



APPEAL
Integrated Planning Act 1997

File No. 03-06-103

BUILDING AND DEVELOPMENT TRIBUNAL - DECISION

Assessment Manager: Maroochy Shire Council
Site Address: *Withheld* – “the subject site”
Applicant: *Withheld*

Nature of Appeal

Appeal against the decision of Maroochy Shire Council to refuse as a concurrence agency an application about design and siting requirements of building work. The building work is for a rainwater tank up to 2.95m in height sited within the prescribed 1.5m side boundary clearance under Part P2 and A2 of Part 11 of the Queensland Development Code.

Date and Place of Hearing: 3:00 pm on Thursday 17 November 2006 at
“the subject site”.

Tribunal: David Kay

Present:

<i>“withheld”</i>	- Owner
<i>“withheld”</i>	- Owner
John Dunn	- Maroochy Shire Council
James Loy	- GMA Certification Group Pty Ltd
<i>“withheld”</i>	- Neighbour

Decision

The decision of the concurrence agency, Maroochy Shire Council, dated 6 November 2006 to refuse an application relating to the siting of a rainwater tank dwelling (Application No. RAB06/0069) on Lot “*withheld*” at “the subject site” is **set aside and is replaced with the following decision:**

The siting of a rainwater tank having dimensions of approximately 3m in length, 0.7m in width and 2.4m in height with a total height of 2.95m above natural ground level within the prescribed northern side boundary setback of 1.2m adjacent to the north eastern corner of the dwelling is **approved.**

Background

Applicant's submission to the tribunal.

The applicant submitted reasons in the documents lodged with the appeal which included that consideration should be made for the fact that 8500 litres of rainwater storage is required to collect roof water, alternative locations for the tank is limited due to windows and doors along the northern wall, the slab and structure supporting the rainwater tank has been structurally certified by an engineer and the amenity of the neighbour is not affected. It was also suggested that the requirement for a rainwater tank under the QDC came into effect in May 2006, after this dwelling was approved.

The applicant also submitted that the rainwater tank in its present location is low on impact and part of the neighbours concern arose from a collapse of the retaining wall due to the wall being undermined by the adjacent neighbour's excavation adjacent to the retaining wall. It was also reiterated that the structure supporting the tank had been certified as structurally adequate by an engineer.

Maroochy Shire Council submission to the tribunal.

John Dunn advised that under Schedule 2 of the Building Act in force from the 1 September 2006 certain structures less than 3.0m in height are exempt building work but Schedule 1 of the Building Act makes certain structures greater than 2.0m in height assessable building work. Under the Queensland Development Code Part 11 and 12, rainwater tanks less than 2.4m in height are permitted within the prescribed side and rear boundary setbacks.

The Council considered that in this situation the amenity of the neighbouring property owner was more adversely affected by the imposition of the rainwater tank in its present location compared to the owner of the property where the tank is located.

Third party submission to the Tribunal.

"*Withheld*", an owner of the neighbouring property adjacent to the rainwater tank, expressed concern that the retaining wall supporting the tank is not stable and questioned if the rainwater tank could safely sit in that location supported by the slab and retaining wall. Further discussion with "*withheld*" during the course of deciding this matter also revealed that there was concern with the visual appearance of the rainwater tank in its present location.

Third Party advice.

The Tribunal also sought third party advice from Kelvin Lanning, RPEQ of DEQ Saunders in relation to the assessment of the structural adequacy of the structures supporting the rainwater tank. The basis of advice provided from this engineer is that the structure had been constructed such that no load would be imposed on the retaining wall on the adjacent property and it would adequately support the rainwater tank.

Material Considered

- Material submitted by the applicant with the appeal notice to the Tribunal.
- Concurrence Agency Response dated 6 November 2006 for decision on Siting matters under Part 11 of the QDC.
- *Integrated Planning Act 1997.*

- *Building Act 1975 and Building Regulation 2006.*
- Queensland Development Code Part 11- Design and Siting Standard for Single Detached Housing on Lots under 450 sq.m.

Findings of Fact

- An application for a concurrence agency decision 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 Tribunal has jurisdiction to hear the appeal.
- The Maroochy Shire Council required the installation of the rainwater storage under a development approval for the reconfiguration of a lot.
- The side boundary setback of the rainwater tank from the northern side boundary of this site does not comply with the Acceptable Solutions which requires a 1.2m side boundary setback for a rainwater tank higher than 2.4m above natural ground level.
- The Performance Criterion “P2” of the QDC Part 11 contains the performance requirements for the assessment of the application.

Reasons for the Decision

The Queensland Development Code Part 11 Performance Criteria for Building Setback P2 is “Buildings and structures -

- (a) provide adequate daylight and ventilation to habitable rooms; and
- (b) allow adequate light and ventilation to habitable rooms of buildings on adjoining lots.
- (c) Do not adversely impact on the amenity and privacy of residents on adjoining lots.”

In consideration of this matter it is quite apparent that clauses (a) and (b) are satisfied for both the dwelling on this site and the neighbouring site.

In relation to clause (c) it is considered that the privacy of residents on adjoining lots is not impacted by the presence of the rainwater tank. This part of the clause would generally relate to the height of a structure or location of windows in a building that would allow overlooking of the neighbours lots and clearly the rainwater tank does not create a situation that reduces the privacy.

The issue to be considered is that of amenity.

In consideration of what is allowed under the QDC Part 11 Acceptable Solutions the following is permitted within the prescribed side boundary setback:-

A screen or fence up to 2.0m in height.

A rainwater tank up to 2.4m in height.

A pergola not more than 2.4m in height at the boundary.

Class 10a buildings not more than 4.5m in height with a mean height not exceeding 3.5 metres and with a maximum length of 9m.

The rainwater tank is 2.95m in height and approximately 0.45m higher than permitted for a length of approximately 3m. A pergola 2.4m in height at the boundary with a pitched roof could be constructed over this rainwater tank as there is no limitation on the pitch of the pergola roof away from the boundary. Alternatively, a lawn locker or garage could be constructed along the side boundary with an average height of 3.5m and a maximum height of 4.5m and for a length of 9m.

When these as of right options are considered and the amenity of such structures is compared to that of the existing rainwater tank it is considered that they would have much more impact on the amenity of residents on the adjoining lots.

Accordingly I am of the opinion that the rainwater tank, in its present location and having a height of 2.95m, does not adversely impact on the amenity of the residents of adjoining lots when compared to what may be constructed as of right along this side boundary.

David Kay
Building and Development
Tribunal Referee
Date: 21 February 2007

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, Planning Sport and Recreation
PO Box 15031
CITY EAST QLD 4002
Telephone (07) 3237 0403: Facsimile (07) 32371248