



## Building and Development Tribunals — Decision

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### *Integrated Planning Act 1997*

<b>Appeal Number:</b>	3-09-056
<b>Applicant:</b>	Michael Noble
<b>Assessment Manager:</b>	Building and Planning Consultants
<b>Concurrence Agency:</b>	Redland City Council
<b>Site Address:</b>	32 Makaha Drive, Birkdale, and described as Lot 631 on RP 123489 — the subject site

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### **Appeal**

Appeal under section 4.2.9 of the *Integrated Planning Act 1997* (IPA) against the decision, dated 22 June 2009, of the assessment manager Building and Planning Consultants to refuse a development application relating to a proposed building structure (new carport) to be constructed within the required front boundary setback for the subject site. The refusal was based on advice from Redland City Council, as concurrence agency.

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<b>Date of hearing:</b>	10.00 am — Wednesday, 12 August 2009
<b>Place of hearing:</b>	The subject site
<b>Tribunal:</b>	Georgina J Rogers — Chair
<b>Present:</b>	Michael Noble — Applicant Mike Ryan — Redland City Council representative David Brown — Redland City Council representative

### **Decision:**

The Tribunal, in accordance with section 4.2.34 (2)(c) of IPA **sets aside** the decision appealed against to refuse the development application for building works, namely a new carport to the front of the existing dwelling and **directs** the assessment manager to re-assess the development application with the reduced front boundary setback of 1200mm to the outermost projection subject to the following conditions:-

1. The proposed building structure (new carport) is not to be enclosed at any stage beyond that shown on the current building application plans.
2. The new carport is to have a maximum width of 6.0m.
3. The new carport is to be constructed so as not to obstruct access for vehicles to the rear of the site.
4. The new carport roof is to have a gable pitch roof fronting the street and the roof pitch is to be the same as that of the existing dwelling.

5. The decision held in this application is separate to any other applications which may be made over the property.

## **Background**

During the on-site hearing, the Tribunal observed that the neighbourhood has low traffic volume and is a well-established residential area with minimal vegetation. There are a number of dwellings in the neighbourhood with carports of similar size in similar locations to that proposed.

The site is rectangular in shape and has a frontage of less than 20.0m fronting Makaha Drive. Car parking is available on site but there is no available car parking undercover.

The proposed new structure (new carport), subject to the appeal, is to be constructed fronting the road boundary alignment of Makaha Drive.

The following correspondence and documentation was reviewed and taken into consideration:-

- **22 June 2009** – Michael Noble – Building and Development Tribunals Appeal Notice – Form 10.
- **22 June 2009** – Building and Planning Consultants – Decision notice (refusal)
- **18 June 2009** – Michael Noble – Grounds for appeal letter.
- **12 June 2009** – Redland City Council – Referral agency's response and conditions - refusal decision to ABC Certification Pty Ltd.
- Various supporting written and photographic documentation.

As a result of the assessment manager's refusal of the building development application (based on concurrence agency advice), the applicant chose to appeal the decision to the Building and Development Tribunals by Notice of Appeal, received 22 June 2009.

## **Material considered**

The material considered in arriving at this decision comprises:

1. 'Form 10 – Notice of Appeal' and Grounds for Appeal received 22 June 2009.
2. Decision notice from the assessment manager advising that the concurrence agency directed refusal of the development application, dated 22 June 2009.
3. Site plan, plans and elevations of the proposed structure (new carport).
4. Verbal submissions from the applicant and reasons for provision of the building structure (new carport) to be located within the required 6.0m setback to the secondary road boundary setback fronting Makaha Drive.
5. Verbal submissions from Council's representative (as concurrence agency) at the hearing outlining Council's assessment of the application and reasons for not locating the deck within the required road boundary setback to Makaha Drive.
6. IPA.
7. *Building Act 1975 (BA)*
8. *The Building Regulation 2006.*
9. The Queensland Development Code (QDC).

## **Findings of Fact**

The Tribunal makes the following findings of fact:

1. The existing dwelling is a two storey dwelling with ground floor entry. The new carport is to be located to allow covered access to the dwelling from the vehicles, while also providing protection to the vehicles parked on site.
2. The proposed structure is consistent with other similar structures within the neighbourhood which have received Council approval on lots with similar size, shape and outlook.
3. It was agreed between the parties that a modified design outcome could be achieved to meet the desired outcomes for the neighbourhood.
4. Based on the above information provided it was determined that the building structure (new carport) was reasonably lodged for approval.

## **Reasons for the Decision**

### **1. QDC MP1.2 (Design and siting standard for single detached housing – on lots 450m2 and over)**

MP1.2 of the QDC sets out Performance Criteria (P1) in relation to siting requirements which a local government must consider and be satisfied that the application meets the intent of each criterion for that application. In addition, the development must not unduly conflict with the intent of each of the Performance Criteria:-

#### ***P1 – Design and Siting of Buildings and Structures***

##### ***(a) The bulk of the building***

From the plans and photographs provided and on-site inspection, the building structure (new carport) will not significantly increase the bulk of the existing dwelling.

The proposed extension (new carport) is to be located over the existing concrete driveway and provide cover to the vehicles which are currently parked in this location, which is directly adjacent to the front ground floor entry to the dwelling. A number of similar carports have been constructed within the neighbourhood and it can be seen from these that they have minimal impact on the bulk of the overall dwellings. The carport is to be located 1.2m away from the road boundary fronting Makaha Drive.

Therefore the extension would have minimal impact on the existing bulk of the building.

##### ***(b) Road boundary setbacks of neighbouring buildings or structures***

The road boundary setbacks of neighbouring buildings and structures within the area appear to vary within the required road boundary setback of 6.0m. The reduced setback would not appear to be out of character with those within the general neighbourhood.

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

The outlook and views of the neighbouring residents would appear not to be significantly affected by the proposed new carport.

##### ***(d) Nuisance and safety to public***

The building structure (new carport) in its proposed location will have no impact on the safety of the public nor provide any potential nuisance to the neighbourhood.

2. Based on the above facts it is considered the appeal is upheld. The decision held in this application is separate to any other applications which may be made over the property at this time or in the future.
3. The QDC provides Performance Criteria and some Acceptable Solutions. The Acceptable Solutions are to provide reasonable and achievable outcomes. The local government is in a position to vary the Acceptable Solutions in relation to an application for siting requirements and to assess the application

based on its merits.

4. In assessing the criteria from this part of the Code in relation to the building structure (new carport) being located within the suggested relaxation for 6.0m setback to the road boundary the Tribunal found that there were grounds to allow for the existing structure to proceed in the proposed location with a reduced setback to 1.2m from the road boundary fronting Makaha Drive.
5. The extent of non-compliance with the QDC Acceptable Solution is greater than acceptable and an alternate solution for the setback to be minimum 1.2m would in the Tribunal's opinion, satisfactorily achieve a solution to the relevant Performance Criteria. In addition, the purpose of the QDC is to provide good residential and neighbourhood design while acceptable amenity to residents is not compromised.

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**Georgina Rogers**  
**Building and Development Tribunal Chair**  
**Date: 24 August 2009**

## **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 Infrastructure and Planning  
PO Box 15009  
CITY EAST QLD 4002  
**Telephone (07) 3237 0403 Facsimile (07) 3237 1248**