



Building and Development Tribunals
Queensland Government

Department of Local Government, Planning,
Sport and Recreation

APPEAL

File No. 03-04-038

Integrated Planning Act 1997

BUILDING AND DEVELOPMENT TRIBUNAL - DECISION

Assessment Manager: Maroochy Shire Council

Site Address: 33 Kondalilla Falls Rd, Flaxton

Applicant:

Nature of Appeal

Appeal under Section 21 of the Standard Building Regulation 1993 against the decision of the Maroochy Shire Council to approve an application for relaxation of siting requirements on land described as Lot 16 on RP 148722 and situated at 33 Kondalilla Falls Rd, Flaxton.

Date and Place of Hearing: 10.00am on Thursday 15th July, 2004
at 33 Kondalilla Falls Rd, Flaxton

Tribunal: Mr Chris Schomburgk

Present: Maroochy Shire Council Representatives;
The applicant.

Decision:

The decision of the Maroochy Shire Council as contained in its written Decision Notice dated 2nd June 2004, to refuse an application for relaxation of the side boundary setback is **set aside and the application is approved.**

Material Considered

The material considered in arriving at this decision comprises:

- The application and supporting plans;
- The relevant provisions of the Town Planning Scheme for Maroochy Shire Council – in particular the Detached Dwelling House Code 4.1;
- The Standard Building Regulation 1993;
- Verbal submissions from the Applicants and Council's Representatives;
- Council's Decision Notice dated 2nd June 2004;
- My own site inspections; and
- The Integrated Planning Act 1997.

Findings of Fact

I make the following findings of fact:

- The site comprises Lot 16 on RP 148722, with frontage to both Kondalilla Falls Rd and Carrington Drive at Flaxton.
- The locality is generally established with a variety of new and some older homes on allotments ranging from traditional residential (800m² or so) to rural residential (4000m² or so).
- Kondalilla Falls Rd is reasonably well trafficked, especially on weekends, as it leads to the falls and picnic areas at its western end. Carrington Drive is a local street with predominantly local traffic only.
- The standard of homes is generally high, and landscaping on allotments is generally well-established. The locality is an attractive one, typical of this part of the Blackall Range.
- A new dwelling exists on the site with frontage to Kondalilla Falls Rd. Carrington Drive is, in effect, a side road for this property.
- The patio cover that is the subject of this appeal has been constructed (without approval). It is constructed of materials and with colours similar to the main house. A concrete floor has been constructed under the patio roof. There are no sides to the patio other than where it abuts the house. The patio is on the eastern side of the house.
- Extensive new landscaping has been planted around both road frontages, with additional planting within the Kondalilla Falls Rd front yard. These plants were all small at the time of inspection, but can be expected to grow well given the soil and climate for this area. Most other properties in the locality have advanced landscaping.
- Along Kondalilla Falls Rd and Carrington Drive there are a number of examples of carports and garages within the front boundary setback distance. I am not aware, nor were the Council's representatives, whether they are all approved structures.
- The Council's Planning Scheme is an "IPA" scheme that came into force in 2000. It sets out a series of Codes, including the Detached Dwelling Code. Performance Criteria P3 of Element 1 of that Code states that:
 - Buildings must be sited such that no significant loss of amenity to adjacent land and dwellings occurs having regard to*
 - *privacy and overlooking*
 - *views and vistas*
 - *building character and appearance*
 - ...
 - *maintaining an open visual landscape dominated by natural elements rather than built structures*
 -
- The Code also requires, as an Acceptable Solution, that land within the Sustainable Rural Residential precincts has a minimum street setback of 10.0 metres, including corner lots. This means, to satisfy this Solution, both street frontages should have a 10m setback. The subject patio cover will encroach into this setback distance for the Carrington Drive frontage. This frontage is a "side street" frontage the way the house is designed.
- Council has refused the application on the basis of conflict with these provisions.
- As above, Carrington Drive is a local street with predominantly local traffic. The intersection with Kondalilla Falls Rd has good sight distances and I do not consider that this open patio will detract from the safety aspects.

Based on my assessment of these facts, it is my decision that the appeal is upheld. Council's decision

to refuse the siting application for relaxation of what is effectively a side boundary is set aside and the **application is approved.**

Reasons for the Decision

- The site is in an area of predominantly residential uses, albeit with varying allotment sizes and a mix of older homes and some newer homes.
- There are a number of structures within the setback areas of other properties in the immediate vicinity.
- The subject patio cover is designed and constructed in sympathy with the existing house in terms of materials and colours. That is, it is complementary to the building character and appearance of the locality.
- The patio will remain open on all sides (except where it abuts the house).
- There is no likelihood of overshadowing or lack of privacy for other residents from the patio area.
- The proponent has already commenced an extensive landscaping program for both street frontages and the Kondalilla Falls Rd front yard to ensure a degree of privacy for residents of the subject property.
- The proposal does not offend the Performance Criteria of the relevant Code, despite non-compliance with one of the Acceptable Solutions.
- The patio is a minor addition to the house and will not detract from the amenity of the locality or this particular property.

Chris Schomburgk
Building and Development Tribunal General Referee
Date: 16th July 2004

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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