



**APPEAL**

*Integrated Planning Act 1997*

**File No. 03-06-036**

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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*

**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”.

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**Date and Place of Hearing:** 11:00am on Thursday 6<sup>th</sup> April 2006 at “the subject site”

**Tribunal:** Mr Chris Schomburgk

**Present:** Applicants;  
Mr Val Moran – Maroochy Shire Council; and  
Mr Andrew Cooksley – Maroochy Shire Council.

**Decision:**

The decision of the Maroochy Shire Council as contained in its written Decision Notice dated 2<sup>nd</sup> March 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 proposed open carport is to be located such that the minimum average setback from the front boundary is at least 4.5m;**
- ii) **The carport is not to contain any side or front wall or gate, other than some screen battens at the side for privacy. Such battens are to achieve a minimum of 50% open nature when viewed from the eastern side.**
- iii) **The existing large tree (Poinciana) located in the north western corner of the site is to be protected from damage during and post construction of the carport and other works on site. This may need to include some root protection below the ground level.**
- iv) **Landscaping that exists along the front boundary that is required to be removed for the proposed development is to be re-instated to at least the same degree of maturity and density prior to occupation of the proposed development.**

## 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 comprising of a written statement and an aerial photograph;
- The relevant provisions of the Town Planning Scheme for Maroochy Shire Council;
- Council’s Decision Notice dated 2<sup>nd</sup> March 2006; and
- The *Integrated Planning Act 1997*.

## Findings of Fact

I make the following findings of fact:

- The site comprises “the subject site”.
- The subject application seeks to provide an open carport at the front of the allotment, to within 1.204m of the front (street) boundary. The proposed carport is part of an overall proposed substantial renovation of the existing dwelling house.
- The existing house has a single car garage under the main roof. The house is built to within approximately 1.8m of each side boundary, such that there is no opportunity to provide additional car accommodation at the side of the existing house.
- *Withheld* is a cul-de-sac and the subject site is approximately midway along its length. The site is almost directly opposite the intersection of *withheld* and *withheld*, another short cul-de-sac. Traffic in *withheld* and *withheld* is predominantly local traffic only with no through-traffic. Both streets present as well vegetated and all allotments have a quiet, pleasant “leafy” character with mostly older homes in very good condition.
- The subject house is relatively plain when viewed from the street, apart from the very large *poinciana* tree located in the north-west corner of the site. This tree has a very large canopy that extends over the road carriageway, providing shade and some shelter, and is typical of the style of vegetation in this cul-de-sac.
- The proposed renovations of the subject house include converting the existing single garage into a storage room and study, substantial extensions to the rear of the house, a new swimming pool, and a new rendered block wall along the front boundary. It was not disputed that the proposed renovations would generally be an attractive addition to the streetscape, subject of course to the proposed carport’s intrusion into the front setback area.
- Council indicated it was prepared to accept a front setback to an open carport of 4.5m, as is allowed in the relevant Planning Scheme Code for an open-sided carport. To achieve this would mean some re-design of the proposed renovations including, potentially, the removal or reduction of either or both of the proposed storage room and study.
- At the hearing, the option of relocating the storage area into the side setback was discussed, thereby allowing the carport to “slide” back to the preferred 4.5m. The applicants acknowledged that this was not their preferred option and some concern was expressed about the potential impacts on the neighbours’ house to the west, given the proximity of their outdoor area to the common boundary. However, it seems likely that some design treatment could be achieved to minimise any potential impacts to those neighbours if that relocation was to occur.
- Council has refused the subject application on the basis of alleged non-compliance with **Performance Criterion P2.1 of Element (1) of the Code for Development of Detached Houses**. That Criterion provides that:

*Buildings and other structures must be sited to contribute positively to the streetscape, maximise community safety and preserve the amenity of adjoining land / dwellings having regard to the following:*

- a) Views and vistas;*
- b) Building character and appearance.*

*The proposal also does not comply with Performance Criteria P2.2 in that the building in the proposed location does not provide or an adequate area suitable for landscaping at the front of the allotment.*

- The Planning Scheme allows some relaxation of boundary setbacks for carports or garages in certain circumstances. As above, it was accepted by the Council officers at the hearing that a setback of an average of 4.5m (given the angle of the front boundary relative to the house) would be acceptable for an open-sided carport. This would allow at least one car to be parked in front of the carport without intruding into the street carriageway. The proposal as lodged does not allow any other off-street parking on the site. While not determinative in this matter, this is, in my opinion, nevertheless a relevant consideration in the circumstances.

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:**

- v) **The proposed open carport is to be located such that the minimum average setback from the front boundary is at least 4.5m;**
- vi) **The carport is not to contain any side or front wall or gate, other than some screen battens at the side for privacy. Such battens are to achieve a minimum of 50% open nature when viewed from the eastern side.**
- vii) **The existing large tree (Poinciana) located in the north western corner of the site is to be protected from damage during and post construction of the carport and other works on site. This may need to include some root protection below the ground level.**
- viii) **Landscaping that exists along the front boundary that is required to be removed for the proposed development is to be re-instated to at least the same degree of maturity and density prior to occupation of the proposed development.**

#### **Reasons for the Decision**

- The proposal, when developed in accordance with the conditions as above, will not detract from, rather it will improve, the streetscape in this locality.
- The proposal, when developed in accordance with the conditions as above, will not create any traffic problem especially given the low-key and local nature of traffic in this locality.
- The proposal, when developed in accordance with the conditions as above, will not detract from the views and vistas obtained by other residents in the locality.
- The proposal, when developed in accordance with the conditions as above, will not detract from the overall building character and appearance in the locality.

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**Chris Schomburgk**  
**Building and Development Tribunal General Referee**  
**Date: 13<sup>th</sup> 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  
Building Codes Queensland  
Department of Local Government and Planning  
PO Box 15031  
CITY EAST QLD 4002  
**Telephone (07) 3237 0403: Facsimile (07) 32371248**