

**APPEAL***Integrated Planning Act 1997***BUILDING AND DEVELOPMENT TRIBUNAL - DECISION****Assessment Manager:** Maroochy Shire Council**Site Address:** *withheld* – “the subject site”**Applicants:** *withheld***Nature of Appeal**

Appeal under Part 2, Section 4.2.9 of the *Integrated Planning Act 1997* against the decision of Maroochy Shire Council to refuse a development application for preliminary building works that sought a siting concession which was required to allow the construction of a Class 10a shed and a Class 10b swimming pool with associated decking, within the road and side boundary setbacks.

Date and Place of Hearing: 10.15am Monday 25 February 2008 at “the subject site”**Tribunal:** Debbie Johnson – Chairperson
Robin King-Cullen – General Referee**Present:** Applicants
Steven Tucker – Building Surveyor, Maroochy Shire Council
Fred Vicary – Building Surveyor, Maroochy Shire Council

Verbal submissions were provided to the Tribunal by *withheld*, the neighbouring property owners, at their home following the hearing.

Decision

In accordance with Section 4.2.34 of the *Integrated Planning Act 1997*, the Tribunal:

1. **Changes** the decision of Maroochy Shire Council, dated 31 January 2008, to allow the relaxation of the siting provisions to allow the proposed Class 10a shed to be sited at 6m from the road boundary and 1.5m from the side boundary. The setback measurement is to be taken from the boundary to the *outermost projection* as defined in the Queensland Development Code MP 1.2.
2. **Confirms** the decision of Maroochy Shire Council to refuse the relaxation of the siting provisions to allow the proposed Class 10b swimming pool and associated decking within the side boundary setback.

Background

The dwelling is situated on approximately 4.3ha of land that has a substantial fall from the road frontage to the rear of the lot. Although the site is large, the existing dwelling was positioned approximately 4.5m from the Western or side boundary.

The proposed swimming pool and associated decking would further reduce this side boundary setback to 1.6m. The construction of the proposed swimming pool and associated timber decking requires a siting variation against the 10m side boundary setback prescribed in the Maroochy Plan 2000 for rural lots. Similarly, a siting variation is required to construct the proposed garage within the 20m road boundary and 10m side boundary clearance required by the Maroochy Plan 2000.

To apply for the relevant siting concessions the applicants lodged a concurrence agency referral with Maroochy Shire Council. This was subsequently withdrawn after council officers undertook a site inspection and suggested to the applicants that the variation request was likely to be refused.

The applicants then lodged a Development Application for Preliminary Building Works to request a siting concession for the garage, the swimming pool and associated timber decking. Council, having regard to privacy, overlooking, building character and appearance, refused this application.

Material Considered

- 'Form 10 – Notice of Appeal' lodged with the Building and Development Tribunals on 12 February 2008;
- Maroochy Shire Council's Decision Notice dated 31 January 2007;
- Property details, including mapping at PD Online, Maroochy Shire Council website;
- The applicants' grounds for appeal against Maroochy Shire Council's reasons for refusal submitted with the application to the Tribunal and other written submissions;
- Verbal submissions made at the hearing by the applicants;
- Verbal submissions by Maroochy Shire Council's representatives to the Tribunal detailing Council's concerns relating to the application and the reasons for refusal;
- Verbal submissions made by the neighbouring property owners at their home following the hearing;
- Written submissions provided to the tribunal by the neighbouring property owners;
- Architectural Drawings prepared by Beachtime Designs, identified as Dwg No 31107 Sheets 1-10/10;
- Relevant sections of the Maroochy Plan 2000 including amendments;
- The *Integrated Planning Act 1997*;
- The *Building Act 1975*;
- The *Building Regulation 2006*; and
- The Queensland Development Code MP1.2.

Findings of Fact

The Tribunal made the following findings of fact:

- The subject site is located in the Rural Precinct under Maroochy Plan 2000.
- Siting requirements for the works subject of this Appeal are contained in Maroochy Plan 2000 Code 4.1 – Code for the Development of Detached Houses and Display Homes.
- Performance Criteria P3 of Code 4.1 applies in respect of the works subject of this appeal and requires that “Buildings are sited to maintain the amenity of adjacent land and dwellings having regard to:....(b)privacy and overlooking:.....(d) building character and appearance.

Garage

- Under Performance Criteria P3 of Code 4.1, the Acceptable Measures for siting the proposed garage are a minimum street frontage of 20m (Acceptable Measure A3.3(a) and a minimum side setback of 10m (Acceptable Measure A3.4(b).
- The subject site has been cut to provide a relatively level area near the street frontage, beyond which the site slopes steeply away to the rear of the lot. This relatively flat area is the most practical location for the proposed garage. It is not possible however to comply with a minimum street frontage setback of 20m in this location nor the side boundary clearance of 10m. The maximum street frontage setback achievable for the proposed garage within this flat area is 6.0m whilst the side boundary clearance will also be reduced to 1.5m.
- The subject site slopes down from *withheld*, and the building platform has been cut down therefore limiting the visibility of the proposed garage from the street. Privacy of residences on the opposite side of *withheld* would not be adversely affected by location of the proposed garage within a 20m frontage setback.
- Adjoining the site to the north is an access easement for the adjacent site. This access easement is well vegetated. Privacy and overlooking of the adjoining property to the north are therefore not relevant factors in considering a relaxation of the side setback for the proposed garage.

Swimming Pool and Associated Decking

- Under Performance Criteria P3 of Code 4.1, the Acceptable Measures for siting the proposed swimming pool and decking are a minimum street frontage of 20m (Acceptable Measure A3.3(a) and a minimum side setback of 10m (Acceptable Measure A3.4(b).
- Part of the proposed swimming pool and decking are proposed within the 20m street frontage. It is noted that the existing house is constructed within the 20m setback.
- A minimum side boundary setback of 1.697m is proposed to the southern boundary in **lieu** of the Acceptable Measure of 10m.
- It is considered that location of the proposed swimming pool and associated decking within the 10m side setback would fail to meet Performance Criteria P3 of Code 4.1 in that amenity of the adjoining property to the south would be adversely affected having regard to privacy and overlooking. It is noted that the owners of the adjoining property to the south have strongly objected to the location of the proposed swimming pool and decking.

Reasons for the Decision

Whilst at the hearing, all parties agreed to the relaxation for the siting of the proposed garage providing the structure was rotated slightly to suit access for vehicles using the existing driveway. It was clear that the proposed garage would be practically undetectable in this location from adjoining sites.

The proposed siting for the swimming pool and associated decking is refused due to the anticipated lack of amenity, primarily of an acoustic nature, for the adjoining property owners, given the rural setting and therefore their reasonable privacy expectations.

Debbie Johnson
Building and Development Tribunal Chairperson
Date: 18 March 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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