



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

Department of **Local Government, Planning,**  
**Sport and Recreation**

**APPEAL**  
*Integrated Planning Act 1997*

**File No. 3-04-046A**

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**BUILDING AND DEVELOPMENT TRIBUNAL - DECISION**

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**Assessment Manager:** Caboolture Shire Council

**Site Address:** 12 Yorkshire Drive, Banksia Beach

**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 459 on RP 180388 situated at 12 Yorkshire Drive Banksia Beach.

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 the aesthetics of the building or structure, when built, will be in extreme conflict with the character of the proposed building's neighbourhood; and
- 2 under Section A1 (c) of the Queensland Development Code (QDC) the location of the building or structure does not facilitate an acceptable streetscape appropriate for; the bulk of the building or structure; the road boundary setbacks of neighbouring buildings or structures; and the outlook and views of the neighbouring residence.

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 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.
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**Date and Place of Hearing:** 2.30pm Friday 6 August 2004.  
Office of the Department of Local Government, Planning,  
Sport & Recreation.  
Level 25 Mineral House,  
41 George Street, Brisbane.

**Tribunal:** Mr L F Blumkie Tribunal Chairperson  
Mr P Locke Tribunal Member  
Mr R Pocock Tribunal Member

**Present:** Applicant / Owner  
Caboolture Shire Council representative  
Mr L Blumkie Tribunal Chairperson  
Mr R Pocock Tribunal Member  
Mr P Locke Tribunal Member

### **Decision**

The Tribunal, in accordance with Section 4.2.34 (2) (a) of the Integrated Planning Act, confirms part 1 of the Council decision appealed against.

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

### **Background**

An application was made to the Caboolture Shire Council for a relaxation to allow the siting of a carport to be erected within the 6 metre street setback.

Council refused to grant the relaxation on 7 May 2004.

On 28 May 2004 the applicants provided further information and details of other carports in the area erected within the street setback, and requested further consideration of the matter.

On the 10 June 2004 Council confirmed its decision not to grant a relaxation.

On the 16 June 2004 the applicants again wrote to Council providing further details on their application.

On the 23 June 2004 Council again confirmed its decision of the 7 May 2004.

An appeal was lodged with the Registrar on the 20 July 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 7 May 2004.

- 3 Copy of the Appeal Notice dated 20 July 2004.
- 4 Correspondence of Council and Applicant submitted with the appeal.
- 5 Photographs submitted with the appeal.
- 6 Verbal submissions from the applicants.
- 7 Verbal submissions from the Caboolture Shire Council representatives.
- 8 Correspondence from the Tribunal to the applicants dated 16 August 2004
- 9 Verbal request from the applicants for an extension of time.
- 10 Correspondence dated 30 August 2004 from the Registrar advising of an extension of time.
- 11 Correspondence from the applicants dated 13 September 2004 advising that Council has approved the erection of a sail structure.
- 12 The Standard Building Regulation 1993 (SBR)
- 13 The Integrated Planning Act 1997
- 14 The Queensland Development Code (QDC)
- 15 Caboolture Shire Council Resolution Policy on Amenity and Aesthetics. Policy No 202/02.

### **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 building and has extensive landscaping, pergolas and outdoor entertainment area. The site has a council sewer running across the rear of the block. The existing house is located 1500mm from the right hand boundary and has a approximately 4000mm clearance on the left hand side. However this space on the left hand side is heavily landscaped with rock walls, pergola and extensive planting and is used as an entertainment area in conjunction with the adjacent family room.

A stormwater gully is located in the street channel in front of the 4000mm setback on the left-hand side of the existing house.

The site is relatively level and is rectangular in shape.

*C Development in the neighbourhood.*

Photographs presented at the hearing indicated numerous carports, within the 6m street setback, located within the neighbourhood. Carports varied in design, height, size and choice of materials.

*E Existing Car accommodation*

The existing development has covered lock-up car accommodation for 1 normal size vehicle.

*C 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.

**Reasons for the Decision**

The Tribunal considered the overall shape, size, height and bulk of the proposal was in extreme conflict with the amenity or future amenity of the building's neighbourhood.

At the request of the Tribunal the applicants agreed to engage professional consultants to review the proposal and reduce the overall bulk of the design.

On the 13 September 2004 the applicants advised that the Caboolture Shire Council had approved the erection of a sail structure at the front of their house.

Hence, in accordance with section 4.2.34(2) (a) of the Integrated Planning Act the Tribunal confirms part 1 of the Council decision appealed against.

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

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**Leo F Blumkie**  
**Building and Development**  
**Tribunal Chairperson**  
**Date: 23 September 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  
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