



**Building and Development Tribunals**

Queensland Government

Department of Local Government and Planning

**APPEAL**

*Integrated Planning Act 1997*

**File No. Insert No. 3-06-009**

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

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**Assessment Manager:** Maroochy Shire Council

**Site Address:** *withheld*-“the subject site”

**Applicant:** *withheld*

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### **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 a variation to the siting provisions of a metal framed, roofed and clad Class 10a farm shed.

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**Date and Place of Hearing:** 11.00am on Tuesday, 31 January 2006.  
On site at “the subject site”

**Tribunal:** Gregory Schonfelder

**Present:** Applicant  
John Dunn – Maroochy Shire Council

### **Decision**

Under section 4.2.34 of the *Integrated Planning Act 1997*, the Tribunal **changes** Maroochy Shire Council’s Decision for a Development Approval Decision Notice for building works (Application No.PBA05/0523) for a Farm Machinery and Storage Shed at “the subject site” **subject to the following conditions:**

1. Siting Variation Criteria - 15.80 metres approximately from the outer most point of the awning to the machinery shed from *withheld*;

(Note: This dimension is derived from the Jaeger-Moran Environmental review and so reflects the current as built location of the corner of the awning at the south end of the building)

2. Machinery Shed Floor Level - The finished floor level of the machinery shed and the awnings currently conditioned at 4.40m AHD shall be re-determined. (The Applicant shall apply to Council for an amendment to the existing operational works approval.) The building is not to be occupied until a concrete floor or other suitable surface is provided to these areas at the approved height and this finished floor level is verified by a check survey.

The awnings are to remain completely open and no storage of fuel, chemicals and equipment for spraying chemicals shall be stored in these areas if the finished floor levels are set below the finished floor level of the shed.

(Note: The 100 year ARI flood level has been determined by the Applicant's consultant as 3.72m AHD and the Council have used 4.00m AHD. The finished floor levels utilising the consultants figure would be 4.12m for the shed floor which is currently the level of the column base plates of the shed. The floor level of the awnings should not be below the floor level but could be considered to have less free board subject to reassessment by Council and comparison to the study undertaken.)

3. Extent of Approval - The works approved by PBA05/0523 includes the machinery shed and the two attached awnings subject to the approval of the floor heights. The retaining walls require building approval and either the existing approval (Suncoast Building Approvals 052238) be amended or a new approval be obtained for these structures.
4. Roof Water Discharge - All roof water is to be collected in a 45,000 litre rainwater tank and the overflow can dispense on site but not into *withheld*. The proposed location to the south west side of the machinery shed will screen the tank from the road and enable a connection to the house pad for a domestic supply.

## Background

The Applicant explained the basis for his original application to Council for a Preliminary Building Works Approval and the basis for their appeal in that:

- The proposed storage shed is for farm machinery and storage;
- His flood reports differ from Council's determined level and the shed should be allowed to have a lower finished floor level of 4.14m in lieu of the Council requirement of 4.40m;
- The awnings on each end of the shed should not have to have a finished floor level higher than the access road, and will only be used for shade and shelter. There is no requirement for the awning to have a floor level similar to the shed as it is not enclosed;
- The area ground behind the shed at the south end is where the water tanks are planned to be constructed. Overflow can be directed away from the creek to comply with the Councils' operational works approval and a line is to be constructed to convey this water supply to the area where the dwelling is to be constructed;
- The siting of the awning at the south end should be allowed as it is contained within the shed pad area which was approved by the operational works approval.

The Council's representatives responded to their refusal in that:

- The preliminary approval for building works approval (PBA05/0523) can not be in conflict to Councils' previous Operational Works Approval (OPW03/0549);

- The siting of the shed which showed 22.3m to the outer most projection of the south end was made because the awning attached to the shed at this end could not be approved because the finished floor level did not comply with the operational works approval;
- The finished floor level of the main shed must be raised to 4.40m AHD to comply with the operational works approval;
- All roof water is to be collected in a 45000 litre water tank and overflow can disperse on site but not directly into *withheld*;
- The building as constructed is not in accordance with the Building Approval issued by Suncoast Building Approvals and not in accordance with Council's operational works approval.

### **Material Considered**

1. Document: Decision Notice, Development Approval in Part (Preliminary Approval for Building Works, Application No. PBA05/0523)  
 From: Maroochy Shire Council  
 To: Applicant, c/- Suncoast Building Approvals  
 Dated: 13 December 2005  
 Detail: In this Decision Notice the Maroochy Shire Council specific to this appeal:  
 Set the siting variation of 22.30 metres from the outermost projection of the machinery shed from *withheld*,  
 Set floor levels of machinery shed including awnings at RL 4.40m AHD  
 Extent of Approval excludes the awnings at each end of the building because the floor levels of these sections do not comply with the operational works approval.  
 Roof water discharge to be collected in a 45000 litre water tank with the overflow not to disperse in to *withheld*.
2. Document: Form 10 – Building and Development Tribunals Appeal Notice  
 From: the Applicant  
 To: Registrar, Building and Development Tribunals  
 Dated: 19 January 2006  
 Detail: Appealing the decision of the Council to refuse the application for siting variation, reduced floor height, discharge of rainwater tank and awnings attached to storage shed.
3. Document: Copy of Letter seeking Preliminary Building Approval  
 From: Jack Greensill (Suncoast Building Approvals)  
 To: Maroochy Shire Council  
 Dated: 12 October 2005  
 Detail: Proposed shed with distance 15.5m from waterway and reduced finished floor level for the shed as opposed to the operational works approval.
4. Document: Copy of Letter providing response to information request.  
 From: Jack Greensill (Suncoast Building Approvals) on behalf of the Applicant  
 To: Maroochy Shire Council (John Dunn)  
 Dated: 1 November 2005  
 Detail: Attached detail response from owner regarding the proposed shed and awnings. Advice from Jaeger-Moran Environmental Consultants advising awning is 15.8m from the creek at the closet point. Extract from flood analysis by Sargent Consulting where they state the road and house and shed platforms will only have small impact on flood levels upstream.

5. Document: Copy of email with attached letter  
From: Melissa Coles (Suncoast Building Approvals)  
To: Maroochy Shire Council (John Dunn)  
Dated: 1 November 2005  
Detail: Notice to cease work (dated 14 November 2005) on subject property until Maroochy Shire Council has issued a Preliminary Building. Details of what was provided as additional information to the Council was not provided.
6. Document: Copy of Letter (Advisory Letter)  
From: Maroochy Shire Council (John Dunn)  
To: Applicant c/- Suncoast Building Approvals  
Dated: 7 November 2005  
Detail: Acknowledges response to information request and sets out the following:  
Operational Works Approval OPW03/0549 has designated finished floor heights  
The floor level under the awning is required to have similar height to balance off the shed.  
Outstanding item still to be addressed  
Water tank location and discharge to be amended.
7. Document: Copy of Email  
From: Jack Greensill (Suncoast Building Approvals)  
To: Maroochy Shire Council (John Dunn)  
Dated: 21 October 2005  
Detail: Advice to Council that Applicant will complete the 4 items in their letter of 7 November 2005.
8. Document: Copy of Letter  
From: Maroochy Shire Council (John Dunn)  
To: Applicant c/- Suncoast Building Approvals  
Dated: 24 November 2005  
Detail: Additional advisory letter request the Applicant:  
Provide amended site plan with finished pad levels certified by a surveyor.  
Indicate how the roof water is to be collected.  
Explain how the existing building complies with Code 4.1 – Element (6) of the Maroochy Shire Planning Scheme.
9. Document: Copy of Email  
From: Jack Greensill (Suncoast Building Approvals)  
To: Maroochy Shire Council (John Dunn)  
Dated: 21 November 2005  
Detail: Seeking further clarification about the status of the shed.
10. Document: Copy of Letter Email  
From: Jack Greensill (Suncoast Building Approvals)  
To: Maroochy Shire Council (John Dunn)  
Dated: 5 December 2005  
Detail: providing additional information to enable the application to be finalised. Attached further information from the Applicant.

11. Document: Copy of Check Survey  
From: Ken Hicks & Associates (Consulting Surveyors and Town Planners)  
To: Applicant  
Dated: 25 November 2005  
Detail: Shed Levels, further information obtained by telephone 22 February 2006.
12. Document: Copy of Building Approval  
From: Jack Greensill (Suncoast Building Approvals)  
To: Applicant  
Dated: 15 December 2005  
Detail: Decision Notice with conditions, endorsed plans.
13. Document: Copy of Hydraulic Analysis of Flood Levels  
From: Sargent Consulting  
To: Applicant  
Dated: 29 March 2004  
Detail: The impact caused by the construction of the house and shed platforms at 3,85m AHD together with the access road at 2.35m AHD on the flood levels of the property. Further information obtained by telephone 22 February 2006.
14. Document: Facsimile received after hearing  
From: Maroochy Shire Council (John Dunn)  
To: Tribunal Referee – Greg Schonfelder  
Dated: 01 February 2006  
Detail: Councils' interpretation of the floor level under an awning.

### **Findings of Fact**

1. Building approval (052238) issued by Suncoast Building Approvals on 15 December 2005 nominated a floor height for the shed of 4.4m AHD, and did not include the awnings to the north and south end.
2. Maroochy Shire Councils' operational works approval (OPW03/0549) determined the shed pad height of 4.00m AHD and a finished floor height of 4.40m AHD. This was restated in the preliminary building works approval (PBA05/0523, 13.12.2005) and the awnings were excluded from this approval because the pad height for these parts of the building were below that previously nominated.
3. In the hydraulic analysis of the flood levels prepared for the Applicant (Sargent Consulting 04005 29.04.04) for their operational work application the flood level determine adjacent to the house site for 100ARI is 3.72m AHD. The report proposes an access road at 2.35m AHD and pad heights for the house and shed of 3.85m AHD. It also notes that in the interests of safety, due to the relatively high frequency of overtopping of the access road, the engineer suggests that flood depth markers and roadway edge markers be included as a requirement in the construction of the access way. The access road will be overtopped but untrafficable (depth of flow over the road greater than trafficability limit of 300mm) in 20year ARI and greater high tailwater events.

4. The surveyor's check survey undertaken for the preliminary building works approval states the following levels; Shed pad 4.0m, north truss base plate 4.13m, south truss base plate 4.14m, north awning pad, 2.5m and south awning pad 3.5m. The Applicant has since advised that additional fill has been placed in the north awning and the pad height is approximately 200mm less being 3.3m. These pad height will increase by approximately 150-200mm when the slabs are poured.
5. The private certifier (Suncoast Building Approvals) issue a cease work notice on 14.11.2005 for the Applicant to stop work on the farm shed at the subject property. The building work had commenced without a building or Council approval. The awnings to each end of the building have been erected and remain, although no building or Council approval exists for these works.
6. From the Maroochy Shire Planning Scheme, 2. General Land Use and Development Codes, 2.1.6 Design Code for Flooding, (2) Element: Provisions applicable to Building Work, A1.2 Building have a minimum floor level, 400mm above 100 year ARI flood level. Therefore the flood level determined in the operational works approval would appear to be 4.0m AHD. This exceeds the predicted flood level by the Applicant's hydraulic engineer who determined the level to be adjacent to the proposed house site as 3.72m AHD.
7. The Maroochy Shire Councils' planning scheme does not have a reduced finished floor level for vehicular parking and non habitable areas.
8. The flood level has been determined as 3.72m AHD (Consultant) or 4.00m AHD (Council) and the pad height of the south awning (higher one) is 3.5m AHD

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

- This decision shall not condone work undertaken prior to the relevant approvals being sought.
- The performance criteria in the planning scheme for the floor levels of detached houses which include Class 10a buildings is not clear regarding unenclosed/open areas of these buildings. Many planning ordinances have a two tiered approach with habitable floor areas set at a greater height above the flood level than utility areas and covered car parking. In this case there is a case for consideration of these open areas at each end of the shed being lower than the main section.
- This appeal is against some of the conditions of the Council's preliminary building works approval (PBA05/0523) and when the application for this approval was made the main requirement was for a reduced finished floor level. This approval (PBA05/0523) should have been held in abeyance until the Applicant had resolved the floor level issue with an application for a variation to the existing operational works approval. The decision of this tribunal can not vary conditions of this first approval.
- The variance in flood levels should have been clearly explained to both the Applicant and his consultant, especially if Council had accepted the hydraulic analysis for the operational works approval.

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**Gregory Schonfelder**  
**Building and Development**  
**Tribunal Referee**  
**Date: 3 March 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.

## **Enquires**

All correspondence should be addressed to:

The Registrar of Building and Development Tribunals  
Building Codes Queensland  
Department of Local Government and Planning  
PO Box 31  
BRISBANE ALBERT STREET QLD 4002  
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