



**APPEAL**  
*Integrated Planning Act 1997*

**File No. 3/07/060**

---

**BUILDING AND DEVELOPMENT TRIBUNAL – DECISION**

---

**Assessment Manager:** Douglas Shire Council  
**Site Address:** *withheld* – “the subject site”  
**Appellant:** *withheld*

---

**Nature of Appeal:**

Appeal under Chapter 4 of the *Integrated Planning Act 1997* against a decision of the Douglas Shire Council to refuse a Development Application (Council reference PF 673) requesting siting dispensation for a dwelling on the subject site.

---

**Date and Place of Hearing:** Monday 29 October 2007 at 9.00 am at the office of the Douglas Shire Council, Mossman.  
**Tribunal:** Nigel Daniels  
**Present:** Applicant (on telephone link);  
Jeff Evans - Douglas Shire Council representative.

---

**Decision:**

Under the provisions of the *Integrated Planning Act 1997*, section 4.2.34, the Tribunal **sets aside the decision appealed against**, as made by the Douglas Shire Council, and substitutes the following decision:

**The proposed building work may be constructed at 1.6 metres from the road boundary, measured to the wall, subject to the following conditions:**

- 1. The side boundary clearance must be not less than 1.5 metres.**
- 2. The building work must comply with the requirements of the Queensland Development Code (QDC), Part 12 Design and Siting standard for single detached housing on lots 450 sqm and over, for:**
  - a. Definitions; and**
  - b. Acceptable solution A1 (c) for open carports;**

**with the following alternative options permitted:**

**c. The “two sides or more open” may be replaced by “at least one side fully open and a second side not less than 50% open.**

**3. The side enclosed by the roller door (or overhead folding door or equivalent) is deemed to be an enclosed side.**

### **Background**

The applicant proposes to construct a garage and store room (together with other building work) at a distance from the road boundary of less than 6 metres and from the side boundary of less than 1.5 metres.

An application was made to the Douglas Shire Council for approval to construct the building work at the proposed reduced distances.

The application to the Council was made under the provisions of the *Integrated Planning Regulation 1998*, Schedule 2, which provides that the Council is a concurrence referral agency for such approvals. Council refused the application.

### **Material Considered:**

The material considered in arriving at this decision include:

- Form 10 – Building and Development Tribunals Appeal Notice from the applicant and material attached to the Notice;
- Verbal submissions made at the hearing by the applicant;
- Verbal submissions by the Council representatives at the hearing;
- The *Building Act 1975*;
- The *Building Regulation 2006*;
- The *Queensland Development Code, Part 12*;
- The *Integrated Planning Act 1997*; and
- The *Integrated Planning Regulation 1998*.

### **Reasons for the Decision:**

A need for location of under-cover secure car parking at a distance of less than 6 metres from the road boundary has been demonstrated; there being no accessible alternative location available on the site.

A need to locate the building work at less than 1.5 metres from the side boundary has not been demonstrated.

Examination of the drawings submitted to the Tribunal indicates that the design of the proposed garage and store may be modified, so as to achieve a side boundary clearance of 1.5 metres.

It is feasible to comply with the QDC requirements for an open carport; subject to the alternative options stated in the Tribunal’s decision.

## **Findings of Fact**

1. **Site conditions:** Inspection of the site and examination of the drawings submitted to the Tribunal indicates that the design of the proposed garage and store may be modified, so as to achieve a side boundary clearance of 1.5 metres.
2. **Applicable code:** The *Queensland Development Code* applies; there being no provisions in the Shire's Planning Scheme to modify or take precedence over the provisions of the QDC..

---

**Nigel Daniels**

**Building and Development Tribunal General Referee**

**Date: 31 October 2007**

## **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, Planning, Sport and Recreation  
PO Box 15031  
CITY EAST QLD 4002  
**Telephone (07) 3237 0403: Facsimile (07) 32371248**