



## Building and Development Tribunals – Decision

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### *Integrated Planning Act 1997*

<b>Appeal Number:</b>	<b>3—09—005</b>
<b>Applicant:</b>	Craig McCulloch
<b>Assessment Manager:</b>	Andrew Stewart for and on behalf of Caloundra Building Approvals
<b>Concurrence Agency:</b> (if applicable)	Sunshine Coast Regional Council – 'Council'
<b>Site Address:</b>	9 Arunta Street, Buddina and described as Lot 198 on B92934 – the subject site

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### **Appeal**

Appeal under Section 4.2.9 of the *Integrated Planning Act 1997* (IPA) against the decision notice issued by the Caloundra Building Approvals to refuse a Building Development Application relating to a proposed carport within the front boundary setback of the subject site. The decision was based on a concurrence agency response from Council.

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<b>Date of hearing:</b>	11:00am – Tuesday 10 February 2009
<b>Place of hearing:</b>	The subject site
<b>Tribunal:</b>	Mr Chris Schomburgk – Chair
<b>Present:</b>	Mr Craig McCulloch – Applicant Mr Mark Ward – Builder for the Applicant Mr Richard Prout – Sunshine Coast Regional Council Representative

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### **Decision:**

The Tribunal, in accordance with section 4.2.34 (2) (c) **sets aside** the decision of the Caloundra Building Approvals to refuse the Building Development Application for a Carport within the front boundary setback; and replaces it with the following decision:-

The Tribunal, in accordance with section 4.2.34 (1), **directs** the Assessment Manager to reassess the Building Development Application subject to compliance with the following conditions:-

1. The carport roof has colours to match the house;
2. The applicant is to maintain the front and side boundary wall in good condition including the rendered and painted exterior of the wall;
3. The carport is to remain open-fronted at all times – no roll-a-door or similar door/gate is to be installed other than the proposed front boundary sliding gate.
4. All other relevant building assessment provisions applicable to the building development application.

## Material Considered

The material considered in arriving at this decision comprises:

- 'Form 10 – Notice of Appeal', grounds for appeal , supporting plans and documentation received by the Registrar on 19 January 2009;
- 'Form 8 – Notice of Election' from Council, received 23 January 2009;
- Decision Notice from Caloundra Building Approvals, dated 1 January 2009;
- Council's Concurrence Agency Response, dated 5 December 2008;
- Verbal and written submissions from the parties at the hearing;
- The Caloundra City Planning Scheme 2004, in particular the Detached Housing Code, Specific Outcomes O7 and O8;
- The Queensland Development Code ("QDC") – Part MP1.2; and
- The IPA;
- The *Integrated Planning Regulation 1998*.

## Findings of Fact

The Tribunal makes the following findings of fact:

- The subject site is the subject of a substantial renovation of an older house. The renovations are to include the conversion of the existing single garage (under the main roof) to a bedroom, as well as the addition of two new rooms on the western side of the existing house. The proposed renovation includes the construction of a new carport within the front boundary setback, which is the subject of this appeal.
- The subject site is generally flat and is "fan-shaped", meaning that it is narrow at its street frontage (14.16m) but approximately 26.0m at its rear boundary. The existing building is located 6.3m from the front (street) boundary.
- The proposal seeks to construct an open carport between the existing house and the front boundary, with vehicular side access from the existing driveway, which would allow vehicles to enter and exit the site in a forward gear.
- The subject locality is one where a number of homes are under major renovation. At present, there are various high block walls along front boundaries, as well as carports (and some garages) within and up the front boundary, within the immediate locality.
- Arunta Street is not an homogenous single detached housing street. Adjacent to the subject site is a duplex, while to the north-west are more duplexes and some Housing Commission units and a two-storey ambulance station, some of which back onto the major Kawana Shopping World retail complex. The built form does, however, change to more single detached housing as one moves eastward away from the shopping complex.
- The applicants, through their building certifier, applied for a variation to the siting requirement to allow the proposed carport. Council was a Concurrence Agency for the variation and directed the certifier to refuse the application by Concurrence Agency Response dated 5 December 2008.
- Council's direction to refuse the application is based on alleged non-compliance with provisions of the Planning Scheme for the former Caloundra City Council, in particular Code 8.5 Detached Housing Code, and more particularly Specific Outcomes O7 and O8 of that Code.
- The specific provisions of the Code relied upon by the Council and the basis for the Council's refusal are:-

### **S07**

- a) *The proposed carport will have a dominating appearance when viewed from the street given that the building is (to be) located within the prescribed setback and located forward of the line of the dwelling;*
- b) *The carport will be inconsistent with the existing and proposed streetscape character; and*
- c) *The carport will detract the outlook (sic) from surrounding properties due to the building's massing and scale.*

### **S08**

*As the existing complying off-street car parking is proposed to be converted to habitable rooms. and*

*The allotment is not constrained and has:*

- a) *complying off-street parking in accordance with the Code; and*
- b) *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.*

- The subject site is at a bend in the road such that the impact of the structure will be visible for only a short time for a passing motorist or pedestrian.
- The applicant provided statements of support from the two most affected neighbours – one adjacent to the western boundary and the other directly across the street.
- The proposed carport is to be located behind a 1800mm high rendered block wall proposed to be built along the front (street) boundary. It is acknowledged by all parties that such a wall does not require separate approval. As such, the parties acknowledged that it is merely the roof over the carport that is in issue in this appeal.
- The carport roof is to be constructed of colourbond material coloured to suit the existing house roof (which is tiled). The carport is to be open on its eastern side (the entry side) and is to be accessed via the existing driveway through a proposed sliding gate. The layout promotes and allows vehicular entry and exit from the site in a forward gear.
- The Council has suggested alternative locations for the carport but, while they were not examined in the most minute detail, appear to create some difficulty in entering and exiting in a forward gear. The applicant advised that he has considered those alternatives and has rejected them as being unsuitable and creating other design issues.

Based on an assessment of these facts, it is the Tribunal's decision that the decision notice being appealed against be **set aside and direct the assessment manager to reassess the building development application subject to compliance with the following conditions:**

1. The carport roof has colours to match the house;
2. The applicant is to maintain the front and side boundary wall in good condition including the rendered and painted exterior of the wall;
3. The carport is to remain open-fronted at all times – no roll-a-door or similar door/gate is to be installed other than the proposed front boundary sliding gate.

### **Reasons for the Decision**

- The proposed carport will be located behind a proposed 1800mm high block wall, such that only the roof of the carport will be visible to passers-by.
- The proposal will have minimal if any visual impact on neighbours, the most potentially-affected of whom have given their written support for the proposal;

- The subject site is within a locality that is of a mixed built form, from which the subject proposal will not detract;
- Alternative designs do not appear to be practical and do not offer the same level of safety with respect to vehicles being able to enter and exit the site in a forward gear;
- The fact that the proposal is changing the existing off-street parking is not a valid reason to refuse the application – indeed, that is the very purpose of the application.
- The proposal satisfies the Specific Outcomes of the relevant Planning Scheme Code.

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**Chris Schomburgk**  
**Building and Development Tribunal Chair**  
**Date: 24 February 2009**

## **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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