



**Building and Development Tribunals**

**Queensland Government**

Department of **Local Government and Planning**

**APPEAL**

*Integrated Planning Act 1997*

**File No. 03-06-006**

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

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**Assessment Manager:** 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* against the decision of the Gold Coast City Council to impose conditions of approval on Preliminary Building Application (No. 2521452) in respect of the height and location of retaining walls for the purpose of filling of land located at “the subject site”.

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**Date and Place of Hearing:** 10.30 am, Monday 23 January 2006  
at Nerang Administration Centre, Nerang  
Heard concurrently with Appeal No 03-06-003

**Tribunal:** Greg Rust

**Present:** Applicant  
Roger Sharpe – Gold Coast City Council  
Craig Tonkin – Gold Coast City Council  
Casey Mitchell – Gold Coast City Council

### **Decision**

I **confirm** the Gold Coast City Council’s decision to impose conditions on Preliminary Building Application (No. 2521452) in relation to the height and location of the proposed retaining walls, therefore the appeal is **dismissed**.

### **Background**

Prior to the lodgement of the preliminary building application, the applicant made enquiries with persons unknown at Council and believed that favourable consideration of his proposal would be given.

Similar examples of retaining wall structures may be found in the vicinity and the applicant believed that a precedent had been set for similar retaining walls to be approved on the applicant's property. Photographs and submission were tendered by the applicant concerning Lots *withheld* which are both owned by the applicant.

The Council submitted that a number of retaining walls built within the vicinity had been constructed without approval or contrary to approval in which the Council is conducting investigations.

The land in question was the subject of subdivision approval by the Gold Coast City Council granted on 3 November 2000 which also included conditions in respect of operational work for earthworks including filling of land. The Council cited the land development guidelines and Australian Standards as being an applicable standard for this application. The land was not platformed at that time and sold leaving individual owners the responsibility should they intend to fill land. The Gold Coast City Council, for consideration, have included a submission outlining grounds in support of its approval.

### **Material Considered**

- Form 10 – Building and Development Tribunals Appeal Notice lodged 17 January 2006 by Applicant including a written submission, photographs and plans;
- Verbal submissions made during appeal 23 January 2006 by Applicant and Gold Coast City Council representatives;
- Decision Notice for subdivision of land dated 3 November 2000;
- Copy of approved plan received by the Tribunal 21 February 2006;
- Submission of Gold Coast City Council dated 23 January 2006;
- Land Development Guidelines of Gold Coast City Council;
- The *Standard Building Regulations 1993*; and
- The Queensland Development Code.

### **Findings of Fact**

- The land in question slopes from front to rear as well as side to side on a hillside.
- Retaining walls proposed will have a maximum vertical height of about 2.4 metres essentially resulting in a large percentage of the land being filled.
- The Council's approval conditions sets the retaining walls back from boundary lines as well as stepping the walls creating a terrace effect.
- Council has Land Development Guidelines which it has used as a guide to condition its approval.
- The area in which the lot is located has a number of examples with similar retaining wall construction to that proposed by the applicant.

### **Reasons for the Decision**

Traditionally sloping land is usually the subject of some cut and fill operations in order to provide a platform for house construction. In this case, very minor cut for the garage is proposed only, therefore a substantial amount of land filling will be necessary to have the platform level from the highest part of land to the lowest part of the land. This filling will require retaining of a high nature and consideration of the visual effect is relevant.

Terracing of hillside land is common and often consists of smaller cut operations to the high side of land and slightly higher fill on the low side of the land. House design may also contain step design reducing the volume of earthwork and retaining structures. Council's policy is clear in this respect and states that retaining structures should generally be located on the "low side" which is clearly not the case in this proposal as the retaining is also located on the high side of the land. Set back distance from a boundary line means clear ownership of retaining structures, which when built to or over boundary lines of properties, can lead to disputes should rectification works is ever required.

The bulk and scale of the proposed vertical retaining walls on the boundary provides unacceptable visual impact to adjoining properties. Vertical retaining walls also lead to canyon type areas which are unusable and often inaccessible. Lower retaining structures near boundaries and stepped allow for landscaping to be provided along separation boundaries creating better visual amenity.

The fact that a number of unauthorised filling and retaining has occurred in the vicinity is not reason to suggest precedent has been made and therefore I cannot give a favourable decision on this basis alone.

For these reasons, I find the decision contained in this report in favour of the Gold Coast City Council preliminary approval No 2521452.

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**Greg Rust**  
**Building and Development**  
**Tribunal Referee**  
**Date: 7 March 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  
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