



APPEAL
Integrated Planning Act 1997

BUILDING AND DEVELOPMENT TRIBUNAL - DECISION

Assessment Manager: Caloundra City Council

Site Address: *withheld*—‘the subject site’

Applicant: *withheld*

Nature of Appeal

Appeal against the decision of Caloundra City Council dated 15 November 2007 (Ref No BDD-04071) to refuse a Preliminary Development Application for Building Works, namely a proposed carport at “the subject site”.

Date and Place of Hearing: 10.00 am Monday 21 January 2008 at “the subject site”

Tribunal: Mr L F Blumkie Chairperson
Mr John Gillespie General Referee

Present: Agent for the Applicant
Mr Ian Simpson Caloundra City Council Representative

Decision

The Tribunal, in accordance with section 4.2.34 (2) (b) of the *Integrated Planning Act 1997* (IPA), **changes** the decision of Caloundra City Council, dated 15 November 2007, **by directing the Local Government to approve the Preliminary Application for Building Works; subject to the appellant complying with following:-**

1. The carport must be moved and a Development Permit obtained for the carport in the new position; and
2. The relocation of the carport is completed within 3 months of the date of this determination, unless otherwise extended by the Caloundra City Council before the expiry date and
3. The development permit cannot be approved unless:-
 - (a) The carport is setback from the front alignment a minimum distance of 2500mm.
 - (b) The carport remains the same distance or greater from the side boundary.
 - (c) The existing design, heights, colour scheme and materials of the carport remain unaltered.

Background

The property is a 604m² residential block, and is located within a Low Density Precinct as per the Caloundra City Plan 2004.

The site is located on a bend with a nearby commercial shopping centre visible from the site.

The front alignment (17.5m) has a rendered 2m high solid block fence and includes a 6m wide automatic sliding gate also 2m high.

A single storey, gable and hip roofed dwelling is located on the property approximately 6m from the front alignment and positioned approximately 7m from the northern boundary.

An application was made to Council on the 12 October 2003 for a boundary fence to exceed the maximum 2m height. Council refused the application on the 4 November 2003.

A 6m x 7m carport has been erected (without approval) within the 6m street set back and 150mm from the northern boundary - the subject of this appeal.

Council became aware of the illegal carport and forwarded correspondence to the owner advising of the illegal structure in late October 2007.

The owner made application to Council for a boundary relaxation on the 9 November 2007.

Council refused the application on the 15 November 2007 and advised the reasons for the refusal as follows:-

- 1 *There are no sufficient or substantial reasons for Council to grant a siting modification for this proposal;*
- 2 *The Development does not comply with 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 be inconsistent with the existing and proposed street-scape;*
 - (b) *The proposed structure will detract the outlook from surrounding properties;*
 - (c) *The allotment has complying off street parking in accordance with Acceptable Solutions A8 of part 12;*
 - (d) *The location of existing buildings on site are such that an alternative design is available to both comply with the Planning Scheme provisions and to have covered parking spaces which do not unduly impact upon the street-scape;*
- 3 *The Development does not comply with Specific Outcome 08 (Garages and Carports) Code 8.5 Detached Houses Code of the Caloundra City Plan 2004. As the proposed garage will have a dominating appearance on the street given that the building is located within the prescribed setback and located forward of the line of the dwelling.*

An appeal was lodged with the Registrar on the 11 December 2007.

The Applicant identified a number of properties within the neighbourhood which had carports erected within the 6m front boundary clearance.

Material Considered

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

1. Caloundra City Council refusal of the application dated 15 November 2007;
2. 'Form 10 – Notice of Appeal' lodged with the Registrar on 11 December 2007 including grounds for appeal and correspondence accompanying the appeal;
3. Photographs of the subject property and existing neighbourhood street-scape;
4. Photographs of existing carports built within the 6m setback within the neighbourhood;
5. Verbal submissions from the applicant
6. Verbal submissions from Mr Ian Simpson;
7. Written Submission from Caloundra City Council dated 17 January 2008 provided at the hearing;
8. Plan sheets 1 and 2 of the existing carport;
9. Council response on nominated structures erected within the street setback within the neighbourhood;
10. CALMAP of the site;
11. Detached House Code of the Caloundra City Plan 2004 - as amended 27 July 2007;
12. The *Building Act 1975* (BA);
13. The *Building Regulation 2006*;
14. The Queensland Development Code (QDC) Part 12;
15. The *Integrated Planning Act 1997*; and
16. The Caloundra City Council planning scheme.

Findings of Fact

The carport has been erected within the 6m setback without first obtaining a Development Approval. It is 6900mm in width and is 6050mm deep.

The carport is located 200mm in from the front alignment and 150mm from the northern boundary. It is 2400mm high on the left-hand side and 2600mm high on the right-hand side. That is, it projects above the fence and gate 400mm on the left side and 600mm on the right hand side.

The side wall on the northern boundary is enclosed below the roof line and the neighbour has advised the owner that they have no objection to the carport and in fact like the appearance created by the carport on the boundary line.

The site is on the edge of the residential zone and the streetscape when viewed from *withheld* looking north, is dominated by the commercial zone shopping centre.

The subject site is not visible when approaching *withheld* from *withheld* due to its location on the bend in *withheld*. Hence, the carport has limited effect on the streetscape when viewed on approaching the south-east.

The Council representative advised, at Council Chambers after the hearing, that of all the properties identified at the hearing with carports within the 6m setback, none had been given a relaxation for setback clearances after the amended Town Plan came into effect after on the 29 September 2004.

The existing 2m high fence and gate to the front alignment are an 'as of right' and are not subject to this appeal.

Reasons for the Decision

The Caloundra City Council in their reasons for the decision state under

A Item 1 :-

"There are no sufficient or substantial reasons for Council to grant a siting modification for this proposal".

The Tribunal disagrees with Council and believes there are sufficient and substantial reasons to grant a siting modification for the following reasons:-

- The site is on the edge of the residential zone and in fact is almost opposite the commercial shopping centre, which has a dominating effect on the street-scape when the subject site is viewed from the southern end of *withheld*.
- The subject site is not visible when approaching *withheld* from *withheld* due to its location on the bend in the *withheld*. Hence, the carport has limited effect on the streetscape when viewed approaching to south-east.

B Item 2

"The Development does not comply with 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 be inconsistent with the existing and proposed streetscape;*
- (b) The proposed structure will detract the outlook from surrounding properties;*
- (c) The allotment has complying off street parking in accordance with Acceptable Solutions A8 of part 12;*
- (d) The location of existing buildings on site are such that an alternative design is available to both comply with the Planning Scheme provisions and to have covered parking spaces which do not unduly impact upon the streetscape".*

The Tribunal believes Performance Criteria 1 of Part 12 calls for the building to *"facilitate an acceptable street-scape"* appropriate for sub headings (a) to (d).

In relation to (a) the existing complying fence and gate being 2m in height and for the full width of the front boundary, is the main feature visible in the street-scape. The existing carport projecting above the fence and gate some 400mm to 600mm has a limited effect on the street-scape and the Tribunal believes this could be reduced and be acceptable, if the carport was sited 2500mm back from the front alignment. This would make the structure consistent with the existing and proposed street-scape.

In relation to (b) the adjoining northern neighbour, who would be most effected by the proposal, has advised the owner that he has no objection to the proposal. Because of the site location and the bend in *withheld*, the Tribunal believes, if set back 2500mm, it will not unduly detract the outlook from surrounding properties.

In relation to (c) the Tribunal believes it is not logical to say that because the allotment has complying off street parking in accordance with Acceptable Solutions A8 of part 12, then the proposal does not facilitate an acceptable streetscape. Granting a relaxation to allow a 2500mm setback also provides for complying parking in accordance with A8 and creates an acceptable streetscape.

In relation to (d) - Yes, the Tribunal agrees, however the owner would prefer not to have the carport in front of the bedroom window. He believes it would reduce light and ventilation to the room. The Tribunal believes it is possible to comply with the Planning Scheme provisions (Refer comments under item 3 below) and to achieve covered parking spaces, which do not unduly impact upon the street-scape with a relaxation of the setback to 2500mm.

C Item 3

"The Development does not comply with Specific Outcome 08 (Garages and Carports) Code 8.5 Detached Houses Code of the Caloundra City Plan 2004. As the proposed garage will have a dominating appearance on the street given that the building is located within the prescribed setback and located forward of the line of the dwelling."

The Detached Houses Code of the Caloundra City Plan under 8.5.1 - Overall Outcomes, calls for under "(c) detached houses and associated buildings are sited and designed to protect residential amenity and maintain streetscape character."

Specific outcomes for Garages and Carports are included in 07 not 08 as referred to in the Council reasons.

Sub clause 07 calls for *Garages and carports not to dominate the streetscapeetc.*

The Tribunal believes the carport, when setback 2500mm (less than 50% of the frontage) provided the existing design, heights, colour scheme and materials are maintained, will **not** dominate the streetscape and will preserve the amenity of adjacent land and dwellings having regard to;

- building character and appearance;
- views and vistas; and
- building massing and scale as seen from neighbouring premises.

Leo F Blumkie
Building and Development Tribunal Chairperson
Date: 23 January 2008

Appeal Rights

Section 4.1.37. of the IPA 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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