



## Building and Development Tribunals — Decision

---

### *Integrated Planning Act 1997*

<b>Appeal Number:</b>	3—09—017
<b>Applicant:</b>	Colin James English
<b>Assessment Manager:</b>	Sunshine Coast Regional Council ('Council')
<b>Concurrence Agency:</b>	N/A
<b>Site Address:</b>	63 Cumberland Way, Buderim and described as Lot 277 on RP801890 — the subject site

---

### Appeal

Appeal under Section 4.2.9 of the *Integrated Planning Act 1997* (IPA) against the decision of the Council, dated 18 February 2009, to refuse a preliminary building application (PBA09/0029) for an as constructed class 10a double carport. The double carport is located over an existing Council sewer line and is within the required front boundary setback of a corner lot on the subject site.

---

<b>Date of hearing:</b>	10.00 am — Monday, 30 March 2009
<b>Place of hearing:</b>	Council offices, Maroochydore
<b>Tribunal:</b>	Georgina J Rogers — Chair Phil Dance — Member
<b>Present:</b>	Colin English — Owner & Applicant Fred Vicary — Council Representative

### Decision:

The Tribunal, in accordance with section 4.2.34 (2)(c), **sets aside** the decision appealed against and replaces it with the following decision:-

The Tribunal, in accordance with section 4.2.34 (1), **directs** the Council to reassess the preliminary building application subject to compliance with the following conditions:-

1. The existing class 10a double carport is to be modified to maintain a 1.5m minimum setback from the boundary fronting Timana Place; and
2. The existing class 10a double carport is not to be enclosed at any stage beyond that shown on the current building application plans; and
3. All other relevant building assessment provisions applicable to the preliminary building application are to be complied with; and

4. The decision held in this application is separate to any other applications which may be made over the property.

## **Background**

The Tribunal conducted an off-site hearing at the offices of the Council. The Tribunal took the opportunity to view the development and character of the neighbourhood prior to the hearing.

The neighbourhood has low traffic volume and is well established with minimal vegetation. The character of the immediate neighbourhood is well established residential.

The subject site is a corner lot fronting Cumberland Way and Timana Place. Cumberland Way is the main traffic route and is located to the south-west of the subject site.

An existing double concrete driveway and crossover from Cumberland Way gives access to a double garage in the existing dwelling. This driveway is greater than 6.0m in length and is able to provide further off-street parking.

The double carport, subject to the appeal, has been fully constructed adjacent to the road boundary alignment of the subject site fronting Timana Place.

Timana Place is a small cul-de-sac road servicing less than half a dozen dwellings. Traffic volume in the street is observed to be minimal. The dwellings in Timana Place appear to have compliant setbacks of approximately 6.0m and there appeared to be no evidence of conflict with on street parking demand. As the traffic flow to Timana Place is of low volume, it is reasonable to refer to this frontage as being the secondary road boundary alignment.

The double carport, subject to the appeal, has been constructed over an existing Local Authority sewer. With reference to plans DWG 05/09 the footings of the building structure are located approximately 0.75m in the north-east corner and 1.33m in the south-east corner away from the sewer to the centre point of the footings. This has been addressed by the Council for an acceptable solution. At the hearing it was advised that the footings have been incorrectly constructed and will need to be reconstructed in accordance with the design submitted by Cardno (Qld) Pty Ltd drawing number 203942-01, dated 20 January 2009, in the approved new location. The Applicant has subsequently advised that the company which supplied the double carport no longer exists and therefore an alternate design, approval and certificate will need to be undertaken in accordance with any modification to the double carport.

The structure is shown to be 6.0m long with a 6.3m wide frontage to Timana Place. The height is consistent with the height of the existing dwelling. The roof pitch corresponds with that of the dwelling but is of different materials.

The structure is setback approximately 0.78m from the north-east corner reducing down to approximately 0.2m at the south-east corner. This is less than the required secondary road boundary setback which can be referred to under the Queensland Development Code (QDC) Section MP1.2.

The following correspondence and documentation was reviewed and taken into consideration:-

1. 30 March 2009 – Written submission provided by the Applicant at the hearing;
2. 30 March 2009 – Written submission provided by Council representative at the hearing;
3. 26 February 2009 – Grounds for Appeal provided by the Applicant with Appeal Application, dated 27 February 2009;
4. 18 February 2009 – Sunshine Coast Regional Council – Decision Notice – Refusal of Application;
5. 11 February 2009 – Part A, Part E, IDAS Assessment Checklist;
6. 5 February 2009 – Sunshine Coast Regional Council – Application for Building over a Council Sewer Application No. BAS09/0005 – Approval;

7. 20 January 2009 – Cardno (Qld) Pty Ltd – Footing Recommendations and plans – drawing number 203941-01;
8. 20 January 2009 – Form 15 – Compliance Certificate for building design - footings only;
9. 16 November 2008 – signed forms from adjoining and adjacent owners at 58-60 Cumberland Way, 62 Cumberland Way, 5 Timana Place, 4 Timana Place, 3 Timana Place, 1 Timana Place, advising no objection to the double carport;
10. 12 November 2008 – DWGs 01/09-05/09;
11. 5 November 2008 – Form 15 – Compliance Certificate for building design – gable roof carport;
12. 24 September 2007 – Current Title Search.

Based on the above information provided it was determined that the Applicant properly made a preliminary building application for the double carport seeking approval.

The Council advised the Applicant of the refusal to the preliminary building application in decision notice dated 18 February 2009.

The Applicant appealed the decision of Council to the Building and Development Tribunals on 3 March 2009.

### **Material Considered**

The material considered in arriving at this decision comprises:

1. 'Form 10 – Notice of Appeal' and Grounds for Appeal contained in letter dated 27 February 2009, lodged with the Registrar on 3 March 2009;
2. Decision notice from the Council refusing the preliminary building application, dated 18 February 2009;
3. Site plan, plans and elevations of the double carport;
4. Letters supporting the as constructed carport from neighbours;
5. Verbal submission from the Applicant at the hearing giving reasons for the double carport to be located within the required 6.0m setback to the secondary road boundary setback fronting Timana Place;
6. Verbal submissions by Council's representative at the hearing outlining Council's assessment of the application;
7. Written submissions provided by both parties at the hearing;
8. The IPA.
9. The *Building Act 1975*.
10. The Building Regulation 2006;
11. The QDC;
12. Relevant sections of the Maroochy Shire planning scheme.

### **Findings of Fact**

The Tribunal makes the following findings of fact:

1. Council wrote to the Applicant on 18 February 2009, (Reference: TUT:PBA09/0029) refusing the application for the double carport to be located within the required road boundary setback fronting Timana Place.
2. Plans provided show the location of the double carport located within the required road boundary setback fronting Timana Place. The following was able to be determined:-
  - (a) The subject site is irregular in shape and is a corner lot fronting Cumberland Way and Timana Place.
  - (b) The subject site has a frontage greater than 20.0m fronting Cumberland Way and approximately 20.0m fronting Timana Place.

- (c) Timana Place is a small cul-de-sac.
  - (d) The double carport is existing and has been located adjacent to Timana Place.
  - (e) The double carport has been located setback between 200–750mm from the Timana Place road boundary alignment.
  - (f) The structure is a significant extension of the existing dwelling and is in full view of pedestrians and traffic. It is overlooked by dwellings in the neighbourhood on the southern side of Cumberland Way.
  - (g) Vehicle access is via the Cumberland Way. The subject site consists of one lot and the existing dwelling has been constructed parallel to road boundary alignment of Cumberland Way.
  - (h) There is an alternate location for the double carport on the subject site, being in front of the existing garage and over the existing driveway having access to Cumberland Way.
  - (i) There is an existing sewer 1.5m inside the property alignment and parallel to the road boundary alignment fronting Timana Place. This sewer services the adjoining owners in the cul-de-sac.
  - (j) The Council advised at the hearing it would be likely to relax the road boundary setback to Timana Place to 3.0m, had such an application been made.
3. The neighbourhood is well established with dwellings which are generally setback the required minimum 6.0m back from the road boundary alignments. The neighbourhood has established vegetation.
  4. The double carport has been requested to house additional vehicles and protect existing pool equipment which would be located in this location irrespective of the structure being in place.

## **Reasons for the Decision**

1. MP1.2 of the QDC sets out Performance Criteria (P1 & P2) in relation to siting requirements which a local government must consider and be satisfied that the application meets the intent of each criteria for that application, and that the development does not unduly conflict with the intent of each of the Performance Criteria:-

### **P1 – Design and Siting of Buildings and Structures**

#### ***(a) The bulk of the building***

From the plans and photographs provided and from the inspection of the site, the double carport does extend the bulk of the existing dwelling. It is located within the suggested relaxation for 3.0m setback for the road boundary fronting Timana Place and is visible from pedestrian and vehicle traffic and the adjoining neighbourhood. Significant establishment vegetation exists within the area and this reduces the visual bulk of the building.

An increase in the setback to minimum 1.5m to the outermost projection would give satisfactory relief to the bulk of the structure.

#### ***(b) Road boundary setbacks of neighbouring buildings or structures***

The road boundary setbacks of neighbouring building or structures generally appear to comply with the required setback of 6.0m. There are some exceptions within the area and the Council have advised that not all the structures that have been referred to have approval to be in the built locations.

It is not relevant in this application to compare this structure with others within the neighbourhood which have been constructed with minimal road boundary setbacks as this site is irregular and is a corner site. Therefore the site is unique and must be addressed accordingly.

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

There is a significant range in the neighbouring residences. Directly opposite and adjacent in Cumberland Way the neighbouring residents would have minimal adverse impact to their outlook.

The residents of Timana Place are in a small cul-de-sac location and the location of the double carport has a marginal impact on their outlook. However, the double carport is significantly screened by a 2.0m high solid timber fence and this significantly reduces the impact of the double carport. It can be viewed that the double carport helps in buffering vehicle noise from traffic in Cumberland Way. Therefore it is considered that the double carport has minimal affect on the outlook and views of the neighbouring residents in Timana Place.

The neighbouring residents overlooking Cumberland Way and the double carport are more adversely affected in their outlook and views.

Taking all aspects into consideration, the outlook and views of neighbouring residents have not been significantly affected by the double carport but a reduction in its size and greater setback to 1.5m to the road boundary in Timana Place would be beneficial.

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

The double carport in its current location is secured by a 2.0m high solid fence. This does not affect the current level of nuisance and safety to the public.

**P2 Building and Structures –**

***(e) Provide adequate daylight and ventilation to habitable rooms***

From the plans provided and on inspection of the site, the double carport is located within the suggested relaxation for 3.0m setback to the road boundary. It abuts the existing dwelling on the site and does not affect the provision of adequate daylight and ventilation to the habitable rooms of this dwelling.

***(f) Allow adequate light and ventilation to habitable rooms of buildings on adjoining lots***

The double carport in its constructed location does not affect the provision of adequate daylight and ventilation to the habitable rooms of the existing adjoining dwellings.

Therefore the structure will have no impact on the light and ventilation of habitable rooms on adjoining lots.

***(g) Do not adversely impact on the amenity and privacy of residents on adjoining lots***

The double carport is located within the suggested relaxation for 3.0m setback to the road boundary. The location of the structure close to the road boundary alignment of the cul-de-sac does have an adverse affect on the amenity of the neighbourhood. However, the location of the double carport would have minimal impact on the privacy of residents on the adjoining or adjacent lots.

***(h) Side and rear boundary clearances – Height in metres***

The double carport is located within the suggested relaxation for 3.0m setback to the road boundary. The setback from the side and rear boundaries are not relevant to the location of the building structure. Therefore the impact of the structure in its proposed location is minimal and within reasonable location of these setback requirements.

2. The relevant control in the Maroochy Shire Planning Scheme is Code 4.1, Element 1, Performance Criteria P2 of the Detached Houses & Display Homes Code. In response to this, the Tribunal finds that a reduced width carport, as set out above, will substantially achieve the outcomes set out in the part.

3. Based on the above facts it is considered the appeal is upheld.

The decision held in this application is separate to any other applications which may be made over the property at this time or in the future.

4. QDC provides Performance Criteria and some Acceptable Solutions. The Acceptable Solutions are to provide reasonable and achievable outcomes. The local government is in a position to vary the Acceptable Solutions in relation to an application for siting requirements and to assess the application based on its merits.
5. In assessing the criteria from this part of the Code in relation to the double carport being located within the suggested relaxation for 3.0m setback to the road boundary the Tribunal found that there were grounds to allow for the existing structure to remain in the current location with an increased setback to 1.5m from the road boundary fronting Timana place.
6. The extent of non-compliance with the QDC Acceptable Solution is greater than acceptable and an alternate solution for the setback to be minimum 1.5m would in the Tribunal's opinion, satisfactorily achieve a solution to the relevant Performance Criteria. In addition, the purpose of the QDC is to provide good residential and neighbourhood design while acceptable amenity to residents is not compromised.

---

**Georgina Rogers**  
**Building and Development Tribunal Chair**  
**Date: 24 April 2009**

## **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 Infrastructure and Planning  
PO Box 15009  
CITY EAST QLD 4002  
**Telephone (07) 3237 0403 Facsimile (07) 3237 1248**