

**APPEAL**

**File No. 3-01- 003  
(amenity and aesthetics)**

***Integrated Planning Act 1997***

## **BUILDING AND DEVELOPMENT TRIBUNAL - DECISION**

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**Local Government:** Townsville City Council

**Site Address:** 6 Balmoral Place, Townsville.

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**Nature of Appeal:** Appeal under Section 21 of the Standard Building Regulation 1993 against the decision of the Townsville City Council to refuse an application for the proposed erection of a dwelling and retaining wall for the following reasons, in relation to **amenity and aesthetics**:

The visual impact created by the bulk of the building and associated works as per the design submitted is considered to have an extremely adverse effect on the amenity or likely amenity of the building's neighbourhood.

The dwelling is proposed to be erected on land described as Lot 130 on SP 120463 and situated at 6 Balmoral Place, Townsville.

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**Date and Place of Hearing:** 11.30 am on Wednesday 7 February 2001, at the Administration Building of the Townsville City Council, Walker Street, Townsville. The hearing adjourned to an inspection of the site following which it reconvened at the Administration Building.

**Tribunal:** Nigel Rees Daniels, Dip. Arch., Reg. Arch., Chairperson of the Tribunal.  
Wayne Pelling, a representative of the Queensland Master Builders' Association.  
Todd Rohl, a representative of the Local Government Association of Queensland.

**Present:** Builder  
Applicant on behalf of the Builder  
The Owners  
Matthew Beggs, Townsville City Council.  
Joe Prego, Townsville City Council  
Joanne Pendergast, Townsville City Council.

**Decision:** To set aside the decision of the Townsville City Council appealed against and to make a decision replacing the decision set aside, as follows:

In response to the application of 7/12/2000 which, in part, requested assessment under the provisions of sections 50 and 51 of the Standard Building Regulation 1993, for the amenity and aesthetic impact of the proposed work, it is decided that-

- (a) the building, when built, will not have an extremely adverse effect on the amenity or likely amenity of the building's neighbourhood; and
- (b) the aesthetics of the building, when built, will not be in extreme conflict with the character of the building's neighbourhood.

**Reasons:** The Council's decision, as expressed in its letter dated 14 December 2000, confuses aesthetics with amenity in the expression: *"the visual impact created by the bulk of the building and associated works ..... is considered to have an extremely adverse effect on the amenity or likely amenity"*.

The Standard Building Regulation clearly regards "amenity" as distinctly different from "aesthetics". The Standard Building Regulation regards "amenity" as measurable properties such as light, ventilation, access, shadowing, outlook, reflection, glare, noise, smell and landscape. It regards "aesthetics" as the subjective property of visual compatibility with the neighbourhood.

While the Tribunal might have referred the matter back to the Local Government for re-wording of its decision, it recognised that such action would only defer the issue. The Council's reasons for its refusal were made clear during the hearing; principally that the height of the building would cause "overlooming" or overpowering of neighbouring allotments, would cause adverse shadowing of neighbouring allotments and would be in extreme conflict with the character of the building's neighbourhood. The Tribunal therefore decided to proceed with its determination, as follows:

#### **Amenity:**

The Tribunal considered properties of amenity and concluded that there would be no extremely adverse effect on the amenity or likely amenity of the building's neighbourhood.

The properties of amenity considered by the Tribunal are:

- ❖ light and ventilation;
- ❖ privacy;
- ❖ outlook;
- ❖ availability of carparking;
- ❖ overcrowding;
- ❖ provision for landscaping;
- ❖ access for maintenance; and
- ❖ shadowing.

The Tribunal formed the opinion that the effect on amenity caused by the proposed development would be no different from that of other developments in the neighbourhood to an extent that could be described as extremely adverse.

With regard to shadowing, in particular, the Tribunal considered that the only possibility of adverse shadowing would occur (if it were to occur) during the early morning, when there

would be some shadowing on properties to the west. Given that some early morning overshadowing would be a normal occurrence, the Tribunal is of the opinion that any overshadowing that might occur could not be described as extremely adverse. The Tribunal noted that the discussion on shadowing was not supported by any technical analysis or solar diagrams.

### **Aesthetics:**

With regard to aesthetics, the principal considerations were:

- ❖ the bulk of the building; and
- ❖ the size of the retaining wall extending from the north-east corner of the building to a point near the road boundary.

The Tribunal is of the opinion that the character or style of the house is consistent with the styles in the neighbourhood, having regard to:

- ❖ the materials proposed to be used;
- ❖ design detail;
- ❖ design massing of the building; and
- ❖ the relationship of the design and structure to the land contours.

The principal item of concern raised by the local government is the bulk of the building; essentially that it is “3-plus” storeys in height, whereas in the neighbourhood there is a mixture of 2 and 3 storeyed buildings, with some of the 3-storeyed houses having an undercroft.

The Tribunal must recognise that it is not the aesthetic quality of the building itself which it is required to address, but only whether its aesthetics (of whatever quality) will be in extreme conflict with the character of the building’s neighbourhood.

The Tribunal is of the opinion that such extreme conflict does not occur.

The Tribunal is also of the opinion that the aesthetics will be enhanced by judicious structural landscaping. Council would benefit from (and should require) submission of landscape plans when considering aesthetics issues.

The Tribunal recommends to the Council that when wording its decisions, it should pay careful attention to the wording of the relevant legislation and to the provisions of the Judicial Review Act.

The Tribunal noted that while the Council’s decision was made under a policy properly established under the provisions of the Standard Building Regulation 1993, the policy effectively related to process. It may assist both the Council and developers if, in neighbourhoods where the Council wished to establish aesthetics standards, the Council adopted a policy indicating the targets or minimum standards to be achieved in the design of the buildings.

In its deliberations, the Tribunal relied upon:

- ❖ Building Note 132 of August 1990, In particular Appendix ‘A’;
- ❖ Photographs supplied by both parties;
- ❖ Visual inspection of the neighbourhood which the Tribunal deemed to be appropriate in terms of proximity;
- ❖ The submissions; and

- ❖ The relevant legislation.

At the conclusion of the hearing, the Council's representative requested information on:

- ❖ What the Tribunal considered to be the neighbourhood; and
- ❖ How a landscape drawing can be required with a building application.

The neighbourhood was considered by the Tribunal to be the immediate environs of the site together with nearby suburban areas, also on the hillslopes although out of immediate sight of the environs of the proposed house. The Tribunal also took reasonable note of the styles and character of developments in other similar hillslope areas such as Melton Hill, Yarrawonga, and North Ward.

The Tribunal is of the opinion that a local government may require submission of all relevant supporting information to guide its assessment of amenity and aesthetics. That information may include landscaping plans, sun and shadow diagrams, etc.

By "structural landscaping" the Tribunal means, in this case, landscaping which includes terracing or other re-shaping of the site using imported fill.

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**Nigel Daniels**  
**Chairperson**  
**Building and Development Tribunal**  
**Date: 14 February 2001.**

## **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  
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