



APPEAL
Integrated Planning Act 1997

File No. 3 – 03 - 045

BUILDING AND DEVELOPMENT TRIBUNAL - DECISION

Assessment Manager: Toowoomba City Council

Site Address: 5 Montclair Close, Toowoomba

Nature of Appeal

An appeal under Section 4.2.9 of the Integrated Planning Act 1997 against the decision of Toowoomba City Council to refuse an application for a siting variation under the Standard Building Regulation 1993 to enable the construction of a retaining wall at the northern boundary of a property described as Lot 6 RP 149662, situated at 5 Montclair Close, Toowoomba.

Date and Place of Hearing: 1.00 pm on Wednesday 13 August, 2003
at 5 Montclair Close, Toowoomba

Tribunal: E K George

Present: Applicant
John Clancy – Toowoomba City Council

Decision

In accordance with Section 4.2.34.(2) of the Integrated Planning Act 1997, I **confirm** the Toowoomba City Council decision contained in its letter dated 30 June 2003, reference 03/00177, to refuse an application under section 48 of the Standard Building Regulation 1993 (SBR) for siting of a retaining wall at the northern boundary of the subject property.

Background

An application was made to Council under section 48 of the SBR for siting of an existing retaining wall at the northern boundary of the subject property. The retaining wall varied in height from 600mm to 1600mm above the natural surface level at the property boundary. Cut for levelling purposes has previously been carried out in properties at the rear of the subject property. The application to Council was refused under the provisions of part 4 of section 48 of the SBR on the

basis of potential flooding of the properties at the rear.

At the Tribunal hearing, concern was also expressed in regard to tie-rods for the wall traversing an existing sanitary sewer and rear-allotment stormwater drain, and the ability of an engineer to certify the structural adequacy of the retaining wall.

Material Considered

- 1.0 Application submitted to Toowoomba City Council requesting variation of the siting provisions of division 2 of the SBR to allow construction of the retaining wall at the northern boundary of the property.
- 2.0 Letter from Toowoomba City Council to the applicant, dated 30 June, 2003, refusing the application and setting out the reasons for the refusal.
- 3.0 Letter from Toowoomba City Council to the applicant dated 17 July 2003, advising the issues that need to be addressed from Council's perspective in regard to the retaining wall.
- 4.0 Appeal form and attachments dated 25 July 2003. This documentation included correspondence from consulting engineers engaged to comment on the retaining wall.
- 5.0 Verbal submissions by the applicant to the Tribunal dated 13 August 2003.
- 6.0 Verbal submission by Toowoomba City Council to the Tribunal dated 13 August 2003.
- 7.0 Verbal discussions of 14 August 2003 with the owner of 16 Grinke Drive, Toowoomba about his concerns with the retaining wall.
- 8.0 Verbal discussion of 19 August 2003 with the owner of 14 Grinke Drive, Toowoomba, who telephoned me about his concerns with the retaining wall.
- 9.0 Verbal discussions of 20 August 2003 with Mr K Flanagan, Works Manager, Toowoomba City Council, and 21 August 2003 with Mr B Carey, Development Engineer, Toowoomba City Council.
- 10.0 Verbal discussions of 28 August 2003 with Mr Philip Meyer, of Rowen Meyer & Associates, who had provided correspondence referred to in Item 4.0 above.
- 11.0 Verbal discussions of 28 August 2003 with Mr Geoff Thompson, of Thompson Consulting Engineers, who had also provided correspondence referred to in Item 4.0 above.
- 12.0 Standard Building Regulation 1993.
- 13.0 Building Act 1975.
- 14.0 Integrated Planning Act 1997.

Findings of Fact

- 1.0 The Tribunal has jurisdiction to hear this appeal.
- 2.0 The decision made by the Council was correctly made under the provisions of section 48 of the SBR.
- 3.0 The retaining wall was constructed without the necessary approvals under the Building Act 1975, including building approval, and approval of siting over the existing sanitary sewer.

Reasons for the Decision

- 1.0 In discussion with engineers from Toowoomba City Council it was expressed that in its existing location the retaining wall intercepts overland stormwater flow, directing this flow into properties at the rear. A number of options were explored to provide drainage into the existing rear-allotment drainage to alleviate this situation, including the design and construction of a "detention" system within the subject property. This was not possible as the rear-allotment drainage is designed solely for drainage of roofwater, and is already at capacity.

- 2.0 Given that the existing tie-rods have been installed in coated steel, they may have a limited life compared to galvanised rods as included in the initial design. This, together with uncertainty of compaction of fill behind the retaining wall has the potential to affect the structural capacity of the retaining wall. An essential part of finalisation of the building approval process is the presentation of certification by a RPEQ, in an acceptable format that the retaining wall is structurally adequate. No certificate has been presented at this time.
- 3.0 The construction of tie-rods over the sanitary sewer and rear-allotment drainage has not been considered as a contributing reason for upholding the decision of the Council, given that modern maintenance techniques limit the need for excavation of services. However, there is a need to maintain clearance around the area of the sewerage connection for the subject property, and the bridging of the retaining wall over the existing trenches remains a subject for Building Over Sewer approval by the Council.
- 4.0 The combined height of the fence and retaining wall has not been considered as a contributing reason for upholding the decision of the Council. Under the terms of the SBR, height is considered as that above the natural surface level, which for this matter is considered as the original surface level at the boundary, not the final level of cut in properties at the rear of the subject property.
- 5.0 At the Tribunal hearing, Council advised that a Notice to Show Cause for demolition of the existing fence and wall was pending. It is recommended that this notice be held, pending approval of an alternative structure located further to the south of the existing structure. During the approval process, the applicant should be required to engage a RPEQ to design a suitable drainage system to convey overland flow without the direction of extra-ordinary flow into properties at the rear. The siting of an alternative wall and fence over the sewer, and rear-allotment drainage can be addressed as part of the approval process, together with construction that will allow certification of structural adequacy of the finalised wall by a RPEQ.

Errol K George
Building and Development
Tribunal Referee
Date: 29 August 2003

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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