



## Building and Development Tribunals—Decision

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### *Integrated Planning Act 1997*

<b>Appeal Number:</b>	3—09—083
<b>Applicant:</b>	Ms Barbara Wade 4 Harrison Court, Mudgeeraba
<b>Assessment Manager:</b>	Gold Coast City Council (Council)
<b>Concurrence Agency:</b> (if applicable)	Not Applicable
<b>Site Address:</b>	4 Harrison Court, Mudgeeraba and described as Lot 58 on RP 851147— the subject site

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### **Appeal**

Appeal under section 4.2.24 (3) of the *Integrated Planning Act 1997* (IPA) against an enforcement notice issued by Gold Coast City Council on 14 October 2009 for a class 10b retaining wall that Council believes is dangerous and dilapidated.

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<b>Date of hearing:</b>	24 November 2009
<b>Place of hearing:</b>	4 Harrison Court, Mudgeeraba
<b>Tribunal:</b>	Greg Rust – Chair
<b>Present:</b>	Ms Barbara Wade – Applicant and Owner Mr Ivan Rohrlach – Applicant's Partner Mr Stephen Belyea – Engineer appointed by owner Mr Craig Johnstone – Gold Coast City Council representative

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### **Decision:**

The Tribunal, in accordance with section 4.2.34 of the IPA

- **confirms** the decision made by Council to issue an enforcement notice to the owner of 4 Harrison Court, Mudgeeraba (the subject site) in relation to a partially collapsed retaining wall on the site;
- orders Council to amend its enforcement notice issued to both 4 and 6 Harrison Street, Mudgeeraba to determine and set out the building work required to be carried out at each respective property and propose a chronological order the work will take including a time frame for the commencement and completion of the building work; and
- insert a new section into the enforcement notice, section 1a, acknowledging that a civil agreement may be required prior to sections b, c and d taking effect.

## **Background**

On or about the time of construction of the dwelling (established from owner photos) at 4 Harrison Court, a retaining wall was built to support excavation in cut located approximately 1 metre within the property boundary of 6 Harrison Court. Part of this wall (the lower retaining wall, LRW) has collapsed within the property and is leaning on the brick veneer house. Council records show the wall was approved on 9 July 1993 and completed on 14 June 1993 without notation of any defect, therefore it is reasonable to conclude that the wall was built in accordance with the permit given.

At a later time a second retaining wall (the upper retaining wall, URW) was built to support fill located close to the boundary of 6 Harrison Court between 4 and 6 Harrison Court, the wall being for the benefit of 6 Harrison Court. Part of this wall has also collapsed. Council records show the wall was approved on 18 October 1993 and completed on 26 July 1993. Therefore, it is reasonable to conclude that the wall was built in accordance with the permit given. However, on-site review raised some doubt about this as the wall was built to a generic design without regard to prevailing conditions. The result of this is that the overall land support is in excess of 2 metres in height with one step in the wall of approximately one metre. The LRW is in the ownership of 4 Harrison Court and the URW is in the ownership of 6 Harrison Court.

As a result of partial collapse of these walls, the Council issued enforcement notices to both owners. The notice issued to Barbara Wade of 4 Harrison Court is the subject of this appeal.

## **Material Considered**

The material considered in arriving at this decision comprises:

1. 'Form 10 – Appeal Notice', grounds for appeal and correspondence accompanying the appeal lodged with the Registrar on 23 October 2009.
2. Email correspondence from Barbara Wade to the Building and Development Tribunal dated 24 October 2009.
3. Email correspondence from Barbara Wade to GCCC dated 28 October 2009.
4. Correspondence from Barbara Wade to Building and Development Tribunal Dated 16 November 2009.
5. Correspondence from Barbara Wade to Building and Development Tribunal dated 19 November 2009.
6. Correspondence from Barbara Wade to Building and Development Tribunal dated 25 November 2009.
7. Statutory Declaration of Craig Johnstone from GCCC dated 20 November 2009.
8. Email correspondence from Council to the Building and Development Tribunal dated 21 December 2009.
9. IPA.
10. The *Building Act 1975* (BA).
11. Verbal submissions at submitted at the appeal hearing.

## **Findings of Fact**

The Tribunal makes the following findings of fact:

Both the retaining walls supporting land separating 4 and 6 Harrison Court have demonstrated failure. Section 248b of the BA provides that a Local Government may give a enforcement notice to the owner of a building, structure or building work if the Local Government reasonably believes the building, structure or building work is dangerous.

No obligation is required of the Local Government to establish the cause of the danger only that the Local

Government reasonably believes the building, structure or building work is dangerous. After observation of both retaining walls, I concur with Council that the retaining walls have become dangerous and repair or rebuilding is required.

### **Reasons for the Decision**

The difficulty the applicant faces when served with the enforcement notice is that the repair and rebuilding process may only occur with the cooperation of the owner's of both retaining walls due to their close proximity and each retaining wall relies on the other for support. It is quite obvious that the URW has not been built well and has been positioned with little regard for the LRW, and has therefore contributed to the collapse due to borrowed support. In hindsight the wall should have a greater horizontal separation or alternative engineering. Clearly without agreement between the two owners, a resolution may not be achieved to remedy the support of land within each property. This lends itself to be a civil matter between owners and it would be unreasonable for Council to proceed with further action until a agreement had been reached.

However, this may result in lengthy delays unless both owners can reach a compromise to assist in the construction work being undertaken. Therefore, the enforcement notices issued to both owners should be modified to require a timeframe for completion the construction work, to provide some assurance the work will proceed in a timely manner.

In terms of the action required by the notices:

“To immediately secure the retaining wall to prevent any further movement of the retaining wall”. This part of the notice will remain unchanged as further movement is possible and should be addressed. The enforcement notice issued to each property owner should be modified to make allowance for a time frame and may require a civil resolution to be made prior to sections b, c and d being enforced. This will more appropriately accord with Section 249 (b) of the Building Act.

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**Greg Rust**  
**Building and Development Tribunal Chair**  
**Date: 21 January 2010**

## **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  
PO Box 15009  
CITY EAST QLD 4002  
**Telephone (07) 3237 0403 Facsimile (07) 3237 1248**