



**Building and Development Tribunals**

**Queensland Government**

Department of **Local Government and Planning**

**APPEAL**

**File No. 3-04-008**

*Integrated Planning Act 1997*

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## **BUILDING AND DEVELOPMENT TRIBUNAL - DECISION**

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**Assessment Manager:** Maroochy Shire Council

**Site Address:** 9 Glen Kyle Drive, Buderim

### **Nature of Appeal**

Appeal under Section 21 of the *Standard Building Regulation 1993* against the decision of the Maroochy Shire Council to refuse an application for Preliminary Approval for Building Works for the erection of a carport within the front boundary setback on land described as Lot 5 on RP200293 and situated at 9 Glen Kyle Drive Buderim.

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**Date and Place of Hearing:** 11.00am on Thursday 19<sup>th</sup> February, 2004  
9 Glen Kyle Drive, Buderim

**Tribunal:** Mr Chris Schomburgk

**Present:** Mr John Dunn – Maroochy Shire Council Representative  
Applicants

### **Decision:**

The decision of the Maroochy Shire Council as contained in its written Decision Notice dated 13<sup>th</sup> January 2004, to refuse an application for Preliminary Approval for Building Work to permit the erection of a carport within the front boundary setback is **set aside**.

The relaxation of the front boundary setback is **approved** subject to the following conditions:

- (a) Minimum setback to the outermost projection of the carport from the front boundary is to be 1000mm;
- (b) No gates are to be provided to the front (street side) of the carport;
- (c) The applicant is to plant and maintain at least two (2) screening trees to the North-eastern side of the carport. These trees are to be planted with a minimum height above ground of 2.4m and be of a species chosen from Council's design species for the locality to achieve visual screening of the north-eastern face of the skillion roof.

## Material Considered

The material considered in arriving at this decision comprises:

- The application and supporting plans;
- Council's Information Request;
- The Applicant's response to the Information Request;
- The relevant provisions of the Town Planning Scheme for Maroochy Shire – in particular Code 4.1 – “Code for the Development of Detached Houses and Display Homes”;
- The Standard Building Regulation 1993;
- My own site inspection;
- Verbal submission from the Applicants and Council's Representative;
- Council's Decision Notice dated 13 January 2004; and
- The Integrated Planning Act 1997.

## Findings of Fact

I make the following findings of fact:

- The site comprises Lot 5 on RP200293 with a site area of approximately 700m<sup>2</sup>.
- The site contains a single detached dwelling, one storey in height. An original carport or garage under the main roof has been enclosed and now forms a habitable room being a study. As a result, the house has no covered car accommodation.
- At the date of inspection and the hearing, a carport was partly completed as per the application. This construction has occurred without Council's relaxation of the front boundary setback as is the subject of this appeal.
- The front yard of the house has been refurbished and provides a modern, tasteful presentation to the premises. A fence of colourbond or similar material approximately 1.8m high runs along the entire front boundary (with the exception of the open carport) and partly down both side boundaries. The new carport (currently constructed) is of matching material. A recent concrete patterned driveway extends from the kerb line throughout the new carport area.
- The Council's Planning Scheme – “Maroochy Plan 2000” – provides a code for dwelling houses and display homes. This code – “Code for the Development of Detached Houses and Display Homes” includes provisions for ancillary structures such as garages and carports.
- The Code provides a series of Performance Criteria, together with Acceptable Measures for each Criterion.
- The Acceptable Measure relevant to this application states that carports should be set back a minimum of 4.5 metres in this area (a Residential Area in the Planning Scheme). Acceptable Measure A2.4 of Code Element (1).
- The Planning Scheme provides that, where the relevant Acceptable Measure/s are not satisfied, regard is to be had to the Performance Criteria. In this case, performance Criterion P2.1 of Element (1) is relevant. This criterion states “*Buildings and structures must be sited to contribute positively to the streetscape, maximise community safety, and preserve the amenity of adjacent land/dwellings by having regard to the following:*”
  - *Views and vistas*
  - *Building character and appearance*
  - *Casual surveillance*”.
- It is this Performance Criterion that the Council says is not satisfied by the proposal.

- Notwithstanding that the carport has already been constructed without Council approval of the relaxation, its evidence provides the opportunity to assess its impacts on the issues identified in the Performance Criterion. The construction, and the time of inspection, had no ceiling lining and no front gate/s. It was open on both sides and its roof line fits over the house roof.
- The skillion roof offers a substantial vertical blank face to the north-eastern side. It is from this direction that the roof is most visible. It can be seen when entering Glen Kyle Drive from Wises Road, (although this view is partly softened by some existing trees), and from the elevated overpass on the Sunshine Motorway.
- The subject site is located opposite a commercial showroom development so that the immediate locality is not a “pristine” residential one. The showrooms present some high blank walls. The visual impacts of the proposed carport on the subject site need to be assessed in this context.
- When viewed from the street and from the west, the visual impact of the carport is not as severe as from the north-east.
- The Council representative advised that it is Council’s preference to have carports that are within the front setback to be aligned at 90° to the road to soften the visual appearance from the street and that, in any event, the structures should not be closer than 1.0m to the boundary to allow persons using the carport to remain clear of the footpath.
- While the carport is, at the time of inspection, almost completed, it must be noted that unauthorised construction should not be used as justification for an approval.
- Notwithstanding this, I have assessed the specific provisions of the relevant Performance Criteria, and I am satisfied that an approval is appropriate in the circumstances. In particular, the carport can be designed and built such that:
  - Views and vistas are not detracted from in any material degree;
  - The building character and appearance will not be substantially out of character with the immediate locality; and
  - Casual surveillance within the immediate locality will not be prejudiced.
- Accordingly, it is my decision that the appeal is proven and an approval, subject to the conditions I have set out above, is appropriate.

### **Reasons for the Decision**

- When assessed against the specific provisions of the relevant Performance Criteria in the relevant Code, the application can be approved subject to conditions.
- By planting appropriate screening trees to the north-eastern face of the roof, the visual impact of the vertical face can be softened.
- By ensuring a minimum setback from the front boundary, no impediment to footpath users should occur.
- By ensuring that no gates are provided to the front of the carport, the “open” nature of the carport will be retained, thereby having only minimal impact to the streetscape.

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**Chris Schomburgk**  
**Building and Development Tribunal Referee**  
**Date: 24<sup>th</sup>. February, 2003.**

## **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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