



## Building and Development Tribunals—Decision

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### *Integrated Planning Act 1997*

<b>Appeal Number:</b>	<b>3—09—007</b>
<b>Applicant:</b>	Achim and Beth Ulzhoefer
<b>Assessment Manger:</b>	Tanya Smith for and on behalf of GMA Certification Group
<b>Concurrence Agency:</b> (if applicable)	Gold Coast City Council – ‘Council’
<b>Site Address:</b>	2 Goodwood Way, Arundel and described as Lot 544 on SP120925—the subject site

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### **Appeal**

Appeal under section 4.2.9 of the *Integrated Planning Act* (IPA) against the decision of GMA Certification Group to refuse a development application for building works, namely a gate house within the Goodwood Way alignment. The decision was based on a concurrence agency response from Council.

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<b>Date of hearing:</b>	Thursday – 2:00pm, 12 February 2009
<b>Place of hearing:</b>	The subject site
<b>Tribunal:</b>	Dennis Leadbetter – Chairperson Greg Rust – Member
<b>Present:</b>	Achim Ulzhoefer – Applicant Beth Ulzhoefer – Applicant Tanya Smith – Assessment Manager Michael Rourke – GMA Certification Group Representative Peter Krook – Gold Coast City Council Representative Jack Matijevic – Gold Coast City Council Representative

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### **Decision:**

The Tribunal, in accordance with section 4.2.34 (2)(c) of the IPA, **sets aside** the decision of GMA Certification Group, dated 19 December 2008, to refuse the development application for building work and replaces it with the following decision:-

The assessment manager, in accordance with section 4.2.34 (1), is **directed** to decide the development application for building works if satisfied that the application complies with the following:-

1. Conforms with the drawing prepared by James Taylor Building Designers, ref number OBRIEN90714D dated 22 July 2008, with the gate house to the Goodwood Way alignment; and
2. All other relevant building assessment provisions applicable to the building development application.

## **Background**

The applicant has carried out substantial work to the subject site including the construction of a rendered block retaining wall / metal decorative fence to the street alignment and substantial landscaping to the area between the dwelling and the road alignment.

The applicant rang council to enquire about the legality of the gatehouse, and was told he had to submit drawings for a relaxation of the street alignment setback. Drawings were subsequently submitted, and Council responded with a conditional approval, as per their letter dated 15 October 2008. The Council had requested that the gate house be set back 1850 mm from the street alignment, a position which would place the gate house outside a 9.0 metre x 9.0 metre truncation of the two road frontages.

The applicant wishes the subject site to be secure because of their age, and also the gate house to allow visitors to be under cover while waiting for the applicant to open the gate in inclement or hot weather.

The applicant submitted drawings to GMA Certification Group for building approval and because of the conditional approval by the Council, GMA Certification Group refused the application.

## **Material Considered**

1. 'Form 10 – Notice of Appeal' and grounds of appeal contained therein lodged with the Registrar on 20 January 2009;
2. 'Form 8 – Notice of Election' provided to the Registrar by the Council on 11 February 2009;
3. Drawings submitted with the appeal application;
4. Verbal submissions from those attending the appeal hearing;
5. The IPA;
6. The Integrated Planning Regulation 1998;
7. The QDC;
8. The Gold Coast Planning Scheme Part 5, Division 2 Chapter 4;
9. An extended inspection of the subject site and consideration of traffic sight lines and other matters; and
10. Additional drawings requested and supplied by the assessment manager following the hearing.

## **Findings of Fact**

The Tribunal makes the following findings of fact:

- The fence and retaining wall to the Goodwood Way and Petworth Court frontage are constructed, with the retaining wall approximately 900 mm high above footpath level and the open metal fence above to approximately 2.0 metres above footpath level;
- The columns and side walls to the gate house are also constructed, as per the drawing submitted with the appeal;
- The subject site is a corner site with its prime frontage to Goodwood Way;
- The footpath to both streets is approximately 4.5 metres wide;
- The topography of the surrounding area falls to the east, ie the corner;
- The detached dwelling is two storey, and set back approximately 11.0 metres from the Goodwood Way alignment.

## **Reason for the Decision**

Council's concurrence agency response, dated 15 October 2008, was to issue a conditional permit under Part 5, Division 2, Chapter 4 of the Gold Coast Planning Scheme.

The Tribunal has difficulty in accepting such a submission, on the basis that Council's planning scheme does not specifically have provision for a gate house to a detached dwelling under the provisions of that section. That section also indicates that detached dwellings, which include ancillary facilities associated with a detached dwelling, are self assessable. Much of the work being carried out by the applicant would be classified as landscaping, which under *Section 3 Table of Development, E: Operational Work – Infrastructure and Landscape Work*, the planning scheme specifically **exempts** landscape works associated with a detached dwelling.

At the hearing, Council officers indicated that they had made the decision to move the gatehouse back to 1850 mm from the Goodwood Way alignment, as the gate house fell within the 9.0 metre x 9.0 metre truncation at the corner of the 2 road frontages mentioned within the QDC MP1.2 A1 (b) (ii) (C) (figure 3).

Council indicated that this was because of road safety, and also why they requested the sides to be of an open nature. The Tribunal is of the opinion that council has misinterpreted the intent of this section, as it limits the height of structures within the defined area to 2.0 metres. Any structure 2.0 metres high in that defined area would totally obstruct traffic vision, except from the cab of a high truck or similar.

The relevant section of the QDC MP 1.2 applicable to site lines is P7 and A7, which limits *the height of structures, including fences and retaining walls and other structures are not more than 1.0 metre high within a truncation made by 3 equal chords of a 6.0 metre radius curve at the corner of the 2 road frontages.*

The gate house does fall inside this 6.0 metre x 6.0 metre area.

Under the QDC MP 1.2, a roofed gate house is provided for as an acceptable solution to Performance Criteria P1, provided it *has a maximum floor area of 4 m<sup>2</sup> and not more than 2.0 metre wide elevation to the street and not more than 3.0 metres in height.*

The gate house proposed is 2.2 metres wide and slightly over the 4 m<sup>2</sup> in floor area.

The **Acceptable Solutions** under the QDC MP 1.2 need not be the only solutions, and the Local Authority does have the capacity to allow alternative solutions, where the intent of the relevant Performance Criteria has been met.

The Tribunal is of the opinion that specific criteria P1 and P7 are relevant to this appeal.

The specific criteria of P1 are:

- (a) the bulk of the building or structure; and
- (b) the road boundary setbacks of neighbouring buildings or structures; and
- (c) the outlook and views of neighbouring residents; and
- (d) nuisance and safety to the public; and

The specific criteria for P7 is:

- (a) The size and location of structures on corner sites provide for adequate sight lines.

The Tribunal is of the opinion that the proposed gate house, being slightly larger and wider than the nominated acceptable solution will not be in conflict with the intent of Performance Criteria P1

The Tribunal is also of the opinion that the gatehouse will not cause any impediment to traffic sight lines, because of:

- The width of footpaths, being approximately 4.5 metres wide;
- The site shape and that of the road alignment which has an included angle greater than 90 degrees (in fact nearly 100 degrees);
- The topography of Goodwood Way rises from the intersection in a north west direction;
- Goodwood Way also curves to the right further enhancing site lines around the corner of the subject site to the top of the hill; and
- The speed limit to the area is 50 kph.

The Tribunal has also looked at all the conditions referred to in Council's concurrence agency response, dated 15 October 2008, and considers conditions 1, 2 and 3 of relevance and have been dealt with above. In relation to conditions 4 to 10 inclusive, the Tribunal considers these to be irrelevant, having cognizance of the size and nature of the development. In relation to condition 11, the Tribunal has dismissed that point on advice from the Council Officers at the hearing, that there were no council sewer mains in the area.

### **General Comments**

The Tribunal is strongly of the opinion that this application should have been approved by GCCC, as it aligns closely with the stipulated **allowable solution** contained within the QDC MP 1.2 A1(d)(iii).

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**Dennis Leadbetter**

Dip Arch QUT, Grad Dip Proj Man QUT, METM UQ

**Building and Development Tribunal Chair**

**Date: 25 February 2009**

## **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 grounds:

- (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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CITY EAST QLD 4002  
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