



**APPEAL**

**File No. 3/01/050**

*Integrated Planning Act 1997*

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## **BUILDING AND DEVELOPMENT TRIBUNAL - DECISION**

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**Assessment Manager:** Gold Coast City Council

**Site Address:** 3 Laurel Court, Sorrento

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### **Nature of Appeal**

Appeal under section 24 of the Building Act 1975 against the decision of the Gold Coast City Council to issue an enforcement notice pursuant to section 22 of the Act, as Council reasonably believes a single brick dividing fence is dangerous and unfit for use. Council requires the following to be done:-

- a. secure the brick fence to prevent sudden collapse, or;
- b. provide a report or a drawing by a Registered Professional Engineer of Queensland (RPEQ) to rectify the brick fence, or;
- c. repair/rectify or remove and reconstruct the brick fence under the supervision of and as directed by the RPEQ (suitable engineer designed drawings signed by the RPEQ must be provided and submitted to Council.)

The brick fence is erected between properties at Lots 331 and 332 Sorrento.

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**Date and Place of Hearing:** 9.00 am on 8 November 2001  
at Level 25, 41 George Street, Brisbane

**Tribunal:** Allan Mitchell Williams

**Present:** Applicant  
Brian Gobie – Building Surveyor Gold Coast City Council

**Inspection at 1 Laurel Court, Sorrento at 9.00 am on 14 December 2001**

**Present:** Owner  
Brian Gobie - Building Surveyor Gold Coast City Council

## **Decision**

In accordance with section 4.2.34. of the Integrated Planning Act 1997, I hereby confirm the decision of the Gold Coast City Council to issue an enforcement notice dated 3 October 2001, and further direct the Gold Coast City Council to issue a similar enforcement notice to the owners of Lot 332.

## **Background**

1. A dividing structure between properties, lots 331 and 332, in the form of a white clay brick wall with "Raked" mortar joints, built approximately 1978 has now failed over a length of 20 metres adjacent to an "in ground" pool and is now considered a dangerous structure.
2. The failure has resulted in the amenity of the pool being denied to the owners of lot 332.
3. The Gold Coast City Council has issued an enforcement notice under the Integrated Planning Act for remedial action to be taken by the owners of the adjacent Lot 331.
4. The applicant and owner of Lot 331, by professional land survey claim that the said wall/fence is not on his property and has no liability in the matter.
5. The applicant further claims that the wall/fence was built by then owners, of Lot 332 for their enjoyment and pleasure.
6. The applicant denies any knowledge of the "water main" bursting on Lot 331.

## **Material Considered**

1. Letter from Gassman & Associates Pty Ltd licensed land surveyors.
2. Statutory declaration by Brian Francis Gassman.
3. Plan of identification survey of part of Lot 331.
4. Detail plan Nos 2112-01-01 and -03 over (boundary) Lots 331 and 332.
5. Detail plan No 2112-01-02 over (boundary) Lots 331 and 332 with home layout and assumed original land form contours in blue.
6. Digital photos of wall/fence between Lot 331 and 332 and related site aspects, taken by others and presented at the hearing.
7. Digital photos taken by Tribunal, Allan Mitchell Williams, on 14 December 2001.
8. Engineers report by CSF Consulting Engineers dated 28 September 2001.
9. Building Act 1975 Section 18, Section 19.(1)

10. Dividing Fences Act 1953, Part 1, Section 6.(1), Part 2, Section 7., Part 3, Sections 15 and 22.
11. Approved building plan BA 5-5706-(9) for a swimming pool in lot 332.[pool built after the construction of the home]
12. Statements on site by current owner of Lot 332 on 14 December 2001.

### **Findings of Fact**

1. The white clay brick structure has failed and constitutes a danger in its present form over a distance of approximately 20 metres along the rear section of the title boundary between Lots 331 and 332.
2. Statutory declaration by Brian Francis Gassman of Gassman and Associates Pty Ltd that “the existing brick wall which appears to be predominately built on the adjoining Lot 332”.
3. Statutory declaration by Brian Francis Gassman that “Council data is shown in blue, and from this data it appears that there has been substantial earthworks on Lot 332 to allow the construction of the swimming pool and adjoining areas”.
4. Note on identification survey #2112-01 the “base of the (single) brick wall is generally on (the title boundary) line” of Lot 331 i.e. the brick wall/fence by survey is within the title boundary of Lot 332.
5. The building platform used for the pool in Lot 332 is approximately 1.2 metres below the natural level of the adjacent land in Lot 331 in accordance with the reduced levels recorded on plan 2112-01-03.
6. The higher level of soil in Lot 331 is pressing on the dividing structure such as to contribute to failure over the 20 metres length with significant movement over the rear 10 metres where the soil height difference is approximately .6 metres.
7. The timber feature fence of 450 mm high is attached to the dividing structure on the side facing Lot 331 to achieve 1.8 metre height or more above natural ground, in accordance with the Gold Coast City Council requirements. This is adding to the structure’s potential instability. Measured height of the fence section between the homes is 1.66 metres in brick plus 450 mm in timber making an actual total height of 2.110 metres.
8. The timber fence extension to the masonry fence is within the title boundary of Lot 331, this is therefore subject to the Dividing Fences Act 1953.
9. The addition of the timber fence was fitted by the then owners of Lot 332 at the time of construction of the home and pool to meet Council requirements.
10. A single leaf brick structure without strengthening may not be able to resist the forces that may be being imposed upon it by wind loading. [the strength of the wall to resist overturning is reduced by the mortar joints being “raked”. From the photos submitted, brick piers appear to have been installed at intervals over the length of the wall including the portion between

the homes (these piers lie inside Lot 331).

11. The dividing structure over its highest sections, has been subject to an attempt to strengthen it by the fitting of 75 x 75 steel posts filled with concrete in Lot 331 and holding back the brickwork with a limited number of steel bolts passed through the bricks. This action was carried out by persons unknown and has not prevented some overturning, slipping or cracking movement of the highest section of the wall and the timber fence above.
12. The general level of both building blocks as prepared by the developer of the canal estate is visually in the region of 3.8 to 4.0 metres relative datum.
13. The building platform of Lots 332 and 331 had a set back of 9 metres from the canal concrete revetment wall and that with a gradient suggested by Council of 1 to 4.5 would give a rise of only 2.00 metres or 3.1 m relative datum. This is less than the current situation where relative levels are 3.7 to 3.8 metres for both homes, with garden beds etc built up to approximately 4.0 metres on both lots. The building platform for the home on Lot 331 has been filled to extend the maximum allowed towards the canal causing a steeper grade to the revetment wall over the width of the home.
14. Blue contours shown on Plan No 2112-01-02 give a greater rise at the point where the wall plus fence height of 2.8m i.e. requiring a cut in the soil of an average of 1.2 m over the length of the garden bed/box in Lot 332.
15. From the end of the garden bed/box in Lot 332 to the canal wall there appears to be fill built up against the brick wall on Lot 331 of an average of 0.6 m which is causing this portion of the wall to lean over 80 to 105 mm which is an unstable state.
16. Lateral movement of the base of the wall at the end of the flower bed/box appears to be in the order of 40 mm. Brickwork of the flower bed/box has been displaced and the lateral stability of the wall appears to be held by the pool structure of Lot 332 together with a number of specially fitted temporary stays.
17. From a photograph submitted the archway between the dividing structure at the front wall of the home on Lot 332 is in matching brick to that of the fence/structure. [archway has now been rendered to match the home].
18. The external walls of the home on Lot 332 have been rendered by the owner over bricks similar to those in the wall/fence visually concealing the type of brick used in the construction of the home.
19. The flower bed/box in Lot 332 is also subject to failure in the area between the pool and the wall and is in the same type of brick as the retaining wall, a further indication of construction of the wall by the then owners of Lot 332.
20. The "in-ground" pool of Lot 332 is set in the as constructed slope of the soil with the upper portion to the south, free standing as shown in a photo taken from the canal.
21. The building platform for the home on Lot 332 has been built up above that indicated by the original soil level defined by the blue contours on plan No 2112-01-02.

22. The indicative original site contours, plotted in blue, prior to building construction as plotted by Gassman & Associates on plan Number 2112-01-02 from Gold Coast City Council records, is only approximate but indicative of the pre building condition.
23. By Council building approval records as quoted by the Applicant, the home and pool on Lot 332 were constructed prior to the home on Lot 331.
24. The portion of wall under determination constitutes part of outdoor pool fencing for both Lots 331 & 332 within the meaning of the Building Act 1975 and its maintenance under Section 19.(1).
25. The soil to be retained between Lots 331 and 332 being of a height of 1 metre or greater requires a design by a Registered Professional Engineer for the structure and appendages in accordance with the Gold Coast City Council requirements.
26. Site inspection revealed that the line of the top of the wall/fence built between the homes was carried level for 5 metres before the first step down despite the effective height increase of 1.0 metres above the pool platform, then at this level for a further 5 metres before the next similar step down of 430mm.
27. Site inspection revealed that the timber fence extension was approximately 450 mm high and made from hardwood now in need of repair/replacement due to decay from exposure to the weather.
28. A colour change in the brickwork at or about the fill line behind as claimed by the adjoining owner could not be accurately verified on site in daylight but is accepted as being discernable at night under artificial light.
29. A boundary wall on the Western side of Lot 332 has been constructed in a similar white clay brick.

### **Reasons for the Decision**

1. The bulk of the failing masonry wall structure lies within the title boundary of Lot 332.
2. The construction of the dividing brick structure was made necessary over the length of the pool and beyond by the owners of Lot 332 having to construct a suitable platform at a level 1.2 metres below the adjacent land in Lot 331 over a distance of approximately 10m.
3. The construction of a wall/fence for the purpose of site and building architecture matches the type of brick used in the construction of the residence of Lot 332 is the same as the wall over its full length and that of the flower bed/box.
4. The flush face of the dividing structure to Lot 332 is prima facie indication of construction by the then owners of Lot 332.
5. Fill has been placed against the wall by the owners of Lot 331 at least over the second 10 metres of length of variable depth ranging from 0 to 1.2 metres.

6. Brick piers built with the wall and the timber fence extension is on Lot 331 creating the structure as a dividing fence.
7. The Dividing Fences Act 1953 Part 3 (15) and (22) applies. Both parties are equally responsible for repairs.
8. The Building Act 1975 Section 19. Viz “Apportionment of cost of constructing dividing fence” applies – both parties are equally responsible for repairs where the dividing fence performs as a pool fence for both properties.

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**Allan Mitchell Williams**  
**Building and Development**  
**Tribunal Referee**  
**Date: 18 December 2001**

## **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  
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