



APPEAL

File No. 3-01-059

Integrated Planning Act 1997

BUILDING AND DEVELOPMENT TRIBUNAL - DECISION

Assessment Manager: Maroochy Shire Council

Site Address: 2 Torulosa Lane, Sippy Downs (Lot 153 SP 124473)

Nature of Appeal

Appeal against the decision of Maroochy Shire Council to refuse an application for preliminary approval for building works (siting variation Class 1A dwelling).

Date and Place of Hearing: 10.00 am on Monday 14 January at
Maroochy Shire Council Offices
Cnr Currie and Bury Streets, Nambour

Tribunal: David Kay

Present: Richard Prout - Maroochy Shire Council
Phil Smith - Maroochy Shire Council
Andrew Cooksley - Maroochy Shire Council (observer)
John Hill - Suncoast Building Approvals for Applicant

Decision

The decision of Maroochy Shire Council dated 4 December 2001 to refuse an application for preliminary approval for building works (siting variation – Class 1A dwelling) Application No. PBA01/05556 on Lot 153 SP124473 at 2 Torulosa Lane, Sippy Downs is **confirmed**.

Background

Maroochy Shire Council submission to the tribunal.

Richard Prout addressed the information requested by the Tribunal and also the matters considered by the Maroochy Shire Council to be relevant to the appeal and the Council's decision. These were presented verbally and are contained in a letter dated 11 January 2002 submitted to the Tribunal (MSC 1). The documents MSC 1 – MSC 5 listed below in the material considered was submitted.

Phil Smith submitted that “overcrowding” of the allotment can also be “perceived overcrowding” by giving the appearance of buildings closer to the street frontage. The proposal was considered to have an effect on bulk and streetscape when set back at approximately 3.0 metres. The building has not been specifically designed for the site.

After questions from the Tribunal referee it was clarified that a setback of 5.0m in accordance with Schedule 11 of the Standard Building Regulation could be applied to this site.

Andrew Cooksley clarified that the draft “code” amendments still required garages or carports to be 6.0 metres from the road front boundary but that 4.5 metre setbacks would apply only to habitable rooms and the like.

Applicant’s agent submission to the tribunal.

John Hill submitted that the owner would like the living area facing Torulosa Lane and not the adjacent allotment. Various options including separating the garage and mirror reversing the house were not acceptable to the owner.

It was considered with the 5.0metre footpath width on Torulosa Lane and the 2.94 metre building setback a total distance of almost 8 metres from the kerb to the building would not affect the building bulk and obstruction of views. In addition, a 2.0 metre high boundary fence would also be as much of an “obstruction” as the building set back approximately 3.0 metres.

It was considered that schedule 11 of the Standard Building Regulation is effectively an “as of right” setback for this site with 5.0 metres, however the proposed building length of 6 – 7 metres with a 2.94 metre setback would be a less visual obstruction than a building length of 12 – 15 metres located 4.5 metres from the road front boundary.

Emphasis was again placed on the 5.0metre wide footpath compared to other or older areas where footpath widths of 3.0metres may be found.

Document AP 1 listed below in the material considered was submitted.

Material Considered

MSC 1 – Letter from Maroochy Shire Council regarding the assessment of the matters to be considered and providing a response to further information requested by the Tribunal.

MSC 2 – Application for preliminary decision including Form 1 Parts A and E.

MSC 3 – Details of the Planning Scheme applicable to this site.

MSC 4 – Vehicle crossover development permit and application.

MSC 5 – Decision Notice details for siting variation at 5 Edgewater Place, Sippy Downs.

APP 1- Submission from Suncoast Building Approvals, details of engagement and vehicle crossover permit decision.

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 Tribunal has jurisdiction to hear the appeal.
- The proposed use as a traditional detached house is self assessable under the Maroochy Plan 2000 and is subject to the Code for Residential Development and Use.
- The Code for Residential Development and Use includes assessment against the Standard Building Regulation other than Section 37 as “acceptable measures”.
- The provisions of the Standard Building Regulation would include any siting variation determined under the Standard Building Regulation.
- The site is not subject to any building envelope or building area that is enforceable under the Standard Building Regulation or the Maroochy Plan 2000.

Reasons for the Decision

Jurisdiction

An application for building work has been lodged with Suncoast Building Approvals and a notice of engagement of John Hill as Building Certifier dated 15 November 2001 was provided.

This is a development application involving a matter of either compliance with performance provisions in a local government planning instrument under Section 46 of the Standard Building Regulation or approval of the siting of a building under section 48, both of which are included in Schedule 6. The local government (Maroochy Shire) is the assessment manager. The application is made to a private certifier. The criteria of Section 20(1) have been met and the local government is required to give written advice under Section 20(2). The appeal for advice given under Section 20 is to a Tribunal as set out in Section 21.

Section 46 of the Standard Building Regulation provides for the local government to assess compliance with performance provisions of “alternative siting provisions” (of a planning instrument). It also requires the private certifier to obtain advice under Section 20 in relation to compliance and then states that the private certifier must accept the advice subject to Section 21. Section 21 contains the right of appeal to a Tribunal.

Accordingly the Tribunal is considered to have jurisdiction.

Applicability of Codes under a planning instrument and Part 3 Siting Requirements of the Standard Building Regulation.

The proposed use is defined as a “traditional detached house”. Volume 1, Table 5.5 of the Maroochy Plan 2000 make this self assessable development in Planning Area 3 Precinct 8 – Chancellor Park South Master Planned Community. Volume 4, Part 1.1(2) (a)(ii) applies Part 4 to Residential Uses. Within Part 4 “Code for Residential Development and Use” Part 4.1 applies to detached houses.

The Code for Residential Development contains 5 elements with performance criteria and acceptable measures. The two elements relevant to this site are Element (1) House Siting, height and density plus Element (5) Vehicle Parking.

The Code also states that “The Standard Building Regulation will apply as acceptable measures, where relevant in this code, except.... Section 37.

It is my view that compliance with the Standard Building Regulation would not be limited to Sections 36,38,39,40,41,42,43 & 44 but would include any siting variation given under Section 48. In other words, if a siting variation is granted under Section 48 for the road boundary clearance, the proposed detached house will satisfy the “acceptable measures” for the Residential Code.

It is therefore necessary to assess the reduced road boundary clearance against the criteria contained in Section 48 of the Standard Building Regulation.

Other codes referenced include the Operational Works Code (Element 7 acceptable measure A4.1) and the Parking Code (Element 1 acceptable measures A1.1 and A3.1) have been satisfied.

The applicable acceptable measures under Clause 4.1(2) for house siting, height and density (Element 1) and vehicle parking (Element 5) are met for this proposal and there is no need for assessment against the corresponding Performance Criteria.

The siting provisions of the Standard Building Regulation have been met for the side and rear boundaries and the southern Lacewing Drive road boundary. The 6.0 metre road boundary set back to Torulosa Lane required under Section 36 has not been met and assessment under Section 48 of the Standard Building Regulation is required. Satisfaction of the criteria under Section 48 will provide compliance with the “provisions of the Standard Building Regulation” and hence be “acceptable measures”.

The test becomes one of meeting the Maroochy Plan 2000 Code for Residential Development and Use “alternative siting requirements” which includes assessment against the respective code elements plus the Standard Building Regulation including the provisions of “alternative siting requirements” under Section 48.

Siting Considerations

Assessment of the siting requirements under Section 48 of the Standard Building Regulation

(a) *The levels, depth, shape or conditions of the allotment and adjoining allotment.*

The allotment has a depth of approximately 21.0 metres facing Torulosa Lane. Based on the details provided there is a sewer connection point only in the north east corner of the lot. The lot is not constrained by services on the land and has ample frontage to 2 roads both of which are of ample width and fully constructed.

(b) *The nature of any proposed building or structure on the allotment.*

The single storey building is in keeping with the height and bulk of other buildings in the locality. I am of the view that the argument of Maroochy Shire Council that the siting of this house is one of fitting a standard design on the site and not a design tailored to suit this site has some credibility.

(c) *The nature of any existing or proposed buildings or structures on adjoining allotments.*

All buildings in the locality appear to have the 6.0 metre setback from the local residential access streets. The site adjacent in Torulosa Lane is vacant and Council has no record of any building approval to date. The Council appears to have placed a strong emphasis in this neighbourhood of requiring and ensuring the 6.0 metre road boundary setbacks are maintained.

(d) *Whether the allotment is a corner lot or has two road frontages.*

The allotment is a corner lot. The use of Schedule 11 of the Standard Building Regulation would allow a setback of approximately 5.0 metres from the Torulosa Lane road boundary. It is noted that a single garage would have a setback of 6.4 metres to Torulosa Lane.

Other relevant matters.

The applicant's agent quoted the siting of a dwelling at 5 Edgewater Place as an example of a reduced setback having been approved. Details provided by Maroochy Shire Council indicated that this was due to a sewer main along the rear boundary and providing the required clearance for building work.

The Maroochy Shire Council view that a garage on this corner of the dwelling will obstruct views, create obscured vision areas, add to the bulk of the building and apparent "obstruction" of the corner area is accepted in this case as all of the building setbacks in this locality have been maintained at 6.0 metres.

The applicant's agents view that the 5.0 metre footpath width provides sufficient width to not obscure the outlook has been considered and is, in my view, of lesser significance for this site due to the strong adherence to the prescribed setbacks in the locality, irrespective of the footpath width.

In conclusion, it is my view that the proposed dwelling, when built on the allotment with a road boundary setback from Torulosa Lane of approximately 2.94 metres to the outermost projection would unduly –

Obstruct the outlook from adjoining allotments on the grounds that there has been considerable effort by Maroochy Shire Council in ensuring that a 6.0 metre setback has been maintained in this locality, there is no sewer or other service on the site that constrains the location of a dwelling and an appropriate design could be prepared to meet the siting requirements of the Maroochy Plan 2000 which includes the Standard Building Regulation.

David Kay
Building and Development
Tribunal Referee
Date: 22 January 2002

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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