



**Building and Development Tribunals**  
**Queensland Government**

Department of Local Government, Planning,  
Sport and Recreation

**APPEAL**  
*Integrated Planning Act 1997*

**File No. 3-05-011 S**

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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*

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**Nature of Appeal**

The appeal is against the decision of the Caloundra City Council to refuse a preliminary application for building works on land described as Lot *withheld* and situated at “the subject site”, for the following reasons:-

- 1 *‘There are no sufficient or substantial reasons for Council to grant a siting modification for this proposal.*
- 2 *The building, if built in the form shown in the application, would have an extreme adverse effect on the amenity or likely amenity of the building’s neighbourhood.*
- 3 *The aesthetic of the building if built in the form shown in the application, would be in extreme conflict with the character of the building’s neighbourhood.*
- 4 *The development does not comply with the 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:-*
- 5 *the proposed structure will be inconsistent with the existing and proposed streetscape;*
- 6 *the proposed structure will detract the outlook from surrounding properties; and*
- 7 *the proposed structure will cause an over development of the site and an overcrowding of the street frontage.*
- 8 *The existing car accommodation has been converted to habitable rooms without a development approval for building works having been obtained.*
- 9 *A carport has been erected along the western side of the dwelling without a development approval for building works having been obtained. This structure can be removed to allow access to the rear of the property where a complying carport/garage can be built.’*

NOTES :- The decision on the (a) Amenity and Aesthetics and (b) siting is considered separately by different Tribunals. Both hearings were held at the same time and date.

- 1 The decision on the siting issue is considered and responded to in this determination.
  - 2 The decision on the Amenity and Aesthetics issue is considered separately and a copy of that Tribunal decision is attached.
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**Date and Place of Hearing:** 10.00am Friday 1 April 2005.  
Inspection of the site and hearing at  
“the subject site”.

**Tribunal:**

Mr L F Blumkie Tribunal

**Present:**

<i>withheld</i>	Owner
Mr Andrew Stewart	Applicant (Caloundra Building Approvals)
Mr R Prout	Caloundra City Council representative
Mr L Blumkie	Tribunal
Mr P Breeze	Observer
Mr G Schonfelder	Observer

**Decision**

The Tribunal, in accordance with Section 4.2.34 (2) (b) of the Integrated Planning Act, changes the decision of the Caloundra City Council, dated 9 February 2005 and grants a relaxation to allow a carport to be sited within the street setback, subject to the conditions established in the Amenity and Aesthetics Tribunal decision. (refer attached).

NOTE: This decision needs to be read in conjunction with the separate Tribunal decision on the affect the carport has on the amenity and aesthetics of the building’s neighbourhood. (copy attached).

**Background**

Application was made to the Caloundra City Council for a relaxation to erect a carport within the street setback and up to the side boundary.

Council refused the application on the 9 February 2005.

**Material Considered**

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

1. Drawings accompanying the appeal.
2. Copy of the Decision Notice dated 9 February 2005.
3. Copy of the Appeal Notice dated 7 March 2005.
4. Drainage plan from the then Landsborough Shire Council.
5. Supporting letters from adjoining owners.
6. Locality plan.

7. Verbal submissions from owner and applicant.
8. Verbal submissions from the Caloundra City Council representatives.
9. Queensland Development Code.
10. *Standard Building Regulation 1993 (SBR)*
11. The Integrated Planning Act 1997.
12. Caloundra City Council Resolution on Amenity and Aesthetics.
13. An inspection of the site and neighbourhood

## **Findings of Fact**

### *A Standard Building Regulation 1993 (SBR)*

The SBR calls up the Queensland Development Code (QDC). Part 12 of the Code establishes Performance Criteria and Acceptable Solutions for the design and siting of buildings and structures on lots 450m<sup>2</sup> and over.

### *B Site*

The site is a typical rectangular shaped block and is developed with an existing class 1 building. The existing car accommodation was converted to habitable rooms without development approval. The carport erected without development approval between the house and side boundary has been removed.

A council sewer crosses the rear of the property approximately 1 metre in from the rear boundary. The existing house is located 2900mm from the right hand side boundary.

### *C Development in the neighbourhood.*

An inspection of the neighbourhood indicated the majority of properties were developed with Class 1 buildings and there were a number of examples of various style carports erected within the street setback. The council representative was unable to confirm whether development approval had been given for the carports through the neighbourhood.

## **Reasons for the Decision**

This decision takes into account the particular circumstances of the site. Consideration has been given to the alternative options for car accommodation and of the owners comments regarding the suitability of the alternative options, which are documented as follows:-

- 1 A tandem carport between the house and side boundary was not satisfactory as the 2900mm width was not sufficient to allow the opening of car doors.
- 2 A double car port at the rear of the house, because of the need to build 1500mm from the sewer line, and the distance between the existing pergola would not allow sufficient access and turning of vehicles. It would also interfere with their proposal to install a swimming pool to the rear of the property and include a landscape outdoor BBQ area.
- 3 To reinstate the previous car accommodation and extend the existing dwelling to the rear is not considered an economical option. In addition this would require a carport as outlined in 1 which is not considered acceptable, as a double carport is preferred.

The Tribunal considered the siting of the proposed carport against the performance criteria established in the Queensland Development Code.

The opinion of the Tribunal, in satisfying the performance criteria, is documented as follows:-

*P1 The Location of a building or structure facilitates an acceptable streetscape appropriate for the bulk of the building or structure;*

(a)

The proposed carport with the conditions nominated by the amenity and aesthetics Tribunal and documented in that decision created an acceptable streetscape within the existing neighbourhood.

It is noted that:-

- 1 Under A8 of the acceptable solutions the minimum recommended dimension of a single covered parking space is 5m x 3m wide. The space to the side of the house is 2900mm and the owner submitted this distance is not suitable.
- 2 The owner's preference was for a double carport.
- 3 A carport at the rear of the property erected between the sewer line and the existing pergola would not allow sufficient space for the turning of the second vehicle to enable access to the car port. Also it would be necessary to reverse both vehicles down the side of the house to exit the property. This is not reasonable.
- 4 To reinstate the existing garage and extend the house to the rear, to achieve additional habitable rooms, is not considered reasonable, under the circumstances. Also it does not allow the owners preferred development of the site for swimming pool and outdoor landscaped BBQ area.
- 5 The alternative on-site locations nominated by the Council representative as outlined above, in the opinion of the Tribunal, are not considered acceptable.

*(b) The road boundary setbacks of neighbouring buildings or structure:*

Taking into account the setbacks of neighbouring buildings, existing fencing and the submissions of adjoining neighbours, the amended proposal being 100% open was considered acceptable.

*(c) The outlook and views of neighbouring residents*

The amended proposed carport would not affect the outlook and views of neighbouring residents.

*(d) Nuisance and safety to the public.*

The amended proposed carport would not create a nuisance or be a safety hazard for the public.

*P2 Buildings and structures-*

*(a) provide adequate daylight and ventilation to habitable rooms;*

The amended proposed carport would allow adequate daylight and ventilation to existing

habitable rooms.

- (b) *allow adequate light and ventilation to habitable rooms of buildings on adjoining lots.*

The amended proposed carport would have limited effect to light and ventilation to habitable rooms of buildings on adjoining lots.

- P3 *Adequate open space is provided for recreation, service facilities and landscaping.*

The amended proposed carport with access to the rear of the property being maintained allows for adequate space for recreation, service facilities and landscaping.

- P4 *The height of a building is not to unduly overshadow adjoining houses;*  
(a)

The amended proposed carport does not unduly overshadow adjoining houses.

- (b) *obstruct the outlook from adjoining lots.*

The amended proposed carport does not unduly obstruct the outlook from adjoining lots.

- P5 *Buildings are sited and designed to provide adequate visual privacy for neighbours.*

The amended proposed carport would not interfere with visual privacy for neighbours particularly with the 1800mm high solid fence erected on the boundary up to the street boundary line.

- P6 *The location of a building or structure facilitates normal building maintenance.*

The amended proposed carport would not interfere with normal building maintenance.

- P7 *The size and location of structures on corner sites provide for adequate sight lines.*

The amended proposed carport would not interfere with site lines.

- P8 *Sufficient space for on-site carparking to satisfy the projected needs of residences and visitors, appropriate for-*

- (a) *the availability for public transport; and*  
(b) *the availability of on-street parking; and*  
(c) *the desirability of on-street parking in respect to the streetscape; and*  
(d) *the residents likelihood to have or need a vehicle.*

The amended proposed carport with access to the rear being maintained does not interfere with on site parking.

In the opinion of the Tribunal, after taking into account the particular circumstances of the site and the development in the neighbourhood, it is possible to justify the location of the carport within street setback as established under performance criteria of the Queensland Development Code.

Hence, the Tribunal, in accordance with Section 4.2.34 (2) (b) of the Integrated Planning Act, changes the decision of the Caloundra City Council, dated 9 February 2005 and grants a relaxation to allow a carport to be sited within the street setback, subject to the conditions established in the Amenity and Aesthetics Tribunal decision. (refer attached).

NOTE: This decision needs to be read in conjunction with the separate Tribunal decision on the affect the carport has on the amenity and aesthetics of the building's neighbourhood. (copy attached).

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**Leo F Blumkie**  
**Building and Development**  
**Tribunal**  
**Date: 12 April 2005**

## **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  
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