



Building and Development Tribunals

Queensland Government

Department of **Local Government and Planning**

APPEAL

Integrated Planning Act 1997

File No. 03-07-004

BUILDING AND DEVELOPMENT TRIBUNAL - DECISION

Assessment Manager: Maroochy Shire Council

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

Applicant: *withheld*

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 a Development Application for Building Works – siting provisions - on land described as “the subject site”.

Date and Place of Hearing: 9:30am on Tuesday 23 January 2007
and 8:30am on Wednesday 31 January, 2007
at “the subject site”

Tribunal: Mr Chris Schomburgk

Present: Applicants (23 January only);
Mr John Dunn – Maroochy Shire Council (31 January only);
Mr Darren Levi – contractor (both meetings)
withheld– agent for the applicants 31 January only)

Decision:

The decision of the Maroochy Shire Council as contained in its written Concurrence Agency response dated 27 September 2006, to direct the refusal of an application for Building Works (siting variation), is **confirmed** and **the application is refused**.

Material Considered

The material considered in arriving at this decision comprises:

- The application and supporting plans and documentation;
- The relevant provisions of the Town Planning Scheme for Maroochy Shire Council;
- The Council’s Concurrence Agency response dated 12 December 2006;

- The Certifier's Decision Notice dated 20 December 2006;
- The Building Code of Australia 2006 Volume 2;
- The Queensland Development Code Part 12;
- The *Building Act 1975*;
- The *Building Regulation 2006*; and
- The *Integrated Planning Act 1997*.

Findings of Fact

I make the following findings of fact:

- The site comprises *withheld*. The site contains a new, large, split level home that enjoys commanding views to the south and east. The locality, and the subject site, slopes steeply downwards from north to south, in this case downwards away from the road. The locality comprises new homes (including some attached dwellings), all of very high quality and all designed to take maximum advantage of the views achievable from this location. I am advised that the subject site was the first to be built on in this new estate. Because of the steepness of the land, houses are built on only the "down" (lower) side of the two east-west roads in the estate.
- The subject house has been set well back (approximately 16m) from the front road boundary. A swimming pool and patio are constructed within this setback area, while a double garage adjacent to the pool area is set back only 6m.
- The subject application seeks approval for a set of two large shade sails that have been constructed to shade the front pool area and to provide visual privacy from neighbours to the east and north. The sails extend from the front boundary fence to the house and cover approximately 70% of this pool area. The sails are pervious structures and are a Class 10 structure as defined in the Building Regulations.
- The applicants explained that the sails became necessary for two reasons:
 - To provide visual privacy from homes that were subsequently built on higher parts of the estate, including the house to the immediate east, and which look down into the pool area,; and
 - To provide shade for users of the pool area and to reduce evaporation from the pool.
- The Council was a concurrence agency for the application and directed the certifier to refuse the application based on the following provisions of the Planning Scheme Code for Detached Housing, Element 1, :

Buildings and structures must be sited to contribute positively to the streetscape, maximise community safety and preserve the amenity of adjoining land/dwellings having regard to the following:

 - (a) *Building character and appearance; and*
 - (b) *Building massing and scale as seen from neighbouring premises.*
- The structures (sails) were inspected from vantage points higher in the estate and it is clear that they present an imposing addition to an already large home when viewed from above. It was acknowledged that it is only the 6m setback area that was in dispute in this appeal, as that part of each sail behind the 6m setback was satisfactory from a siting perspective (although it may raise issues of site coverage, given the scale of the house).

- Two hearings were held in this appeal, the first to accommodate the owners who were returning to their NSW home for a period, and the second to accommodate the Council's representative. The sails contractor, Mr Levi, attended both hearings on behalf of the applicant.
- At the second hearing, the sails contractor provided, on behalf of the applicant, signed statements from most of the surrounding neighbours, including those directly above the site, stating that they did not object to the sails as they existed.
- The applicants explained that they had not anticipated the effects of overlooking from above when they purchased the house (from a spec builder). Nor had they anticipated the need for shade over the pool, for users of the pool as much as to reduce the evaporation rate from the pool. Notwithstanding this, a prudent purchaser ought to have taken these matters into consideration, as should have the home designer, considering the topography of the estate and the very real prospect that homes built on the higher parts would inevitably look directly into the northern parts of this house and its front yard.

Based on my assessment of these facts, it is my decision that **Council's decision** to direct a refusal of the Application for siting variation for a garage is **confirmed** and **the application is refused**.

Reasons for the Decision

- The sails are structures that, because of their visual appearance, and when combined with the large scale of the home, provide a scale and massing that is in excess of what can reasonably be expected in a residential area.
- The subject house is already a large home over two levels, consistent with the other large homes in this estate. The addition of the imposing sail structures over such a large area detracts from the visual character of the locality.
- The builder, designer and subsequent purchasers of this home ought to have anticipated the impacts now being sought to be mitigated by the sails. Failure to do so cannot be considered as sufficient justification for the siting relaxation now sought.
- Other alternatives exist to provide some degree of shade and privacy over this area (although admittedly probably not to the same degree as the current sails provide).
- In my opinion, the building character and appearance is unreasonably and negatively influenced by the extent of the existing sails.
- In my opinion, the massing and scale of the sails, when considered together with the massing and scale of the existing house, as seen from neighbouring and nearby premises, is unreasonable and has a detrimental impact on the character and amenity of the locality.

Chris Schomburgk
Building and Development Tribunal General Referee

Date: 2st 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:

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