



Building and Development Tribunals

Queensland Government

Department of Local Government and Planning

APPEAL

File No. 3/04/014

Integrated Planning Act 1997

BUILDING AND DEVELOPMENT TRIBUNAL - DECISION

Assessment Manager: Maroochy Shire Council

Site Address: 4 Pacific Heights Court, Coolum Beach

Nature of Appeal

Appeal under Section 4.2.9 of the Integrated Planning Act 1997 against the decision of the Maroochy Shire Council in relation to a request to change a development approval, not to grant an approval of the height of the combined retaining walls and fence above 2.000m on the eastern side boundary alignment on land described as Lot 20 on RP No. 886658 and situated at 4 Pacific Heights Court, Coolum Beach.

Date and Place of Hearing: 11.00 am on Tuesday, 30 March, 2004
at 4 Pacific Heights Court, Coolum Beach.

Tribunal: Georgina J Rogers

Present:
Owner
Mr T Ditchfield – Architect
Mr R Watt - Builder
Mr G Heelan – Maroochy Shire Council representative
Mr J Dunn – Maroochy Shire Council representative
Mr M Burr – Adjoining owner (10.30am separate meeting)

Decision

The decision of the Maroochy Shire Council as contained in its letter dated 16 February 2004 (Reference: DGH:HMF:CDA04/0004) refusing the request to change a development application sought for the combined height of an existing fence and retaining wall exceeding 2.000m surrounding a service area and setback 280mm from the allotment side boundary and for an existing fence and retaining wall setback 1.120m from the allotment side boundary, in lieu of the prescribed 2.000m is set aside and the following decision replaces the decision set aside:

1. The existing fence and retaining wall setback 280mm from the allotment eastern side boundary is to be reduced in height by 400mm for a length of the existing meter access panel, then is to be reduced by a further 400mm (800mm total) for the balance of the fence and retaining wall and returning to the fence and retaining wall setback 1.120m from the allotment's eastern alignment.
2. The existing fence and retaining wall, which is setback 1.210m from the allotment's eastern side boundary, is to have three alternate battens from the top removed.

Background

The site is located in Coolum Beach on the northern side of Pacific Heights Court. The site falls steeply from the south (street) frontage, to the north, falling approximately 2.000m in 3.000m. There is an existing dwelling on site, which has been very recently constructed and occupied. The new dwelling has been built down the site in consideration of the fall of the land.

The neighbour to the east expressed concern with the height of the newly constructed fence and retaining walls, which has been constructed approximately 280mm off the alignment for a distance of 3.600m, then returns into the site to 1.120m and continues for a further distance of approximately 4.500m, on 4 Pacific Heights Court site. The land in this area is part of the constructed driveway at footpath level and has been retained to provide vehicle and pedestrian access onto the site.

Material Considered

1. Appeal documentation included drawings indicating the proposed fence and retaining walls in excess of 2.000m within the eastern side boundary setback of 1.500m;
2. Drawing No. 0235, TD 01 dated 5 March 2003, a site plan to 1:200.
3. Observation of neighbourhood and from adjoining neighbours property.
4. Verbal submission by the adjoining neighbour and reasons for concern in relation to the construction of the fence and retaining walls which are in excess of 2.000m adjacent to their common boundary alignment;
5. Verbal submission by the owner and reasons for construction of the fence and retaining walls which are in excess of 2.000m adjacent to their common boundary alignment;
6. Verbal submission by the architect and reasons for construction of the fence and retaining walls which are in excess of 2.000m adjacent to their common boundary alignment;
7. Correspondence from the Maroochy Shire Council dated 16 February 2004, refusing the Change of Development Application for combined height of the retaining walls and fence exceeding 2.000m adjacent to the allotment side boundary sought for an existing fence and retaining walls in lieu of the prescribed 2.000m;
8. Verbal submissions by the representatives of the Maroochy Shire Council outlining the Council's assessment of the application and giving its reasons for refusal of the change of development permit sought;

9. The Standard Building Regulation 1993; and
10. The Queensland Development Code, Part 12.

Findings of Fact

I made the following findings of fact:

1. The development application for the construction of a dwelling was lodged with the Maroochy Shire Council and approved. Plans ref: 0235 TD01-3, 07 & 10 dated 5/3/2003.
2. A subsequent notice was received by the Maroochy Shire Council from the adjoining owner expressing concern with the constructed fence and retaining walls adjacent to the common alignment.
3. An application was made by the architect on behalf of the owner for a change of development application (S3.5.25) under the Integrated Planning Act 1997.
4. The Maroochy Shire Council's response, 16 February 2004 (Reference: DGH:HMF:CDA04/0004) refusing the change of development application for combined height of the retaining walls and fence exceeding 2.000m adjacent to the allotment side boundary sought for an existing fence and retaining walls in lieu of the prescribed 2.000m.
5. The SBR was amended and the Queensland Development Code commenced on 14 November 2003. This application has been assessed under the QDC, Part 12.
6. The site at 4 Pacific Heights Court has a single road frontage and is located on the northern side of Pacific Heights Court.
7. The site falls steeply from the southern alignment (street) to the rear of the site. The site is irregular in shape with a narrow 7.300m angled frontage. Access from Pacific Heights Court onto the site is dictated by the narrow frontage and steepness of the site.
8. The location and storage of rubbish bins for the site is also dictated by the narrow frontage and steepness of the site. These bins along with gas cylinders and meter have been stored adjacent to the driveway and along the common boundary of the site to the east. This service area has been located at footpath and driveway level, which is retained by walls of less than 1.000m at the highest point, with a 2.200m timber batten screen fence on top of the retaining wall and surrounding the service area. This fence provides a discreet barrier between the neighbourhood and the service area.
9. The driveway to the garage has been provided and retained at footpath level and provides access to the existing dwelling. To be able to enter the dwelling separate from the garage the width of the driveway has been made wide enough to allow for the provision of a standard size gate. This has brought this part of the retaining walls and fence to within 1.120m setback from the side boundary. The timber batten screen fence provides privacy between the neighbours and decreases any visual affects of vehicle lights as cars enter the garage.
10. The dwellings constructed within the neighbourhood are a mixture of recently constructed homes on the steep terrain. The neighbourhood consists of a mix of one and two storey dwellings.

11. The QDC, Part 12 sets out Performance Criteria P1-P8 in relation to siting requirements which a local government must consider and be satisfied that the application meets the intent of each criteria for that application and that the development does not unduly conflict with the intent of each of the Performance Criteria:

P1 The Location of a building or structure facilitates an acceptable streetscape, appropriate for –

(a) the bulk of the building or structure

The existing fence and retaining walls are in excess of 2.000m above natural ground level. However due to steepness of the site and surrounding neighbourhood the existing heights have a visual bulk to the adjoining site to the east.

In accordance with the negotiations and discussions on site these fences are to be reduced in height to help reduce the apparent bulk on the adjoining neighbour. As the terrain is steep it is difficult to achieve significant reduction in bulk without compromising the privacy afforded between the neighbours by the fencing.

The adjoining neighbours to the north will not be affected by the reduced height of the fence and retaining walls.

(b) the road boundary setbacks of neighbouring buildings or structure

The neighbouring buildings and structures generally appear to be setback approximately 6.000m. New building work appears to vary in setback with this site having the garage setback at an angle to the front boundary alignment. The fence and retaining walls surrounding the service area is setback approximately 280mm from the boundary alignment. The fence then returns onto the site to be setback approximately 1.120m from the side boundary alignment.

Consideration has been given to the neighbourhood and of the steep terrain by offsetting the fence and retaining walls from the common boundary between the two properties.

(c) the outlook and view of neighbouring residents

The outlook from the adjoining neighbour to the east will benefit from the proposed reduced height of the fence and retaining walls.

Due to the steepness of the site, viewing these structures from the lower side of the slope can appear dominant. These structures are on the south-western side of the adjoining neighbour, adjacent to their outdoor drying area and the driveway of 4 Pacific Heights Court. The fence and retaining walls provide privacy between the two properties.

The neighbours to the north would have no impact from the height of the existing structures, as they are located on the high side of the road.

(d) nuisance and safety of public

The development would not cause any nuisance or increased safety issues to the public.

P2 Buildings and structures –

(a) provide adequate daylight and ventilation to habitable rooms

The location of the fence and retaining walls has no impact on the extent of daylight to habitable rooms as they are located away from the existing dwelling.

The height of the fence and retaining walls surrounding the service area has no impact on the ventilation to habitable rooms as they are located away from the existing dwelling.

(b) allow adequate light and ventilation to habitable rooms of buildings on adjoining lots

The location of the fence and retaining walls will have no impact on the extent of daylight to habitable rooms of the neighbourhood dwellings.

The height of the fence and retaining walls surrounding the service area have been reduced in height to assist in allowing south-westerly breezes through, while still providing visual screening and minimizing potential rubbish odours. The fence located 1.120m from the side boundary alignment is to have every second batten removed for 3 alternate top battens to allow south-westerly breezes through, while still providing visual screening to the adjoining neighbours.

It will be difficult to assess whether any benefit has been achieved by reducing the height and mass of the fence and retaining walls as the new dwelling on 4 Pacific Heights Court will have contributed significantly to the loss of breezes from the south and west.

P3 Adequate open space is provided for recreation, service facilities and landscaping-

The location of the fence and retaining walls has no impact on the extent of open space provided for recreation, service facilities and landscaping for the dwelling.

P4 The height of a building is not to unduly-

(a) overshadow adjoining houses

The existing fence and retaining walls does not overshadow the adjoining dwelling.

(b) obstruct the outlook from adjoining lots

The existing fence and retaining walls will have minimal impact upon the outlook of the adjoining allotment.

The existing fence and retaining walls do not create any obvious visual obstructions to the neighbourhood, which would be over and above what is acceptable to this suburban allotment.

P5 Buildings are sited and designed to provide adequate visual privacy for neighbours-

The existing fence and retaining walls contributes to the privacy between the adjoining properties.

P6 The location of a building or structure facilitates normal building maintenance-

The setbacks shown provide adequate access for normal building maintenance onto the site.

P7 The size and location of structures on corner sites provide for adequate sight lines-

The allotment is not on a corner and is not affected by normal sight line requirements. Access to and from the site does not appear to be diminished by the height and location

of the existing fence and retaining walls under discussion.

P8 Sufficient space for on-site carparking to satisfy the projected needs of residents and visitors, appropriate for—

(a) the availability of public transport

The availability of public transport is not relevant to this hearing as provision has been made for on-site carparking.

(b) the availability of on-street parking

The availability of on-street parking is not relevant to this hearing.

(c) the desirability of on-street parking in respect to the streetscape

On-street car parking will not be affected by the proposed development.

(d) the residents likelihood to have or need a vehicle

The proposed development includes the provision for minimum two on-site carparks.

12. Based on the above facts it is considered the appeal is proven.

Reasons for the Decision

QDC provides Performance Criteria and some Acceptable Solutions. The Acceptable Solutions are guidelines to provide reasonable and achievable outcomes. The local government is in a position to vary the Acceptable Solutions in relation to an application for siting requirements and to assess the application based on its merits.

In assessing the criteria from this part of the Code in relation to the proposed use of the structure, its relationship to the existing dwelling on site and the adjoining neighbourhood, the Tribunal found that there were grounds to vary the side boundary setback to allow for the adjusted height to the existing fence and retaining walls.

An assessment of QDC, Part 12, did not identify any valid reason for refusing the Change of Development Application for a fence and retaining walls in excess of 2.000m.

GEORGINA J ROGERS
Building and Development
Tribunal Referee
Date: 21 April 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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