 The size and location of structures on corner sites provide for adequate sight lines–***

This carport is to be located away from the corner of *withheld* and *withheld* Streets and therefore will not impact upon sight lines of others. The location of the carport away from the northern side boundary alignment will not impact on site traffic vision.

***P8 Sufficient space for on-site carparking to satisfy the projected needs of residents and visitors, appropriate for–***

***(a) the availability of public transport***

The availability of public transport is not relevant to this hearing, as provision has been made for required on-site carparking.

***(b) the availability of on-street parking***

The availability of on-street parking is not relevant to this hearing.

***(c) the desirability of on-street parking in respect to the streetscape***

On-street car parking will not be affected by the proposed development.

***(d) the residents likelihood to have or need a vehicle***

The proposed development includes the provision for two on-site carparks.

2. Based on the above facts it is considered the appeal is proven.

3. QDC provides Performance Criteria and some Acceptable Solutions. The Acceptable Solutions are guidelines to provide reasonable and achievable outcomes. The local government is in a position to vary the Acceptable Solutions in relation to an application for siting requirements and to assess the application based on its merits.
4. In assessing the criteria from this part of the Code in relation to the proposed carport advised to be setback 50mm from the *withheld* Street, road boundary alignment, the Tribunal found that there were grounds to allow for the construction of the carport in the location shown.
5. An assessment of Part 11 of the QDC did not identify any valid reason for refusing the application for the proposed carport to be setback 50mm from the on the side boundary alignment.

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**GEORGINA J ROGERS**  
**Building and Development**  
**Tribunal Referee**  
**Date: 8 December 2005**

## **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  
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