



**APPEAL**  
*Integrated Planning Act 1997*

**File No. 3/03/003**

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

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**Assessment Manager:** Caloundra City Council  
**Site Address:** 15 Wallaby Circuit, Pelican Waters

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### **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 a siting concession for part of a dwelling already constructed to frame stage on land described as Lot 66 SP 118046, situated at 15 Wallaby Circuit, Pelican Waters.

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**Date and Place of Hearing:** 10.30 am on 14 January 2003  
at 15 Wallaby Circuit, Pelican Waters

**Tribunal:** Geoff Cornish

**Present:** Robert Boog, Private Certifier - Applicant  
Bill Rolley - Builder  
Andrew Stewart - Caloundra City Council  
Phil Butler - Caloundra City Council

### **Decision**

In accordance with Section 4.2.34 [2] of the Integrated Planning Act 1997, I hereby confirm the decision of Caloundra City Council to refuse an application for a siting concession to validate the laundry part of a dwelling constructed within the prescribed side boundary setback on Lot 66 SP 118046, situated at 15 Wallaby Circuit, Pelican Waters.

### **Background**

The matter concerns an application made to Caloundra City Council in respect of a partly constructed dwelling that encroaches into the prescribed side boundary setback. This has occurred as

a result of an oversight on the part of the private certifier at the time of approval of the plans for the dwelling, combined with the fact that he did not personally undertake the footing inspection that should have identified the problem. This inspection was referred to another certifier, as a “competent person”, due to the approving certifier’s unavailability because of a prior appointment. The inspection was undertaken on the basis of the approved plans being assumed to be correct. The applicant, who is the approving certifier, identified the problem at frame stage and applied to Council for a siting concession as a way to rectify his mistake.

### **Material Considered**

1. Application from RC Building Inspections to Caloundra City Council, dated 26 November 2002, requesting approval of a reduced side boundary setback to the laundry of the dwelling.
2. Caloundra City Council’s Decision Notice of 11 December 2002 refusing the concession.
3. Building and Development Tribunals Appeal Notice dated 7 January 2003.
4. Letter dated 9 January 2003 from RC Building Inspections to the Registrar of Building and Development Tribunals setting out grounds for the appeal.
5. Letter from the adjoining neighbour, dated 25 November 2002, stating no objection to the granting of a concession for the laundry.
6. Verbal submission by the applicant on 14 January 2003 setting out why the application should have been granted and the appeal should be allowed.
7. Verbal submission by Andrew Stewart of Caloundra City Council on 14 January 2003 setting out Council’s reasons for refusal.
8. Standard Building Regulation 1993.
9. Building Act 1975.
10. Integrated Planning Act 1997.

### **Findings of Fact**

I made the following findings of fact:

1. The application was made to Council to rectify a mistake made by the applicant, in his role as a private certifier, in assessing and approving plans for the construction of the dwelling.
2. The dwelling is approved at the limit of site coverage and close to the limit on the length of Class 10 buildings within the side boundary setback to this boundary.
3. Approval of this application would require the granting of a concession to increase the permissible total length of all buildings within the side boundary setback to approximately 12.5 metres in lieu of the prescribed maximum of 9.0 metres. This is in addition to the requested concession to reduce the required side boundary setback.

4. The Class 10 part of the building has not been constructed in accordance with the approval granted by the certifier. It is currently built at a total length of approximately 8.5 metres including the front roof overhang and the roof extension to the rear to join with the laundry.
5. If the problem with the laundry had been identified before plan approval, modification of the dwelling would have been necessary to achieve building approval.
6. The adjoining neighbour has agreed to the granting of a concession.
7. The requirements of Section 48(3) of the SBR have been satisfied.
8. No special circumstances apply to this allotment, however, that would justify the granting of such concessions, given the allotment's size, shape, slope and width.
9. The applicant holds insurance, in accordance with the requirements of his accreditation as a private certifier, against the making of such mistakes.

### **Reasons for the Decision**

After assessing the facts and the submissions of the parties, I have reached the following conclusions:

- No special circumstances apply to this site that would justify the granting of a concession.
- Correct assessment of the application to construct this dwelling would have required the laundry to be modified before approval was granted.
- Modification of the laundry now should result in no substantial difference to the final configuration of the dwelling from that which would have resulted from a correct assessment and approval.
- As the problem exists because of a mistake on the part of the certifier and the certifier is required to hold appropriate insurances against such occurrences, the building should be modified to comply with the requirements of the Regulation.
- The granting of a concession, justified solely on the basis of the work having already been done, could establish an unacceptable precedent.

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**G.S.Cornish**  
**Building and Development**  
**Tribunal Referee**  
**Date: 20 January 2003**

## **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**