



Building and Development Tribunals

Queensland Government

Department of Local Government and Planning

APPEAL

Integrated Planning Act 1997

File No. 03-07-023

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 Preliminary Approval for Building Works on land described as “the subject site”.

Date and Place of Hearing: 8:30am on Monday 14th May 2007
at “the subject site”

Tribunal: Mr Chris Schomburgk

Present: Applicant;
Mr John Dunn - Maroochy Shire Council Representative

Decision:

The decision of the Maroochy Shire Council as contained in its written Decision Notice dated 8th March 2007, to refuse an application for boundary setback relaxation, is **confirmed** and **the application is refused**.

Material Considered

The material considered in arriving at this decision comprises:

- The application, including ‘Form 10 – Notice of Appeal’ and supporting plans and documentation;
- Letters of support from surrounding landowners received after the decision;
- The relevant provisions of the Town Planning Scheme for Maroochy Shire Council, in particular the Code for the Development of Detached Houses and Display Homes;

- Council’s Decision Notice dated 8th March 2007;
- The Queensland Development Code;
- The Building Code of Australia Volume 2; and
- The *Integrated Planning Act 1997*.

Findings of Fact

I make the following findings of fact:

- The site comprises *withheld* and is located at “the subject site”. The site presently contains a large home and is located in a relatively new part of *withheld*, with surrounding homes of a similar high quality.
- The subject home has a swimming pool located in the front yard, set behind a high rendered-block wall such that it is screened from view of passers-by. The wall is set back from the front boundary by approximately 2.6m due to the location of an underground sewer line within the subject property.
- The application results from a Show Cause Notice issued by Council. The roofed structure has been built without the necessary approval.
- The applicants have now sought approval for the existing thatched roof hut within this front poolside area. The hut has a floor area of approximately 10m² (perhaps slightly less). The hut has been constructed with a pitched roof, which has a height of approximately 3.5m at its peak.
- In the locality, all homes are set back from the street boundary by, from inspection, at least 6m. There are two homes in the same street that have sail structures within the front setback area. The Council officer at the hearing advised that neither of these have been lawfully approved and that action was being taken by the Council to deal with those structures.
- The applicant has obtained letters from many of the surrounding residents – not just immediate neighbours - in support of the proposal.
- Since the roof was constructed, the applicants have built “day bed” type seating and a table within the hut.
- The applicants have indicated that the structure is desired to provide shade and shelter for the poolside area. At the hearing, the Council officer noted that there were alternate locations within the poolside area for a shade structure, but the applicant indicated that these were not as desirable and may detract from the front appearance of the home.
- The Council’s refusal is based on its Code for Detached Houses, and in particular Element 1, Performance Criteria P2 which provides that:

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) ...
- (b) *Building character and appearance*
- (c) ...
- (d) ...

- At the hearing, the Council officer explained that the primary concern was the impact on streetscape, especially given that there were no other lawful structures intruding into the front setback area in the locality.

Based on the assessment of these facts, it is the Tribunal's decision that **Council's decision** to refuse the Application for relaxation of boundary setbacks is **confirmed** and **the application is refused**.

Reasons for the Decision

- Despite the letters of support from surrounding neighbours, the proposal will be out of character with the locality, as it will be the only intrusion into the front setback in this street.
- The proposal cannot be said to “contribute positively to the streetscape”, although it is fair to say that it is not necessarily a negative contribution either.
- While it may not be the applicant's preference, there are other opportunities around the pool area for the location of a shade structure that would not intrude into the front setback area.
- The structure does not, in my opinion, maintain the amenity of the locality – especially adjacent land and dwellings – as it would represent the only lawful intrusion into the front setback area in this locality.

Chris Schomburgk
Building and Development Tribunal General Referee
Date: 16th May 2007

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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