



**APPEAL**  
*Integrated Planning Act 1997*

**File No. 3-01-052**

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

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**Assessment Manager:** Maroochy Shire Council

**Site Address:** 3 Senior Street, Mudjimba (Lot 409 SP 127790)

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### **Nature of Appeal**

Appeal against the decision of Maroochy Shire Council to refuse an application for preliminary approval for building works (siting variation Class 1A dwelling).

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**Date and Place of Hearing:** 10.00 am on Thursday 22 November 2001 at  
Maroochy Shire Council Offices  
Cnr Currie and Bury Streets, Nambour

**Tribunal:** David Kay

**Present:** Richard Prout - Maroochy Shire Council  
Brett England - Maroochy Shire Council  
Phil Smith - Maroochy Shire Council  
Owner/Applicant  
John Hill - Suncoast Building Approvals for Applicant

### **Decision**

The decision of Maroochy Shire Council dated 31<sup>st</sup> October, 2001 to refuse an application for preliminary approval for building works (siting variation – Class 1A dwelling) at 3 Senior Street, Mudjimba is set aside and is replaced by the following decision.

The application for preliminary approval for building works (siting variation – Class 1A building) on Lot 409 SP127790 situated at 3 Senior Street, Mudjimba is approved subject to:-

- (1) The proposed dwelling being resited towards the rear northern boundary with a clearance of 1.5 metres from the sewer main located inside the allotment and running along the northern rear boundary.

- (2) The proposed dwelling being located (subject to condition 1) approximately 4.9 metres to the outer most projection from the Senior Street road boundary.
- (3) The proposed building being otherwise located and constructed generally as shown on Miller Homes drawings reference No. 350-1/7, 350-2/7 and 350-3/7.

## **Background**

### *Maroochy Shire Council submission to the tribunal.*

Richard Prout raised the matter of the jurisdiction of the tribunal to hear the appeal as it is considered that this matter should be heard by the Planning and Environment Court and not a tribunal. The question as to whether the appellant in this hearing has the right to lodge the appeal or whether it is limited to the original applicant to the Maroochy Shire Council was also raised. The documents MSC 1 – MSC 7 listed below in the material considered was submitted.

Phil Smith raised issues concerning the need to consider the performance criteria of the Code for Residential Development and Use where the proposed development did not satisfy the requirements of the Standard Building Regulation. It was advised that this allowed for the consideration of height, bulk, setbacks, overlooking and other issues under the performance criteria. It was submitted that the proposed building location, in particular the garage, would affect the bulk and appearance of the building, and be detrimental to sight lines and obscure outlooks in the general vicinity of the corner. There was also concern that views to the street from within the building would be detrimental to security with the garage access facing Senior Street. The draft of the proposed amendment to the Code for Residential Development and Use was submitted in support.

### *Applicant's agent submission to the tribunal.*

John Hill submitted that the proposed layout is considered by the owner to be a lifestyle issue and accommodates future area for swimming pool, play area for children and is appropriate for this corner allotment. Issues concerning driveway locations, road widths, sewer main location and Twin Waters letter of support were presented. The lack of a specific requirement for the Maroochy Shire Council's policy of garage doors being located 6metres from the road boundary was raised together with the approval of the current driveway location. The documents APP1 – APP3 listed below in the material considered were submitted.

The owner of the land, stated that his family likes the house design, Twin Waters have endorsed the plan and that he was concerned that proposed access from Baker-Finch Place would require a 3 point turn to access the property.

## **Material Considered**

- MSC 1 – Letter from Maroochy Shire Council regarding jurisdiction of the Tribunal.
- MSC 2 – Application for preliminary decision including Form 1 Parts A, B and E.
- MSC 3 – Alternative Siting Requirements of the Standard Building Regulation and extracts of Maroochy Plan 2000 relating to Residential Development Code.
- MSC 4 – Operational Works plan for Baker Finch Place north of the subject site.
- MSC 5 – Extract of Maroochy Plan 2000 relating to the Parking Code for residential uses.
- MSC 6 – Plan of sewer main location through rear of the subject land.

MSC 7 – Extract of Maroochy Plan 2000 relating to operational works and building near sewers.  
MSC 8 – Draft Code for the development of detached houses.  
MSC 9 – Extract from S 4.2.9 and Schedule 10 of Integrated Planning Act.

APP 1 – M.C.U approval showing building areas for lots in this locality.  
APP 2 – Suncoast Building Approvals submission to Tribunal.  
APP 3 - Plan showing Twin Waters Indicative building setback plan.

Material submitted with the appeal notice to the Tribunal.  
Integrated Planning Act 1997.  
Building Act 1975 and Standard Building Regulation 1993.

### **Findings of Fact**

- An application for preliminary approval for building work and alternative siting requirements under Maroochy Plan 2000 was made to the Maroochy Shire Council.
- The application was refused by Maroochy Shire Council.
- The appeal to a Building and Development Tribunal was lodged within the required time.
- The Tribunal has jurisdiction to hear the appeal.
- The proposed use as a traditional detached house is self assessable under the Maroochy Plan 2000 and is subject to the Code for Residential Development and Use.
- The Code for Residential Development and Use includes assessment against the Standard Building Regulation other than Section 37 as “acceptable measures”.
- The provisions of the Standard Building Regulation would include any siting variation determined under the Standard Building Regulation.
- The site is not subject to any building envelope or building area that is enforceable under the Standard Building Regulation or the Maroochy Plan 2000.

### **Reasons for the Decision**

#### *Jurisdiction*

An amended appeal form has been lodged with the applicant Miller Homes as the applicant. This removes the question as to whether the owner has standing to appeal the matter instead of the original applicant. Notwithstanding this, it is my view that the applicant under “Chapter 4 –Appeals” would include the owner as the owner is the person in whom the benefit of the application vests. It should be noted that the definition of applicant in Chapter 4 is more expansive than an applicant in “Chapter 3 – IDAS”.

This is a development application involving a matter of either compliance with performance provisions in a local government planning instrument under Section 46 of the Standard Building Regulation or approval of the siting of a building under section 48, both of which are included in Schedule 6. The local government (Maroochy Shire) is the assessment manager. The application is made to a private certifier. The criteria of Section 20(1) have been met and the local government is required to give written advice under Section 20(2). The appeal for advice given under Section 20 is to a Tribunal as set out in Section 21.

Section 46 of the Standard Building Regulation provides for the local government to assess compliance with performance provisions of “alternative siting provisions” (of a planning instrument). It also requires the private certifier to obtain advice under Section 20 in relation to compliance and

then states that the private certifier must accept the advice subject to Section 21. Section 21 contains the right of appeal to a Tribunal.

Accordingly the Tribunal is considered to have jurisdiction.

*Applicability of Codes under a planning instrument and Part 3 Siting Requirements of the Standard Building Regulation.*

The proposed use is defined as a “traditional detached house”. Volume 1, Tables 5.5 and 6.1 of the Maroochy Plan 2000 make this self assessable development in Area 15 - Twin Waters Master Planned Community. Volume 4, Part 1.1(2) (a)(ii) applies Part 4 to Residential Uses. Within Part 4 “Code for Residential Development and Use” Part 4.1 applies to detached houses.

The Code for Residential Development contains 5 elements with performance criteria and acceptable measures. The two elements relevant to this site are Element (1) House Siting, height and density plus Element (5) Vehicle Parking.

The Code also states that “The Standard Building Regulation will apply as acceptable measures, where relevant in this code, except.... Section 37.

It is my view that compliance with the Standard Building Regulation would not be limited to Sections 36,38,39,40,41,42,43 & 44 but would include any siting variation given under Section 48. In other words, if a siting variation is granted under Section 48 for the road boundary clearance, the proposed detached house will satisfy the “acceptable measures” for the Residential Code.

It is therefore necessary to assess the reduced road boundary clearance against the criteria contained in Section 48 of the Standard Building Regulation.

Other codes referenced include the Operational Works Code (Element 7 acceptable measure A4.1) and the Parking Code (Element 1 acceptable measures A1.1 and A3.1) have been satisfied.

The view of Maroochy Shire Council that both Clauses 4.1(2) - Code Elements and 4.1(4) – the Standard Building Regulation apply together is supported.

The applicable acceptable measures under Clause 4.1(2) for house siting, height and density (Element 1) and vehicle parking (Element 5) are met for this proposal and there is no need for assessment against the corresponding Performance Criteria.

The siting provisions of the Standard Building Regulation have been met for the side and rear boundaries and the eastern Baker-Finch Place road boundary. The 6 metre road boundary set back to Senior Street required under Section 36 has not been met and assessment under Section 48 of the Standard Building Regulation is required. Satisfaction of the criteria under Section 48 will provide compliance with the “provisions of the Standard Building Regulation” and hence be “acceptable measures”.

The view of Maroochy Shire Council that Element 1, Performance Criteria P2 “dwellings and outbuildings must be of a height etc...” should be used when compliance with the “prescribed” Standard Building Regulation sections 36, 38-44 can not be met is not supported as Section 48 of the Standard Building Regulation is an “alternative” siting requirement and forms part of the Standard Building Regulation.

The test becomes one of meeting the Maroochy Plan 2000 Code for Residential Development and Use “alternative siting requirements” which includes assessment against the respective code elements plus the Standard Building Regulation including the provisions of “alternative siting requirements” under Section 48.

### *Siting Considerations*

#### Assessment of the siting requirements under Section 48 of the Standard Building Regulation

(a) *The level, depth, shape or conditions of the allotment and adjoining allotment.*

The allotment has a shallow depth of approximately 22.5metres facing Senior Street. A sewer main is located 0.95metres – 1.15metres inside the northern rear allotment boundary. When combined with the 1.5metre clearance required under the Maroochy Plan 2000 Code for Operational Works, the normal rear boundary clearance of 1.5metres is increased to approximately 2.7metres. In the absence of the sewer main the siting of the proposed dwelling 1.5metres from the rear boundary would have provided a 6.0metre road boundary set back. At 2.7metres from the rear boundary the proposed dwelling would be sited 4.9metres to the outermost projection and 5.35metres to the wall from the Senior Street road boundary.

(b) *The nature of any proposed building or structure on the allotment.*

The single storey building is in keeping with the height and bulk of other buildings in the locality. The orientation with the kitchen, meals, family and two bedrooms taking advantage of the northern and easterly aspect is considered desirable. The use of the western wall for amenities, robes and having limited openings is also of benefit and protects the dwelling from hot afternoon sun in summer and cold westerly winds in winter. The layout and orientation of the dwelling is considered to be well suited to the site and the prevailing weather conditions.

(c) *The nature of any existing or proposed buildings or structures on adjoining allotments.*

An existing dwelling to the west at 1 Senior Street has a setback of approximately 4.6 - 4.7 metres to the front patio and a setback of 5.4 –5.5 metres to the front of the garage wall adjacent to this site.

A Plan of Development “MCU99/8092” dated 15/05/2000 (PP2) indicates a zero lot line in the adjacent northern allotment along the common rear northern boundary with this site. A future dwelling built on this zero lot line would reduce winter sun on the northern side of this lot. Increasing the northern rear boundary set back of 1.5metres would be desirable to provide winter sun to the rear northern area. Reduction of the road boundary set back to Senior Street would facilitate this.

(d) *Whether the allotment is a corner lot or has two road frontages.*

Given the configuration of the road layout and turning movement of vehicles, access to the site from the existing constructed pavement in Baker-Finch Place would be far more restrictive and difficult to manoeuvre vehicles than access from Senior Street.

(e) *Other relevant matters.*

The design and construction of Baker-Finch Place is narrow and has not included any constructed driveway turnout to this site. Other lots fronting Baker-Finch Place forming part of an integrated design have been provided with driveway turnouts.

The footpath area along the Baker-Finch Place frontage to this site has a landscaped area with young trees with ground cover and appears to be intended to act as a screen for traffic. By comparison the footpath area along the Senior Street frontage is grassed with isolated trees. The road pavement in Senior Street is of a width suitable for turning and manoeuvring vehicles with relative ease.

The Maroochy Shire Council view that a garage on this corner of the dwelling will obstruct views, create obscured vision areas, add to the bulk of the building and apparent "obstruction" of the corner area is not accepted. It is my view that any portion of a dwelling would have the same affect and the fact that it appears acceptable to the Council to have part of an adjacent dwelling within 4.5metres of the road boundary reinforces this. The building has ample provision for car parking with room for two cars and a 5.35metres setback to the garage wall would allow additional on site car parking in the driveway for a normal vehicle without the vehicle protruding beyond the road boundary.

In conclusion, it is my view that the proposed dwelling, when built on the allotment with a road boundary setback from Senior Street of approximately 4.9 metres to the outermost projection would not unduly –

- (a) obstruct the natural light or ventilation of an adjoining allotment; or
- (b) interfere with the privacy of an adjoining allotment; or
- (c) obstruct the outlook from adjoining allotments; or
- (d) overcrowd the allotment; or
- (e) restrict off street parking for the allotment; or
- (f) obstruct access for normal building maintenance.

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**David Kay**  
**Building and Development**  
**Tribunal Referee**  
**Date: 3 December 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  
PO Box 31  
BRISBANE ALBERT STREET QLD 4002  
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