



APPEAL
Integrated Planning Act 1997

File No. 3 – 02 - 020

BUILDING AND DEVELOPMENT TRIBUNAL - DECISION

Assessment Manager: Maroochy Shire Council

Site Address: 1 Tandara Street, Buderim

Nature of Appeal

An appeal under Section 4.2.9 of the Integrated Planning Act 1997 against the decision of Maroochy Shire Council to refuse an application for a preliminary approval for building work (a siting concession required to enable the construction of a carport within the front six metre setback) on a property described as Lot 35 RP 95883, situated at 1 Tandara Street, Buderim.

Date and Place of Hearing: 10.00 am on Thursday 30 May, 2002
at 1 Tandara Street, Buderim

Tribunal: E K George

Present: Applicants
Richard Prout – Maroochy Shire Council

Decision

In accordance with Section 4.2.34.(2) of the Integrated Planning Act 1997, I set aside the decision appealed against and grant a siting concession to enable a single carport to be erected in the location indicated on the attached Drawing A 302020/1, subject to the following conditions:-

- 1.0 The carport shall be accessed from the existing property entrance located on the Tandara Street alignment.
- 2.0 The carport shall be constructed of shadecloth in a single colour, which is sympathetic to the local environment, and shall contain no stripes or motifs in any other colour.
- 3.0 The carport shall be constructed in accordance with the attached Drawing A302020/2, with four support posts only.
- 4.0 Significant landscaping shall be planted and maintained between the carport and the Moorabinda Street frontage, in accordance with the requirements of the Council's published landscaping policy.

Background

An application was made to Council for a preliminary approval for building work to enable a carport to be constructed within the secondary boundary setback of the property. Maroochy Plan 2000 makes reference to the siting of carports in Code 4 of the Plan. It calls up the siting provisions of Part 3 of the Standard Building Regulation 1993, with the exception of the provisions of section 37, as being acceptable measures for any assessment of compliance with the Plan requirements for such a building. This application for preliminary approval was refused, and that decision has been appealed.

There are however, questions as to the jurisdiction of a Building and Development Tribunal to determine such an appeal and this matter is addressed as follows:

- a) The development approval applied for was for building work
- b) Building work is a matter under the Integrated Planning Act 1997 that relates to the Building Act 1975.
- c) Section 4.2.7 of the Integrated Planning Act prescribes the rights of appeal to a Tribunal and limits those rights to only that part of a development application assessed against the Building Act 1975.
- d) Maroochy Plan 2000 states that the provisions of the Standard Building Regulation 1993 will apply as “acceptable measures” where relevant in the Council’s “Code for Residential Development and Use”, except for the provisions in section 37.
- e) Section 37 forms part of division 2 of Part 3 of the Standard Building Regulation 1993.
- f) Section 48 of the SBR sets out the process for assessing an application to vary the provisions of division 2 of Part 3 of the SBR.
- g) The assessment carried out by Maroochy Shire Council was against the “acceptable measures” listed in section 48(3) of the SBR.
- h) The Tribunal’s jurisdiction is limited to a review of the Council’s assessment of the original application against those “acceptable measures”, and excludes any consideration of matters involving impact assessment under Maroochy Plan 2000.
- i) As the development application was for building work and the siting assessment was made against provisions of the Building Act 1975 called up in the Plan, the jurisdiction of the Tribunal to hear the matter is as defined in section 4.2.7(2)(a) of the Integrated Planning Act.

I am therefore of the opinion that this Tribunal has jurisdiction to conduct the hearing of this appeal.

Material Considered

- 1.0 Application submitted to Maroochy Shire Council requesting a concession for the siting of a proposed shadecloth carport.
- 2.0 Letter from Maroochy Shire Council to the applicant, dated 3 April, 2002, refusing the application and setting out the reasons for the refusal.
- 3.0 Appeal form and attachments dated 29 April 2002.
- 4.0 Copies of letters from neighbours at 4 Tandara Street, 6, 8 & 10 Moorabinda Street, advising there are no concerns from these neighbours in regard to the proposed carport.
- 5.0 Verbal submissions by the applicants to the Tribunal dated 30 May 2002.
- 6.0 Verbal submission by Maroochy Shire Council to the Tribunal dated 30 May 2002.
- 7.0 Codes for Residential Development and Use extracted from Maroochy Plan 2000.
- 8.0 Standard Building Regulation 1993.
- 9.0 Building Act 1975.

10.0 Integrated Planning Act 1997.

Findings of Fact

- 1.0 The Tribunal has jurisdiction to hear this appeal.
- 2.0 There is an alternative location on the property for siting of the proposed carport, siting in this location would require a separate application for siting over an existing sanitary sewer.
- 3.0 The clear indication of the Council was to draw the siting provisions of the Standard Building Regulation into Maroochy Plan 2000 as “alternative siting requirements” and to define “acceptable measures” for an assessment of siting compliance in its “Code for Residential Development and Use”.
- 4.0 Assessment of any siting concession application should proceed in accordance with the provisions of the “alternative siting requirements “ in the above Code.
- 5.0 No acceptable measures have been defined in the Code applicable at the time of the hearing, for carports in the front six metre setback. Advice from Maroochy Shire Council is that Round One Amendments, which address carports had been approved by the Minister prior to this application being lodged, and these amendments were taken into account in Council’s decision.

Reasons for the Decision

- 1.0 An alternative location exists on the property for the provision of a covered car accommodation. This site however would require some removal of existing landscaping, and earthworks to achieve siting of the structure. This site is also located over an existing sanitary sewer. At the time of the hearing it was established that this would require a separate application to Maroochy Water. From discussion and precedent it appeared that the structure would be allowed to be located over the sanitary sewer subject to an indemnity to the authority, and that the structure would require removal prior to any excavation of the sewer for maintenance/repair. This alternative site was not favoured by the applicants.
- 2.0 Correspondence from adjoining property owners indicated that the proposed carport would not interfere with views.
- 3.0 The property is located in an area of significant vegetation for landscaping, including footpaths of a number of properties in the locale. Landscaping of the area between the proposed carport and the Moorabinda Street property alignment will comply with the intent of Maroochy Plan 2000 for streetscape, and provide shielding of the carport.
- 4.0 The property is a corner allotment, with a narrow angle at the intersection of the Moorabinda and Tandara Street alignments. It is accepted that a concession has previously been granted for a deck extension at the Tandara Street alignment, but the geometry of the property restricts its potential development.
- 5.0 Construction of the proposed carport in a single colour, sympathetic to the environment will not render significant impact on the Tandara Street streetscape. Tandara Street is a short street with low traffic volumes.

Errol K George
Building and Development
Tribunal Referee
Date: 18 June 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
PO Box 31
BRISBANE ALBERT STREET QLD 4002
Telephone (07) 3237 0403: Facsimile (07) 32371248