



APPEAL
Integrated Planning Act 1997

File No. 3-07-076

BUILDING AND DEVELOPMENT TRIBUNAL - DECISION

Assessment Manager: Suncoast Building Approvals

Concurrence Agency: 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 Suncoast Building Approvals to part approve and part refuse a Development Approval, based on a Concurrence Agency response from Maroochy Shire Council dated 16th October 2007, which limits a shed height to 2.35m and refuses the siting of a 5000L rainwater tank within the 6.0m of a road boundary. The application for a siting concession was required to allow a domestic steel clad shed and a 5000L rainwater tank to be built at the rear of the "subject site" within the 6.0m of a road boundary.

Date and Place of Hearing: 2.00 pm Monday 17th December 2007 at "the subject site".

Tribunal: Debbie Johnson - Chairperson
John Gillespie - General Referee
Don Grehan - General Referee

Present: Applicant / Owner and Builder
Steven Tucker - Maroochy Shire Council Representative
John Hill - Private Certifier, Suncoast Building Approvals
Alan McMillan - Private Certifier, Suncoast Building Approvals
Tom Hill - Cadet, Suncoast Building Approvals

Decision

In accordance with section 4.2.34 of the *Integrated Planning Act 1997*, the Tribunal **changes** the decision of Suncoast Building Approvals dated 16th October 2007, based on a concurrence agency response from Maroochy Shire Council, and allows the domestic steel clad shed "as built" to remain and allows the proposed rainwater tank to be positioned within the road boundary setback; **subject to the following condition:**

The applicant is to plant and maintain a 4m length of landscaped screening, adjacent and parallel to the Western wall of the existing shed, using endemic native species that will grow to an average height of 3.5m when matured.

Background

The applicant engaged AK Building Design to prepare architectural documentation for their residence and Titan Enterprises (Qld) Pty Ltd for a shed design, to be built on the “subject site”.

On the 31st August 2007 Allan McMillan, Suncoast Building Approvals, approved the drawings prepared by AK Building Design, identified as Dwg No 07153A/ Sheets 1/5-5 and those prepared by Titan Enterprises and issued a Development Permit For Building Work.

Several months after building works had commenced, Suncoast Building Approvals realized that the dwelling and associated structures required an approval for the setbacks assumed. The applicant was therefore called upon to lodge a Change to a Development Approval as the road setback to *withheld* was taken to measure 4.32m for the dwelling and 2.3m for the shed. Both buildings were substantially erected by this time. Similarly, the subsurface drainage lines had also been installed for the rain water tank to be positioned in the area between the new shed and the road boundary. The Private Certifiers referred this application to Maroochy Shire Council as a concurrence agency to determine the siting variations.

Maroochy Shire Council issued a Concurrence Agency Response as a Part Approval and Part Refusal, by written notice to Suncoast Building Approvals on 16th October 2007. Consequently, Suncoast Building Approvals issued a Change to an Existing Development Approval Notice to the applicant on 29th October 2007, advising that the application for a siting variation was a Part Approval and a Part Refusal.

Material Considered

- ‘Form 10 – Notice of Appeal’ lodged with the Registrar on the 31st October 2007, including the Grounds of Appeal, plans and correspondence;
- Maroochy Shire Council’s Concurrence Agency Response dated 16th October 2007;
- Suncoast Building Approval’s Decision Notice dated 31st August 2007;
- Suncoast Building Approval’s Change to an Existing Development Approval Notice;
- Property details, including aerial mapping as available through PD Online, Maroochy Shire Council website;
- Verbal submissions made by the applicant at the hearing;
- Verbal submissions made by Maroochy Shire Council representative at the hearing;
- Verbal submissions made by Suncoast Building Approvals representatives at the hearing;
- Observations made at the hearing from within the “subject site” as both the shed and the residence are effectively completed. Similarly, the site was viewed from a distance at various points along *withheld*;
- The *Integrated Planning Act 1997*;
- The *Building Act 1975*;
- The *Building Regulation 2006*;
- Part 1.0 Siting and Amenity, MP1.2, of the Queensland Development Code (QDC); and
- Maroochy Plan 2000.

Findings of Fact

The “subject site” is 1197 sq/m, essentially rectangular in shape with a low narrow truncated frontage being approximately 18m long and 5m wide adjacent to *withheld*. The site abuts *withheld* along the rear or Southern boundary for a total length of 27.26m. The Eastern boundary is shared with an adjoining residence, however the adjacent residential lot to the North is still vacant. The finished surface levels indicate a gentle, even slope of approximately 450mm across the site, falling to *withheld* from the Northern end of the site.

The “subject site” is part of a small housing estate comprising 31 allotments. This housing area is buffered to the East but predominately to the North, from the Sunshine Coast Motorway by existing native subtropical vegetation. All the allotments within this estate are orientated to front *withheld* which forms a circuit from and to *withheld*. This arterial road forms the Southern boundary of the *withheld* community which is shielded by dense planting and timber fencing, instigated by the developer of this estate. Across from the “subject site” in *withheld* there is a sporting field, a dense landscaped parkland and a very large car parking area which is part of community development owned and run by the Baptist Church facility. Further residential development is anticipated along the entire Western boundary of the *withheld* estate, on land which is currently undeveloped and drainage deficient, this land also sits between the Sunshine Coast Motorway and *withheld*. An existing landscaped drainage reserve separates the *withheld* community from any future residential lots along this Western boundary.

The “subject site” is located in the South Western corner of the estate and is therefore bordered by *withheld* to The South and the drainage reserve along the Western boundary. No pedestrian or vehicular access is available to *withheld* from the subject site however it is deemed a road frontage.

In all, there are nine allotments in this community that back on to *withheld*. From the rear of these homes it is not possible to see *withheld* due to the height of the fencing and planting provided by the developer. This is relevant as it appears neither AK Building Design nor Titan comprehended the significance of the *withheld* building setback requirements. The prepared architectural site plan, being part of the approved drawings, clearly indicates the position of the proposed dwelling, the shed, the rain water tank and *withheld* at the rear of the site, however, no acknowledgement is given on this drawing, to the required road setbacks.

The applicant and his consultants were seemingly unaware that a 6.0m setback requirement was applicable from the rear or Southern boundary as a consequence of *withheld*, possibly because the allotments are well screened from the adjoining arterial road and there is no possible direct access to this road. Similarly, other dwellings in this estate have varied their rear building lines to *withheld* so that the required building line is not immediately obvious.

The applicant, having been issued with his Development Permit commenced the building works and he was not advised of the siting requirements until both the shed and the dwelling were almost completed. The significance of the building line setback was initially overlooked by the certifier, however as the subsequent building works progressed, the error was realised.

Siting for Class 10 buildings and structures is determined by Part 1.0, MP1.2 of the QDC, to the extent that the planning scheme does not identify or state alternative provisions for boundary clearances. However, if a local planning scheme identifies alternative provisions that apply to class 1 and accompanying class 10 buildings and structures, the alternative provisions apply.

In this instance, Maroochy Plan 2000 does stipulate alternative provisions. The applicable MP2000 code being 4.1 Code for the Development of Detached Houses & Display Homes. This Code regulates the establishment of detached houses, display homes and associated outbuildings and other structures associated with the detached houses and display homes. Structures must satisfy various Performance Criteria listed within the Code. One means of satisfying the Performance Criteria is by adherence to listed Acceptable Measures. The applicable *building setback* from a road frontage for a single storey detached houses is 4.5m and for garages, 6m. The proposal does not comply and so must demonstrate satisfaction of the Performance Criteria by alternative means.

“*Building Setback* refers to a line or lines, fixed by council, parallel to any boundary of a lot beyond which a building or other structure shall not encroach, and measured as the shortest horizontal distance from the outermost projection of the building or other structure to the vertical projection of the lot boundary” (MP2000 Interpretation 3.2 Administrative Definitions)

The applicable Performance Criteria is “P2 Buildings and structures are sited to contribute positively to the streetscape, maximise community safety, and maintain the amenity of adjacent land and dwellings by having regard to the following:

- (a) views and vistas;
- (b) building character and appearance;
- (c) casual surveillance; and
- (d) an adequate area suitable for landscaping being provided for at the front of a lot.”

Council, in their advice to the certifier, refused the application because, in their view, it does not satisfy P2(b) above i.e. the shed and tank, in their location as-constructed do not, in Council’s opinion, contribute positively to the streetscape and amenity of the area.

Reasons for the Decision

The Tribunal has considered the Performance Criteria P2 of 4.1 Code for the Development of Detached Houses & Display Homes of the Maroochy Plan 2000:-

Siting of Rainwater Tank:

With regard to the character and appearance of the rainwater tank, it is considered that typical materials and colours will be consistent with similar structures located within the general vicinity. The proposed siting of the structure will have a negligible effect on the streetscape as viewed from *withheld* due to the minimal extent that the structure will project above the level of the existing subdivisional fencing and the landscape buffer within the road reserve.

Height Limitation on Garage:

There are no views or vistas to be compromised by the height or siting of the existing shed. Ultimately, there should be no adverse effect or the amenity of existing or future dwellings in this vicinity due to the provisions of both existing and proposed landscape buffers adjacent to the “subject site” and specifically in the area where the shed has been constructed. The character and appearance of the shed is similar to other structures in the area due to the choice of construction materials and colours that have been used. The ‘subject site’ has no casual surveillance to *withheld* due to the buffers that have been established. The existing shed has no bearing on this.

Debbie Johnson
Building and Development Tribunal Chair
Date: 21 January 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 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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Building Codes Queensland
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