

**APPEAL**

*Integrated Planning Act 1997*

**File No. 3-01-045**

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

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**Assessment Manager:** Caboolture Shire Council

**Site Address:** 109 Cross Street, Deception Bay 4508

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**Nature of Appeal** Appeal under Section 4.2.9 of the Integrated Planning Act 1997 against the decision of the Caboolture Shire Council not to grant approval for the siting of an open carport between the existing dwelling and the road boundary. The property is described as Lot 1 on RP 124621 Parish of Redcliffe and situated at 109 Cross Street, Deception Bay.

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**Date and Place of Hearing:** 10.00 am on Thursday 4<sup>th</sup> October 2001 at 109 Cross Street, Deception Bay.

**Tribunal:** John William Rauber

**Present:** Applicant  
Mr Chris Harris (Caboolture Shire Council)

### **Decision**

The decision of Caboolture Shire Council as contained in its letter dated 4/9/01, not to agree to the siting of an open carport on a 1.2m road boundary clearance and located between the existing dwelling and road boundary is set aside. The open carport as described on the site plan presented to Caboolture Shire Council for consideration may be constructed within the 6m road boundary clearance subject to obtaining a development permit (building approval).

### **Material Considered**

The matter was considered on the basis of the written submissions made to the Registrar and verbal submissions made on the day of the hearing. No further formal written submissions were made. The hearing was held at the subject site.

Reference was also made to the Standard Building Regulation 1993 and the Integrated Planning Act 1997.

### **Findings of Fact**

I made the following findings of fact:-

The site has been developed for a number of years (1970's) and the dwelling is of split level construction with existing car accommodation located on the ground level of the two storey section

of the building. The site does have access to the rear of the property and the owner has recently constructed a metal shed at the left hand rear corner of the site. The shed is not being used for regular car accommodation. There is also a caravan and box trailer housed on the property at the side of the dwelling and these vehicles would restrict regular access to the metal shed at the rear of the property.

Section 36 Division 2 of the Standard Building Regulation 1993 prescribes a Road Boundary Clearance of 6.0m for all buildings and structures.

Section 37 Division 2 however, provides, subject to prescribed performance criteria, a concession for 'open carports', allowing such buildings to be sited with a road boundary clearance of less than 6.0m. In this instance the carport can be supported on columns that do not exceed in width 10% of the perimeter of that section of the carport within the 6.0m road boundary clearance. As well, I am satisfied that the applicant has found it expedient to locate the proposed carport as indicated on the site plan submitted to the Caboolture Shire Council.

Notwithstanding the above determination, I am also of the opinion that for carports to be erected within the usual 6.0m road boundary clearance, and where a local authority has no other town planning regulation for siting control in these circumstances, then the building certifier has upon advice from an applicant an obligation to consider the concession for an open carport in accordance with Section 37 Division 2 of the Standard Building Regulation 1993.

When refusing the application for siting approval for the carport, the local authority has not mentioned that it relied on its town planning regulations to arrive at the decision it made.

The local authority may have also considered the siting request under the provisions of Section 48 Division 3 of the Standard Building Regulations and applied the test of reasonableness to the proposal.

**With respect to Section 48[3], the matters to be considered are:-**

- (a) the levels, depth, shape or conditions of the allotment and adjoining allotments*
- (b) the nature of any proposed building or structure on the allotment*
- (c) the nature of any existing or proposed buildings or structures on adjoining allotments*
- (d) whether the allotment is a corner allotment*
- (e) whether the allotment has two road frontages*
- (f) any other matter it considers relevant*

**Under Section 48[4], the local government must be satisfied that a relaxation would not unduly:**

**(a) *obstruct the natural light and ventilation of an adjoining allotment***

The proposed carport adjacent to the street boundary and within the 6.0m road boundary clearance will not impact upon the adjoining development.

**(b) *interfere with the privacy of an adjoining allotment***

The location of the proposed carport is well separated from the adjoining allotment.

**(c) *restrict the areas of the allotment suitable for landscaping***

Ample areas remain on the site for landscaping.

**(d) *obstruct the outlook from adjoining allotments***

The carport when constructed will not provide an obstruction to the outlook from any other allotments.

**(e) *overcrowd the allotment***

No overcrowding would occur.

**(f) *restrict off-street parking for the allotment***

Ample areas are available on the property for off-street parking. The carport will provide covered accommodation for vehicles.

**(g) *obstruct access for normal building maintenance***

There is ample access around all buildings on the property to carry out maintenance.

**Reasons for the Decision**

The decision to set aside the determination of the local government is founded on the following grounds:-

I have had regard to the following matters:

1. I note that Division 2 of Part 3 of the Standard Building Regulation by Section 36 requires all building and structures to which the Part applies to have at least 6.0m road boundary clearance. In the absence of anything more, this would be an absolute requirement unless a local government was prepared to exercise its discretions under Division 3. However, I also note that Section 37 which immediately follows the mandatory Section 36, provides an exemption into Division 2 so far as open carports is concerned. My view is that if an applicant can meet the requirements of Section 37, then there is no need for an application to the local government to exercise its discretion

pursuant to Division 3. As already pointed out, I consider the situation in this matter meets the requirements of Sub Section (a) and (b) of Section 37. Therefore it is my view that the application to the local authority in the circumstances of this matter was unnecessary and that the local authority in reality was without jurisdiction.

2. The fact that the proposal in my opinion satisfies the performance criteria in section 48;

In all the circumstances I am therefore satisfied that a concession under Section 37 Division 2 can be supported and also that when applying section 48 to consider a siting concession the proposal is reasonable. I therefore set aside the decision of the Caboolture Shire Council.

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**John William Rauber**  
**Building and Development**  
**Tribunal Referee**  
**Date: 12<sup>th</sup> October 2001**

## **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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