



**APPEAL**  
*Integrated Planning Act 1997*

**File No. 03-08-024**

## **BUILDING AND DEVELOPMENT TRIBUNAL DECISION**

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**Assessment Manager:** GMA Certification Group P/L

**Concurrence Agency:** Gold Coast City Council

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

**Applicant:** *withheld*

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### **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 dated 20 March 2008 to refuse a development application for proposed building works, namely additions to a class 1a dwelling because it was directed by the Gold Coast City Council, acting as a concurrence agency, to do so.

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**Date and Place of Hearing:** 9.45 am on Monday 28 April 2008 at ‘the subject site’

**Tribunal:** Paul Smith – Chairperson  
Greg Rust – General Referee

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

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### **Decision**

The Tribunal, in accordance with Section 4.2.34 (2) (c) of IPA, **sets aside** the decision of GMA Certification Group P/L to refuse a development application for proposed building works, dated 20 March 2008, to refuse the building development application and **replaces it with the following decision:-**

**GMA Certification Group P/L is directed to assess and decide the application disregarding the response from Gold Coast City Council, acting as a concurrence agency, that the application is to be refused.**

**GMA Certification Group P/L is directed to decide that application within five business days of receipt of this decision.**

## **Background**

The Development application, the subject of this appeal, is for retrospective approval of alterations to an existing building, once used as a garage to house a vehicle.

The structure is free-standing and access to the dwelling on the same allotment is via a flight of stairs open to the sky.

The structure once had its own laundry facilities but these facilities have been removed. The structure has its own bathroom and an area suitable for use as a kitchen.

The Applicant admitted that the structure was once used as a separate dwelling unit but advised that it is no longer used for that purpose nor is it intended that it be used for that purpose in the future. The Applicant advised that the building will be used as additional bedroom accommodation for family guests who visit from time to time.

Council representatives expressed the view that the design of the structure makes it suitable for use as a second dwelling on a single allotment and that an application for a material change of use for “Family Accommodation” should be made. If such an application was made, Council representatives believed the application would have reasonable prospects of success.

The subject land is included in the Detached Dwelling Domain of Council’s planning scheme, which prescribes, as an acceptable solution, a 1.5m side boundary clearance. The existing building’s eaves is within about 850mm of the side boundary.

Council representatives expressed the view that the following should be required:

- Written advice from the neighbour to the south of the subject land expressing their opinion about the relaxation of the side boundary clearance; and
- A statutory declaration from the Applicant swearing to the effect that they have no immediate plans to use the building which is the subject of the appeal as a separate dwelling and that they acknowledge that a development application for a material change of use will be required.

The Applicant advised that there is no utility in making an application to use the structure as “Family Accommodation” because that is not the intended use. The Applicant expressed no opposition to obtaining the written advice from the neighbours or the statutory declaration suggested by Council representatives.

The Tribunal gave the following directions dated 21 May 2008:

*In accordance with Section 4.2.34 of the IPA the Tribunal makes the following directions:*

1. *GMA Certification Group P/L to submit to the Tribunal a draft decision notice approving the application subject to conditions it considers appropriate. The draft decision is to be given to the Tribunal, the applicant and Council by close of business Friday, 30 May 2008; and*

2. Council to give to the Tribunal, the applicant and GMA Certification Group P/L submissions on the draft decision notice by Friday, 6 June 2005; and
3. The Tribunal to make its decision as soon as is practicable after receipt of Council's submissions.

GMA Certification Group P/L complied with the Tribunal's directions by providing to the Tribunal and to Council a draft Decision Notice by email on Thursday 29 May 2008. Notwithstanding several requests from the Registrar of the Tribunals, Council made no submissions on the draft Decision Notice.

On 19 June 2008 Council advised the Registrar of the Tribunals " I apologise for the delay. I would like to inform you that Council does not support the decision to approve the application and will highly likely lodge an Appeal".

### **Material Considered**

- 'Form 10 – Notice of Appeal' with accompanying material submitted with the Registrar;
- Decision notice from GMA Certification Group P/L, dated 20 March 2008;
- Letters from Gold Coast City Council to the Applicant, dated 22 January 2008 and 5 March 2008;
- Site Plan – reference number BA 20073963;
- 'Form 18 – Notice of Election' received from Council;
- Submission from the Applicant and owners at the on-site hearing;
- Submission from GMA Certification Group P/L representative;
- Submission from Council representatives;
- Tribunal directions dated 21 May 2008;
- Draft GMA Certification Group P/L Decision Notice dated 1 March 2008, given by email to the Tribunal and to Council on Thursday 29 May 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 (QDC)*;
- Gold Coast City Council planning scheme.

### **Findings of Fact**

The application is for the use of a class 1a building, once used as a garage to house a vehicle. It is not "a second dwelling on a single allotment" so as to fall under the definition of "Family Accommodation" in Council's planning scheme.

Written advice from the neighbour to the south of the subject land, expressing their opinion about the relaxation of the side boundary clearance, will not, in this particular case, assist the Tribunal in making its decision.

The Tribunal inspected the site and formed the opinion that because the building is an existing building, and has been existing for many years, its use for bedroom accommodation rather than for vehicular accommodation will not, in its current position, materially alter the impact, if any, on the neighbour.

A statutory declaration from the Applicant swearing to the effect that they have no immediate plans to use

the building, which is the subject of the appeal, as a separate dwelling, is not relevant to this application.

The application before the Tribunal is not an application to use the building for “family accommodation”. There is also no evidence before the Tribunal that the Applicant intends to use the building for this, or any other purpose, that requires a MCU development permit.

The building when used for bedroom accommodation complies, or can be made to comply by the imposition of reasonable conditions of the nature set out in GMA Certification Group P/L’s draft Decision Notice date of 1/03/08, with all relevant requirements of the *Building Act 1975*, including the Building Code of Australia, relevant to a Class 1a building.

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**Paul Smith**

**Building and Development Tribunal Chairperson**

**Date: 23 June 2008**

## **Appeal Rights**

Section 4.1.37. of the IPA 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  
PO Box 15009  
City East QLD 4002

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