

## BUILDING AND DEVELOPMENT TRIBUNAL - DECISION

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**Assessment Manager:** Pine Rivers Shire Council

**Site Address:** 12 Mingaletta Crescent, Ferny Hills

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**NATURE OF APPEAL:** The appeal is against the decision of the Pine Rivers Shire Council to refuse an application for a relaxation of the road front boundary clearance to allow a carport to be erected with a minimum setback of zero (0.0) metres.

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**DATE AND PLACE OF HEARING:** 2:50 pm on Monday 24 September, 2001 at 12 Mingaletta Crescent, Ferny Hills.

**Tribunal:** David Kay

**Present:** Donald Wright – Design Associates Consultants

Keith Thomas – Thomas Management Design

Gary Choveaux –Pine Rivers Shire Council

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### TRIBUNAL DECISION:

The decision of Pine Rivers Shire Council contained the letter dated 10 April, 2001 to not allow a zero (0.0) metre setback for a carport at 12 Mingaletta Crescent is **set aside** and is replaced by the following decision.

(1) The carport is permitted to be located with a road front boundary clearance of zero (0.0) metres at the south western corner of the roofed area 1.7 metres from the side boundary and is to be constructed in accordance with Donald Wright drawing numbers 2000-945/WD1B&WD2B

(2) The carport shall not exceed a height of 2.7 metres above the existing ground level.

(3) Roof water from the carport shall discharge to the existing approved stormwater drainage system.

(4) The colour scheme for the carport shall be compatible with the existing dwelling.

(5) The carport is to remain open on three sides and shall not be enclosed by walls, screens doors or the like other than the front elevation to Mingaletta Crescent which may be fitted with a garage door that does not open out over the footpath.

(6) At least 0.9 metres of the 1.7 metre wide setback area between the carport and the western side boundary within 6.0 metres of the front road boundary shall be planted with screening trees or landscaped vegetation that will grow to a height of 3.0 metres. The type of planting and the ongoing maintenance of this landscaped area is to be to the satisfaction of the Manager Statutory Building Services, Pine Rivers Shire Council.

(7) This decision shall lapse if a development for building work associated with this appeal has not been obtained within twelve (12) months of the date of this decision.

## **MATERIAL CONSIDERED:**

- 21-11-0 Application by Pine Rivers Shire Building Certifiers on behalf of Design Associates Consultants for a relaxation of the front road boundary setback.
- 21-12-0 Letters from neighbours at 10 and 14 Mingaletta Crescent advising of their views in relation to the proposed building work
- 10-4-01 Letter from Pine Rivers Shire advising of decision to allow a 1.0 metre setback and other council meeting minutes.
- 9-5-01 Appeal by Thomas Management Design on behalf of Design Associates Consultants to Building and Development Tribunal and supporting material.
- 5-9-01 Advice from Crown Law on the jurisdiction of the Building and Development Tribunal to hear the appeal and other related correspondence.

Various facsimiles to Pine Rivers Shire Council from Design Associates Consultants

Extract of Part 9, Division 5 of The Pine Rivers Shire Town Planning Scheme –“Building Lines in Particular Areas”

**. Applicants Submission:** The details are contained in the documentation lodged with the Tribunal as part of the appeal. The proposed carport location will allow more light and air into the dwelling when located on the front boundary line rather than being 1.0 metre closer to the dwelling. The proposal makes allowance for a third carport and would be no difference in appearance whether it was located on the front boundary or 1.0 metre back. There is support from the neighbours for the proposal. The proposal provides privacy and security for the occupants of the premises. The relaxation should have been granted by Council as there is no valid reason to request the carport be moved back 1.0 metre.

**Assessment Managers Submission.** The council initially wanted the carport to be kept at the existing alignment but then offered a 1.0 metre setback. Council considered that the 0.0 metre setback would be detrimental to the amenity of the area. This proposal was considered to have a greater impact at this location compared to existing approved carports in other locations. The proposal was assessed against the requirements of the town planning scheme.

It was also considered the absence of trees and vegetation forming a landscaped screen on this site compared to that existing on neighbouring properties was detrimental to the proposal .

## **RELEVANT LEGISLATION:**

Integrated Planning Act, 1997

**FINDINGS OF FACT:**

The proposed carport is to be approximately 2.4 metres in height and is to be erected at a distance of 0.0metres at the south west corner and approximately 0.8 metres at the south east corner from the road front boundary to Mingaletta Crescent.

A 1.8 metre masonry brick fence with timber paling infill panels is erected along the frontage of the site other than the width of the existing 4.8 metre driveway entry.

The buildings on either side of the site are high set 2 storey dwellings.

The Pine Rivers Shire Council has approved numerous open carports in the 6.0 metre road front boundary setback in the neighbourhood. Some of these have a zero building setback.

An enclosed garage/carport has been approved and constructed at 7 Olakuna Crescent with what would appear to be a zero building setback.

The Pine Rivers Town Planning Scheme sets out in Part 9, Division 5, Clause (4),(a)-(d) the circumstances in which a setback of lesser than 6.0 metres may be approved.

**REASONING:** The advice received from Crown Law indicates that the application for the setback variation can be heard under the appeal provisions of Section 21 of The Standard Building Regulations which place the matter in the jurisdiction of the Building and Development Tribunal.

In consideration of the relevant provisions of the Pine Rivers Scheme the Council did not offer any evidence that it was necessary in the foreseeable future to undertake road works or relocation of services in the existing road reserve that would necessitate road widening affecting the front property alignment.

The historical pattern of buildings in this neighbourhood has evidence of carports and garage type structures being approved and constructed within the 6.0 metre road front boundary and this is supported by documentation submitted from the applicant.

As the site does not have more than one road frontage or a service road this is not a consideration.

The lesser setback would not have a detrimental effect on the built environment as :-

An existing front boundary fence 1.8 metre high along the frontage provides visual screening to the front 6.0 metre setback and the proposed carport would not project beyond the front alignment of this fence.

Visual sighting when walking along the footpath and driving along the road is not obstructed by the fence and would not be obstructed by the proposed carport as they are located on an external face of the bend in the road.

Outlook from the neighbouring residences would not be adversely affected as they are both high set dwellings

Vehicles can be parked in this area which is partly roofed now and would continue to be parked in this location whether the area is fully roofed or unroofed.

The additional height of the carport roof will not project above the line of the roof of the existing dwelling and will be generally lower than the roof level of the carport covering part of this area presently.

The presence of a landscaped area with screening vegetation would enhance the site and break any roof glare from the roof towards the neighbouring property to the west containing a high set dwelling.

David Kay

**Building and Development**

**Tribunal Referee**

**Date: 10 October, 2001**



## **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.

## **Reason for Decision**

Reasons may be obtained if requested 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**

