

30 July 2026

Gold Coast City Council
Chief Executive Officer
GPO Box 5042
GOLD COAST MC QLD 9726

sent via: electronic upload

Dear Sir/Madam,

RE: OPERATIONAL WORK (CODE ASSESSABLE) INVOLVING REFERRAL AGENCY RESPONSE FOR RETAINING WALL IN THE EMERGING COMMUNITY ZONE UPON LAND AT 71 KINSHIP ROAD, UPPER COOMERA

We write on behalf of the applicant, *Pitch Permits* in relation to the land at 71 Kinship Road, Upper Coomera formally description as Lot 233 on SP351084.

This development application seeks a Code Assessable Development Permit for Operational Work for a Retaining Wall within 20m of a property boundary in the Emerging Community Zone. Furthermore, the proposed design involves combined fencing and retaining walls that exceed 2m above ground level, which also triggers a Referral Agency Response from Gold Coast City Council.

1.0 SITE DETAILS

1.1 SITE DESCRIPTION

The subject site is located at 71 Kinship Road, Upper Coomera, formally described as Lot 233 on SP351084. The site is located within a newly developing residential locality provided with standard urban services and infrastructure.

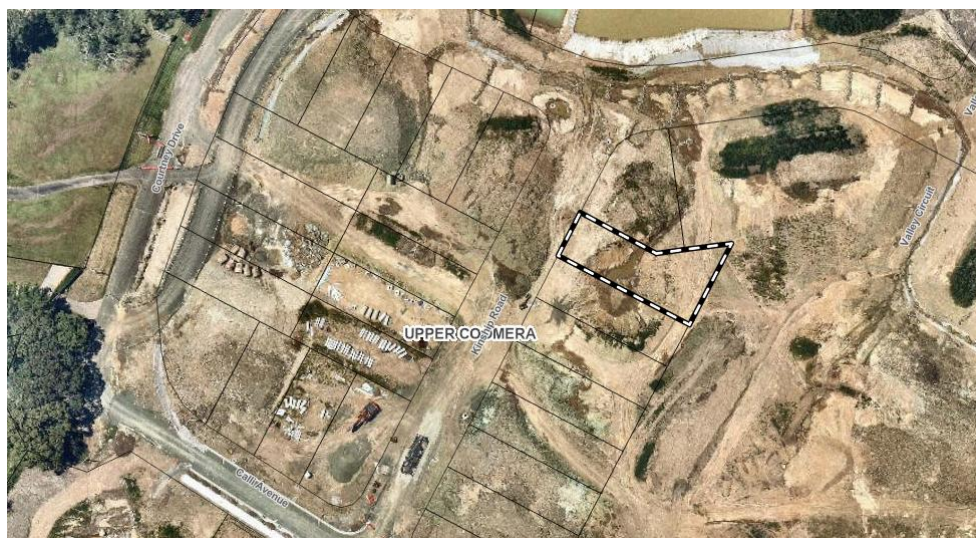


Figure 1: Aerial Image of Subject Site

1.2 SITE HISTORY & PROPOSAL OVERVIEW

The site currently contains an existing dwelling house. The proposal relates to rear yard improvements including a swimming pool, retaining walls ranging in height including 1.8m, combined with perimeter fencing, and a levelled turfed area extending beyond the swimming pool structure itself.

1.3 PLANNING CONTEXT

Under the Gold Coast City Plan, the site is designated within the Emerging Community Zone and the following overlays:

- + Airport environs overlay; and
- + Bushfire overlay; and
- + Dwelling house overlay.



Figure 2: Zoning Map of Subject Site

2.0 CATEGORISATION OF DEVELOPMENT & STATUTORY FRAMEWORK

2.1 STATUTORY DEFINITIONS (PLANNING ACT 2016)

While a swimming pool and its immediate structural walls/shell are typically defined as Building Work, the proposed scope of development extends beyond the physical structure of the pool itself. The proposal encompasses:

- + Construction of a swimming pool and associated retaining walls (up to 1.8m high);
- + Creation of a retained, flat turfed lawn area extending beyond the structural envelope of the pool; and
- + Integrated perimeter fencing installed atop retaining structures, where the combined height exceeds 2m.

Under the *Planning Act 2016*, building work is defined as:

- (i) building, repairing, altering, underpinning (whether by vertical or lateral support), moving or demolishing a building or other structure; or*
- (ii) works regulated under the building assessment provisions; or*
- (iii) excavating or filling for, or incidental to, the activities stated in subparagraph (i); or***

- (iv) excavating or filling that may adversely affect the stability of a building or other structure, whether on the premises on which the building or other structure is situated or on adjacent premises; or
- (v) supporting (vertically or laterally) premises for activities stated in subparagraph (i).’

Based on the above, filling and excavation are only defined as building work if they are strictly incidental to constructing a structure (like a pool). Once earthworks extend beyond the footprint of the structure such as leveling the surrounding yard for a flat lawn, they are not considered ‘building work’ and are defined as Operational Work.

2.2 RELEVANT CASE LAW – BAXTER V PRESTON & ORS (2021)

This statutory distinction formed a key consideration in *Baxter v Preston & Ors [2021] QPEC*. In that matter, the Planning and Environment Court considered earthworks, filling, and retaining structures associated with a residential pool development. The court affirmed that where site works and ground-level modifications extend beyond the immediate structural envelope of the pool to alter the surrounding land, those works cannot be treated as incidental building work. Instead, they constitute Operational Work, potentially requiring development approval under the Local Government Planning Scheme.

In relation to the proposed development:

1. The immediate construction of the swimming pool and surrounding fencing constitute Building Work.
2. However, the site earthworks, 1.8m high retaining structures, and ground-level modifications required to create the levelled, turfed area adjacent to the pool, which extends a significant distance beyond the pool structure itself are not deemed incidental to the building of the pool structure.

Accordingly, to eliminate any subjectivity or doubt, this application properly seeks Operational Works approval for the change to ground level, retaining structures, and associated levelled lawn platform.

3.0 TRIGGERS FOR ASSESSMENT & ASSESSMENT BENCHMARKS

- + **Emerging Community Zone:** In accordance with Table 5.8.1 – Operational work involving a change to the ground level that exceeds 100m³ of fill/excavation or is located within 20 metres of a site boundary triggers Code Assessment. Because the retaining structures and filled turfed platform sit within 20m of the property boundaries, Code Assessment applies.
- + **Referral Agency Trigger:** The proposed design incorporates combined retaining wall and fencing structures exceeding 2m in total height, triggering Referral Agency Assessment for amenity and height considerations.
- + **Built Form & Neighbourhood Character:** The proposed 1.8m high retaining wall and flat turfed lawn area are situated entirely to the rear of the existing dwelling house. The scale and arrangement are consistent with typical residential backyards in the locality and will not adversely impact surrounding properties.
- + **Fencing & Boundary Screening:** Potential privacy or safety impacts arising from the combined height can be appropriately managed. The development can be conditioned to provide compliant fencing and safety barriers in accordance with the submitted proposal plans.

- + **Compliance with Applicable Codes:** The development has been assessed against all relevant planning scheme codes, demonstrating compliance with:
- *Emerging Community Zone Code*
 - *Change to Ground Level and Creation of New Waterways Code*
 - *General Development Provisions Code*
 - *Healthy Waters Code*
 - *Vegetation Management Code*
 - Any applicable Overlay Codes triggered by mapping – however City Plan, Part 5.10, confirms the applicable overlays do not apply to the proposed development.

The abovementioned codes have been addressed in the attached documentation.

As demonstrated throughout this submission and the attached code assessment, the proposed operational work is suitable, complies with all relevant assessment benchmarks, and represents an appropriate outcome for the site.

Accordingly, we respectfully request that Council approve this application subject to reasonable and relevant conditions.

Should you require any further clarification or wish to discuss draft conditions prior to a decision being made, please feel free to contact me on **0434 995 532** or **sam@plan-dev.com.au**.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Sam Heckel', written in a cursive style.

Sam Heckel
DIRECTOR

PLANDEV
APPROVALS + ADVICE