



**APPEAL**  
*Integrated Planning Act 1997*

**File No. 3-03-004**

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

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**Assessment Manager:** Maroochy Shire Council  
**Site Address:** 2 Summit St., Flaxton (Lot 13 and 15 RP140390)

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### **Nature of Appeal**

Appeal against the decision of Maroochy Shire Council to refuse an application for preliminary approval for building works (siting variation for a tennis court fence).

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**Date and Place of Hearing:** 10.30 am on Thursday 23 January 2003 at  
2 Summit Street, Flaxton

**Tribunal:** David Kay

**Present:** Richard Prout - Maroochy Shire Council  
Gordon Heelan - Maroochy Shire Council  
Phil Smith - Maroochy Shire Council  
Applicant/Owner

### **Decision:**

The tribunal does not have jurisdiction to determine the matter as it involves a decision on town planning provisions relating to the type and form of fencing contained in the Blackall Range Area Local Plan.

It is further noted that by letter dated 29 May 2003 Maroochy Shire Council have agreed to the erection of the tennis court and fence subject to the following conditions :-

- the fence does not exceed 3.0 metres in height.
- the proposed fence colour is black.
- the corner of the fence on the boundary with Ensby Rd is chamfered off by a minimum of 1.0 metre.
- additional landscaping is provided within the allotment boundary to buffer the proposed

fence from Summit St and Ensby Road.

## **Background**

*Maroochy Shire Council submission to the tribunal.*

The Maroochy Shire Council representative raised the matter of the jurisdiction of the tribunal to hear the appeal as it is considered that this matter should be heard by the Planning and Environment Court and not a tribunal.

The issue raised concerned the need to consider the performance criteria of the Blackall Range Area Local Plan which includes elements relating to fences. In particular Element 3 Landscaping, Performance Criteria PI and P2 that refers to fencing.

Concern was raised that the trees fronting Ensby Road could be removed and this would highlight the fence.

*Applicant's submission to the tribunal.*

The applicant submitted that the proposed tennis court, its size and fence is considered to be suitable for the locality and is screened by the trees along Ensby Rd. It was put forward that a 2.0 metre high fence could be erected without a siting variation under the Standard Building Regulation and no approval would be required from Council.

## **Material Considered**

- Decision Notice dated 16 December issued by Maroochy Shire Council.
- Maroochy Plan 2001 Code for Residential Development and Use and the Blackall Range Area Local Plan.
- Alternative Siting Requirements of the Standard Building Regulation 1993.
- Material submitted with the appeal notice to the Tribunal.
- Integrated Planning Act 1997.
- Building Act 1975 and Standard Building Regulation 1993.

## **Findings of Fact**

- An application for preliminary approval for building work and alternative siting requirements under Maroochy Plan 2000 was made to the Maroochy Shire Council.
- The application was refused by Maroochy Shire Council.
- The appeal to a Building and Development Tribunal was lodged within the required time.
- The Blackall Range Area Local Plan contains provisions controlling the type and style of fences in the area covered by the Local Plan.

## **Reasons for the Decision**

*Jurisdiction*

The provisions of the Standard Building Regulation in relation to the height and location of fencing

are replaced by alternative siting requirements, in this case being the height, location and style of fencing contained in the Blackall Range Area Local Plan.

This is a development application involving a matter of compliance with the provisions in a local government planning instrument, in this case the Blackall Range Area Local Plan. The matter involves a decision on town planning provisions relating to the type and form of fencing contained in the Blackall Range Area Local Plan. An appeal against this decision would need to be lodged with and determined by the Planning and Environment Court.

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**David Kay**  
**Building and Development**  
**Tribunal Referee**  
**Date: 21 July 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  
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