



Building and Development Tribunals
Queensland Government

Department of Local Government, Planning,
Sport and Recreation

APPEAL
Integrated Planning Act 1997

File No. 3-04-046B

BUILDING AND DEVELOPMENT TRIBUNAL - DECISION

Assessment Manager: Caboolture Shire Council

Site Address: 12 Yorkshire Drive, Banksia Beach

Applicant:

Nature of Appeal

The appeal is against the decision of the Caboolture Shire Council not to grant an approval to construct a carport on land described as Lot 459 on RP 180388 situated at 12 Yorkshire Drive Banksia Beach.

Council considers that:-

- 1 the building or structure, when built will have an extreme adverse affect on the amenity or future amenity of the proposed building's neighbourhood and the aesthetics of the building or structure, when built, will be in extreme conflict with the character of the proposed building's neighbourhood; and
- 2 under Section A1 (c) of the Queensland Development Code (QDC) the location of the building or structure does not facilitate an acceptable streetscape appropriate for; the bulk of the building or structure; the road boundary setbacks of neighbouring buildings or structures; and the outlook and views of the neighbouring residence.

NOTE :- The decision on each issue is considered separately by different Tribunals. Both hearings were held at the same time and date.

- 1 The decision on the siting issue is considered and responded to in this determination.
 - 2 The decision on the Amenity and Aesthetics issue is considered separately and a copy of that Tribunal decision is attached.
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Date and Place of Hearing: 2.30pm Friday 6 August 2004.
Office of the Department of Local Government, Planning,
Sport & Recreation.
Level 25 Mineral House,
41 George Street, Brisbane.

Tribunal: Mr L F Blumkie Tribunal

Present: Applicant / Owner
Caboolture Shire Council representative
Mr L Blumkie Tribunal Chairperson
Mr R Pocock Observer
Mr P Locke Observer

Decision

The Tribunal, in accordance with Section 4.2.34 (2) (b) of the Integrated Planning Act, changes the second part of the decision of the Caboolture Shire Council, dated 7 May 2004, and approves the location of a carport within the 6m road boundary clearance, subject to the design satisfying the amenity and aesthetics policy of the Caboolture Shire Council.

This decision needs to be read in conjunction with the separate Tribunal decision on the affect the carport has on the amenity of the building's neighbourhood (copy attached).

Background

An application was made to the Caboolture Shire Council for a relaxation to allow the siting of a carport to be erected within the 6 metre street setback.

The application, other than engineering details, consisted of a single line section and a site plan. The site plan contained no details of the landscaping or other development on the site. The existing street gully, (which would interfere with a driveway on the opposite side of the property) was not mentioned, nor was the sewer line at the rear of the property.

The existing car accommodation was only suitable for one vehicle as the garage area was reduced in area by a truncated wall on the left-hand side. The applicant required covered car accommodation for another vehicle and a boat.

The position of the existing garage door in relation to the driveway and right-hand side boundary made it difficult to position a 6000mm wide carport and still maintain an acceptable pedestrian entrance.

Even though the left-hand side of the house had a clearance of 4000mm this area was extensively landscaped and had pergola and as such was used as outdoor entertainment area in association with the adjacent family room.

Council was not aware of the above facts and because of the limited time (5 days to decide on amenity and aesthetics concerns) refused to grant the relaxation on the 7 May 2004.

On 28 May 2004 the applicants provided further information and details of other carports in the area erected within the street setback, and requested further consideration of the matter.

On the 10 June 2004 Council confirmed its decision not to grant a relaxation.

On the 16 June 2004 the applicants again wrote to Council providing further details on their application.

On the 23 June 2004 Council again confirmed its decision of the 7 May 2004.
An appeal was lodged with the Registrar on the 20 July 2004.

Material Considered

In coming to a decision, consideration was given to the following material: -

- 1 Drawings accompanying the application.
- 2 Copy of the Decision Notice dated 7 May 2004.
- 3 Copy of the Appeal Notice dated 20 July 2004.
- 4 Correspondence of Council and Applicant submitted with the appeal.
- 5 Photographs submitted with the appeal.
- 6 Verbal submissions from the applicants.
- 7 Verbal submissions from the Caboolture Shire Council representatives.
- 8 The Standard Building Regulation 1993 (SBR)
- 9 The Integrated Planning Act 1997
- 10 The Queensland Development Code (QDC)
- 11 Caboolture Shire Council Resolution Policy on Amenity and Aesthetics. Policy No 202/02.

Findings of Fact

A Standard Building Regulation 1993 (SBR)

The SBR calls up the Queensland Development Code (QDC). Part 12 of the Code establishes Performance Criteria and Acceptable Solutions for the design and siting of buildings and structures on lots 450m² and over.

B Site

The site is developed with an existing class 1 building and has extensive landscaping, pergolas and outdoor entertainment area. The site has a council sewer running across the rear of the block. The existing house is located 1500mm from the right hand boundary and has approximately 4000mm clearance on the left hand side. However this space is heavily landscape with rock walls, pergola and extensive planting and is used as an entertainment area in conjunction with the adjacent family room.

A stormwater gully is located in the street channel in front of the 4000mm setback on the left-hand side of the existing house.

The site is relatively level and is rectangular in shape.

C Development in the neighbourhood.

Photographs presented at the hearing indicated numerous carports, within the 6m street setback, located within the neighbourhood. Carports varied in design, height, size and choice of materials.

E Existing Car accommodation

The existing development has covered lock-up car accommodation for 1 normal size vehicle.

Reasons for the Decision

The siting of the carport was considered against the performance criteria established in the Queensland Development Code. The opinion of the Tribunal in satisfying the performance criteria is documented as follows:-

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

(a) the bulk of the building or structure;

Because of the location of the existing development, (including the extensive landscaping, planning of the house, location of the council sewer and street gully), in my opinion, there is no other suitable location to erect a double carport.

The Council representative, having been made aware of the on site conditions, agreed there was no alternative/suitable location to erect a double car port.

The Amenity and Aesthetics tribunal has considered the amenity and aesthetics aspects of the proposal and its decision is contained in the attached determination.

(b) the road boundary setbacks of neighbouring buildings or structure:

Both neighbouring properties have a 6m setback to buildings. There is an 1800mm solid fence to the right-hand side boundary right up to the front alignment.

(c) the outlook and views of neighbouring residents

The carport would not affect the outlook and views of neighbouring residents.

(d) nuisance and safety to the public.

The carport would not create a nuisance or be a safety hazard for the public.

P2 Buildings and structures-

(a) provide adequate daylight and ventilation to habitable rooms;

The carport would allow adequate daylight and ventilation to habitable rooms.

(b) *allow adequate light and ventilation to habitable rooms of buildings on adjoining lots.*

The carport would have no effect to light and ventilation to habitable rooms of buildings on adjoining lots.

P3 *Adequate open space is provided for recreation, service facilities and landscaping.*

The carport allows for more than adequate space for recreation, service facilities and landscaping.

P4 *The height of a building is not to unduly*

(a) *overshadow adjoining houses;*

The carport does not overshadow adjoining houses.

(b) *obstruct the outlook from adjoining lots.*

The carport does not obstruct the outlook from adjoining lots.

P5 *Buildings are sited and designed to provide adequate visual privacy for neighbours.*

The carport would provide adequate visual privacy for neighbours.

P6 *The location of a building or structure facilitates normal building maintenance.*

The carport would allow normal building maintenance.

P7 *The size and location of structures on corner sites provide for adequate sight lines.*

The site is not a corner site.

P8 *Sufficient space for on-site carparking to satisfy the projected needs of residences and visitors, appropriate for-*

(a) *the availability for public transport; and*

(b) *the availability of on-street parking; and*

(c) *the desirability of on-street parking in respect to the streetscape; and*

(d) *the residents likelihood to have or need a vehicle.*

The carport would not reduce the amount of car parking on site. There is adequate on site car parking.

In the opinion of the Tribunal, there is no alternative location to site a carport other than within the 6m street setback. The proposal (subject to the amenity and aesthetics appeal decision) satisfies the performance criteria under P1 and acceptable solutions A1(c)(ii) of the Queensland Development Code.

Hence, the Tribunal, in accordance with Section 4.2.34(2)(b) of the Integrated Planning Act, changes the second part of the decision of the Caboolture Shire Council, dated 7 May 2004, and approves the location of a carport within the 6m road boundary clearance, subject to the design satisfying the amenity and aesthetics policy of the Caboolture Shire Council.

This decision needs to be read in conjunction with the separate Tribunal decision on the affect the carport has on the amenity of the building's neighbourhood (copy attached).

Leo F Blumkie
Building and Development
Tribunal
Date: 23 September 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
Department of Local Government and Planning
PO Box 31
BRISBANE ALBERT STREET QLD 4002
Telephone (07) 3237 0403: Facsimile (07) 32371248