



**APPEAL**  
*Integrated Planning Act 1997*

**File No. 03/08/001**

## **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 13 December 2007 (Ref No BDD-04116) to refuse a Preliminary Development Application for Building Works, namely a carport at “the subject site”.

**Date and Place of Hearing:** 10.00 am Friday 22 February 2008 at the Office of Caloundra City Council, 1 Omrah Avenue, Caloundra

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

**Present:** 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 13 December 2007, by directing the Local Government to approve the Preliminary Application for Building Works subject to the appellant complying with the following:

1. The existing carport must be lowered so that the maximum height above the concrete slab to the carport is 2700mm.
2. The panel lift door to the front elevation is removed and, if required to be enclosed for security reasons, is enclosed with a material which has voids of at least 50% when viewed from the horizontal.
3. The corrugated iron sheeting to both side elevations is removed and is replaced with timber battens matching the timber shades to the windows on the front of the house. The battens must be spaced so that voids make up 50% of the enclosure when viewed from the horizontal.
4. A Development Permit is obtained for the carport.
5. The above work is completed within three months of the date of this determination, unless otherwise extended by the Caloundra City Council before the expiry date.

## Background

The property is a 600m<sup>2</sup> residential block, and is located within a Low Density Precinct as per the Caloundra City Plan 2004.

The site is located in a short cul-de sac which has nine residential properties.

The existing single storey, slab on ground house was built in approximately 1982 and at the time included a single garage as part of the house.

The current owner purchased the house in late 1993 and was aware the single garage had been converted to habitable living space without a building approval.

Around Easter 2005 the appellant had a double garage (5600mm x 5350mm wide) erected within the front boundary setback by a licensed carpenter. No Development Permit was obtained for the garage. The garage is set back approximately 1200mm from the front alignment.

Council became aware of the illegal carport and forwarded correspondence to the owner advising of the illegal structure on 5 November 2007.

The owner made application to Council for a "Relaxation for Carport" boundary relaxation on 5 December 2007.

Council refused the application on 13 December 2007 and advised the reasons for the refusal as follows:-

1. *The Development does not comply with Performance Criteria 1 of Part 12 (Design and Siting Standards for Single Detached Housing on Lot 450m<sup>2</sup> and over) of the Queensland Development Code for the following:-*
  - (a) *The building is inconsistent with the existing streetscape;*
  - (b) *The building detracts the outlook from surrounding properties;*
  - (c) *The building causes an over development of the site and an overcrowding of the street frontage;*
  - (d) *The location of the existing buildings onsite 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.*
2. *The Development does not comply with Specific Outcome 08 (parking and access) Code 8.5 Detached Houses Code of the Caloundra City Plan 2004 as:-*
  - (a) *The original complying off-street car parking has been converted (without a building approval having been obtained) to habitable rooms;*
  - (b) *The dimensions of the proposed carport do not allow for two off-street parking spaces as required by the code.*
3. *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 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 15 January 2008.

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 correspondence dated 5 November 2007 advising of the “Unauthorised Building Works”.
2. Caloundra City Council refusal of the application dated 13 December 2007.
3. ‘Form 10 – Notice of Appeal’ lodged with the Registrar on 15 January 2008 including grounds for appeal and correspondence accompanying the appeal.
4. Photographs of the subject property and existing neighbourhood streetscape.
5. Photographs of existing carports built within the 6m setback within the neighbourhood.
6. Verbal submissions from the Applicant.
7. Verbal submissions from Council.
8. Council response on nominated structures erected within the street setback within the neighbourhood.
9. Calmaps of the neighbourhood.
10. Plan sheets 1 and 2 Job Number 2007/128 of the existing carport.
11. Detached House Code of the Caloundra City Plan 2004 - as amended 27 July 2007.
12. The *Building Act 1975*.
13. The *Building Regulation 2006*.
14. The Queensland Development Code Part 12.
15. The *Integrated Planning Act 1997*.
16. The Caloundra City Council planning scheme.

### **Findings of Fact**

The structure erected within the front setback is enclosed on the front with a solid panel lift door and on both sides with corrugated iron. Hence, under the Definitions in Part 12 of the Queensland Development Code, it is a class 10 – garage.

It is approximately 5400mm in width and 5600mm deep. It has a flat roof (small curve) falling to a gutter on each side. Stormwater is connected to the curb and channel.

The garage has been erected within the 6m setback without first obtaining a Development Approval. It is approximately 5400mm in width and 5600mm deep.

The carport is located approximately 1200mm in from the front alignment and approximately 100mm from the Western side boundary. It is 3050mm above the concrete garage slab at the highest point.

The immediate neighbour on the western side had advised in writing they have no objection to the existing garage.

The existing garage is barely visible when approaching *withheld* from *withheld* due to dense landscaping. The view down *withheld* is not the typical long open residential streetscape.

*Withheld* street-scape is a short view with houses in the cul-de-sac being the main focal point, unlike typical residential streets where the street is the focal point.

The residential property adjoining the subject site on the corner of *withheld* has a single garage erected within the setback from *withheld*. This garage has a similar impact on the streetscape as the subject garage when viewed from the junction of *withheld*.

The Council representative advised at the hearing that the majority of properties identified in the appeal with carport/garages within the 6m setback, had been approved under previous legislation or had been erected prior to Council records being available.

None had been given a relaxation for setback clearances after the amended Town Plan came into effect after 29 September 2004.

A number of properties within the neighbourhood have a 2m high fence and gate to the front alignment which are an 'as of right'. These structures have a dominating effect on the streetscape.

The adjoining property on the corner of *withheld* has a 2m high timber fence which dominates the *withheld* streetscape.

## **Reasons for the Decision**

Caloundra City Council in its reasons for the decision state under:-

### Item 1

*The Development does not comply with Performance Criteria 1 of Part 12 (Design and Siting Standards for Single Detached Housing on Lot 450m<sup>2</sup> and over) of the Queensland Development Code for the following:-*

- (a) The building is inconsistent with the existing streetscape;*
- (b) The building detracts the outlook from surrounding properties;*
- (c) The building causes an over development of the site and an overcrowding of the street frontage;*
- (d) The location of the existing buildings onsite 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 Tribunal believes Performance Criteria 1 of Part 12 calls for the building to "*facilitate an acceptable streetscape*" appropriate for sub headings (a) to (d).

In relation to (a) the existing garage being 3050mm high and enclosed on the front and both sides is inconsistent with the existing streetscape. The majority of properties in *withheld* have no fence except the adjoining property to the East (2m high timber fence).

The subject property has substantial landscaping which is seen when the streetscape is viewed from the Eastern end of *withheld*. The houses in the cul-de-sac close-off the open streetscape. If the existing garage was converted to a carport (i.e. at least 50% open on all sides) it would not be inconsistent with the existing streetscape, especially after taking into account the adjoining 2m high fence, landscaping and houses in the cul-de-sac.

In relation to (b) the adjoining Western neighbour, who would be most affected by the proposal, has advised the owner in writing that they have no objection to the existing garage. The enclosed garage does detract the outlook from the adjoining property and would be less obstrusive if it were an open carport. This would allow some visibility as well as ventilation to the neighbour's courtyard.

In relation to (c), the Tribunal believes the enclosed garage being 3050mm high creates an unnecessary overcrowding of the site and does not need to be that high. A maximum height of 2700mm above the existing concrete slab is adequate and if the garage was converted to a carport (i.e.50% open on all sides) it would not unduly overcrowd the site.

In relation to (d) - Yes, the Tribunal agrees it would be possible to comply with the planning scheme, eg provide a complying driveway down the side of the house and construct a garage or carport in the rear of the property, however this would mean reversing back up the driveway or creating a turn around area at the rear of the property. This would mean almost the whole of the area to the rear of the house would be garage/driveway – not desirable.

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 streetscape with a conversion of the existing garage to a carport.

## Item 2

*The Development does not comply with Specific Outcome 08 (parking and accesss) Code 8.5 Detached Houses Code of the Caloundra City Plan 2004 as:-*

- (a) The original complying off-street car parking has been converted (without a building approval having been obtained) to habitable rooms;*
- (b) The dimensions of the proposed carport do not allow for two off street parking spaces as required by the code.*

The fact that the previous garage, forming part of the house, has been converted (without a building approval having been obtained) to habitable rooms, is not a reason to refuse the relaxation, as it is possible to comply with the City Plan Specific Outcome 08 with a driveway and garage/carport at the rear.

It is correct that the width of the proposed carport does not satisfy the code – it falls short by 150mm in width. The owner is satisfied the width is quite adequate for his needs.

### Item 3

*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 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."

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

The Tribunal believes the existing garage, when set back 1,200mm (and occupying less than 50% of the frontage); provided the garage:-

- is converted to an open carport;
- is reduced to a maximum height of 2,700mm above the existing concrete floor;
- maintains the existing design, colour scheme and materials;

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.

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**Leo F Blumkie**  
**Building and Development Tribunal Chairperson**  
**Date: 5 March 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  
**Telephone (07) 3237 0403 Facsimile (07) 3237 1248**