



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

Department of Local Government, Planning,  
Sport and Recreation

**APPEAL**  
*Integrated Planning Act 1997*

**File No. 03-04-047**

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**BUILDING AND DEVELOPMENT TRIBUNAL - DECISION**

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**Assessment Manager:** Caloundra City Council

**Site Address:** 7 Grace Court, Pelican Waters

**Applicant:**

**Nature of Appeal**

Appeal under Section 21 of the Standard Building Regulation 1993 against the decision of the Caloundra City Council to refuse an application for relaxation of siting requirements on land described as Lot 250 on RP 861496 and situated at 7 Grace Court, Pelican Waters.

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**Date and Place of Hearing:** 9:30am on Friday 6<sup>th</sup> August, 2004  
at Caloundra City Council offices, Omrah Avenue, Caloundra

**Tribunal:** Mr Chris Schomburgk

**Present:** Caloundra City Council Representative;  
applicants.

**Decision:**

The decision of the Caloundra City Council as contained in its written Decision Notice dated 5<sup>th</sup> July 2004, to refuse an application for relaxation of the front boundary setback is **set aside and the application is approved, subject to conditions.**

**Material Considered**

The material considered in arriving at this decision comprises:

- The application and supporting plans;
- The relevant provisions of the Town Planning Scheme for Caloundra City Council;
- The Queensland Development Code;
- Verbal submissions from the Applicants and Council's Representatives;
- A written submission from the Council;
- Council's Decision Notice dated 5<sup>th</sup> July 2004;
- My own site inspections; and
- The Integrated Planning Act 1997.

## **Findings of Fact**

I make the following findings of fact:

- The site comprises Lot 250 on RP 861496, with frontage to Grace Court at Pelican Waters.
- Grace Court is a cul-de-sac with the subject property near the northern end of that cul-de-sac.
- The locality is generally established with a variety of new and some older homes (up to 10 or 12 years). The area is generally of high quality, larger homes.
- The road reserve starts to widen in front of the subject property as part of the turn-around area of the cul-de-sac.
- The subject house contains a double garage that is proposed to be converted to a bedroom for visitors or sewing room, necessitating the addition of new car accommodation.
- An existing approved boat shed occupies the side setback on the northern side, leaving little practical alternative area on the allotment for new car accommodation.
- The proponent seeks an enclosed garage within the front 6m setback of the property. Not all of the proposed garage intrudes into this setback area, although the majority of it does. The intention is to provide a garage with roof and walls that complement the existing house in form, materials and colours.
- The house to the north is a large home that faces away from the subject property. The house to the south is screened from the subject property to a large degree by existing landscaping that is intended to remain.
- The proposed garage will be obvious to residents across Grace Court.
- There are no other approved structures within the front setback area in the immediate locality.
- The option of an open carport (sides and front) with the same roof as proposed, was put by the Council and was reluctantly acceptable to (although not preferred by) the proponents.
- Council has refused the application on the basis of visual amenity impacts and “overcrowding” of the front of the allotment.
- The nature of the street is such that any visual impact will be limited to a very small number of residents.

Based on my assessment of these facts, it is my decision that the appeal is upheld. **Council’s decision to refuse the siting application for a structure within the front setback area is set aside and the application is approved, subject to the following conditions:**

- 1) **The sides of the proposed carport structure are to remain predominantly open - that is, no less than 50% of the area of each side is to be open and no solid material greater than 1.0 metre in the horizontal direction is allowed;**
- 2) **The front of the proposed structure may include a lockable door (eg roll-a-door) provided that such door is to be an open grille style door with at least 50% of its surface area to be open and no solid material greater than 1.0 metre in the horizontal direction is allowed;**
- 3) **Brick pillars complementary to the existing house are acceptable as part of this structure;**
- 4) **The proposed louvres on the side walls are not approved and this area of each side is to remain open as per Condition 2 above.**
- 5) **The existing landscaping along the southern boundary of the subject allotment is to remain at all times;**
- 6) **Nothing in this approval implies any approval for Building Works for either the carport or the modifications to the existing double garage. Separate approvals are required for all Building Works.**

### **Reasons for the Decision**

- The site is towards the end (turn-around area) of a small cul-de-sac.
- The proposed structure will not have any significant visual impact to either adjoining residence (north and south).
- Residents across Grace Court will have some visual impact to their current outlook, but the conditions imposed will minimise that impact.
- The existing landscaping along the site's southern boundary serves to provide a visual screen to that side.
- The proposed structure has a roof with shape, colours and materials complementary to the existing house.
- If the proposed structure was to have open sides and front (as required by the conditions of this decision), the visual impacts to the residents across the street will be minimised.
- The subject allotment has a wider-than-average footpath and verge area because of the cul-de-sac nature of this part of the street. The proposed structure will be set back from the kerb line much more than in a "conventional" street.
- There is no likelihood of overshadowing or lack of privacy for other residents from the proposed structure.
- The proposed structure, subject to the conditions as set out above, will not create any significant detrimental impact to the visual amenity of the immediate locality.

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**Chris Schomburgk**  
**Building and Development Tribunal General Referee**  
**Date: 8<sup>h</sup> August 2004**

## **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  
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