



**APPEAL**  
*Integrated Planning Act 1997*

**File No. 03/07/069**

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

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**Assessment Manager:** Caloundra Building Approvals - Mr Andrew Stewart

**Concurrence Agency:** Maroochy Shire Council

**Site Address:** *withheld* - 'the subject site'

**Applicant:** *withheld*

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### **Nature of Appeal**

The appeal is against the decision of Caloundra Building Approvals to refuse a development assessment for a design and siting relaxation of an existing swimming pool and associated deck, based on a concurrence agency response from Maroochy Shire Council. The reasons for refusal :-

The proposed development will not comply with, and cannot be conditioned to comply with the Maroochy Shire Town Planning Scheme performance criteria of Code 4.1, Element 1, P2:-

*Building and structures are sited to contribute positively to the streetscape, maximize community safety, maintain the amenity of adjacent land and dwellings by having regard to the following;*

*(b) building character and appearance;*

*(d) an adequate area suitable for landscaping being provided for at the front of a lot.*

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**Date and Place of Hearing:** 12.30pm Thursday 22 November 2007 at 'the subject site'

**Tribunal:** Mr L F Blumkie Chairperson  
Ms Robin King Cullen General Referee

**Present:** Owner  
Applicant  
Applicant's representative  
Mr Fred Vicary Maroochy Shire Council  
Mr Leo Blumkie Chairperson Tribunal  
Ms Robin King Cullen Tribunal General Referee

## **Decision**

The Tribunal, in accordance with Section 4.2.34 (2) (b) of the *Integrated Planning Act 1997*, **changes** the decision of Caloundra Building Approvals based on the concurrence agency response by Maroochy Shire Council and **approves the siting relaxation subject to the following:-**

- (i) the owner submitting amended plans (showing the extended deck and existing associated works, which appear to have been constructed without approval) and obtaining development approval; and
- (ii) compliance with either one of the following options:-

### **OPTION 1**

- (a) The owner obtains approval from the Maroochy Shire Council to landscape the footpath area to the front of the property in order to screen the wall on the front alignment and reduce its visual impact from the street. The landscaping shall consist of a series of tiered retaining walls, each no more than 1 metre in height, with an area behind each wall planted with council approved screening plants. The wall, when viewed from a height of 1500mm above the kerb line at the centre line of the property, shall be positioned so that a height of not more than 1200mm of the existing wall (on the alignment), is visible;
- (b) The owner shall prepare a draft proposal to comply with (a) above for discussion with Council within 1 month of the date of this decision and after agreement is reached with Council submit a detailed final proposal for Council approval within 2 weeks of that agreement;
- (c) The work referred to in (a) above is to be completed within 2 months of the approval referred to in (b) above unless otherwise extended by Council before the expiry date, and
- (d) The pole located at the south eastern end of the deck is cut off at deck level and the double beam structure between this pole and the next pole is cut off approximately 2 metres back from the alignment in order to reduce the bulk of the structure above pool deck level.

or

### **OPTION 2**

The existing construction to the deck and pool is modified within 1 month of this decision as follows:-

- (a) reducing the length of the wall on the alignment by removing approximately 3.2 metres in length of the wall from the south eastern corner under the pool deck, while allowing the fascia at pool surround level to remain;
- (b) landscaping the area under the pool deck created by the above alterations and the adjoining area to the opposite boundary within the street setback to the satisfaction of the Maroochy Shire Council;
- (c) relocating the proposed 1.2 metre high glass pool fencing from a point 3.2 metre (point A) from the south eastern edge of the deck to intersect with the existing pole located approximately 2 metres in from the front alignment and still maintain personal access around the pool;

- (d) reducing the bulk of the structure above pool deck level by cutting off the pole located at the south eastern end of the deck at deck level and cutting off the double beam structure between this pole and the next pole located approximately 2 metres back from the alignment;
- (e) constructing a CCA treated wall or similar between the second pole and point A to close off the area under the pool deck.

### **Background**

The property is a 921m<sup>2</sup> residential block, and has a pole house constructed towards the rear. The site is steep and has considerable fall both from right to left and rear to front.

The footpath has approximately 1 metre of land adjacent to the kerb suitable for pedestrians and the remainder has considerable slope down from the subject property alignment and also from right to left. This steep land is not suitable for pedestrians.

The footpath has some erosion and currently has limited vegetation.

The owner obtained development approval on 1 November 2006 for a swimming pool and 1.8 metre wide deck located in the front right hand corner of the property.

The approval had conditions namely:-

- Pool maximum 1.0 metre out of ground;
- Boundary fence within 1.5 metres of water to be 1.8 metre high and splashproof.

Construction of the pool commenced in December 2006. During excavation for the pool, rock was encountered and the construction company raised the level of the pool. This made the pool surround more than 1.0 metre above the ground at the left-hand corner.

The pool company were only responsible for construction of the pool and pool surround. The owner was responsible for construction of the deck. The owner commenced construction of the deck during the 2006 Christmas holidays and in doing so extended the width of the deck from 1.8 metres to 4.0 metres on the left-hand side of the pool.

The owner also included a double beam feature with lights some 1.8 metres high on the left-hand side of the deck.

The wall between the pool surround and ground level at the front alignment is a rendered type finish. The proposed pool fence above the pool surround on the front alignment is to be 1.2 metre high glass.

The builder advised the certifier that the pool and associated works had exceeded the maximum permitted height above the ground permitted under the QDC.

The certifier advised the builder that his only recourse was to apply for a relaxation from the Local Authority. A Notice to cease work was issued to the builder on 23 July 2007.

The owner held discussions with Council regarding landscaping (including trees and shrubs) of the footpath for the purpose of screening the offending wall.

Council was reluctant to agree to landscaping because of possible future maintenance costs of the landscaping and liability of injury to the public from possible falling branches.

The pool fence to the side alignment is an existing block wall some 1.8 metres high.

There is other existing building work adjacent to the pool and deck within the 6 metre building alignment, which apparently has no building development approval. This building work does not form part of this appeal. The owner is aware that an amended development application needs to be submitted.

The Certifier submitted a development assessment application for relaxation of design and siting of existing building work (on the subject property) to the Maroochy Shire Council (Concurrency Agency) on 20 August 2007.

Maroochy Shire Council refused the application for relaxation under the Maroochy Shire Town Planning Scheme on 15 October 2007.

The Certifier advised the builder of the Concurrency Agency response and issued a decision notice refusing the relaxation request on 20 October 2007.

The Applicant lodged an appeal to the Registrar regarding the refusal on 2 November 2007.

### **Material Considered**

In coming to a decision, consideration was given to the following material: -

- (1) Pool Approval No. 1854 dated 1 November 2006 and associated documents.
- (2) Notice to cease works dated 23 July 2007.
- (3) Development assessment application for relaxation of design and siting of existing building work dated 20 August 2007.
- (4) Maroochy Shire Council decision on the application dated 15 October.
- (5) Certifier's decision notice dated 20 October 2007 to the Builder.
- (6) 'Form 10 – Notice of Appeal' lodged with the Registrar on 2 November 2007 including grounds for appeal and correspondence accompanying the appeal.
- (7) Verbal submissions from the Owner.
- (8) Verbal submissions from the Applicant.
- (9) Verbal submissions from Mr Fred Vicary.
- (10) Written (undated) Submission from Maroochy Shire Council provided at the hearing.
- (11) "Form 18 - Notice of Election' from Maroochy Shire Council.
- (12) Inspection of the site.
- (13) Plan and elevation of owner's proposal to landscape the footpath to the front of the property.
- (14) The *Building Act 1975*.

- (15) The *Building Regulation 2006*.
- (16) The Queensland Development Code (QDC).
- (17) The *Integrated Planning Act 1997*.
- (18) Maroochy Shire Council Planning Scheme.

### **Findings of Fact**

The builder raised the level of the pool above ground level greater than that permitted under the conditions of the development approval.

The owner extended the deck by 2.2 metres in width without first obtaining an amended development approval.

The constructed pool and associated deck is more than 1 metre above the ground line on the front property alignment.

The height of the existing construction above the ground at the front alignment exceeds that permitted under Acceptable Solutions A1 (d) of Part 12 of the QDC.

The site and footpath have considerable slope from the front alignment to approximately 1 metre out from the kerb line. This footpath area 1 metre behind the kerb line is not suitable for pedestrians.

The footpath is eroded and currently has limited vegetation.

The rendered wall on the front alignment from ground level to the pool surround and deck is totally visible from the street.

### **Reasons for the Decision**

The existing wall on the front alignment between the pools surround, deck and ground line, including the double beam structure has an adverse impact on the streetscape.

After phoning Council works section during the hearing, the Council representative advised that Council would be prepared to consider a maintenance free tiered retaining wall proposal (with approved planting) on the sloping footpath, provided the proposal partly reduced the view to an acceptable amount of the existing wall from the street level.

However, it would be subject to a detailed discussion and approval from Council. This proposal with consideration of appropriate sight lines and location of the tiered walls could reduce the impact of the existing wall to the streetscape and make it acceptable. The Council representative agreed with this proposal in principle.

The Tribunal considered that this proposal had merit, as it:-

- reduced the impact of the wall on the streetscape;
- addressed the erosion problem of the existing footpath;

- increased the amount of landscaping to the front of the property visible from the street.

The Tribunal also considered it was possible to reduce the impact of the wall by undertaking the following:-

- (i) reducing the length of the wall on the alignment by removing approximately 3.2 metres in length of the wall from the south eastern corner under the pool deck, while allowing the fascia at pool surround level to remain;
- (ii) landscaping the area under the pool deck created by the above alterations and the adjoining area to the opposite boundary within the street setback to the satisfaction of the Maroochy Shire Council;
- (iii) relocating the proposed 1.2 metre high glass pool fencing from a point 3.2 metre (point A) from the south eastern edge of the deck to intersect with the existing pole located approximately 2 metres in from the front alignment and still maintain personal access around the pool;
- (iv) reducing the bulk of the structure above pool deck level by cutting off the pole located at the south eastern end of the deck at deck level and cutting off the double beam structure between this pole and the next pole located approximately 2 metres back from the alignment;
- (v) constructing a CCA treated wall or similar between the second pole and point A to close off the area under the pool deck.

The Tribunal considered that compliance with either option 1 or option 2 would bring the building works into compliance with the objectives of the Maroochy Shire Council Town Planning Scheme.

#### **NOTE**

The Tribunal has only considered the impact of the extended deck, on the streetscape, and advises the owner, that an amended application needs to be submitted for approval, which includes the extended deck and all the other existing building works which appear to have been undertaken without a development approval.

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**Leo F Blumkie**  
**Building and Development Tribunal Chairperson**  
**Date: 30 November 2007**

## **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, Planning, Sport and Recreation  
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