



Building and Development Tribunals
Queensland Government

Department of Local Government, Planning,
Sport and Recreation

APPEAL
Integrated Planning Act 1997

File No 3/05/035 A&A

BUILDING AND DEVELOPMENT TRIBUNAL - DECISION

Assessment Manager: Caboolture Shire Council

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

Applicant: *withheld*

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 and responded to in this determination.

The decision on the siting issue Item (B) is considered separately and a copy of that Tribunal decision is attached.

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

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

Tribunal:	Mr L F Blumkie	Tribunal
	Mr P Breeze	Tribunal
	Ms J Owen	Tribunal

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

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 30 June 2005 and approves the proposed garage subject to the following conditions:-

1. The garage is located 6m from the *withheld* Parade frontage and 500mm from the side boundary;
2. It has a brick external finish matching the house as near as possible;
3. It has a 20 degree gable roof with the gable facing the Street frontage;
4. It has a white “colourbond” roof;
5. It has a fascia in line with the existing house, ie fascia line at approximately 2400mm above ground line;
6. It has a second driveway established from *withheld* Parade;
7. Stormwater drainage is installed in accordance with Council requirements;
8. 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.
9. The colour scheme is matching the house.

This decision needs to be read in conjunction with the separate Tribunal decision on the siting of the carport. (copy 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 the height and bulk of this proposal would not be in keeping with their 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 for relaxation did not contain all the facts.

The owner and applicant did not convey any further written or verbal information to Council. Council decided the application based on the information presented.

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.
2. Copy of the Appeal Notice dated 21 June 2005.
3. Copy of the building approval for the garage at the rear of the property.
4. Verbal submissions from applicant.
5. Verbal submissions from applicant .
6. Verbal submissions from the Caboolture Shire Council representatives.
7. Standard Building Regulation 1993 (SBR)
8. The Integrated Planning Act 1997.
9. The Queensland Development Code (QDC).
10. Caboolture Shire Council Resolution Policy on Amenity and Aesthetics. Policy No 202/02.
11. An inspection of the neighbourhood.

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 Class 10 Buildings located in residential areas etc 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 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 neighborhood.

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.

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 and aesthetics resolution.

Reasons for the Decision

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

He was not aware that the application for relaxation indicated a height of 3900mm from the ground to the fascia line of the proposed 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 Tribunal after taking into account the facts and circumstances presented at the hearing by the owner and Council representative, with the consent of the owner approved the application subject to the following conditions:-

1. The garage is located 6m from the *withheld* Parade frontage and 500mm from the side boundary
2. It has a brick external walls matching the house as near as possible;
3. It has a 20 degree gable roof with the gable facing the Street frontage;
4. It has a white “colorbond” roof;
5. It has a fascia in line with the existing house, ie fascia line at approximately 2400mm above ground level;
6. It has a second driveway established from *withheld* Parade;
7. Storm water drainage is installed in accordance with Council requirements;
8. 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.
9. The colour scheme matching the house.

This decision needs to be read in conjunction with the separate Tribunal decision on the siting of the garage. (copy attached).

Leo F Blumkie
Building and Development
Tribunal Chairperson
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