



APPEAL
Integrated Planning Act 1997

File No. 3-06-017

BUILDING AND DEVELOPMENT TRIBUNAL - DECISION

Assessment Manager: Caloundra City Council
Site Address: *withheld*-"the subject site"
Applicant: *withheld*

Nature of Appeal

Appeal under Section 20 of the *Building Act 1975* against the Caloundra City Council to issue a Siting Variation Advice – BDD-03148 dated 5 January 2006, refusing a siting variation application in relation to a dwelling situated at "the subject site". The Tribunal will address the siting issues only.

Date and Place of Hearing: 11.00am, Tuesday 14th March 2006 at "the subject site"

Tribunal: Raymond W Rooney
Present: Owner
Owner's Representatives
A. Stewart – Caloundra Building Approvals
D. Jones – Caloundra Building Approvals
R. Prout – Caloundra City Council
P. Ryan – Builder

Decision

Taking into consideration the relevant facts and circumstances, the Tribunal **sets aside** the Caloundra City Council's "Siting Variation Advice – BDD-03148" refusing a siting variation application on 5 January 2006 **and the Tribunal decides that:-**
The dwelling satisfies the Performance Requirements under P2, P4 and P5 (Design and Siting Standard for Single Detached Housing – on Lots under 450m²) of the Queensland Development Code (QDC).

Background

A development approval for the dwelling was issued by Caloundra Building Approvals – Building Approval No. 582 dated 30 March 2005.

On final inspection Caloundra Building Approvals became aware that the side boundary clearances did not conform with the Acceptable Solutions under A2 of Part 11 of the QDC.

Caloundra Building Approvals then sought a relaxation of the above Acceptable Solutions from the Caloundra City Council.

A boundary relaxation drawing (No. 2005-037) was submitted to Council. The drawing has hand written notation of Council's requirements. Essentially the removal of the upstand on the alignment and repositioning the balustrade 750mm from the alignment.

Material Considered

1. Form 10 – Building and Development Tribunal, Appeal Notice dated 26 January 2006 with attached letter “Grounds of Appeal” responding to Council’s contention;
2. Plans – Drawing No. 2005-037 as submitted to Council for a relaxation of siting requirements and as subsequently noted by Council;
3. Caloundra City Council’s ‘Siting Variation Advice – BDD03148’ refusing the relaxation referred to in 2;
Caloundra City Council’s letter dated 13 March 2006 to the Tribunal, outlining the background and events leading up to the appeal and includes Council’s assessment of the application and reasons why it was refused. Under a “Negotiated Design” Council were prepared to accept the existing structure with the following alterations to meet the intent of Part 11 of the QDC for light, ventilation and privacy onto the adjoining property.
 - o The existing handrail within 1m of the northern boundary removed; and
 - o A 1.5m high screen is erected along the full length of the deck parallel to the boundary and set back 1m from the boundary.
4. Verbal submissions by representatives of Caloundra Building Approvals and Caloundra City Council;
5. The *Building Act 1975*, referencing the *Standard Building Regulation 1993*, referencing the Queensland Development Code.

Findings of Fact

1. Caloundra Building Approvals gave Building Approval NO. 582 on 30 March 2005 to amended plans Job No. 746 – Sheets 1 to 9 dated 10 December 2004. Sheet 1 indicated amendments to sewer location and house relocation, dated 25 February 2005.
2. The area of the site is 405 square metres with a 10.064m street frontage facing east.
3. The northern side boundary clearances are not in accordance with the Acceptable Solutions under A2 of the Part 11 – Queensland Development Code (QDC).
4. Caloundra Building Approvals sought advice from Caloundra City Council whether the Performance Requirements under the QDC had been satisfied.

5. In respect to the siting requirements Caloundra City Plan 2004 calls up the Standard Building Regulation which references the QDC as the applicable code.
6. Council advised by “Siting Variation Advice – BDD-03148” that Caloundra Building Approvals application, referred to in 4, be refused because the development does not comply with Performance Criteria P2, P4 and P5 of Part 11 of the QDC, giving reasons for refusal.

Reasons for the Decision

1. The *Standard Building Regulation 1993* (SBR) requires that building work must comply with each part of the Queensland Development Code (QDC) mentioned in Schedule 13 to the extent the part applies to the work.
2. Schedule 13 of the SBR nominates Part 11 – Design and Siting Standards for single detached housing on Lots under 450m², in Table 2: Local Government.
3. Part 11 of the QDC is a performance based code giving the performance criteria to be met and acceptable solutions as “deemed-to-satisfy” the requirements.
4. The performance criteria may also be satisfied by other than the deemed-to-satisfy solutions listed. Alternative solutions would be acceptable provided the intent of the performance criteria is met.
5. In this instance, the performance criteria for Class 1 buildings satisfies the performance requirements P1 for the minimum road setback in accordance with the acceptable solutions A1.
6. The performance requirements P2, Building and Structures in respect to side and rear boundary clearances are:-
 - i. provide adequate daylight and ventilation to habitable rooms;
 - ii. allow adequate light and ventilation to habitable rooms of buildings on adjoining lots; and
 - iii. do not adversely impact on the amenity and privacy of residents on adjoining lots.
7. The garage under the balcony is a Class 10a portion of the building. Although it exceeds the 3.5m “mean height” nominated under the Acceptable Solution A2 (d) (i), the height within the boundary clearance is not more than 4.5m. I am of the opinion that the Performance Criteria is satisfied. This corresponds with Caloundra City Council’s view.
8. The balcony is an extension of the first floor living area of the dwelling and is classified as a class 1 building. The height 150mm inside the northern boundary is between 4.1m and 4.2m to the top of the upstand above the floor. A metal framed glass infill balustrade is another 600mm above the upstand. Due to the lightness and transparency of the top portion, I am of the view that it will not adversely impact on the adjoining lot. The upstand forms the lower portion of the balustrade at approximately 400mm above the balcony floor. It gives some degree of visual cut-off and contains surface water from the neighbouring property.

9. I am of the opinion that one of the Council conditions of acceptance of the proposal that
- i.* the existing handrail (ie. Balustrading including the upstand) within 1m of the northern boundary be removed; will not materially affect the natural light and ventilation to the adjoining property, nor that another condition of acceptance that,
 - ii.* A 1.5m high screen be erected along the full length of the deck parallel to the boundary and setback 1m from the boundary for privacy, is necessary.

The adjoining dwelling is set back well beyond the extent of the balcony and is not directly overlooked from the balcony. Further, a screen wall 1.5m high may inhibit light and ventilation to the adjoining property.

10. The council representatives contended that the Building Code of Australia (BCA) requirements regarding fire separation to protect the dwelling from the boundary as a fire source feature may impact on the siting determination. These are separate issues and should be considered each on its merits. Caloundra Building Approvals have undertaken to provide a certified Fire Engineer's confirmation that the proposal complies with the performance provisions of the BCA.
11. Performance Criteria P4 – The height of a building is not to unduly:-
- i.* overshadow adjoining houses; and
 - ii.* obstruct the outlook from adjoining lots.

In respect to *i*:

- o The acceptable solution has been met; and

In respect to *ii*:

- o The outlook from the lot adjoining the northern boundary is toward the street (east) and potentially toward the ocean (north). Accordingly, I am of the opinion that P4 is satisfied.

12. Performance Criteria P5 – Buildings are sited and required to provide adequate visual privacy for neighbours. This privacy issue was addressed in item 9 as part 2 of Council's conditions of acceptance. I am of the opinion that adequate visual privacy for neighbours is provided.
13. It is noted that the neighbouring owner of the property on the northern side *withheld* has, by letter dated 25 November 2005, advised no objection to the dwelling as constructed.

Mr Ray Rooney
Building and Development
Tribunal Referee
Date: 24/03/2006

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 31
BRISBANE ALBERT STREET QLD 4002
Telephone (07) 3237 0403: Facsimile (07) 32371248

