



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

Department of Local Government, Planning,  
Sport and Recreation

**APPEAL**  
*Integrated Planning Act 1997*

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

---

**BUILDING AND DEVELOPMENT TRIBUNAL - DECISION**

---

**Assessment Manager:** Caboolture Shire Council

**Site Address:** 113 Fleet Street Burpengary

**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 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.

NOTES :- 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 Amenity and Aesthetics issue is considered and responded to in this determination.
  - 2 The decision on the siting issue is considered separately and a copy of that Tribunal decision is attached. (Refer No. 3/04/027 B)
- 

**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 Phil Breeze Tribunal member  
Ms Jenny Owen Tribunal member  
Mr L F Blumkie Tribunal Chairperson

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

### **Decision**

The Tribunal, in accordance with Section 4.2.34 (2) (b) of the Integrated Planning Act, changes the decision appealed against and deletes the first part of the decision of the Caboolture Shire Council, dated 22 April 2004, namely that the structure has an extreme adverse affect on the amenity of the proposed building's neighbourhood.

This decision needs to be read in conjunction with the separate Tribunal decision on the siting of the carport. (Refer No. 3/04/027 B 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. Caboolture Shire Council Resolution Policy on Amenity and Aesthetics. Policy No 202/02
10. 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 - Division 4 - Amenity and Aesthetics*

Caboolture Shire Council adopted an Amenity and Aesthetics policy under Section 50(1) of the Standard Building Regulation on the 5 September 2000 and amended that policy on the 19 February 2002 and again on the 17 December 2002.

The resolution amongst other things declared that all development applications for carports within the 6m road boundary clearance to be erected within the Caboolture Shire, are to be subject to amenity and aesthetics assessment by the Caboolture Shire Council.

Section 50 (2) of the Standard Building Regulation 1993 states that applications mentioned in Section 50 (1) must be assessed by the local government for the amenity and aesthetics impact of the proposed building work.

Section 50 (3) states that the local government may refuse an application to which subsection (2) applies if the building, when built, would have an extremely adverse effect on the amenity or likely amenity of the building's neighbourhood etc.

#### *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.

#### *D Forms of buildings and Council policy*

The local government representative was unable to table a written policy on the forms of buildings, which the local government considered acceptable under their amenity aesthetics resolution.

*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 Tribunal considered the overall shape, size, height, color scheme and landscaping of the existing carport blended in with the existing class 1 building. It was not clearly visible when approaching the property and hence, in the opinion of the Tribunal, was therefore not in extreme conflict with the amenity or future amenity of the building's neighbourhood.

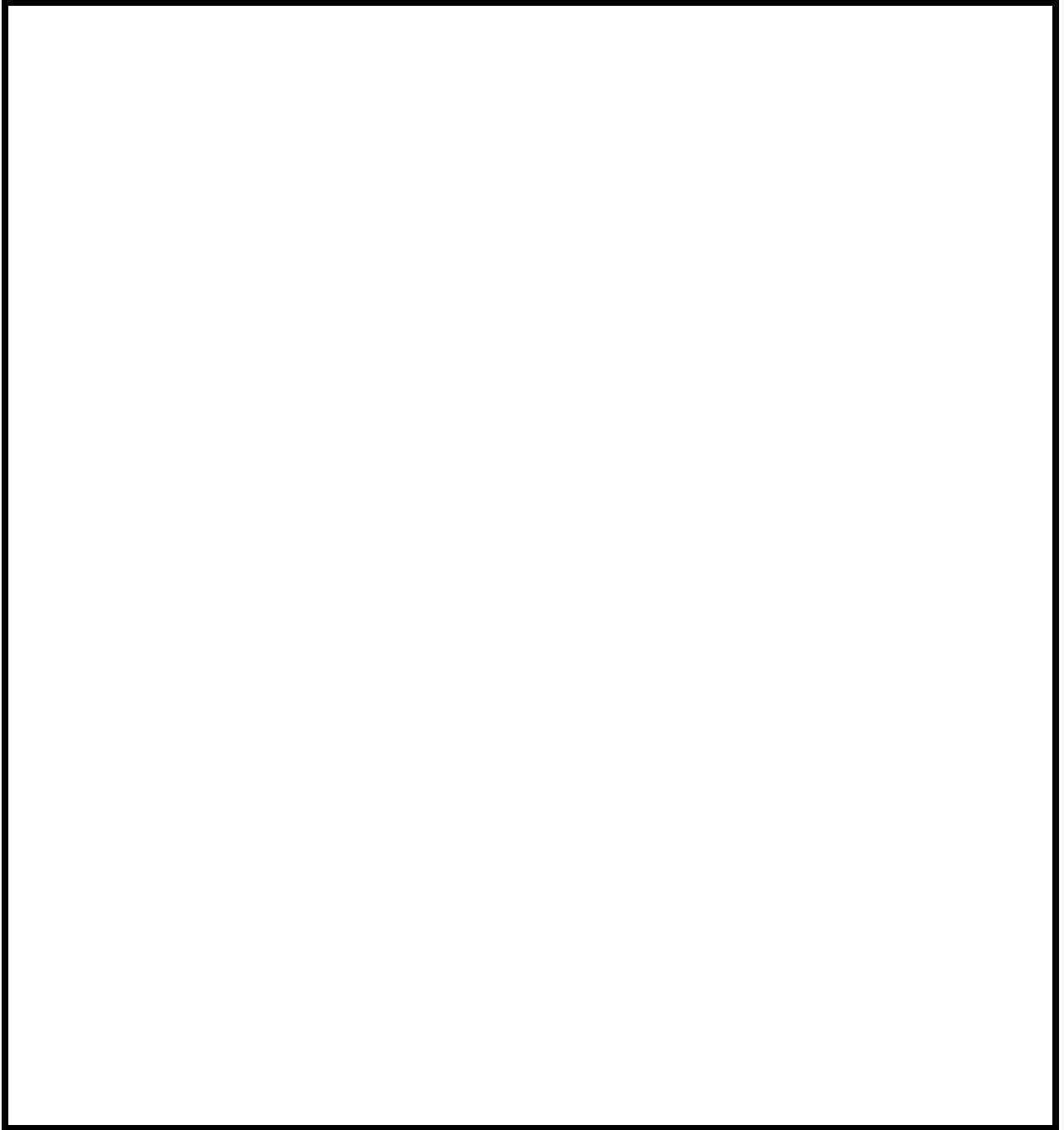
The Council representative was unable to satisfactorily demonstrate to the Tribunal how it would have an extreme adverse affect on the amenity or future amenity of the proposed building's neighbourhood.

Hence, in accordance with section 4.2.34(2) (b) of the Integrated Planning Act the Tribunal decided to change the decision appealed against and delete the first part of the decision of the Caboolture Shire Council dated 22 April 2004 that *the structure, has an extreme adverse affect on the amenity of the proposed building's neighbourhood.*

This decision needs to be read in conjunction with the separate Tribunal decision on the siting of the carport. (Refer No. 3/04/027 B attached)

---

**Leo F Blumkie**  
**Building and Development**  
**Tribunal Chairperson**  
**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**