



Building and Development Tribunals
Queensland Government

Department of Local Government, Planning,
Sport and Recreation

APPEAL
Integrated Planning Act 1997

File No. 3-04-034

BUILDING AND DEVELOPMENT TRIBUNAL - DECISION

Assessment Manager: Hervey Bay City Council

Site Address: 5-7 Exeter Street, Torquay

Applicant:

Nature of Appeal

Appeal under Section 21 of the *Standard Building Regulation 1993* (SBR) against the decision of the Hervey Bay City Council in varying the application of Part 3– Requirements for Siting, Amenity and Aesthetics, as provided for under Part 12 of the *Queensland Development Code* (QDC), for a combined Class 10b retaining wall and fence to be built on land described as Lot 33-34 RP892999, situated at 5-7 Exeter Street, Torquay.

Date and Place of Hearing: 10:00 am Thursday 17 June 2004
at 5-7 Exeter Street, Torquay

Tribunal: Clay Warner Anderson

Present: Applicant
Hervey Bay City Council representatives

Decision

In accordance with Section 4.2.34(2)(a) of the *Integrated Planning Act 1997*, I hereby **confirm** the decision of the Hervey Bay City Council as contained in its letter dated 19 May 2004, reference AS040165, not to grant approval to permit the erection of a combined Class 10b retaining wall with a maximum height of 2.4 m and 1.8 m high fence.

Background

The application to Hervey Bay City Council was for a proposed combined Class 10b retaining wall and fence, that when constructed would provide a near level building envelope to facilitate the

construction of an already approved 200 m² Class 10a shed with a 200,000 litre water tank located under-slab, together with a proposed 2 storey dwelling having a preliminary gross floor area of 494 m², irregular shaped swimming pool with attached lap pool approximately 54 m² and a proposed gatehouse having an area under roof of 11.5 m².

Hervey Bay City Council refused the application on the grounds that “the retaining wall does not facilitate an acceptable streetscape, appropriate for:

1. the bulk of the retaining wall structure;
2. the outlook and views of neighbouring residents;
3. the road boundary setbacks of neighbouring buildings.”

Material Considered

1. Form 10 – Building and Development Tribunals Appeal Notice dated 3 June 2004 together with attached grounds for appeal.
2. Letter from Hervey Bay City Council, dated 19 May 2004, refusing the siting concessions sought by the applicant.
3. Plans of the proposed development.
4. Colour photographs of the site and two purportedly similar developments having combined Class 10b retaining wall/fences.
5. Verbal representations on-site by the appellant on 17 June 2004 setting out why the appeal should be allowed.
6. Verbal representations by Hervey Bay City Council on 17 June 2004 setting out Council’s reasons for refusing the application.
7. Integrated Planning Act 1997
8. Standard Building Regulation 1993
9. QDC Part 12 Design and Siting Standards for Single Detached Housing – on Lots 450m² and Over.

Findings of Fact

I made the following findings of fact:

1. The retaining wall is proposed to be an engineer designed 200 series block work wall finished with Granosite texture coating having fencing columns integrated with the wall and in-filled with pool style fencing to the front boundary and Kwela timber infill panels to the eastern side boundary by arrangement with the neighbour.
2. The allotment slopes downward from west to east along the front boundary approximately 3 m.
3. The retaining wall would, if allowed to be constructed, have a maximum height of 2.4 m at the eastern end of the allotment (starting at ground level at the western end) and when combined with the proposed fence of 1.8 m high would have a total height of 4.2 m at the eastern end.
4. The purpose of the retaining wall is to provide a near level building envelope to facilitate the construction of the dwelling, shed, pool and roofed entry gate as shown on proposed plans submitted by the appellant.
5. There are no special topographic or site constraints such as water or sewerage lines, registered easements, steep slopes or the like that exist on the site.
6. The site in question is located at the head of a “T” intersection.

7. The distance from the constructed kerb and channelling to the front boundary of the site in question is 11 m.
8. The allotment exists in a subdivision where there are no other siting concessions of any type existing in the street or nearby neighbourhood made up of residential uses.
9. The evidence submitted by the appellant that Hervey Bay City Council has permitted other such combined Class 10a retaining wall/fences in other parts of the shire is not considered relevant to this application as both developments sighted are located approximately 1 km and 2.4 km's distance away from the site in question and are related to a large residential development in one instance and the subject of an Operational Works approval in the other.
10. The applicant is unwilling to consider alternative retaining wall designs because this will, in his opinion, reduce the size of the proposed swimming pool unnecessarily.

Reasons for the Decision

After assessing the facts and the representations of the parties before me, I have reached the following conclusions:

- a) There are no special topographic or other site constraints that unduly affect the design of the dwelling and structures on the allotment and that necessitate a relaxation.
- b) The site in question is located at the head of a "T" intersection servicing several homes from both streets that will have views of and outlook onto the proposed retaining wall/fence and will be unnecessarily effected by its height and bulk that are of such a magnitude so as not to facilitate an acceptable streetscape.
- c) The site is in an area of relatively "pristine" residential uses and where there are no other siting concessions of any type existing in the street or nearby neighbourhood and as such, the granting of this siting concession would establish an unacceptable precedent for the area and would in effect 'open the flood-gates' for further unnecessary applications.
- d) The existence of other relaxations in other parts of the Shire is not considered sufficient justification for an approval on this site.
- e) The planning and design for the dwelling and structures, having taken place in a 'piece-meal' fashion, fails to take into consideration the allotment's size and characteristics. Whereby a reasonable designer, reasonably informed can still design the dwelling and structures in such a way as to allow for the slope of the allotment and still comply with the Acceptable Solutions provided for within the QDC.
- f) The proposed retaining wall/fence is of such a magnitude, being 4.2 m in total height, that it would not facilitate an acceptable streetscape appropriate for the road boundary setbacks of other buildings and structures adjoining this site and within the street. All other dwellings and structures requiring a development permit being set back a minimum of 6 m from the road boundary.
- g) It is considered that the proposed retaining wall/fence, if permitted to be constructed, will be the dominant feature of the site and the street and cannot, despite the appellant's undertakings, be suitably screened by landscaping the road reserve without also affecting the nuisance and safety of the public using the footpath located adjacent to the property in question.

C. W. Anderson
Building and Development Tribunal Referee
Date: 28 June 2004

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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