



**APPEAL**

*Integrated Planning Act 1997*

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**BUILDING AND DEVELOPMENT TRIBUNAL - DECISION**

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**Assessment Manager:** Maroochy Shire Council

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

**Applicant:** *withheld*

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**Nature of Appeal**

Appeal under Part 2, Section 4.2.9 of the *Integrated Planning Act 1997* against the decision of Maroochy Shire Council to refuse a development application for building works, namely additions and alterations to an existing class 1a dwelling.

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**Date and Place of Hearing:** 2pm Friday 11 January 2008 at “the subject site”

**Tribunal:** Debbie Johnson – Chairperson  
John Gillespie – General Referee

**Present:** Applicant/Owner  
Tenants  
Applicant’s representatives  
Brian Benporath – Maroochy Shire Council Representative

**Decision**

In accordance with section 4.2.34 of the *Integrated Planning Act 1997*, the Tribunal ***confirms*** the decision of Maroochy Shire Council dated 1 October 2007.

**Background**

On 22 May 2007, following its initial correspondence of 17 April 2007, Maroochy Shire Council issued a Show Cause Notice to the applicant for unauthorised building works at “the subject site”.

Following Council’s letter of 3 July 2007 and accompanying Enforcement Notice, the applicant lodged a development application for building works and a siting variation request to Council on 22 August 2007.

The application related to works already completed and included the following:

- A detached steel framed shed, approximately 3 x 6 x 12 metres, built at the rear of the allotment;
- The conversion of an existing single carport, which was fully enclosed to be used as a living area;
- The construction of a patio roof over an existing slab, which was subsequently fully enclosed to be used as a living area; and
- Construction of an attached carport situated at the front of the allotment within 600mm of the road alignment.

The applicant's request for the siting of the carport to be varied from 6 metres to 600mm was refused on 1 October 2007, with Maroochy Shire Council citing section 3.3.18(8) of the *Integrated Planning Act 1997*.

The application for building works was also refused on 1 October 2007, for various non compliance reasons against the Building Code of Australia, *Building Act 1975* and Maroochy Plan 2000.

### **Material Considered**

- Maroochy Shire Council's Concurrence Agency Response dated 1 October 2007;
- Maroochy Shire Council's Decision Notice dated 1 October 2007;
- 'Form 10 – Notice of Appeal' lodged with the Building and Development Tribunals on 10 October 2007;
- Property details, including mapping as available through PD Online, Maroochy Shire Council's website;
- The applicant's grounds for appeal against Maroochy Shire Council's reasons for refusal submitted with the application to the Tribunal;
- Written submission by Maroochy Shire Council given to the tribunal at the hearing;
- Written letters of support for the siting of the carport, from adjoining property owners;
- Working drawings prepared by *withheld*, identified as Dwg No 1-13/13 /516, dated July 2007;
- Maroochy Shire Council's representative provided a verbal submission to the Tribunal detailing council's concerns relating to the application and the reasons for refusal;
- Verbal submissions made at the hearing by the applicant;
- Verbal submissions made at the hearing by the applicant's tenants;
- Relevant sections of the Maroochy Plan 2000, particularly the Detached House Code;
- The *Building Code of Australia* (BCA);
- The *Integrated Planning Act 1997*;
- The *Building Act 1975*;
- The *Building Regulation 2006*; and
- *QDC MP1.2*.

### **Findings of Fact**

The subject site is 848 square metres, basically rectangular with a 20 metre frontage to the road and an average depth of 44.5 metres.

Under Maroochy Plan 2000, the site is located within a *Neighbourhood Residential Precinct* in the *Blackall Range Planning Area*. There are established dwellings built on the rear and adjoining sites. Dwellings facing the subject site are concealed from view by trees and other native vegetation. These allotments are larger, being designated *Sustainable Rural Residential* under Maroochy Plan 2000.

The subject site is within a significant wooded area and it is also a designated tourist drive connecting Mapleton to Cooloolabin Dam. All the established dwellings along this stretch of road appear to have been built with a minimum setback of 6 metres from the road frontage.

The building works in question include a separate steel framed prefabricated style shed used as a domestic workshop area, being approximately 3 x 6 x 12 metres in size. In its decision notice under the heading of Advisory Notes, Maroochy Shire Council stated that there were no construction details provided for assessment for either this shed or an adjacent retaining wall. Therefore, it was unable to consider an approval for these two structures. At the hearing, Council's officer indicated to the tribunal that a future approval could be given, providing satisfactory construction details are submitted.

At some time after the original dwelling was constructed, an area at the rear of the dwelling was covered by a patio roof to provide an outdoor recreational area. As neither the applicant nor the local authority have any records to establish otherwise, it seems that this roofline was erected without an appropriate building approval being given. This patio roof along the Eastern end of the dwelling and what was originally an attached single carport on the Southern end, form an "L" shaped extension to the main roof of the dwelling. Unauthorised building works have since taken place to fully enclose this entire area for use as living space.

Upon inspection it was noted that the ceiling height in this area is low and does not comply with the BCA, specifically Part 3.8.2.2 (a) that stipulates,

*"Ceiling heights must not be less than- (a) in a habitable room excluding a kitchen – 2.4M"*

Similarly on the Western wall, there are insufficient differences to the finished floor levels between outside areas and those inside. The BCA, Part 3.1.2.3 stipulates,

*Surface Water Drainage (b) Slab on ground – finished slab heights:*

*The height of the slab-on-ground (measured at the slab edge) above external finished surfaces must be not less than- (iii) 50mm above paved or concreted areas that slope away from the building in accordance with (a.)*

*(a) Slab-on-ground- finished ground level adjacent to buildings: the external finished surface surrounding the slab must be drained to move surface water away from the building and graded to give a slope of not less than 50mm over the first 1M from the building.*

Finally, the roof sheeting in this area has a "customorb" profile. The manufacturer's written specification for this product states a minimum roof pitch of 5 degrees is required to maintain protection from water ingress. This has not been achieved for the roof line in this area.

There are also structural concerns with the new attached single carport that has been built within the road setback. Although the drawings that were submitted for assessment show otherwise, the steel hollow sections, (SHS) are not set in concrete pad footings, as is required under the BCA. Two of the SHS columns are bolted to the carport concrete slab using mild steel brackets.

In its decision notice under the heading of Advisory Notes, Maroochy Shire Council stated that soil reports were not lodged, however stipulated in the BCA, Part 3.2.5.6 is,

*Stump Footing Details*

*(c) Steel stumps must be –*

*(iii) encased in concrete sloping away from the stump and finishing not less than 100mm above finished ground level; and further states,*

*(f) Stumps must be embedded into foundation material not less than 30% of their height above ground or 450mm, whichever is the greater.*

The roof sheeting over the carport is also a “customorb” profile. The manufacturer’s written specification for this product states a minimum roof pitch of 5 degrees is required to maintain protection from water ingress. This has not been achieved for the roof line in this area.

The building work, the subject of this appeal, in so far as the carport is concerned, is defined by MP2000 Volume1, Table 5.2 Development Assessment for Building Work as being “Building work associated with a detached house”. As the building work is not more than 8.5 metres or 2 storeys high, the work is “self-assessable” provided it complies with the Code for the Development of Detached Houses and Display Homes (Elements 1 – 9 and 11 – 17). Element 1 in particular deals with Siting Provisions. For carports, an Acceptable Measure is provided such that “Carport Setbacks: A2.4 In residential precincts the minimum street setback for carports (including corner lots) is 4.5 metres.” The subject carport does not comply and so for it to be approved it would need to satisfy the Performance Criteria i.e. “P3 Buildings are sited to maintain the amenity of adjacent land and dwellings having regard to:

- (a) overshadowing;
- (b) privacy and overlooking;
- (c) views and vistas;
- (d) building character and appearance;
- (e) building massing and scale as seen from neighbouring premises;
- (f) the typically open or forested rural landscape in which buildings are a minor element;
- (g) maintaining an open visual landscape dominated by natural elements; rather than built structures; and (h) buffering from unsealed roads, heavily trafficked roads and existing or likely future heavy vehicle haul routes in order to avoid or minimise noise and dust nuisance.”

(a), (b), (c) and (h) are not applicable for this particular circumstance i.e. a low-set, open sided, single vehicle carport.

Guidance for compliance with items (d), (e), (f) and (g) is obtained from various parts of MP2000:

- The applicable acceptable measure from the Detached Housing Code i.e. carports should be setback 4.5 metres.
  - The purpose of setbacks is to prevent a “walled in” feel developing along a road corridor. Site specific planning and technical conditions would need to be in evidence in order to override this strong compliance guide of 4.5 metres. The significance of this purpose is possibly heightened in this particular location because of:
    - (i) the importance of the road as a tourist drive; and
    - (ii) the land opposite is in a Sustainable Residential Precinct and as such, frontages are heavily naturally vegetated and structures are set well back from the road frontage.
- Relevant aspects from the Precinct Notes i.e. “The village character of Mapleton is to be reinforced and maintained, by reflecting and/or reinforcing the scale, massing and Queensland vernacular traditions of existing buildings and maintaining or upgrading the landscape character of these areas (including the treatment of road reserves and parking areas)” and “In particular, development is to be consistent with the relevant provisions of the Blackall Range Local Area Code.”
  - This carport is considered to be inconsistent with “Queensland vernacular traditions of existing buildings” but then neither do adjoining houses reflect this tradition. As such non-compliance with these traditions cannot reasonable be said to be contribute to the reasons for refusal.

- There is a code for this area, considered to be of particular relevance and the community and Council want to protect an amenity and “feel” for this area: “The purpose of this code is to ensure that development in the Blackall Range Planning Area:
  - protects the natural, rural and village character and atmosphere of the area;
  - maintains a desirable quality of life for local residents and an attractive environment for visitors;
  - has a form and character consistent with the planning intentions of Council and the community consistent with that described in the Blackall Range Planning Area and Precincts contained within this Planning Scheme”
- Guidance re siting for the Blackall Range area is provided by the Performance Criteria for Element 1 of the Blackall Range Code and is in the main similar to that provided by the Detached Housing Code, with the following addition:
  - “Buildings and other structures are sited in a manner which respects the character of the Precinct in which they are located.” How siting affects character has been discussed above and is not seen as particularly relevant in this specific locality because of the non-traditional nature of neighbouring residential buildings. Having said this, one of the Acceptable Measures detailed in this Code is seen as particularly relevant in providing evidence as to the satisfaction of the Performance Criteria re siting provisions – “where structures are for an activity ancillary to the predominant use of the site, that they are sited and designed to be visually subordinate to the main use on the site by, for example, being at the rear of the site, and/or in a substantially smaller building.”

### **Reasons for the Decision**

Approval for the detached shed may be considered and approved providing relevant details can be submitted.

The extensions undertaken to the existing dwelling including the new carport, do not currently comply with relevant *deemed to satisfy* regulations stipulated in the BCA and there has been no *alternative building solution* provided for consideration.

In summary, in so far as MP2000 is concerned, the location of and nature of the carport cannot be deemed to satisfy the relevant Performance Criteria when general guidance for these Performance Criteria is considered against the particular development and site.

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**Debbie Johnson**  
**Building and Development Tribunal Chairperson**  
**Date: 7 February 2008**

## **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 grounds:

- (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 Infrastructure and Planning  
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