



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

Department of Local Government, Planning,  
Sport and Recreation

**APPEAL**  
*Integrated Planning Act 1997*

**File No 3-05-035 S**

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**BUILDING AND DEVELOPMENT TRIBUNAL - DECISION**

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**Assessment Manager:** Caboolture Shire Council

**Site Address:** *withheld* – “the subject site”

**Applicant:** *withheld*

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**Nature of Appeal**

The appeal is against the decision of the Caboolture Shire Council not to grant a relaxation for the height and location of a proposed garage to be constructed on land described as Lot *withheld*, and situated at “the subject site”.

Council considers that under:-

Item A

- 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
- 2 The aesthetics of the building or structure, when built will be in extreme conflict with the character of the proposed building’s neighbourhood.

Item B

- 3 Section 42(d) of the Queensland Development Code (QDC) that there is an alternative location on the site to locate a garage in compliance with A2 (a) and The location of the building or structure does not facilitate an acceptable streetscape appropriate for :-
  - The bulk of the building or structure: and
  - The outlook and views of the neighbouring residents.

**NOTES :-** The decision on Items A and B are considered separately by different Tribunals. Both hearings were held at the same time and date.

The decision on the amenity and aesthetics issue Item (A) is considered separately and a copy of that Tribunal decision is attached.

The decision on the siting issue, Item (B) is considered and responded to in this determination.

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**Date and Place of Hearing:** 9.00am Friday 8 July 2005.

Inspection of the site and hearing at  
“the subject site”.

<b>Tribunal:</b>	Mr L F Blumkie	Tribunal
<b>Present:</b>	Mr T McLean <i>withheld</i> <i>withheld</i>	Caboolture Building Approvals Owner/Applicant Owner
	Mr Chris Harris	Caboolture Shire Council representative
	Mr L Blumkie	Tribunal
	Mr Phil Breeze	Observer
	Ms J Owen	Observer

### **Decision**

The Tribunal, in accordance with Section 4.2.34 (2) (b) of the Integrated Planning Act, **changes the decision** of the Caboolture Shire Council, dated 3 June 2005 and grants approval to allow the proposed garage to be sited as proposed, subject to the conditions established in the Amenity and Aesthetics Tribunal decision. (refer attached).

### **Background**

Application was made on 30 May 2005 for a relaxation to allow the overall height of the proposed garage to exceed the 3000mm maximum height required by Council.

The application for relaxation was not clearly documented. It appeared that the height of the proposed garage was 3900mm to the fascia line with a gable roof above, indicating an overall height of approximately 5200mm. Council considered that the height and bulk of this proposal would not be in keeping with Council’s amenity and aesthetics policy and refused the application on the 3 June 2005.

On the 1 June 2005 Caboolture Building Approvals (Private Certifiers) granted approval for a 6m x 6m steel framed garage to the left rear of the property.

Council was not aware of this approval and when an inspection of the site was made to assess the relaxation request, there was no evidence on site to indicate an approval had been granted for a new garage to the rear of the house.

The application to Council for relaxation did not contain all the necessary details.

The owner and applicant did not convey any further written or verbal information to Council. Council decided the application based on the information presented, and the on site conditions at the time of inspection.

The applicant lodged an appeal with the Registrar on the 21 June 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 3 June 2005.
- 3 Copy of the Appeal Notice dated 21 June 2005.
- 4 Copy of the building approval for the garage at the rear of the property.
- 5 Verbal submissions from applicant.
- 6 Verbal submissions from applicant.
- 7 Verbal submissions from the Caboolture Shire Council representatives.
- 8 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
- 12 An inspection of the neighbourhood

### **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 450m<sup>2</sup> and over.

#### *B Site*

The site is developed with an existing class 1 building. A previously approved garage was under construction at the rear of the property.

The site is level with a slight fall to the street alignment.

#### *C Development in the neighbourhood.*

An inspection of the neighbourhood indicated the majority of properties were developed with Class 1 buildings. There were numerous examples of garages, however none appeared to have excessive height.

## Reasons for the Decision

The owner explained that they wanted the garage fascia line to align with that of the house, and the roof of the garage to also match the house ie 20 degree pitch and a gable roof.

The owner was not aware that the application for relaxation indicated a height of 3900mm from the ground to the fascia line of the garage.

The Council representative advised that, had Council been correctly informed of the proposed height of the garage (2400mm to the fascia line) and that a new garage had also been approved by a private certifier to the rear of the property, Council would have approved the siting and relaxation request.

The siting of the proposed garage 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;*

The proposed double garage with the following conditions applied would create an acceptable streetscape within the existing neighbourhood.:

1. The garage is located 6000mm from the *withheld* Parade frontage and 500mm from the side boundary;
2. Brick external finish matching the house as near as possible;
3. 20 degree gable roof with the gable facing the street frontage;
4. Fascia in line with that of the existing house, ie fascia line at approximately 2400mm above ground;
5. Second driveway constructed from *withheld* Parade;
6. Stormwater drainage in accordance with Council requirements;
7. The previously approved carport to the left side of the house is totally removed (excluding the brick columns) and Council approval is obtained for any future pergola, carport or other structure in this position.
8. The colour scheme matching the house.

Taking into account the overall shape, size, height and color scheme of the proposal, the bulk of the Garage would be in keeping with the existing streetscape.

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

The proposal was in keeping with setbacks of neighbouring buildings.

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

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

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

The proposed garage 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 proposed garage would allow adequate daylight and ventilation to habitable rooms.

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

The proposed garage 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 proposed garage 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 proposed garage does not overshadow adjoining houses.

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

The proposed garage does not obstruct the outlook from adjoining lots.

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

The proposed garage would not interfere with visual privacy for neighbours.

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

The proposed garage would not interfere with normal building maintenance.

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

The proposed garage would allow for more than adequate site lines.

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 proposed garage does not interfere with on site parking.

In the opinion of the Tribunal, after taking into account the particular circumstances of the site, it is possible to justify the siting of the garage as proposed under performance criteria and acceptable solutions of the Queensland Development Code.

Hence the Tribunal, in accordance with Section 4.2.34 (2) (b) of the Integrated Planning Act, **changes the decision** of the Caboolture Shire Council, dated 3 June 2005 and grants approval to allow the proposed garage to be sited as shown in the application, subject to the conditions established in the Amenity and Aesthetics Tribunal decision. (refer attached).

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

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**Leo F Blumkie**  
**Building and Development**  
**Tribunal**  
**Date: 14 July 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  
Department of Local Government and Planning  
PO Box 31  
BRISBANE ALBERT STREET QLD 4002  
**Telephone (07) 3237 0403: Facsimile (07) 32371248**