



**APPEAL**  
*Integrated Planning Act 1997*

**File No. 03-06-054**

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**BUILDING AND DEVELOPMENT TRIBUNAL – DECISION**

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**Assessment Manager:** **Caloundra City Council**

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

**Applicant:** *withheld*

**Nature of Appeal**

Appeal under Section 4.2.29 of the *Integrated Planning Act 1997* against the decision of the Caloundra City Council to refuse an application for siting variation on land described as “the subject site”.

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**Date and Place of Hearing:** 9:00am on Monday 26<sup>th</sup> June 2006 at “the subject site”

**Tribunal:** Mr Chris Schomburgk

**Present:** Applicant;  
Architect for the applicant; and  
Mr Richard Prout – Caloundra City Council.

**Decision:**

The decision of the Caloundra City Council as contained in its written Decision Notice dated 16<sup>th</sup> May 2006, to refuse an application for relaxation of the boundary setback, is **set aside** and **the application is approved**, subject to the following conditions:

- 1. The front of the proposed carport is to be no closer than 4.5m from the front boundary alignment.*
- 2. The side of the proposed carport is to be no closer than 0.5m from the western boundary, unless appropriate fire rating is provided.*

**Material Considered**

The material considered in arriving at this decision comprises:

- Form 10 – Building and Development Tribunals Appeal Notice and supporting plans and documentation;
- A written statement from the Council, presented at the hearing;
- Written letters of support from one adjoining and one nearby neighbour, presented at the hearing;
- The relevant provisions of the 2004 Town Planning Scheme for Caloundra City Council;

- Council's Decision Notice dated 16<sup>th</sup> May 2006;
- The relevant provisions of the Queensland Development Code; and
- The *Integrated Planning Act 1997*.

### **Findings of Fact**

I make the following findings of fact:

- The site comprises *withheld*, is located at “the subject site”, and contains an area of 546m<sup>2</sup>.
- The site currently contains an older style house (formerly a duplex, approximately 20 years old) which is in the process of being modified and renovated to include, of relevance, the conversion of the existing garage and carport into a habitable room and the proposed addition of a new carport within the front boundary setback, built to the front boundary.
- *Withheld* in this part, is a short street and comprises predominantly older homes, but there is evidence of recent renovations to many homes to a higher standard. In the street, there is a higher-than-normal occurrence of carports or garages built close to, or up to, the front boundary, as evidenced from the photographs provided by the applicant. The properties to the immediate west (no's 22, 24 and 26) each have a carport with roller or panel-lift doors built to the front boundary, and a similar structure exists across the road from the subject site at no. 35. Many other carports or garages in the immediate locality are built to within 2.5 or 4.5m (approximately) of their front boundary.
- The applicant has obtained the written support for the proposed carport from the adjoining neighbours to the west (no. 26) and directly across the street (no. 35), being those who are most likely to be affected. The adjoining property to the west has erected a solid brick wall approximately 2.5m high on the common boundary with the subject site, such that any impacts from the proposal on that site's privacy will be negligible, whether in the location as proposed or as suggested by the Council (see below).
- The subject application seeks to provide a single width, tandem length carport built to the front boundary of the allotment, together with other improvements to the frontage of the property including fencing, a formal covered pedestrian entry and landscaping. There was no suggestion that the renovations as a whole (notwithstanding the setback issue) would be other than an improvement to the existing dwelling and to the streetscape. The applicant, through her architect, has sought to minimise the visual impact of the carport by keeping it to a single car width and seeking an open-sided structure with a roof line that is in keeping with the roof line of the existing building.
- Other improvements to the frontage of the property (that are not the subject of this appeal) including an awning (verandah) and a covered formal entry, are set back 4.5m from the front boundary.
- At the hearing, the applicant explained that the primary purpose of the renovations was to accommodate the applicant's aged mother in a separate living area of the house, but with easy, covered access into the house from the carport.
- The Council's grounds of refusal include the impact on the streetscape and “overcrowding of the street frontage”. As noted above, there are currently many existing structures in *withheld* built within the front setback area, although most (but not all) were approved under a different approval regime. Notwithstanding the age of those approvals, they do exist and most are of a much higher quality and visual appearance than the non-renovated homes in the locality. Whether they enhance or detract from the streetscape is a matter of subjective opinion.

- The Council also had concerns over the practical width of part of the carport, which appears from the plans to narrow in part to about 2.4m. This could be overcome by widening the carport to be within 0.5m of the side boundary, as opposed to the current proposal of 0.9m from that boundary.
- Given the low-volume traffic nature of this part of the street, visibility and safety are less problematic than if the site were in a busy through street.
- At the hearing, alternatives to the proposal were discussed. Mr Prout for the Council helpfully offered that shifting the proposed carport back to a setback of 4.5m would be acceptable to the Council, as amendments to the Planning Scheme were imminent that would allow this setback, as opposed to the current 6.0m requirement. This has the effect of “sliding” the proposed carport back 4.5m from its proposed position, which would then place a part of the carport alongside an existing bedroom. This was discussed on site and no problems with sunlight access were raised with this, given the open-ended and open-sided nature of the carport. This would also allow, in practice, a third vehicle to park on the site within the property boundary if required.
- The applicant and her architect took time to consider this suggestion and have since verbally advised me that it would be, while not their preferred outcome, acceptable to them.
- This outcome will achieve a degree of articulation in the streetscape and, together with the other frontage improvements being proposed to this site, will add to, rather than detract from, the quality of the streetscape in this locality, in my opinion.

Based on my assessment of these facts, and the applicant’s agreement to the compromise as offered by the Council, it is my decision that **the appeal is upheld. Council’s decision** to approve the Application for Building Works - siting variation - is **set aside** and **the application is approved, with conditions.**

3. **The front of the proposed carport is to be no closer than 4.5m from the front boundary alignment.**
4. **The side of the proposed carport is to be no closer than 0.5m from the western boundary, unless appropriate fire rating is provided.**

#### **Reasons for the Decision**

- The proposal, as amended by these Conditions, will not detract from the amenity or character of the streetscape, nor will it have any negative impacts on privacy or access to sunlight or breezes for any other residents in the locality.
- The proposal will, as amended, satisfy the relevant Performance Criteria of part of Part 12 of the Queensland Development Code.

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**Chris Schomburgk**  
**Building and Development Tribunal General Referee**  
**Date: 26<sup>th</sup> June 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:

The Registrar of Building and Development Tribunals  
Building Codes Queensland  
Department of Local Government and Planning  
PO Box 15031  
CITY EAST QLD 4002  
**Telephone (07) 3237 0403: Facsimile (07) 32371248**