



**APPEAL**  
*Integrated Planning Act 1997*

**File No. 3-06-022**

## **BUILDING AND DEVELOPMENT TRIBUNAL - DECISION**

**Assessment Manager:** Caloundra City Council

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

**Applicant:** *withheld*

### **Nature of Appeal**

Appeal under Section 21 *Standard Building Regulation 1993* (SBR) against the decision of the Caloundra City Council in application of its *Amenity and Aesthetics* Policy under Section 50 of the SBR, refusing an application for a Class 10 building on land described as “the subject site”.

**Date and Place of Hearing:** 10.00am on Wednesday 8 March, 2006 at “the subject site”  
Followed by a hearing at Caloundra City Council,  
1 Omrah Avenue, Caloundra.

**Tribunal:**

Gregory Schonfelder	Tribunal Referee
Phil Locke	Tribunal Referee
Dennis Leadbetter	Tribunal Referee (Chairman)

**Present:**

Applicant and Owners	Private Certifier
Jeffrey Brooks	Caloundra City Council
Gary Ingram	Caloundra City Council
Richard Prout	

### **Decision**

The decision of the Caloundra City Council as contained in its letter dated 9 January 2006, reference BDD-03190 REV01, granting an amended relaxation to their *Amenity and Aesthetics Policy* to permit the erection of a Class 10 building (open carport attached to the existing residence) up to 4.5 metres from the street alignment on the land is **set aside and replaced with following decision.**

**The applicant may erect a class 10a building on the site subject to the following conditions:-**

- The building shall be of the dimensions and located on the site, having the alignment set backs (viz 2.251 metres to the western chord of the front alignment and 2.880 metres to the second chord of the front alignment and 0.449 metres to the western side alignment) as noted on drawings file number L52BRIG sheets 1 and 2, all measured to the outer most projection.
- The building shall not be enclosed, except for nominal panels at support columns as existed on site at the date of the hearing to a maximum 15% of the total length of all walls within the 6 metre setback, as provided for in the *Queensland Development Code Part 12, Element 1 – Design and Siting of Buildings an Structures, Acceptable solution section A1(c) (i)*.
- The carport may have gates erected to the front of the carport or at the alignment to a maximum 2000mm high, which could form part of a fence should the owner desire to fence the property, as provided for in the *Queensland Development Code Part 12, Element 1 – Design and Siting of Buildings an Structures, Acceptable solution section A1 (d) (ii)*.
- It is understood from the information supplied by the applicant at the tribunal that the existing residence and the carport structure would be rendered to further unify the new and existing structures.

This approval is also conditional on compliance with all normal Local Government approvals, including, but not limited to, building approval, plumbing approval, landscaping approvals, as appropriate.

### **Background**

The owner had sought approval from the Caloundra City Council (CCC) to erect a carport within the 6 metre road alignment and 1.5 metre side alignment setback. The carport was also to be erected to within 1.5 metres of a Council sewer main which traverses the northern street boundary of the property. CCC in a letter dated 3 October 2005, under the hand of the Principal Building Surveyor, granted that approval, with standard conditions. That letter also contained a paragraph stating:

*Please submit a copy of this letter with your lodgement of development application for building and/or plumbing works.*

This letter was construed as granting development approval to construct the carport within the front and side alignment setbacks, and the Private Certifier issued a building approval for this work.

Further to an inspection by CCC officers on December 22, the owners were advised that the works required a boundary relaxation, and because the structure was within the side alignment setback would also require assessment against CCC's Amenity and Aesthetics policy, proclaimed under Section 50 of the *Standard Building Regulation 1993*.

The owners lodged an application with the CCC for a relaxation on January 2, 2006, and that application was refused on the basis that:

- *The existing site is not constrained in any way and as such there is an obligation on the applicant to design in accordance with the applicable codes. In this instance the applicable codes are Part 12 of the QDC and the Caloundra City Plan 2004 Detached Housing Code.*
- *As per the QDC Part 12 Acceptable Solution A1 the minimum road boundary setback for the structure is 6 metres.*
- *As per the Specific Outcome 010 (parking and Access) Code 8.5 Detached Housing Code of the Caloundra City Plan 2004. The applicant is required to provide two off street parking spaces one of which must have the ability to be covered ie at the 6 metre setback.*
- *The structures within Brigalow Street are complying with the above Codes.*
- *The Development does not comply with the Performance Criteria 1 Part 12 (Design and Siting Standards for Single Detached Housing on Lot 450 m<sup>2</sup> and over) of the Queensland Development Code for the following:*
  - (a.) The proposed structure will be inconsistent with the existing and proposed street scape.*
  - (b.) The proposed structure will detract the outlook from surrounding properties.*
  - (c.) The proposed structure will cause an overdevelopment of the site and an overcrowding of the streetscape.*
  - (d.) The allotment has complying off street parking in accordance with Acceptable Solution A8 of Part 12 (Design and Siting Standards for Single Detached Housing on Lot 450 m<sup>2</sup> and over) of the Queensland Development Code.*
  - (e.) The allotment has complying off street parking in accordance with Specific Outcome 010 (parking and Access) Code 8.5 Detached Housing Code of the Caloundra City Plan 2004.*
  - (f.) The proposed carport can be located on the site in accordance with the above Code.*
- *There are no sufficient or substantial reasons for Council to grant a siting modification for this proposal.*
- *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 buildings (sic) neighbourhood.*
- *It should also be noted that at the time the application was approved by the Private Certifier the allotment had space to build complying off street parking in accordance with the above codes.*

On January 6, 2006 a meeting between the owners and their representatives with CCC resulted in an amended application with the front alignment setback increased from 2.251 metres to 3.87 metres to the western chord, with the majority of the carport located 4.5 metres from the main chord of the street frontage.

CCC issued a preliminary development approval for this proposal on January 9, 2006.

This modification would have resulted in a reduction to the depth of the proposed carport by 1.62 metres, from 5.890 metres to 4.270 metres, a totally inadequate length for a car parking space, and non compliant with the *Acceptable Solution A8* of the QDC Part 12.

Once the effect of this approved proposal had been assessed by the Owner, they lodged an appeal with Building and Development Tribunal.

## **Material Considered**

1. Form 10 – Building and Development Tribunals Appeal Notice and grounds of appeal contained therein;
2. Drawings attached to that appeal notice;
3. Letter from the Caloundra City Council approving the amended application;
4. Caloundra City Council’s verbal and written submission at the hearing, including the amended resolution of CCC, Amenity and Aesthetics, dated 22 September 2003, adopted by resolution under Section 50 SBR, CCC’s detached housing code and a chronological history of events from CCC’s perspective;
5. Verbal submissions from the owner, explaining their reason for the siting of the proposed structure, and the owner’s overall proposed treatment of the existing and new structures and the site landscaping;
6. The *Standard Building Regulation 1993*;
7. Queensland Development Code, Part 12;

## **Finding of Fact**

The Tribunal made the following findings of fact:

- 1 The site is approximately 800 m<sup>2</sup> on the southern side of Brigalow Street with a total street alignment dimension of approximately 23 metres. The allotment has the western alignment at an angle of approximately 84 degrees to the main chord of the street alignment frontage.
- 2 The site has a reasonable fall from south west to north east of approximately 4 metres, and the site has been cut to the south of the house and along the western alignment and has retaining wall to the west alignment rising to approximately 800 high at the 6 metre front alignment set back line, and continuing to increase to approximately 2 metres behind the western end and to the rear of the existing house. The retaining wall adjacent to the carport structure is of treated hardwood construction and the retaining wall to the rear of the house is stone pitched. The site also has stone pitched retaining walls to the street alignment ranging from nil at the eastern side of the driveway to approximately 2 metres high at the eastern alignment. This wall forms the edging for existing mature landscaping to a significant portion of the street alignment.
- 3 The neighbouring area is comprised of similar sized allotments with houses and outbuildings of similar nature to the proposed, but in general set back the prescribed 6 metres.
- 4 The roof line of the carport is below the existing 2 metre high dividing fence for a considerable part of its length.

## Reason for the Decision

### Amenity and Aesthetics

Caloundra City Council's *Amenity and Aesthetics Policy* states, inter alia, that the following types of class 10 structures require assessment by the local authority against its Amenity and Aesthetic policy:

- ii) Any Class 10a buildings which are proposed to:
  - Stand alone as a separate structure or form part of an existing Class 10a structure;
  - Not form an integral part and reasonable consistency in design of a Class 1 building;
  - be sited nearer than 6 metres to a property boundary; and
  - have an overall height in excess of 3.6 metres when measured above the natural ground level; and/or
  - have a total floor area in excess of 56m<sup>2</sup>
  
- vi) Any carport or open garage proposed to be sited within 1.5 metres of a side boundary **and**<sub>1</sub> within a road boundary setback area stipulated in the provisions of the Building Act or planning instrument.

It is the provision of section (vi), in that the proposed development encroaches within both the 1.5 metre side alignment **and** the road boundary setback that requires an Amenity and Aesthetic determination by the CCC.

Section 50 of the SBR, states that:

- (1) A local government, by resolution, may declare, for single detached class 1 buildings or class 10 buildings or structures, locations and forms of buildings and structures the local government considers-
  - (a) may have an extremely adverse effect on the amenity or likely amenity of a locality;
  - or
  - (b) may be in extreme conflict with the character of a locality.
- (2) Building development applications for forms of buildings or structures in localities mentioned in subsection (1) must be assessed by the local government for the amenity and aesthetic impact of the proposed building work.
- (3) The local government may refuse an application to which subsection (2) applies only if-
  - (a) the building or structure, when built, will have an **extremely**<sub>1</sub> adverse effect on the amenity or likely amenity of the building's or structure's neighbourhood; or
  - (b) the aesthetics of the building or structure, when built, will be in **extreme**<sub>1</sub> conflict with the character of the building's or structure's neighbourhood.

The Tribunal is of the opinion that the design of the proposed carport structure, has a total empathy to the existing structure, through continuity of materials, design proportions, roof lines and slopes and overall integration with the existing structure, and that this empathy will be further enhanced with the owner's overall refurbishment program in rendering the total structure, and is in keeping with the buildings and overall streetscape for the neighbourhood.

### **Siting variation**

The Queensland Development Code Part 12, sets out performance criteria and a deemed acceptable solution.

In assessing this appeal for a relaxation of the front alignment setback, the tribunal considered the following Performance Criteria and Acceptable Solutions.

#### **PERFORMANCE CRITERIA**

P1 The location of a building or structure facilitates an acceptable streetscape appropriate for-

- (a.) the bulk of the building or structure; and
- (b.) the road boundary setbacks of neighbouring buildings and structures; and
- (c.) the outlook and views of neighbouring residents; and
- (d.) nuisance and safety to the public.

#### **ASSESSMENT AGAINST CRITERIA**

The code provides a 6 metre set back as one acceptable solution, but for open carports, does provide for a reduction in that setback under clause (c), where:

- (i) the aggregate perimeter dimension of walls, solid screens, and supports located within the setback does not exceed 15% of the total perimeter dimension (along the line of supports) of that part of the carport within the same setback; and
- (ii) there is no alternative on-site location for a garage or carport that-
  - A complies with A1(a) (ie 6 metres); and
  - B will allow vehicular access having a minimum width of 2.5 m; and
  - C has a maximum gradient of 1 in 5

In assessing sub clause (ii), the tribunal determined that because of the topography of the site and the site shape, it would be extremely difficult to access areas to the east or south of the site, with the site having no direct street access at the eastern side because the corner is truncated around a council sewer manhole, and any access would need to accommodate the falls to the site, necessitating gradients greater than 1:5 or substantial retaining walls to support the existing structure or limiting access to the area currently employed or in close proximity. Traversing the north east corner of the existing house is limited to approximately 2.4 metres in the north south direction and the side alignment clearance to the eastern side of the residence is approximately 3.6 metres making vehicle access extremely difficult if not impossible. Relocating the structure southwards to provide a 4.5 metre set back to the carport, would severely limit the development because of the angle of the western side boundary, which the design already accommodates by stepping and would restrict the potential width of any carport to be less than that set out in the QDC Part 12 section A8, which lists the minimum dimensions for a double covered carport as 5 metres long by 5.5 metres wide.

The capacity to move other parts of the proposed development southwards also has similar impacts from the angle of the western side alignment and also the existing stone pitched retaining wall, which is approximately 2 metres high behind the extensions.

The tribunal was of the opinion that the development would not :

- present an unacceptable streetscape in terms of the bulk of the building or structure;
- would not look out of place in terms of the existing buildings or structures in the surrounding areas because of a reduced street alignment setback;
- would not affect the outlook or views from any adjoining property because of the topography of the area, and the fact that the floor level of the structure is set below natural ground level at the western alignment; and
- the development will not cause any greater nuisance or safety issues to the public.

- P8** Sufficient space for on-site car parking to satisfy the projected needs of residents and visitors, appropriate for-
- (a.) the availability of public transport; and
  - (b.) the availability of on-street parking; and
  - (c.) the desirability of on-street parking in respect of the streetscape; and
  - (d.) the residents likelihood to have or need a vehicle.

The requirement of both the QDC acceptable solution A8 and the CCC Planning scheme in the ability to park two vehicles on site should be viewed as a **minimum** requirement, not an absolute or maximum.

The owners of the property currently have three vehicles and it is reasonable for them to desire, where practicable, covered accommodation for those. The development does provide for covered accommodation of all three vehicles.

It is also the opinion of the Tribunal that long term on-street parking by residents should be discouraged by the provision of on site parking.

Hence, in accordance with the provisions of Section 4.2.34 2(c) of the *Integrated Planning Act 1997*, the Tribunal determined to **set aside** the decisions of the Caloundra City Council, contained in its letters dated 5 January not to grant preliminary development approval to erect a class 10a building on the site, and 9 January 2006, to grant an amended preliminary development approval to erect a class 10a building on the site, and allow the development of an open carport set back 2.251 mm from the first chord and 2.880 to the main chord to the *withheld* frontage.

## **GENERAL COMMENTS**

The Tribunal has taken cognisance of the comments made on site by the representative of the CCC, in relation to the letter from CCC dated 3 October 2005, and it is the opinion of the Tribunal that this letter could be reasonable construed to be a granting of all necessary council approvals in relation to this development. This is especially so as the letter is issued not by CalAqua, the approving department, but under the hand of the Principal Building Surveyor. It is of the opinion of this Tribunal that such letters should be issued by the relevant department, or be more explicit in relation to the material being approved and/or alert applicants to other necessary approvals to avoid confusion. The comments also expressed by CCC's representative that it was clearly not a relaxation of the front alignment setback requirement, primarily on the grounds that it was not issued on standard IDAS forms is all irrelevant, as many local governments do not use such forms to advice decisions of applications.

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**Dennis Leadbetter**

Dip. Arch. QUT; Grad. Dip. Proj. Man QUT; METM UQ.

**Building and Development**

**Tribunal Chairperson**

**Date: 28 March 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  
PO Box 31  
BRISBANE ALBERT STREET QLD 4002  
**Telephone (07) 3237 0403: Facsimile (07) 32371248**