



**Building and Development Tribunals**

**Queensland Government**

Department of **Local Government and Planning**

**APPEAL**

*Integrated Planning Act 1997*

**File No. 03-06-082**

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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 for a carport and verandah - on land situated at “the subject site”.

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**Date and Place of Hearing:** 8:30am on Friday 15<sup>th</sup> September 2006  
at “the subject site”

**Tribunal:** Mr Chris Schomburgk

**Present:** Applicant;  
Town planner for the applicant  
Representative for the applicant  
Mr Brian Benporath – Maroochy Shire Council

**Decision:**

The decision of the Maroochy Shire Council as contained in its written Decision Notice dated 24<sup>th</sup> July 2006, to refuse an application for siting variation for a carport and patio/verandah, is **set aside in part and the application is approved in part, subject to the following conditions:-**

- i) The proposed structure is to be located no closer than 4.5m from the “withheld” St boundary, with the exception of the carport component which is to be located no closer than 1.4m from the “withheld” St boundary.**
- ii) The carport component is defined, for the purposes of this decision, as the northern-most end of the existing structure with a maximum north-south dimension (width) of 6.0m, measured from the northern end of the existing structure.**
- iii) A strip of at least 1.4m width along and inside the existing boundary fence/wall, extending from the “withheld” St boundary to the driveway into the proposed**

- iv) **Trees or shrubs for the purpose of Condition (iii) are to be selected to achieve a minimum height of 3 metres within 5 years with a minimum spacing of 1.5m at the time of planting.**
- v) **This approval does not provide or imply any building or structural approval, which approval/s need to be obtained separately..**

### **Material Considered**

The material considered in arriving at this decision comprises:

- The application and supporting plans and documentation;
- A written statement provided by the Council at the hearing;
- Aerial photographs of the site dated 2003 and 2005 provided by the Council at the hearing;
- A written statement provided by “*representative for the applicant*” after the hearing;
- The relevant provisions of the Town Planning Scheme for Maroochy Shire Council;
- Council’s Decision Notice dated 24<sup>th</sup> July 2006;
- The Queensland Development Code; and
- The *Integrated Planning Act 1997*.

### **Findings of Fact**

I make the following findings of fact:

- The site is located at “the subject site”, on the corner of “*withheld*” St. The site comprises an area of 1141m<sup>2</sup>, and contains an existing, older-style house which has its orientation towards “*withheld*” St.
- This part of Yandina is of mixed character, with many older homes and some newer ones. The site is within walking distance of the Yandina Town Centre and is, in fact, included within the “Yandina Village Centre” designation in the Maroochy Planning Scheme. “*withheld*” St is a reasonably major thoroughfare for this part of Yandina. “*withheld*” St, while contained within a wide road reserve, is a less heavily trafficked street.
- The application seeks approval for a carport and patio/verandah within the “*withheld*” St setback distance. The structure has been built (without approval) and was the subject of a “Show Cause” Notice and Enforcement Order.
- The front of the house itself is stepped in a north-south alignment and is setback approximately 8.2m and 7.0m from the street boundary. The new structure is set back approximately 1.4m from that boundary. The floor area under the new structure has been concreted and a new 1.8m high block and timber wall has been erected along this part of the boundary.
- The applicant explained that the proposal was to replace a previous patio that had fallen into disrepair. A photograph provided by the applicant bears this out. However, it emerged at the hearing and from the photograph that the previous structure was set well back from the Scott St boundary and did not provide car accommodation. The previous structure provided shade and shelter for the otherwise exposed windows and front door of the house, but was much narrower than the new structure and did not provide a covered outdoor living area as does the new structure.
- The house is located towards the southern end of the subject site, leaving a considerable area of land on the northern side which is presently vacant. A second driveway exists closer to the northern boundary and provides vehicular access to an undercover garage underneath the house. That car accommodation provides for only one small car and is very narrow with a low head height. There is ample room on the site for alternative car accommodation to comply with the

provisions of the Planning Scheme and the QDC. The applicant explained that the intention was to achieve covered car accommodation with covered access into the front door of the house. That could be achieved with a complying carport at the side of the house (as opposed to the front) and a narrower patio cover.

- There are two separate codes in the Planning Scheme that have relevance. Code 4.1 is the Code for the Development of Detached Houses and Display Homes. Code 5.1 is the Code for Town and Village Centres. Code 4.1 has been relied upon by the Council in its decision and requires, as an Acceptable measure, that “*The minimum street setback for carports (including corner lots) is 4.5m*”. Code 5.1 provides, as an Acceptable Measure, that “*buildings are located close to the frontages of streets ... a minimum of 70% of the front façade of the building at street level ... abutting or within 3 metres of the site frontage or principal site frontage.*” There is clearly a degree of internal conflict between these provisions. However, the relevant element of Code 5.1 applies, by implication, more for commercial, retail or mixed residential development than to a single house. The applicant, in his written statement provided after the hearing, notes that the Village centre is expected to be redeveloped at some time in the future for a mix of commercial and other uses. However, that is not the case here and the proposal merely seeks an addition to an existing single detached house.
- Mr Benporath, for the Council, pointed out that the proposed structure is likely to be classified as a Class 1 structure, given that it has a solid roof and provides, in addition to covered car accommodation, a covered outdoor living area. He also noted that the new structure intrudes into the 9 x 9m corner truncation area, required to be kept clear of structures.
- The Council’s refusal is based on Code 4.1 and in particular Element 1, Performance Criteria P2.1 and P2.2 which provide that:
  - P2.1 Buildings and 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*
    - c) casual surveillance.*
  - P2.2 An adequate area suitable for landscaping must be provided for at the front of the lot.*
- The proposal does not offend views or vista but may be regarded as out of character with the locality. However, that is a subjective test and the locality has a very mixed character. The new high fence may reduce the opportunities for casual surveillance but the proposal will, at the same time, allow for more outdoor living, which itself may improve casual surveillance of the street.
- The proposal does not allow for any on site landscaping, with the concreted floor area right up to the new fence.

Based on my assessment of these facts, it is my decision that **the appeal is upheld in part**. Council’s **decision** to refuse the Application for siting variation – carport and patio - is **set aside** and **the application is approved in part, subject to conditions, being:**

- vi) The proposed structure is to be located no closer than 4.5m from the “withheld” St boundary, with the exception of the carport component which is to be located no closer than 1.4m from the “withheld” St boundary.**
- vii) The carport component is defined, for the purposes of this decision, as the northern-most end of the existing structure with a maximum north-south dimension (width) of 6.0m, measured from the northern end of the existing structure.**
- viii) A strip of at least 1.4m width along and inside the existing boundary fence/wall,**

extending from the “withheld” St boundary to the driveway into the proposed carport, is to be landscaped with shrubs or trees.

- ix) Trees or shrubs for the purpose of Condition (iii) are to be selected to achieve a minimum height of 3 metres within 5 years with a minimum spacing of 1.5m at the time of planting.
- x) This approval does not provide or imply any building or structural approval, which approval/s need to be obtained separately.

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

- The fact of the erection of a structure without approval cannot be given any weight in the assessment of such an application. This assessment must proceed as if that structure does not exist, and is being assessed “from scratch”.
- The desire to provide shade and shelter to otherwise exposed windows and front door is understandable, but that shade and shelter could be provided without the extent of intrusion into the front setback distance.
- The applicant can achieve the required shade and shelter for the windows and doorway within the amended setback distances as per the Conditions above. There are other alternatives on the site for covered car accommodation.
- The site is on a corner allotment and the house is set back from the higher order street frontage by at least 6.0m.
- The Planning Scheme provisions relating to the Village Centre Code (5.1) do not, in my opinion, take precedent over the Code for Detached Houses and Display Homes (4.1).
- The amended setback as per the conditions above will provide the required shade and shelter and will allow an area for landscaping within the site.
- The amended setback distance as per the conditions above provides shade and shelter superior to the structure that is being replaced.
- The amended location will achieve compliance with the relevant Performance Criteria and with Acceptable Solution A2.1 (d) of the Code for Detached Houses and Display Homes in the Planning Scheme.

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**Chris Schomburgk**  
**Building and Development Tribunal General Referee**  
**Date: 26<sup>th</sup> September 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  
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