



Development Tribunal—Decision Notice

Planning Act 2016, section 255

Appeal number: 25-003

Appellant: Dean Pask

**Respondent
(Assessment manager):** Matthew Grimmond

**Co-respondent
(Concurrence agency):** City of Gold Coast Council

Site address: 2 Heron Ave, Mermaid Beach Qld 4218 and described as Lot 20 on SP 272502— the subject site

Appeal

Appeal regarding refusal by the assessment manager at the direction of the referral agency of a development application for building work for a front boundary fence and fence within foreshore setback area.

Appeal under section 229(1)(a)(i) and schedule 1, section 1(b) and table 1, item 1(a) of the *Planning Act 2016* (the Planning Act) and Version 10 of the *City of Gold Coast City Plan 2016* (the City Plan).

Date and time of hearing: 08 May 2025, 9:00 am

Place of hearing: 2 Heron Avenue, Mermaid Beach

Tribunal: Peter Hope —Chair
Michael Yau—Member

Present: Dean Pask (Landowner)—Appellant
David Geyer—Town Planner
Andre Sultan —Town Planner (Appellant’s agent for communications with the Registry)
Michael Bale—Civil Engineer (RPEQ)
Vitto Ulliana—Builder
City of Gold Coast Council—Respondent
Roger Sharpe, Manager Planning Assessment, City of Gold Coast—Council representative

Shane Waterings—A/Coordinator Development Assessment,
City of Gold Coast

Leon Newland—Principal Building Certifier, City of Gold Coast

Sarah Godwin—Senior Planner, City of Gold Coast

Daniel Hamilton—Coastal Engineer, City of Gold Coast

Not present:

Mathew Grimmond—Building Certifier (Assessment Manager)

Decision:

The Development Tribunal (Tribunal), in accordance with section 254(2)(a) of the Planning Act, confirms the assessment manager's decision.

Background

1. Appellant—The Appellant has constructed a rendered block masonry fence approximately 2.2m high that extends, separated with a control joint, approximately 4.3m into the 8.1m foreshore setback area. The control joint has been included in the construction with the intention of enabling the 4.3m long part of the fence to be sacrificial and able to be removed by the Council on a needs basis.
2. Council—The Council has expressed no objection to the height of the front boundary fence. However, the Council does not consider the 4.3m long part of the front boundary fence to be a sacrificial structure due to its solid construction, which the Council does not consider of a temporary nature easily removed during emergencies. Therefore, the Council has refused to permit that part of the fence within the 8.1m foreshore seawall setback area, stating that it does not comply with the Coastal erosion hazard overlay code of the City Plan (PO1).
3. Correspondence between Council and the Appellant's representative attached to the notice of appeal shows that Council had indicated that it could be satisfied regarding compliance if it could be demonstrated through engineering drawings that the fence can be sacrificial.
4. Seawall—The foreshore seawall setback area facilitates access to build, maintain or repair a continuous foreshore seawall barrier across public and private property. The seawall appears to be a sub-soil engineered boulder-wall that may typically be located 2m below the beach level providing a barrier intended to protect people and premises from coastal erosion and climate change events. In this case, the Council states it will need access along the foreshore setback area from Heron Avenue for maintenance or reconstruction within the next five years. Further, the Council generally needs to ensure reasonable access is provided for emergencies following disruption caused by adverse climatic forces (coastal hazards) to repair the seawall.
5. Assessment benchmarks—The Coast erosion hazard overlay code discourages development on the foreshore setback area. Setback performance outcome PO1 of the Coastal erosion hazard overlay code include that—

Buildings and structures are setback from the ocean beach to:

(a) ensure the protection and maintenance of the foreshore seawall (boulder wall);

(..)

- (c) protect beachfront properties from erosion and other coastal hazards;*
- (d) ensure the protection and maintenance of the active dunal areas;*
- (e) ensure unimpeded access through to neighbouring properties for seawall maintenance'*¹

6. In its reasons for recommending the refusal, Council did not specify which sections of PO1 it considers the development does not comply with, but its stated reasons suggest Council assessed the works against (a), (c), (d) and (e) of PO1.

7. Performance Criteria P1 (Building and Structures) of the Queensland Development Code MP1.2 - Design and Siting Standards for Single Detached Housing—on Lots 450m2 and Over (QDC MP1.2), provides as follows—

The location of a building or structure facilitates an acceptable streetscape, appropriate for—

(...)

(d) nuisance and safety to the public.

8. Council's stated reasons for refusal were—

- *The proposal is not considered to comply with Performance outcome PO1 of the Coastal erosion hazard overlay code of the City Plan, as follows:*
 - *The solid masonry fence and retaining wall within the 8.1 metre A-line setback area are not considered to be sacrificial structures and subsequently will not provide adequate access to the seawall for maintenance purposes from Heron Avenue and to neighbouring properties.*
 - *Inadequate access to the seawall for maintenance purposes and during emergencies significantly inhibits people and premises from being protected from the threat of adverse impacts from erosion and climate change.*
 - *The applicant has not demonstrated how the proximity of the structures to the seawall protect the seawall structure and avoids impact to its structural integrity and longevity.*
 - *The works are not considered to protect or maintain dunal areas and do not facilitate the restoration of dune systems.*
- *The fence is not considered to comply with Performance Criteria P1 of the Queensland Development Code MP1.2 - Design and Siting Standards for Single Detached Housing—on Lots 450m2 and Over (QDC MP1.2), as follows:*
 - *The potential impacts caused by the structure's proximity to the seawall may not protect the structural integrity and longevity of the seawall and subsequently may impact upon safety to the public.*
 - *The structures are not considered to be sacrificial and therefore will not facilitate emergency access to repair and maintain the seawall to protect*

¹ City Plan, Setbacks, Table 8.2.4-3, PO1

the safety of the public and neighbouring properties from erosion and climate change.

- *Officers acknowledge that the height of the proposed fence along Heron Avenue is considered to achieve compliance with Performance Criteria P1(a), (b) and (c) of QDC MP1.2. However, due to non-compliances with P1(d), the potential impacts to safety are significant and therefore on balance P1 of the QDC MP1.2 is not considered to be achieved.*

9. The Appellant's grounds of appeal outlined in the notice of appeal are as follows:

- (a) In response to Council's claim that the solid masonry fence is not sacrificial and consequently restricts access to the seawall for maintenance purposes from Heron Avenue and to neighbouring properties, the Appellant—
 - (i) argued that Council's finding that the structure is not sacrificial is contradicted by the letter of support from the RPEQ engineer, who opined that, separated with a control joint, the structure can be deemed to be sacrificial.
 - (ii) asserted that the seawall can be accessed from the beachfront
- (b) In response to Council's claim that inadequate access to the seawall for maintenance purposes and during emergencies significantly inhibits the protection of people and premises from the adverse impacts from erosion and climate change, the Appellant—
 - (i) asserted that structures within the 8.1m setback area are common features across the Gold Coast and do not restrict access where they are sacrificial
 - (ii) disputed that the fence could impede workers undertaking rectification works and disputes that there is an unreasonable threat to people and property
 - (iii) asserted that the seawall can be accessed from the beachfront.
- (c) In response to Council's claim that the applicant had not demonstrated how the proximity of the structure to the seawall protects the seawall structure and avoids impact to its structural integrity and longevity, the Appellant—
 - (i) argued that the fence sits clear of the seawall
 - (ii) asserted that the wall does not impact on the structural integrity and longevity of the seawall
 - (iii) relied on the opinion of the RPEQ engineer that the wall may be deemed to be sacrificial.
- (d) In response to Council's finding that the works do not protect or maintain dunal areas and don't facilitate the restoration of dune systems, the Appellant—
 - (i) contended that the fence is located on road frontage and does not interfere with beachfront access to the dunes.
 - (ii) argued that the fence that delineates the private from the public property is a dune-style fence and does not restrict access to the dunes.
 - (iii) contended that there would be no material difference to the impact on the dunes if the constructed fence were replaced with a timber fence.
- (e) In response to Council's finding that the fence does not comply with the public safety requirements of P1(d) of the QDC MP 1.2, based on the structure's proximity to the

seawall possibly not protecting the structural integrity and longevity of the seawall, the Appellant contended that—

- (i) the Appellant's responses to Council's reasons in relation to PO1 of the Coast erosion hazard overlay code address Council's reasons in relation to P1(d) of QDC MP 1.2
 - (ii) proximity to the seawall is not a relevant consideration for assessing P1(d) because QDC MP1.2 makes no reference to the seawall
 - (iii) P1 applies to the streetscape only and the wall is appropriate for the streetscape
 - (iv) removal of the fence would result in nuisance and safety concerns for the users of the subject site
 - (v) Council has permitted other structures of varying scales within the 8.1m setback area
 - (vi) the wall it does not impact the integrity of the seawall because it remains clear of the seawall
 - (vii) the fence complies with PO1 of the Medium Density Residential Zone Code
10. At the hearing on 8 May 2025, the Council tabled submissions, which may be summarised as follows:
- (a) The structure is not sacrificial and would be an impediment to future seawall works.
 - (b) The structure posed a potential safety risk and prevent excavating adjacent to it as part of planned maintenance work within five years.
 - (c) A reference to a recent issue with an unsupported block fence wall exposed by dune erosion in Woodroffe Avenue.
11. At the hearing on 8 May 2025, the Tribunal invited the parties to provide any further submissions that they wished to provide.
12. On 16 May 2025, the Appellant provided additional photos, a further letter from the civil engineer dated 14 May 2025, and made the following submissions:
- (a) Seashell Avenue, by reason of topography and the existing pedestrian boardwalk, was likely to be preferred to Heron Avenue as the point of entry to the beachfront for seawall repairs. This submission referenced photographs showing that following Cyclone Alfred, access was gained through Seashell Avenue for seawall repairs.
 - (b) The Appellant proposed a condition of approval that would make the owner responsible for removing the fence when required to do so by Council to permit access for emergency maintenance of the seawall and would make the owner responsible for all associated costs including the costs of Council removing the structure if the owner failed to do so within the time required.
 - (c) Submitted that the as built fence was consistent with the built form outcome for beachfront properties in the area.
13. It was submitted on behalf of the Appellant that 'The position and solid nature of the fence as proposed is important to the Appellant, to maintain the aesthetic continuation of the

fence for this premium beachfront property and to ensure security and privacy to the residence from the street.’²

Jurisdiction

14. Section 229(1) of the Planning Act provides that schedule 1 (‘the schedule’) of the Planning Act states the matters that may be appealed to a tribunal. Section 1(1)(b) of the schedule provides that the matters stated in table 1 of the schedule (‘table 1’) are the matters that may be appealed to a tribunal. However, section 1(2) of the schedule provides that table 1 only applies to a tribunal if the matter involves one of the matters set out in section 1(2).
15. Section 1(2)(g) provides that table 1 applies to a Tribunal if the matter involves a matter under the Planning Act to the extent that the matter relates to the *Building Act 1975* (Building Act) other than a matter under the Act that may or must be decided by the Queensland Building and Construction Commission.
16. The assessment benchmarks are the QDC MP 1.2 and the Coastal erosion hazard overlay code. Section 33 of the Building Act (Alternative provisions to QDC boundary clearance and site cover provisions for particular buildings) allows a planning scheme to include alternative provisions for single detached Class 1 buildings and Class 10 buildings or structures to the provisions of the QDC for boundary clearance and site cover.
17. Section 1.5(4) (Building work regulated under the City Plan), table 1.5-1 of the City Plan provides that, pursuant to section 33 of the BA, the Coastal erosion hazard overlay code applies to structures in a Foreshore seawall area on the Coast erosion hazard overlay map.
18. The Tribunal is satisfied that it has jurisdiction under section 229(1)(a)(i), and item 1(a) of table 1 and section 1(2)(g) of schedule 1 of the PA.

Decision framework

19. The tribunal is required to decide the appeal in one of the ways mentioned in section 254(2) of the PA, which relevantly provides.
 - (2) *The tribunal must decide the appeal by—*
 - (a) *confirming the decision; or*
 - (b) *changing the decision; or*
 - (c) *replacing the decision with another decision; or*
 - (d) *setting the decision aside, and ordering the person who made the decision to remake the decision by a stated time; or*
 - (...)
20. The onus rests on the Appellant to establish that the appeal should be upheld (section 253(2) of the PA)
21. The tribunal is required to hear and decide the appeal by way of a reconsideration of the evidence that was before the person who made the decision appealed against (section 253(4) of the PA)
22. In addition, the Planning Act provides the Tribunal with broad powers to inform itself in the way it considers appropriate when conducting a tribunal proceeding and it may seek the

² Appendix 5 Civil Engineering Review Letter

views of any person³.

23. The Tribunal may (but need not) consider other evidence presented by a party with leave of the Tribunal⁴.
24. At the hearing, Council provided written submissions with the Tribunal's leave.
25. At the conclusion of the hearing, the Tribunal invited the Council and the Appellant to present any further information they wished to provide, and in response, the Appellant provided further submissions on 16 May 2025.
26. The Tribunal granted the Council and the Appellant respectively leave to present these further submissions.

Material considered

27. The material considered in arriving at this decision was:
 - (a) Form 10 Notice of appeal, grounds for appeal and correspondence accompanying the appeal lodged with the Tribunals registrar on 11 March 2025 (Appendix 1)
 - (b) Decision Notice—(Refusal)—13693, 11 March 2025, Matthew Grimmond, Building Certifier A1509347, Axis Building Certification Pty Ltd
 - (c) Appeal to the Development Tribunal, 11 March 2025, David Geyer, Director Zone Planning Group
 - (d) Development Application Submission Package (Appendix 2), Request for Referral agency assessment, 09 November 2023 (unsigned)
 - (e) Development Application Submission Package (Appendix 2), Referral Agency Assessment Application, Daniel Jackson, 09 November 2023
 - (f) Referral Decision Notice—City of Gold Coast Council (Appendix 3), 10 February 2025, City Development Branch (no signature)
 - (g) Referral Decision Notice—City of Gold Coast Council (Appendix 3), Response Notice - Referral Agency—refusal, Shane Waterings, Coordinator Development Assessment (Fast Track), 07 February 2025
 - (h) Decision Notice—Axis Certification (Appendix 4), Decision Notice (Refusal)—13693, Matthew Grimmond, Building Certifier A1509347, 11 March 2025
 - (i) Civil Engineering Review Letter (Appendix 5), Michael Bale, Director, BEng, MIEAust, CPEng, IntPE, NER, RPEQ, 26 April 2024
 - (j) Email Correspondence—Axis Certification (Appendix 6)—
 1. Sarah Godwin, Monday, 15 January 2024 3:58 PM
 2. Daniel Jackson, Wednesday, 20 December 2023 4:22 PM
 3. Sarah Godwin, Friday, December 1, 2023 2:53 PM
 - (k) Email Correspondence—Zone Planning Group (Appendix 7)—
 1. Roger Sharpe, Thursday, 23 May 2024 7:29 AM

³ Section 249 of the Planning Act.

⁴ Section 253(5)(a) of the Planning Act.

2. Andre Sultan, Wednesday, 22 May 2024 3:14 PM
 3. Roger Sharpe, Tuesday, May 21, 2024 5:04 PM
 4. Andre Sultan, Friday, 26 April 2024 1:18 PM
 5. Roger Sharpe, Thursday, March 21, 2024 7:29 AM
 6. Andre Sultan, Wednesday, 20 March 2024 8:04 AM
 7. Roger Sharpe, Wednesday, March 20, 2024 7:26 AM
 8. Andre Sultan, Friday, 1 March 2024 12:35 PM
- (l) Submission from the City of Gold Coast—Building Tribunal Matter—2 Heron Avenue, Mermaid Beach, 08 May 2025 (paper handed out at hearing)
- (m) Post hearing submission from the Appellant—David Geyer, Director, Zone Planning Group, Letter, 16 May 2025 (Ref: Q24086)—
1. Engineer Response (Appendix 1), Michael Bale, Director/ Principal Engineer, Michael Bale & Associates Pty Ltd, Letter, 14 May 2025

Findings of fact

28. The tribunal makes the following findings of fact:

- (a) Terminology—The foreshore ‘A-Line’ is taken to mean the ‘Coastal erosion Hazard—Foreshore seawall line’ (the Coastal erosion hazard overlay map) and the foreshore ‘seawall line’. The ‘A-Line 8.1m Setback’ is a line 8.1m setback from the foreshore ‘A-Line’. The ‘foreshore setback area’ is the 8.1m setback area between the foreshore ‘A-Line’ and the ‘A-Line 8.1m Setback’. The ‘as constructed’ front boundary fence encroaches into the foreshore setback area by 4.306m.⁵
- (b) As constructed—A rendered block masonry fence along the northern property boundary of 2 Heron Avenue, Mermaid Beach (described as Lot 20 on SP 272502) has already been constructed in association with the approved house construction.⁶
- (c) Development—The following matters triggered a referral of the development application for the as constructed front boundary fence to Council for referral agency response pursuant to section 55(2) of the PA and schedule 9, part 3, division 2, table 3 of the *Planning Regulation 2017*—
 - (i) Fence height—The front boundary fence exceeding 2m in height
 - (ii) Fence encroachment into foreshore setback area—The front boundary fence is built within the 8.1m foreshore seawall setback area (Overlay Code) used to maintain and repair a subsurface seawall storm barrier.⁷
- (d) The development application has been refused in accordance with the referral agency response by Council⁸, primarily due to the rendered block masonry type of fence construction⁹. The Council by way of guidance suggests a timber batten type of fence would be acceptable.

⁵ Site plan, February 2023, Jared Pool Design

⁶ Civil Engineering Review Letter, appendix 5

⁷ Appendix 3 Referral Decision Notice—City of Gold Coast Council

⁸ Referral Decision Notice CGCC, 10 February 2025, Appendix 3

⁹ Development Application Submission Package, 9 November 2023, Appendix 2

- (e) Assessment Manager—The decision notice records that ‘The assessment manager was directed to refuse the application by Gold Coast City Council in accordance with their referral agency role. The refusal is solely because of the direction of the referral agency’.¹⁰
- (f) Appeal—The Appellant appealed to the Development Tribunal against the decision of the assessment manager to refuse the development application for building work for a front boundary fence and fence within foreshore setback.¹¹

Reasons for the decision

- 29. Assessment benchmarks: The Coast erosion hazard overlay code discourages development on the foreshore setback area. Setback performance outcome (PO1) states that ‘buildings and structures are setback from the ocean beach to: (a) ensure the protection and maintenance of the foreshore seawall (boulder wall); (c) protect beachfront properties from erosion and other coastal hazards; (d) ensure the protection and maintenance of active dunal areas; (e) ensure unimpeded access through to neighbouring properties for seawall maintenance’.¹²
- 30. The Tribunal agrees with Council’s conclusion, stated in its reasons for refusal, that ‘...the solid masonry fence and retaining wall within the 8.1m A-line setback area are not considered to be sacrificial structures and subsequently [sic] will not provide adequate access to the seawall for maintenance purposes from Heron Avenue and to neighbouring properties.’¹³ That is, the Tribunal considers that the rendered block masonry fence even with the proposed control joint, is an impediment to the Council in conducting the functions described in PO1(a), (c), (d) and (e).
- 31. In relation to the height of the fence, The Council stated ‘Officers acknowledge that the height of the proposed fence along Heron Avenue is considered to achieve compliance with Performance Criteria P1(a), (b) and (c) of QDC MP1.2. However, due to non-compliance with P1(d), the potential impacts to safety are significant and therefore on balance P1 of the QDC MP1.2 is not considered to be achieved.’¹⁴ The Tribunal notes that the height of the proposed, and as constructed, fence is supported by Council and the Tribunal concurs.
- 32. Precedence—The Tribunal considers that, to approve the application on the basis of a comparable fence approved at 1 Heron Avenue (across the road) for example, would do little to alleviate the Council’s burden of ensuring reasonable access through the rendered block masonry fence. The Tribunal notes that the Council plans to conduct excavations for maintenance on the seawall barrier within the next five years. Further, the Tribunal notes that during emergencies the Council may need access for excavation work to the seawall barrier that provides safety for the public and property exposed to coastal hazards and at risk of erosion.¹⁵ The Tribunal considers that the, as constructed, rendered masonry block fence within the 8.1 setback area does not provide adequate access for foreshore seawall maintenance in accordance with the Coastal erosion hazard overlay code, and it is not

¹⁰ Decision Notice—(Refusal)—13693; Decision Notice—Axis Certification (Appendix 4); Decision Notice—(Refusal)—13693, Matthew Grimmond, Building Certifier A1509347, 11 March 2025

¹¹ Appeal to the Development Tribunal, 11 March 2025, David Geyer, Director Zone Planning Group

¹² City Plan, Setbacks, Table 8.2.4-3, PO1

¹³ Appendix 3 Referral Decision Notice—City of Gold Coast Council

¹⁴ Appendix 3 Referral Decision Notice—City of Gold Coast Council

¹⁵ Appendix 2 Development Application Submission Package

appropriate for safety to the public in accordance with the Queensland Development Code MP1.2, P1(d).

33. Retaining raised fill—It was submitted on behalf of Council that ‘Survey levels on the plans appeared to be inconsistent with actual site levels as the fence appears to be retaining fill within the site, which would mean that the fence cannot be removed and replaced with a dune type fence.’¹⁶ The Tribunal acknowledges this conundrum which emphasises both the non-sacrificial nature of the rendered block masonry fence, and the issue in designing a suitable replacement sacrificial fence.
34. Sacrificial—A sacrificial structure is one of a temporary nature that can be easily removed during erosion events. In this case a control joint is constructed to separate the (permanent) front boundary fence from that part of the fence (sacrificial) on the foreshore setback area to enable its removal for maintenance or emergency access¹⁷. The rendered block masonry fence as constructed, whether or not it provides a retaining wall function, would be required to have adequate footings, designed and certified to ensure that they are erosion resistant to safe standards, while also being of a sacrificial nature (easily removed), for emergency access as needed, on a rare occasion. The Tribunal agrees with Council that the fence is not sacrificial.
35. Light framed fence type: The Council suggests that a timber good neighbour fence or timber batten fence would be acceptable¹⁸. The Council offered the further guidance that a lightweight framed fence clad with in a ‘blue board’ material, to look similar to the as constructed front boundary fence, may offer a solution.
36. Notwithstanding the Appellant’s submission that the seawall can be accessed from the beachfront, the availability of alternative access via the beachfront is not a relevant consideration for the assessment of compliance with PO1 of the Coastal erosion hazard overlay code, which clearly exhibits an intention that the access area for consideration in assessing compliance with the performance requirements is the 8.1m setback area from the foreshore seawall line.

Peter Hope
Development Tribunal Chair
Date: 29 September 2025

¹⁶ Submission from the City of Gold Coast—Building Tribunal Matter, 8 May 2025, tabled at the on-site hearing

¹⁷ Appendix 5 Civil Engineering Review Letter

¹⁸ Appendix 6 Email Correspondence—Axis Certification

Appeal rights

Schedule 1, table 2, item 1 of the *Planning Act 2016* provides that an appeal may be made against a decision of a Tribunal to the Planning and Environment Court, other than a decision under section 252, on the ground of -

- (a) An error or mistake in law on the part of the Tribunal; or
- (b) Jurisdictional error.

The appeal must be started within 20 business days after the day notice of the Tribunal decision is given to the party.

The following link outlines the steps required to lodge an appeal with the Court.

<http://www.courts.qld.gov.au/courts/planning-and-environment-court/going-to-planning-and-environment-court/starting-proceedings-in-the-court>

Enquiries

All correspondence should be addressed to:

The Registrar of Development Tribunals
Department of Housing and Public Works
GPO Box 2457
Brisbane QLD 4001

Telephone 1800 804 833

Email: registrar@epw.qld.gov.au