
BUILDING AND DEVELOPMENT TRIBUNAL – DECISION

Assessment Manager: Pine Rivers Shire Council

Site Address: Lot 1 Freshwater Creek Road, Mango Hill.

Nature of Appeal: Appeal under Section 4.2.9 of the Integrated Planning Act 1997, against the decision of the Pine Rivers Shire Council not to grant approval for the proposed construction of a retaining wall and general filling below the nominated Q50 flood level on land described as Lot 1 on RP No. 904008 and situated at Lot 1 Freshwater Creek Road, Mango Hill.

Date and Place of Hearing: 10:00 am on Thursday 29 January 2004 at Lot 1 Freshwater Creek Drive, Mango Hill.

Tribunal: B J Williamson

Present:	B J Williamson	Tribunal Referee
	Owner	
	G Choveaux	Pine Rivers Shire Council
	A Herring	Pine Rivers Shire Council

Decision:

The decision of the Pine Rivers Shire Council in its letter dated 27 November 2003 (Reference: 2003-502/RELAX) not to grant approval for the proposed construction of a retaining wall and general filling below the nominated Q50 flood level **is changed** in accordance with the agreement between the owner and the Pine Rivers Shire Council as indicated in the Council letter dated 9 March 2004 which is to allow the erection of the retaining walls and general filling subject to the following conditions:

- (a) The proposed retaining wall on the western boundary line may be constructed to a height equivalent to the existing filled area adjacent to the shed; and
- (b) The retaining wall along the eastern side of the property shall be constructed along the alignment indicated within the owner's correspondence dated 2 February 2004 and being no greater than 1.0 metre in height; and
- (c) Any fencing to be erected on top of the retaining walls shall be restricted to a maximum height of 1.5 metres above the top of the retaining wall and shall be constructed with open wire materials (i.e., chain mesh) ; and
- (d) General filling placed on the site shall be sloped to the retaining walls and at the boundary lines of the property the filling shall not exceed the height of the retaining walls.

Background:

The existing residential property had been filled by the previous owner. The current owner wants to erect retaining walls to enable him to increase the height of the filling to level the site and to erect perimeter fencing. The perimeter fencing is needed to provide security for the current owner's family and property as the house is in an isolated section of the road.

The owner has experienced unauthorised entry of persons onto his property and he is concerned with possible liability if these persons are injured on the steep slope at the boundaries of his property. Adjacent to the southern boundary of the property is Fresh Water Creek and next to the eastern boundary is a drainage easement. At the hearing there was some doubt about the exact height of the Q50 flood level at the site in question and therefore it was agreed to adjourn the hearing to allow the exact Q50 flood level for the site to be established and to allow both parties to investigate the options discussed at the hearing.

Further discussions and correspondence between the parties after the hearing, has resulted in the agreement as listed in the decision.

Material Considered

1. Copy of Form 1 Development Application Part A and B and associated plans.
2. Copy of letter from the Pine Rivers Shire Council dated 27 November 2003
3. Copy of letter from the owner to the Pine Rivers Shire Council dated 9 December 2003.
4. Copy of letter from the Pine Rivers Shire Council dated 12 December 2003.
5. Copy of Form 10 Building and Development Tribunals Appeal Notice dated 12 December 2003.
6. Verbal submission at the hearing by the representatives of Pine Rivers Shire Council outlining the reasons stated on the Council's letters.
7. Verbal submission at the hearing by the owner outlining the reasons for the proposed works.
8. Copy of the letter from the owner to Pine Rivers Shire Council dated 2 February 2004.
9. Copy of the letter from the Pine Rivers Shire Council to the owner dated 9 March 2004.
10. Copy of the fax from the Pine Rivers Shire Council to the Dept of Local Government dated 10 March 2004

Finding of Fact

I made the following findings of fact:

1. The existing site had been filled by the previous owner.
2. The original proposed retaining wall and filling could restrict the free flow of flood water in the adjacent creek and add to the flooding of properties in the upper sections of the creek.
3. As the house is isolated on the southern side of the road there is a need for the owner to secure his property by fencing in a way that enables the owner to maximise the use of his property and does not present any dangerous situation for his children.
4. The Q50 flood level for the site had to be determined by the Pine Rivers Shire Council.

Reason for the Decision:

The decision is based on the agreement between the Pine Rivers Shire Council and the owner. Condition (d) was added to the decision as the agreement dated 9.03.04 had no reference to filling that would be supplied by the owner. Mr Choveaux of Pine Rivers Shire Council agreed to the addition of condition (d) to the decision in a telephone conversation on 23.03.04.

B J Williamson
Building and Development
Tribunal Referee
Date: 30 March 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 grounds:

- (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 the notice of the Tribunal's decision is given to the party.

Enquires

All correspondence should be addressed to:

The Registrar of Building and Development Tribunals
Building Codes Queensland
Department of Local Government, Planning, Sport and Recreation
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