



**APPEAL**  
*Integrated Planning Act 1997*

**File No. 03-06-056**

---

**BUILDING AND DEVELOPMENT TRIBUNAL – DECISION**

---

**Assessment Manager:** Maroochy Shire Council

**Site Address:** *withheld*-“the subject site”

**Applicant:** *withheld*

**Nature of Appeal**

Appeal under Section 4.2.9 of the *Integrated Planning Act 1997* against the decision of the Maroochy Shire Council to refuse an application for Building Works – retaining wall and fill - on land described as “the subject site”.

---

**Date and Place of Hearing:** 10:00am on Wednesday 19<sup>th</sup> July 2006 at “the subject site”

**Tribunal:** Mr Chris Schomburgk

**Present:** Applicant;  
Mr Roy Saint – engineer for the applicant;  
Mr Brian Benporath – Maroochy Shire Council;  
Mr John Dunn – Maroochy Shire Council.

**Decision:**

The decision of the Maroochy Shire Council as contained in its written Decision Notice dated 26<sup>th</sup> May 2006, to refuse an application for retaining wall and fill, is **set aside in part** and **the application is approved in part, subject to the following conditions:-**

- i) Retaining walls are to be constructed in accordance with Plan No. 271005.02 Sheets 1 and 2 Revision A dated 05/06, prepared by Saint Consulting Engineers, except as amended by these conditions.**
- ii) The retaining wall adjacent to the western boundary (common with *withheld*) is to be setback from that boundary a minimum of 1.5m, with the exception of the northern-most end where it can be angled to meet the boundary coincident with the southern corner of the existing access easement.**

- iii) **The 1.5m strip referred to in condition (ii) above is to be landscaped with trees and shrubs to provide a vegetated screen to the adjacent property. Trees are to be selected to achieve a minimum height of 3 metres within 5 years with a minimum spacing of 1.5m at the time of planting.**
- iv) **Drainage is to be provided within the 1.5m landscaped strip to ensure no additional stormwater flow from the subject site into the adjoining property (Lot 4).**

### **Material Considered**

The material considered in arriving at this decision comprises:

- Form 10 – Building and Development Tribunals Appeal Notice and supporting plans and documentation;
- A written statement provided by the Council at the hearing;
- The relevant provisions of the Town Planning Scheme for Maroochy Shire Council;
- Council’s Decision Notice dated 26<sup>th</sup> May 2006;
- The Queensland Development Code; and
- The *Integrated Planning Act 1997*.

### **Findings of Fact**

I make the following findings of fact:

- The site comprises *withheld* and is located at “the subject site” a suburb of Nambour. The site comprises an area of 4.387ha, is well vegetated, and slopes quite steeply downwards from the north to the south. The site obtains access via a shared easement off *withheld*. The subject site is one of the dominant tenements for the easement, meaning that the easement is owned by others and the subject site enjoys use of it for access.
- The application seeks approval for a series of retaining walls to provide safe and level areas for access within the site and for proposed buildings, being a new shed and extension of an existing shed (studio) on the site.
- The application also includes part of a retaining wall within the access easement. Given the land tenure of the easement, it is not within the jurisdiction of this Tribunal to consider that part of the application as there is no owner’s consent to the application being made over that land. In addition, no information has been provided regarding the terms of that easement to determine whether works within that easement by the applicant are permitted. Accordingly, I do not determine that part of the application, and it is therefore deemed to be refused.
- At the hearing, the Council officers helpfully offered alternatives to the siting of the retaining wall adjacent to Lot 4 that would go some way to appease their concerns. Other proposed retaining walls as part of the application are not in contention.
- The applicant explained that the larger levelled area was required for the maneuvering of exiting vehicles prior to moving onto the access easement, and to provide sufficient sight lines for those vehicles. The easement is narrow in part and includes a crest such that visibility from one end to the other is not achieved. The applicant also proposes an electric sliding gate at the property boundary where it meets the easement.

- The retaining wall adjacent to Lot 4 is likely to be up to 2.5 or 3m in height at its highest point. Lot 4 is well below the existing level of the subject site, such that the retaining wall as proposed would present as a significant visual feature from Lot 4.

Based on my assessment of these facts, it is my decision that **the appeal is upheld in part. Council's decision** to refuse the Application for Building Works – retaining walls and fill - is set aside and **the application is approved in part, subject to conditions, being:**

- i) Retaining walls are to be constructed in accordance with Plan No. 271005.02 Sheets 1 and 2 Revision A dated 05/06, prepared by Saint Consulting Engineers, except as amended by these conditions.**
- ii) The retaining wall adjacent to the western boundary (common with Lot 4 on *withheld*) is to be setback from that boundary a minimum of 1.5m, with the exception of the northern-most end where it can be angled to meet the boundary coincident with the southern corner of the existing access easement.**
- iii) The 1.5m strip referred to in condition (ii) above is to be landscaped with trees and shrubs to provide a vegetated screen to the adjacent property. Trees are to be selected to achieve a minimum height of 3 metres within 5 years with a minimum spacing of 1.5m at the time of planting.**
- iv) Drainage is to be provided within this 1.5m landscaped strip to ensure that no additional stormwater flows from the subject site into the adjoining property (Lot 4).**

#### **Reasons for the Decision**

- That part of the retaining wall proposed within the access easement cannot be assessed under this application, as no owner's consent for that land has been provided.
- The proposed amendment to the location of the retaining wall adjacent to Lot 4 (set back 1.5m) does not significantly reduce the maneuvering area on the site, as it is unlikely that a turning vehicle would come that close to the boundary in any event. Sufficient levelled area for vehicles will be achieved under the conditions of this approval.
- The retaining wall as originally proposed adjacent to Lot 4 would, in my opinion, create an undesirable visual impact to the occupants of Lot 4. The amendment as per the conditions of this approval will overcome that visual impact.
- The amendments mean that the retaining wall adjacent to Lot 4 will comply with Council's requirements, and this can be achieved without significantly affecting the utility of the levelled area.

---

**Chris Schomburgk**  
**Building and Development Tribunal General Referee**  
**Date: 20<sup>th</sup> July 2006**

## **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 Local Government and Planning  
PO Box 15031  
CITY EAST QLD 4002  
**Telephone (07) 3237 0403: Facsimile (07) 32371248**