



**APPEAL**  
*Integrated Planning Act 1997*

**File No. 3-02-032**

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

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**Assessment Manager:** Maroochy Shire Council

**Site Address:** North Beach Place, Mudjimba (Lot 32 SP 131493)

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### **Nature of Appeal**

Appeal against the decision of Maroochy Shire Council to refuse an application for a proposed siting variation of the road boundary setback on a corner site for a detached house assessed under the performance criteria of Code 4.1 Development of Detached Houses and Display Homes of the Maroochy Plan 2000.

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### **Date and Place of Hearing:**

The hearing in relation to the road boundary clearance was conducted by way of written submissions following initial submissions at the first hearing regarding the deemed refusal by Maroochy Shire Council.

**Tribunal:** David Kay

### **Decision**

The decision of Maroochy Shire Council dated 6 September 2002 to refuse the application for a siting variation assessed against the performance criteria of the Maroochy Plan 2000 is set aside and is replaced by the following decision.

The siting of the proposed dwelling with the road boundary clearances in accordance with Blackburne Jackson Drawings numbered 4239/01B, 02B, 03B (all dated 28/6/02), 04A, 06A, 07A, 08A (all dated 24 May 02), being the drawings lodged to the Tribunal, is approved.

## **Background**

The appeal was initially considered as a deemed refusal from Maroochy Shire Council. The Tribunal directed Maroochy Shire Council to make a decision. Subsequent to this direction Maroochy Shire Council made a decision to not approve the proposal. The applicant has now requested the Tribunal to hear this matter on the basis of this refusal.

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

A written submission was presented at the initial hearing in relation to the issues associated with the assessment of the proposed building and its siting against the performance measures of the Residential Code. There are some lots in this estate that have been considered as part of an overall plan but this lot has not been included to date.

The proposed development does not comply with Element 1, Acceptable Measures A2.2 of Code 4.1. The applicant should demonstrate compliance with Performance Criteria P2.1. the applicant has not demonstrated compliance with the issue of “building character and appearance”.

From the evidence presented, it would appear that the encroaching two storey elevation is relatively unarticulated with no continuous plane to lead the viewers eye around the corner. The structure will present a level of bulk within 3 metres of the road boundary which is unlikely to be repeated anywhere else in the street.

Deletion of the encroaching corner (upstairs w.c.) would give apparent compliance with acceptable measure A2.2(b). The lot is relatively large and flat with no real constraints and an appropriate design could be prepared within the guidelines. There are many other siting options available without requiring the requested setback.

### *Applicant’s agent submission to the Tribunal.*

The merits of the siting of the building were also addressed at the initial hearing and it was considered that the design was in keeping with the estate. Gary Menyweather advised that the houses in this estate were to be designed by a limited panel of architects approved by the developer and that design by these relevant professionals should ensure that both Council and developers requirements were satisfied.

Siting “relaxations” have been granted for Lot 40 with a setback of 4.5m and lot 41 with a setback of approximately 3.5m to a patio and 4.0m to the main building.

The encroachment footprint is 4.5m with the building envelope having an average setback of 9m. There is no encroachment of the 12m truncation. The location of the sewer main requires a greater side boundary setback of 3m from the northern boundary.

The design is specifically for a corner site and has a curved wall leading around the corner with an interesting and positive affect on the streetscape. The design maximises the benefits of solar orientation and prevailing northeast breezes.

## **Material Considered**

MSC 1 – Preliminary assessment of urban design issues.

MSC 2 – Letter of refusal dated 6 September 2002.

MSC 3 – Letter to Tribunal outlining reasons dated 18 September 2002.

APP 1 – Submission and reasoning by applicant.

APP 2 – Notice of Engagement as Private Certifier.

APP 3 – Blackburne Jackson letter dated 30 August 2002.

Maroochy Plan 2000 Code for Residential Development and Use.

Material submitted with the appeal notice to the Tribunal.

Integrated Planning Act 1997.

Building Act 1975 and Standard Building Regulation 1993.

## **Findings of Fact**

- A private certifier has been engaged to assess a development application for building work for the proposed dwelling on this land.
- The local government has prescribed alternative siting requirements in the form of the Code for Residential Development and Use in the Maroochy Plan 2000
- The siting of the proposed dwelling does not comply with the Acceptable Measure A2.2 for House setbacks on Corner lots and assessment against Performance Criteria P2.1 and P2.2 of the Code for Residential Development and Use is required.
- Assessment of the proposed dwelling siting location against the relevant performance criteria is required to be undertaken by Maroochy Shire Council
- The application was refused by Maroochy Shire Council.

## **Reasons for the Decision**

The provision of Code 4 – Residential Development and Use apply to this site.

Element 1 – Height and siting of building and structures.

Performance Criteria P1 is satisfied by compliance with the acceptable measures as the building is not higher than 2 storeys and is less than 8.5m in height on a level site.

Performance Criteria P2.1 and P2.2 are not satisfied by compliance with the acceptable measures A2.2 for corner lots.

Performance criteria P3 – P7 are not applicable to the site. Performance criteria P8 is satisfied as the slope of the land is between 0 – 25%.

Element 2 is satisfied as there is only one detached dwelling proposed.

Element 3 is not applicable.

Element 4 would have been satisfied as part of the subdivision approval and Element 5 would be satisfied by construction methods. Element 6 and 7 are not applicable.

Element 8 – vehicle parking and access is satisfied by the proposed development layout and the

existing road access.

Element 9 is satisfied and Element 10 is not applicable.

The side and rear boundary clearances are required to satisfy the Standard Building Regulation as there are no alternative provisions in the Residential Development Code. The proposed development satisfies these requirements.

In conclusion, Performance criteria P2.1 and P2.2 need to be addressed.

“P2.1. Buildings and structures must be sited to contribute positively to the streetscape, maximise community safety and preserve the amenity of adjacent land/dwellings by having regard to the following:

- views and vistas
- building character and appearance and
- casual surveillance

P2.2. An adequate area suitable for landscaping must be provided as the front of a lot”.

Given that the site is a corner site with 50metres of road frontage and 35metres of this 50metre frontage has a full 6.0m width available for landscaping it is considered that this criteria is satisfied. It should be noted that some lots on this estate have road frontages as small as 19metres.

Casual surveillance of the road and property frontage to the eastern frontage is available from the lounge bay windows at ground level and bedroom 1 at upstairs level. Surveillance to the southern road frontage is available from the ground level kitchen and bedroom 1 at the upstairs level. It is considered the criteria for casual surveillance is satisfied.

The outlook from this site does not have any special view or vista. Similarly the locality does not have any particular view or vista that would be affected by the presence of this building. It is considered that the design of the building with the curved bay window to the lounge and the curved wall around bedroom 1 and lounge add to the view around the corner.

The single storey projection of approximately 4m to the overhang and 4.8m to the building at the bay window of the ground level lounge area projects beyond the 5.2m road boundary clearance that would satisfy the acceptable measures criteria for a low set portion of a dwelling on a corner site. The 2 storey projection of approximately 3.1m to the overhang and 4.0m to the building also does not satisfy the acceptable measures.

It is agreed that the 2 storey section of the lounge and bedroom 1 (w.c.) does present a level of bulk at the front of the dwelling when measured from the 13m three chord truncation.

The road curve varies from 5.8m off the northeast boundary to 4.2m around the corner truncations and up to 8m off the southwest corner. The corner truncation on this site is approximately a 13m radius. The normal corner truncation is based on a 6m radius. The use of a 6m radius places the 2 storey section containing the upstairs toilet behind what would be the normal 6m road boundary clearance. In addition, no part of the building projects within the 12m “truncation”. I am of the opinion that the sight lines and building bulk for this site would not appear intrusive given sight lines for normal residential and corner sites when measured from the 6m three chord truncation.

If a normal 6m radius three chord truncation was used the building would be located behind a 6m road boundary setback. The curvature of the road also provides a minimum 4m footpath width at this location. Other corner lots (Lots 3 and 38) approaching this site have the normal 6m truncations and buildings could be constructed at similar clearances.

It is my opinion that the clearance from the “normal” truncation and 4m footpath width is adequate to preserve the streetscape.

The proposed siting is considered to be in keeping with the streetscape and amenity of adjacent land and setbacks for other dwellings that could be constructed in this locality and still meet the acceptable measures criteria.

An inspection of the area found a similar style dwelling under construction on Lot 42 that utilised 2 storey F.C. cladding with timber weather strips. The character and appearance of the proposed dwelling is in keeping with amenity of dwellings in this particular development.

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**David Kay**  
**Building and Development**  
**Tribunal Referee**  
**Date: 30 September 2002**

## **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:

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