



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

Department of Local Government, Planning,  
Sport and Recreation

**APPEAL**  
*Integrated Planning Act 1997*

**File No. 3-05-011 A&A**

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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 Amenity and Aesthetics issue is considered and responded to in this determination.
  - 2 The decision on the siting 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 Phil Breeze	Tribunal member
Mr Greg Schonfelder	Tribunal member
Mr L F Blumkie	Tribunal Chairperson

**Present:**

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

### **Decision**

The Tribunal, in accordance with Section 4.2.34 (2) (b) of the Integrated Planning Act, **changes** the decision appealed against and with the consent of the owner allows a carport subject to the following conditions:

- 1 The carport is located within the front street setback, starting at the front wall line of the house and projecting forward for a distance of 6 metres.
- 2 It is approximately 6 metres in width and extends from the right hand veranda post towards the righthand side boundary when viewed from the street.
- 3 The existing roof of the house is modified to include an integrated hip roof over the proposed carport – (roof pitch to be consistent) all as shown on the attached drawing.
- 4 The new roof to the carport is tiled to match the existing house.
- 5 It is 100% open on all sides except where it abuts the existing house; Note – This is not to exclude a front fence and gates erected on the front allignment.
- 6 It is supported on rendered block or brick columns (matching the house) set back 600mm from the front fascia line.
- 7 It has a fascia line in line with the fascia of the existing veranda ie approximately 2100mm above the ground at the existing right hand column line.
- 8 Stormwater is connected to the street channel in accordance with Council requirements;
- 9 It has fascia and gutter etc in colours matching the existing house;
- 10 A detailed building application being prepared and development approval obtained.
- 11 Vehicular access is maintained to the rear of the property.
- 12 It is landscaped in a similar manner to match the existing streetscape to the satisfaction of Council.

This decision needs to be read in conjunction with the separate Tribunal decision on the siting of the carport. (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 *Standard Building Regulation 1993 (SBR)*
- 10 The Integrated Planning Act 1997.
- 11 Caloundra City Council Resolution on Amenity and Aesthetics.
- 12 An inspection of the site and neighbourhood

## **Findings of Fact**

### *A Standard Building Regulation - Division 4 - Amenity and Aesthetics*

Caloundra City Council adopted an Amenity and Aesthetics policy under Section 50(1) of the Standard Building Regulation on the 24 January 2002 and amended that policy on the 18 September 2003.

The resolution amongst other things declared that all development applications for Class 10 Buildings located in Residential areas etc are to be subject to amenity and aesthetics assessment by the Caloundra City Council.

Section 50 (2) of the Standard Building Regulation 1993 states that applications mentioned in Section 50 (1) must be assessed by the local government for the amenity and aesthetics impact of the proposed building work.

Section 50 (3) states that the local government may refuse an application to which subsection (2) applies if the building, when built, would have an extremely adverse effect on the amenity or likely amenity of the building's neighbourhood etc.

*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 between the house and side boundary has been removed.

*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 throughout the neighbourhood.

**Reasons for the Decision**

Taking into account the particular circumstances of the site and neighbourhood namely :-

- 1 Council sewer line crossing the rear of the property and approximately 1 metre in from the rear alignment.
- 2 The house being located 2900mm from the right hand side boundary.
- 3 The existing car accommodation being enclosed by the previous owner.
- 4 The distance between the rear of the house (Pergola) to the existing sewer line.
- 5 The owners desire to have a double carport.
- 6 The owners proposal to have a swimming pool to the rear of the property.
- 7 Numerous carports erected within the front setback throughout the neighbourhood.

The Tribunal considered the proposal as submitted was in extreme conflict with the amenity and aesthetics of the neighbourhood because of the design, choice of materials, height and color scheme and with the consent of the owner imposed the following conditions on the proposal:-

1. The carport is located within the front street setback, starting at the front wall line of the house and projecting forward for a distance of 6 metres.
2. It is approximately 6 metres in width and extends from the right hand veranda post towards the righthand side boundary when viewed from the street.
3. The existing roof of the house is modified to include an integrated hip roof over the proposed carport – (Roof pitch to be consistent) - all as shown on the attached drawing.
4. The roof is tiled to match the existing house.
5. It is 100% open on all sides except where it abuts the existing house; Note – This is not to exclude a front fence and gates erected on the front alignment.
6. It is supported on rendered block or brick columns (matching the house) set back 600mm from the front fascia line.
7. It has a fascia line in line with the fascia of the existing veranda ie approximately 2100mm above the ground at the existing right hand column line.
8. Stormwater is connected to the street channel in accordance with Council requirements;
9. It has fascia and gutter etc in colours matching the existing house;
10. A detailed building application being prepared and development approval obtained.
11. Vehicular access is maintained to the rear of the property.
12. It is landscaped in a similar manner to match the existing streetscape to the satisfaction of Council.

Hence, in accordance with section 4.2.34(2) (b) of the Integrated Planning Act the Tribunal decided to change the decision appealed against and with the consent of the owner allow a carport subject to the above conditions.

- 1 The carport is located within the front street setback, starting at the front wall line of the house and projecting forward for a distance of 6 metres.
- 2 It is approximately 6 metres in width and extends from the right hand veranda post towards the righthand side boundary when viewed from the street.
- 3 The existing roof of the house is modified to include an integrated hip roof over the proposed carport (roof pitch to be consistent) – all as shown on the attached drawing.
- 4 The new roof to the carport is tiled to match the existing house.
- 5 It is 100% open on all sides except where it abuts the existing house; Note – This is not to exclude a front fence and/or gates erected on the front street alignment.
- 6 It is supported on rendered block or brick columns (matching the house) set back 600mm from the front fascia line.
- 7 It has a fascia line in line with the fascia of the existing veranda ie approximately 2100mm above the ground at the existing right hand column line.
- 8 Stormwater is connected to the street channel in accordance with Council requirements;
- 9 It has fascia and gutter etc in colours matching the existing house;
- 10 A detailed building application being prepared and development approval obtained.
- 11 Vehicular access is maintained to the rear of the prpoerty.
- 12 It is landscaped in a similar manner to match the existing streetscape to the satisfaction of Council.

This decision needs to be read in conjunction with the separate Tribunal decision on the siting of the proposal.

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**Leo F Blumkie**  
**Building and Development**  
**Tribunal Chairperson**  
**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  
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