



APPEAL
Integrated Planning Act 1997

File No. 03-08-026

BUILDING AND DEVELOPMENT TRIBUNAL - DECISION

Assessment Manager: GMA Certification Group P/L

Concurrent Agency: Gold Coast City Council

Site Address: *withheld*—‘the subject site’

Applicants: *withheld*

Nature of Appeal

Appeal under Section 4.2.9 of the *Integrated Planning Act 1997* (IPA) against the decision of GMA Certification Group P/L to refuse a development application for proposed building works, namely a retaining wall.

Date and Place of Hearing: 8.30 am on Monday 28 April 2008 at ‘the subject site’

Tribunal: Paul Smith – Chairperson
Greg Rust – General Referee

Present: Applicant/Owner
Tanya Smith – GMA Certification Group P/L
Patrick Giess – Gold Coast City Council Representative
Wiremu Cherrington – Gold Coast City Council Representative

Decision

In accordance with Section 4.2.34 (2)(a) of the IPA, the Tribunal **confirms** the decision appealed against and the appeal is dismissed.

Background

The subject land:

1. is located in the Residential Choice Domain of the Gold Coast City Council’s planning scheme. The siting requirements for a retaining wall in the scheme are 6000mm from the road Front Property Boundary and 1500mm of the side and rear boundaries;
2. is vacant;
3. has a significant fall, in the order of 10.0m, from Wunburra Circle towards the north east;
4. has a common boundary to the north west with a public park;
5. has a common boundary to the south east with a residential allotment on which is constructed a house and a substantial rock retaining wall.

A single retaining wall has been constructed on the subject land.

Significant fill has been placed on the subject land. That fill has not been retained.

The applicant says that the existing retaining wall was constructed without his consent and the fill was placed without his consent. The constructed retaining wall exceeds 1200mm in height and extends to meet the southern side boundary.

The applicant has offered to remove that part of the retaining wall that exceeds 1.2m in height and to remove the fill.

The development application which is the subject of this appeal was lodged with GMA Certification Group P/L on 16 January 2008 for three separate retaining walls.

The application was referred to Gold Coast City Council for a relaxation of height and boundary clearance on 27 February 2008.

No approval from the Council was received and the application was refused.

GMA Certification Group P/L advised, subsequent to the hearing, that amended plans that comply with the Planning Approval for the Estate have been received and an approval will be issued without referral to Council.

Material Considered

- 'Form 10 – Notice of Appeal' with accompanying material submitted with the Registrar, including grounds for appeal;
- Decision Notice from GMA Certification Group P/L, dated 4 April 2008;
- Disclosure Plan showing proposed retaining wall;
- 'Form 18 – Notice of Election' from Gold Coast City Council;
- Verbal submissions from the applicants at the onsite hearing;
- Verbal submission from GMA Certification Group P/L representative at the onsite hearing;
- Verbal submissions from Council representatives at the onsite hearing;
- Additional information received from GMA Certification Group P/L, 29 April 2008;
- Additional information received from Council, 29 April 2008;
- *The Integrated Planning Act 1997 (IPA)*;
- *The Integrated Planning Regulation 1998*;
- *The Building Act 1975*;
- *The Building Regulation 2006*;
- *The Queensland Development Code Part MP1.2*;
- Copy of original Council approval dated 5 January 2006;
- Letter from GMA Certification Group P/L, dated 24 April 2008;
- Various emails between the Tribunal and the parties including:
 - a. emails to the applicants dated 29 April and 7 May and the applicants' response 7 May 2008;
 - b. emails to GMA Certification Group P/L 29 April, 7 and 8 May 2008 and its responses of 29 April and 8 May 2008.
 - c. emails to Council 29 April 2008 its response 7 May 2008.

Findings of Fact

The retaining wall that is the subject of this appeal does not comply with the 2006 Planning Approval for the Estate.

The new “amended plans” submitted to GMA Certification Group P/L after the hearing of the appeal, is a new application that must be assessed and decided on its merits.

Reasons for the Decision

The 2006 Planning Approval for the Estate was approved by judgement of the court and it is not within the power of the Tribunal to approve a change from that approval.

Paul Smith

Building and Development Tribunal Chairperson

Date: 21 May 2008

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
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