



**APPEAL**  
*Integrated Planning Act 1997*

**File No. 3/04/027 B**

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## **BUILDING AND DEVELOPMENT TRIBUNAL - DECISION**

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**Assessment Manager:** Caboolture Shire Council

**Site Address:** 113 Fleet Street Burpengary

**Applicant:**

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### **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 212 on RP 858817 and situated at 113 Fleet Street Burpengary.

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
- 2 under Section A1 (c) of the Queensland Development Code (QDC) there are alternative locations on the site to locate a carport in compliance with A1(c)(ii) and therefore the carport does not comply with Part 12 A1 (c) of the QDC.

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. (Refer No. 3/04/027 A)
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**Date and Place of Hearing:** 11.00am Friday 21 May 2004.

Inspection of the site 113 Fleet Street, Burpengary followed by a hearing at the Caboolture Shire Council, Shire Administration Centre, 2 Hasking Street Caboolture.

**Tribunal:** Mr L F Blumkie Tribunal

**Present:** Applicant / Owner  
Caboolture Shire Council representative  
Mr L Blumkie Tribunal Chairperson  
Builder (present at the site inspection only)  
Observer  
Observer

### **Decision**

The Tribunal, in accordance with Section 4.2.34 (2) (a) of the Integrated Planning Act, confirms the second part of the decision of the Caboolture Shire Council, dated 22 April 2004, namely that the carport does not comply with Part 12 A1 (c) of the Queensland Development Code.

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. (Refer No. 3/04/027 A attached)

### **Background**

The property is a corner allotment.

The carport is existing and the owner informed the Tribunal that it was erected some 18 months ago by a builder. The owner was not aware until recently that it had been erected without first obtaining building approval as required by the Integrated Planning Act.

The owner has, since the erection of the carport (ie 18 months ago) been requesting from the builder a copy of the approval documents.

Application for the carport was made to Council on approximately 15 March 2004.

Application was made to Council for a relaxation of the street setback on the 15 April 2004.

Council decided the application on the 22 April 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 22 April 2004.
2. Copy of the Appeal Notice dated 7 May 2004.
3. Verbal submissions from the owner.
4. Verbal submissions from the builder.
5. Verbal submissions from the Caboolture Shire Council representatives.
6. The Standard Building Regulation 1993 (SBR)
7. The Integrated Planning Act 1997
8. The Queensland Development Code (QDC)

9. Correspondence from a number of property owners in the neighbourhood indicating they have no objection to the development.
11. An inspection of the neighbourhood indicating:-
  - no carports erected within the 6m street setback
  - numerous carports of varying size, roof design and choice of materials.

### **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 and 10 building. The carport, the subject of the appeal, is also existing and is within approximately 3m of the street boundary.

The site is some 3126m<sup>2</sup> in area, relatively level, rectangular in shape and has well developed and presented landscaping.

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

An inspection of the neighbourhood indicated the majority of properties were rural. There were numerous examples of carports all beyond the 6m street setback. Carports varied in design, height, size and choice of materials. Some, from a design, choice of materials and colour scheme, point of view, appeared to be in conflict with the class 1 buildings on the same site.

#### *E Existing Carport*

The carport is existing. It has a flat roof in line with the existing Class 1 fascia and gutter. It has decorative columns and a color scheme matching that of the house. It has well developed and presented landscaping and is barely visible from the road when approaching the property.

### **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;*

The carport having a flat roof in line with the existing eaves of the house established an acceptable streetscape.

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

No other carports in the neighbourhood were found to be within the 6m street setback. Caboolture Shire Council has to-date been able to rigidly maintain the 6m street setback. Allowing the proposal would establish a precedent. There are a number of alternative locations on the site to locate the carport which are outside the 6m street setback.

(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 carport would allow 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 carport does not interfere with on site parking. More than adequate on site car-parking is available.

In the opinion of the Tribunal it is not possible to justify the location of the carport within the 6m street setback as established under performance criteria P1(b) and acceptable solutions A1(c)(ii) of the Queensland Development Code.

Hence, the Tribunal, in accordance with Section 4.2.34 (2) (a) of the Integrated Planning Act, confirms the second part of the decision of the Caboolture Shire Council, dated 22 April 2004, namely that the carport does not comply with Part 12 A1 (c) of the Queensland Development Code. Also the proposal does not satisfy performance criteria P1(b).

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. (Refer No. 3/04/027 A attached).

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**Leo F Blumkie**  
**Building and Development**  
**Tribunal**  
**Date: 27 May 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**