



**Building and Development Tribunals**

**Queensland Government**

Department of **Local Government and Planning**

**APPEAL**

*Integrated Planning Act 1997*

**File No. 03-07-022**

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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 approve in part an application for Preliminary Approval for Building Works on land described as “the subject site”.

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**Date and Place of Hearing:** 8:30am on Tuesday 3<sup>rd</sup> April 2007  
at “the subject site”

**Tribunal:** Mr Chris Schomburgk

**Present:** Applicant  
Mr Neil Messinbird - Maroochy Shire Council Representative

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**Decision:**

The decision of the Maroochy Shire Council as contained in its written Decision Notice dated 13<sup>th</sup> March 2007, to approve in part an application for boundary setback relaxation, is **set aside** and **the application is approved, subject to the following conditions:**

- 1. The building shall be constructed in accordance with the plans lodged with the application, referred to as Beachtime Designs - Proposed Renovations and Additions dated 02/11/06, except as amended by notations of the Council and by Condition 2 below.**
- 2. Notations on those plans referring to the patio roof being amended, are to be disregarded.**

## Material Considered

The material considered in arriving at this decision comprises:

- The application and supporting plans and documentation;
- A letter of support from the adjoining landowner received after the decision;
- A written statement provided by the Council at the hearing;
- 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 Element 8 - Special Requirements for Steep or Unstable Land;
- Council's Decision Notice dated 13<sup>th</sup> March 2007;
- The Queensland Development Code (QDC) Part 12 – in particular, P2 and A2;
- 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 over two levels with a carport entry off *withheld*. The house is proposed for substantial renovations. The site also has a road frontage to *withheld*, and a double garage is proposed off that lower road.
- The subject site is very steep, sloping down from west to east, and affords spectacular views to the coast, predominantly in a north easterly direction.
- Other homes in the locality are similarly designed and sited to take advantage of these views. Due to the topography, the adjoining house to the north is slightly higher than the subject house, while houses to the south are lower. The house to the immediate north is currently under construction and is set back slightly further from its eastern boundary than the subject house, such that it does not impinge on views or breezes from/to the subject house.
- The planned renovations include a new garage at the lower *withheld* level, a new pool and deck at a level above that garage, and renovation of the existing two habitable levels. This is to include, of relevance to this appeal, a minor extension to the existing deck in the north eastern corner.
- The relevant Planning Scheme Code for this appeal is the Code for Detached Houses – in particular ‘Element 8 – Special Requirements for Steep or Unstable Land’.
- The existing setbacks to the northern and southern boundaries are already less than would be allowed under the current Planning Scheme Codes. Because of the slope of the land, building setbacks are defined by a 45 degree setback requirement for the higher parts of the building, as shown in Figure 4-4.1(g) of the Code. That Figure is part of an Acceptable Measure for the Code. In this case, the proposed deck would have a side boundary setback of 1.159m at its highest point, which is approximately 8.0m above the natural ground level.

- The Council has, by its conditions and notations on the approved plans, effectively refused a part of the application, being the north-eastern corner of the proposed deck roof. The Council's decision is based on its Code for Detached Houses, and in particular Element 8, Performance Criteria P2 which provides that:

*Buildings and other structures are designed and sited to minimise adverse impacts on amenity of neighbouring sites having regard to:*

*(a) Natural light and ventilation*

*(b) Views and outlook*

*(c) Privacy.*

- The QDC includes a sloping land setback criterion (Acceptable Solution A2) similar to the Council's Code. The QDC provision is slightly more generous than the Council's Code provision, and the Council has elected to require compliance with the QDC provision in this instance. Both provisions are Acceptable Solutions to Performance Based Codes, so it is appropriate to also consider the relevance Performance Criterion. The QDC Criterion (P2) is similar to the Council's Code, although it does not specifically mention views and outlook.
- At the hearing, the Council officer provided a plan showing the extent of the deck that offended A2 of Part 12 of the QDC. Council's concerns are legitimately held that the proposed building should not impinge on light and ventilation, views and outlook, or privacy - both for residents of the adjoining properties as well as for the residents of the subject site. However, the applicant provided a letter from the adjoining landowner to the north (the only potentially-affected property) advising of no objection.
- The Council also raised its concern of visual impact of the offending corner of the deck.
- The plan provided by the Council shows that compliance with the QDC Acceptable Solution would be achieved by taking out a small rectangle of the deck roof, measuring approximately 3m by 1m. This part of the roof is approximately 12m long and taking out this small rectangle would, in the applicant's opinion, create an odd visual appearance for anyone looking at this side of the house. It was accepted that the deck itself could remain, but that this small part of it would be unroofed in order to comply.
- The Council's written statement notes that, because the existing house is to substantially remain, the Council has already given substantial other relaxations over what would otherwise be allowed for a new dwelling.

Based on my assessment of these facts, it is my decision that **Council's decision** to approve in part the Application for relaxation of boundary setbacks is **set aside** and **the application is approved, subject to the following conditions:**

- 1. The building shall be constructed in accordance with the plans lodged with the application, referred to as Beachtime Designs Proposed Renovations and Additions dated 02/11/06, except as amended by notations of the Council and by Condition 2 below.**
- 2. Notations on those plans referring to the patio roof being amended, are to be disregarded.**

## **Reasons for the Decision**

- The proposed renovations will improve the character of this locality by upgrading the visual appearance of the house, in line with other homes in the vicinity.
- The design of the proposed renovations is such that the proposed encroachment into the side boundary setback will not, in my opinion, cause any detrimental impacts to natural light and ventilation, views and outlook, or privacy for either the residents of the subject house or its neighbours. That is, the proposal as sought will comply with the Performance Criteria of both the QDC and the Council's Planning Scheme Code.
- While the Council has referred to the other relaxations provided in its assessment and decision in this application, I am required to consider the relaxation that is the subject of this appeal on its merits.
- The removal of a small section of the patio roof to achieve compliance with the QDC Acceptable Solution would, in my opinion, create a less than desirable visual outcome for the house. In any event, the location of the offending section for of is such that it will be unlikely to be discernible to any casual passer-by looking towards this property.

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**Chris Schomburgk**  
**Building and Development Tribunal General Referee**  
**Date: 11<sup>th</sup> April 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:

The Registrar of Building and Development Tribunals  
Building Codes Queensland  
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