



**APPEAL**  
*Integrated Planning Act 1997*

**File No. 3/03/011**

---

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

---

**Assessment Manager:** Maroochy Shire Council

**Site Address:** 154 Grandview Drive, Coolum

---

### **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 a siting concession for part of a pool deck already constructed on land described as Lot 60 on RP 93748, situated at 154 Grandview Drive, Coolum.

---

**Date and Place of Hearing:** 2.00 pm on 13 March 2003  
at 154 Grandview Drive, Coolum

**Tribunal:** Geoff Cornish

**Present:** Applicants  
John Hill – Applicant’s Private Certifier  
Debbie Johnson – Applicant’s draftsman  
Steven Tucker – Maroochy Shire Council

### **Decision**

In accordance with Section 4.2.34 [2] of the Integrated Planning Act 1997, I hereby set aside the decision appealed against and grant a siting concession to enable a pool deck to be erected to within 600mm of the rear boundary of the property described as Lot 60 on RP 93748, situated at 154 Grandview Drive, Coolum, subject to the following conditions:-

1. The area on each side of the rear corner of the deck, between the fence and the deck where the deck is within a distance of 1.5 metres from the rear boundary of the property, shall be landscaped to the mutual satisfaction of Maroochy Shire Council and the applicants to achieve both an effective screening of the area below the encroaching portion of the deck and a dense privacy screen of planting to a height comparable with that of the existing timber

screen on the southern end of the deck.

2. To achieve the condition above, the applicants shall seek such professional advice as is necessary and shall submit a suitably prepared landscaping plan to, and obtain approval from, Maroochy Shire Council prior to undertaking the necessary landscaping.
3. The landscaping, after completion, shall be maintained so as to continue to meet the screening requirements of Condition 1 above.

### **Background**

The matter concerns an application for a concession to enable the validation of the erection of an existing pool deck and privacy screen to a height of up to 3.8 metres above natural ground level and encroaching to within 0.6 metre of the southern rear boundary of this property. The matter came to Council's attention as the result of a complaint about another matter relating to the dwelling. Erection of the pool deck and screen was undertaken without a prior siting approval having been obtained.

This problem was drawn to the attention of the Private Certifier who in turn made application to Council for the necessary concession. The situation is understood to have occurred through an oversight firstly on the part of the design company in the preparation of the drawings for approval, and secondly in the checking and approval processes of the private certifier.

### **Material Considered**

1. Development approval for building work for a swimming pool issued by Suncoast Building Approvals and dated 9 October 2002.
2. Development approval for building work for a deck and carport issued by Suncoast Building Approvals and dated 18 November 2002.
3. The Enforcement Notice dated 13 December 2002 issued by Zane Russell to the applicants in respect of fencing of the pool.
4. Decision of Maroochy Shire Council dated 6 February refusing a siting variation for the deck as constructed close to the rear boundary.
5. Letter and attachments from Suncoast Building Approvals dated 20 February 2003 to the Registrar setting out the circumstances under which the problem occurred.
6. Building and Development Tribunals Appeal Notice dated 24 February 2003.
7. Verbal submission by the applicants, their private certifier and their designer, on 13 March 2003 setting out why the application should have been granted and the appeal should be allowed.
8. Verbal submissions by the attending officer from Maroochy Shire Council on 13 March 2003 setting out Council's reasons for refusal.

9. Standard Building Regulation 1993.
10. Building Act 1975.
11. Integrated Planning Act 1997.

### **Findings of Fact**

I made the following findings of fact:

1. The pool deck was erected without the prior approval of a siting variation as required by the Standard Building Regulation.
2. The plans for approval and the issuing of the approval for building work relating to the deck were both undertaken without proper attention to the requirements of the Standard Building Regulation.
3. The building work was undertaken on the understanding that the necessary building approval had issued.
4. The error came to Council's attention through the investigation of a complaint relating to an unrelated issue.
5. The original complaint was received from a neighbour not affected by the proximity of the deck to the rear boundary.
6. There is existing landscaping on the adjoining allotment in the vicinity of the infringement but there is no guarantee that this will be maintained for the mutual benefit of the owners of the two properties in closest proximity to the deck.
7. Modifying the deck to comply with the requirements of the Standard Building Regulation would not make any substantial change to the impact of the structure on the adjoining properties to the south and east.
8. Neither of these adjoining owners has complained to Council regarding the deck as constructed.
9. The major views from the two dwellings on these adjacent properties are to the east and south and away from the pool deck.
10. It is possible and reasonable to landscape the area between the deck and the fence, where the deck is less than 1.5 metres from the fence, to ensure that the impact on adjoining properties is minimised and to provide privacy to the pool owners at the same time.
11. A condition of the decision, requiring that suitable landscaping be installed and maintained between the deck and the boundary, is a reasonable condition to apply to an approval of an application for such a siting variation.

12. In response to a direct question in relation to the matter of jurisdiction, Council's representative verbally acknowledged the Tribunal's jurisdiction to hear and determine the appeal.

### **Reasons for the Decision**

After assessing the facts and the submissions of the parties, I have reached the following conclusions:

1. The failure to obtain prior approval of the encroachment of the deck into the required boundary setback was the result of failures on the part of both the designer and the certifier and not the owners.
2. The owners/applicants and their builder were entitled to believe that the necessary approvals were in place once the development approval for building work for the deck was issued by the certifier.
3. There was no deliberate attempt on the part of the applicants or their builder to contravene the requirements of the Standard Building Regulation.
4. No complaints have been received in respect of the proximity of the deck to the boundary.
5. Modifying the deck to comply with the requirements of the Standard Building Regulation would not make any substantial change to the impact of the structure on the adjoining properties to the south and east.
6. A mutually agreeable solution to the problem can be achieved by suitable landscaping of the area between the deck and the fence in the offending area and this can be conditioned in an approval.

---

**G.S.Cornish**  
**Building and Development**  
**Tribunal Referee**  
**Date: 24 March 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  
Building Codes Queensland  
Department of Local Government and Planning  
PO Box 31  
BRISBANE ALBERT STREET QLD 4002  
**Telephone (07) 3237 0403: Facsimile (07) 32371248**