



Building and Development Tribunals

Queensland Government

Department of **Local Government and Planning**

APPEAL

Integrated Planning Act 1997

File No. 03-06-038

BUILDING AND DEVELOPMENT TRIBUNAL - DECISION

Assessment Manager: Maroochy Shire Council

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

Applicant: *withheld*

Nature of Appeal

Appeal under Section 4.2.9 of the *Integrated Planning Act 1997* against the decision of the Maroochy Shire Council to refuse an application for Building Works – siting variation - on land described as “the subject site”.

Date and Place of Hearing: 2:00pm on Thursday 6th April 2006
at “the subject site”

Tribunal: Mr Chris Schomburgk

Present: “Applicant”
Mr Brian Benporath – Maroochy Shire Council.

Decision:

The decision of the Maroochy Shire Council as contained in its written Decision Notice dated 24th February 2006, to refuse an application for relaxation of the boundary setback, is **set aside** and **the application is approved, subject to the following conditions:-**

- i) **The applicant is to provide landscaping between the shed and the front boundary to provide additional visual buffering to the road. Such landscaping is to be planted immediately and is to comprise native trees and bushes of a type and density that will achieve substantial screening of the shed (ie: to a height of at least 3 metres) within 5 years of this approval.**

Material Considered

The material considered in arriving at this decision comprises:

- Form 10 – Building and Development Tribunals Appeal Notice and supporting plans and documentation;

- Additional material provided by the Council, being a flood map of the locality;
- The relevant provisions of the Town Planning Scheme for Maroochy Shire Council;
- Council's Decision Notice dated 24th February 2006; and
- The *Integrated Planning Act 1997*.

Findings of Fact

I make the following findings of fact:

- The site is located at "the subject site".
- The subject application seeks approval for a shed/garage at the front of the allotment, to within 2.8 of the front (street) boundary. The property presently has no other formal covered car accommodation.
- "The subject site" is a predominantly rural area comprised of houses on large acreage allotments, with properties mainly used for grazing and some smaller hobby farms and rural residential living. "The subject site" is approximately 2ha in area, and is one of the smaller allotments in this locality.
- "The subject site" has a very wide road reserve (approximately 60m). At present, the nearest edge of the road carriageway is approximately 33m from the front boundary, and this separation distance comprises many mature trees and bushes, providing a substantial visual barrier to the site from passers-by on the road. Parts of "the subject site" to the east are currently the subject of roadworks to widen and straighten the road. It was suggested that those roadworks may continue past the subject site, but no design plans of those possible roadworks were available. It was not known whether the new carriageway would come closer to the subject property or move further away, within the road reserve.
- Regrettably, the subject shed has already been partially built without approval. However, this provided the opportunity to see the extent of any visual impact of the building. The shed is located within 2.8m of the front boundary and closer to the western side of the property, adjacent to the existing driveway. The house, an older, high set Queenslander style house, is located further east on the site.
- Council provided a map of the locality showing the extent of flood inundation on this and adjoining properties. On the subject site, less than 0.4ha was flood free, and this area was located at the northern end of the site, closest to the road. The applicant explained that the shed was erected in its current location to avoid this inundation area, and because it was closer to the existing driveway.
- The relevant Council Code (see below) requires a minimum setback in rural areas of 20m. This is an Acceptable Solution, and applicants can elect to demonstrate compliance with the Performance Criterion to satisfy the Code.
- The applicant has provided letters of support from nine (9) surrounding neighbours, at least one of whom (the neighbour to the west) has experienced inundation of their own sheds and garages.
- Council has refused the subject application on the basis of alleged non-compliance with **Performance Criterion P3 of Element (1) of the Code for Development of Detached Houses**. That Criterion provides that:
 - Buildings must be sited such that no significant loss of amenity to adjacent land and dwellings occurs having regard to:*
 - *building character and appearance,*
 - *building massing and scale as seen from neighbouring premises,*
 - *the typically open forested rural landscape in which buildings are a minor element,*
 - *maintaining an open visual landscape dominated by natural elements, rather than built structures, and*

- *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.*
- The applicants have planted a row of native trees inside their front boundary which will, as they mature, provide a substantial visual buffer when viewed from the road, in addition to the existing vegetation within the road reserve. Additional planting to supplement the existing vegetation could be undertaken in case the future roadworks require the removal of some of the existing vegetation within the road reserve.

Based on my assessment of these facts, it is my decision that **the appeal is upheld**. Council's **decision** to refuse the Application for Building Works - siting variation - is **set aside** and **the application is approved, subject to conditions, being:**

- ii) **The applicant is to provide landscaping between the shed and the front boundary to provide additional visual buffering to the road. Such landscaping is to be planted immediately and is to comprise native trees and bushes of a type and density that will achieve substantial screening of the shed (ie: to a height of at least 3 metres) within 5 years of this approval.**

Reasons for the Decision

- The proposed location is the most logical location on the site for a shed and car accommodation, being flood free and closest to the existing driveway. The only other practical location is on the eastern side of the house, which is further from the driveway and behind the house.
- The proposal, when developed in accordance with the conditions as above, will not detract from the streetscape or the rural nature of this locality.
- The shed is already well screened from, and substantially separated from, the existing road carriageway. In the event that the road is re-aligned at some future time, the additional landscaping required inside the front boundary in condition i) above will serve to retain the visual screening that presently exists.
- There is considerable support from neighbours in the immediate locality, such that there is no suggestion from them that they will suffer any loss of visual amenity.
- The proposal, when developed in accordance with the conditions as above, will not detract from the overall building character and appearance in the locality.
- The proposal, when developed in accordance with the conditions as above, will satisfy the Performance Criterion of the relevant Code.
- The majority of the subject property is subject to flood inundation. The relaxation of the usual 20m setback in this case will not create any undesirable precedent, given the particular circumstances of this site.

Chris Schomburgk
Building and Development Tribunal General Referee
Date: 13th April 2006

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
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