



Building and Development Tribunals – Decision

Integrated Planning Act 1997

Appeal Number:	3–09–019
Applicant:	<i>Withheld</i>
Assessment Manager:	Redland City Council
Concurrence Agency: (if applicable)	Redland City Council ('Council')
Site Address:	<i>Withheld</i> – the subject site

Appeal

Appeal under section 4.2.9 of the *Integrated Planning Act 1997* (IPA) against the decision of the assessment manager to refuse a development application for building work, namely a boundary wall ancillary to a Class 1 building in excess of 2.0m above ground level within the prescribed front boundary setback. The decision was directed by a concurrence agency response issued by Council.

Date of hearing:	10.00 am – Wednesday, 11 March 2009
Place of hearing:	The subject site
Tribunal:	Mr John Panaretos – Chair Mr Greg Rust – Member
Present:	<i>Withheld</i> – Applicant David Brown – Council representative Mike Ryan – Council representative <i>Withheld</i> – Owner

Decision:

The Tribunal, in accordance with section 4.2.34 (2) (c) of the *Integrated Planning Act 1997* (IPA) **sets aside** the decision appealed against and replaces it with the following decision:-

The Tribunal, in accordance with section 4.2.34 (1), **directs** the assessment manager to approve the development application for building works in accordance with the modified Site Plan, Elevation and Section submitted to the Tribunal on 13 March 2009 (Attachment 1 and 2), subject to the following conditions:-

1. A 100mm high boundary edge to *street withheld* for the length of that portion of the wall exceeding 2.0m high;
2. The portion of wall in excess of 2.0m in height to be set back 1.5m from the front alignment, the setback area to be a planted garden bed;

3. A maximum wall height of 2.8m;
4. The entire wall is to be rendered and painted; and
5. All other relevant building assessment provisions applicable to the building development application are complied with.

Background

The development application for building works was for a boundary wall in excess of 2.0m high for a distance of approximately 16.0m along the *street withheld* frontage and returning along the site driveway.

The height of the structure reached a maximum of 2.8m above ground level. Council refused the application for the following reasons:-

- a) *The proposal overcrowds the streetscape due to excessive height and bulk;*
- b) *The proposal is not consistent with the already established characteristics of the vicinity/neighbourhood;*
- c) *Proposal inconsistent with RPS and QDC.*

Council submitted further written reasons for its refusal at the hearing. However, in appealing to the Tribunal, the applicant submitted a changed plan allowing for a 1.0m setback to the wall from the front alignment. Following the hearing and subsequent negotiation, the applicant submitted a further modified plan which the Council representatives are satisfied complies with both the Redlands Planning Scheme and the Queensland Development Code (QDC). The Tribunal concurs with this outcome.

Material Considered

The material considered in arriving at this decision comprises:

1. The application, including 'Form 10 – Notice of Appeal', lodged with the Registrar on 5 March 2009 including statement of grounds for appeal.
2. Decision notice refusal issued by the assessment manager, dated 26 February 2009.
3. Concurrence Agency Response from Council, dated 26 February 2009.
4. 'Form 8 – Notice of Election' provided by Council to the Registrar on 9 March 2009.
5. Drawings and photos of similar boundary walls in the vicinity lodged with the appeal and subsequent site plan, elevation and section lodged with the Tribunal on 13 March 2009.
6. Signed statements from nearby neighbours agreeing to the proposal.
7. Verbal submissions by the applicant and the Council representatives at the hearing.
8. A written submission presented by a Council representative at the hearing.
9. The Redland Planning Scheme, particularly the Dwelling House Code.
10. Part MP 1.2 of the QDC.
11. The IPA.

Findings of Fact

The Tribunal makes the following findings of fact:

- The application proposed a structure over 2.0m high and up to 2.8m high at the front alignment, for a length of 16.0m, subsequently changed to a setback of 1.0m from the front alignment.

- The proposal conflicted with both the Redlands Planning Scheme and Part MP1.2 of the QDC.
- The final plan submitted has been agreed to by both parties and allows for a raised garden bed between the front alignment and the main part of the wall to visually soften the wall.
- The Tribunal is satisfied that the final plans are consistent with the intent and performance criteria of the relevant codes of both the Redlands Planning Scheme and the QDC.

Reasons for the Decision

- The plans, as originally proposed, presented an imposing height to the front boundary of the site, but there are other examples of front boundary walls to similar height and above in the vicinity.
- The compromise outcome was satisfactory to all parties to the appeal.
- Although the approved wall exceeds 2.0m in height, its apparent height is reduced by the height of the raised garden bed and planted 1.5m setback which will soften and partially screen the structure.
- The approved landscaped wall will contribute to a high standard of residential amenity and complements the character of the area as required by the Redlands Planning Scheme.

John Panaretos
Building and Development Tribunal Chair
Date: 24 March 2009

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 Infrastructure and Planning
PO Box 15009
CITY EAST QLD 4002
Telephone (07) 3237 0403 Facsimile (07) 3237 1248