



APPEAL
Integrated Planning Act 1997

File No. 3/03/033

BUILDING AND DEVELOPMENT TRIBUNAL - DECISION

Assessment Manager: Ipswich City Council
Site Address: 163 Brisbane Street, Ipswich
Applicant: C.Y.Tay of Memo Corporation Australia Pty Ltd

Nature of Appeal

Appeal under Section 24 of the Building Act 1975 against a decision of the Ipswich City Council to issue an Enforcement Notice in respect of the safety of part of the glazed roofing over a public access area of the shopping centre located on Lot 531 on Plan SL 12439, situated at 163 Brisbane Street, Ipswich.

Date and Place of Hearing: 2.00pm on 6 June 2003
at 163 Brisbane Street, Ipswich

Tribunal: Geoff Cornish

Present: Graham Rowe – Applicant’s representative
David Kay – Ipswich City Council
Vic Vermeer – Ipswich City Council

Decision

In accordance with Section 4.2.34 [2] of the Integrated Planning Act 1997, I hereby confirm the decision of Ipswich City Council to issue an Enforcement Notice in respect of the safety of part of the glazed roofing over a public access area of the shopping centre located on Lot 531 on Plan SL 12439, situated at 163 Brisbane Street, Ipswich.

Background

The matter concerns an enforcement notice issued by Ipswich City Council to the owners of the shopping centre. A column required to provide support to part of the glazed roofing over a public walkway has subsided, resulting in several of the glazed panels of the roof becoming partially unsupported. As a consequence, Council now considers that portion of the building to be dangerous.

Material Considered

1. Enforcement Notice issued by Ipswich City Council dated 26 May 2003.
2. Building and Development Tribunals Appeal Notice dated 3 June 2003, containing reasons for the appeal.
3. Verbal submission by the applicant's representative on 6 June 2003 setting out why the appeal should be allowed.
4. Verbal submission by David Kay of Ipswich City Council on 6 June 2003 setting out Council's reasons for issuing the notice.
5. Survey plan of the level changes in the affected area of the building.
6. Original building approval plans for the building.
7. Real Property Plan for the site and the adjacent roadway.
8. Standard Building Regulation 1993.
9. Building Act 1975.
10. Integrated Planning Act 1997.

Findings of Fact

Following a site inspection of the subsidence and the problems with the roof glazing, I made the following findings of fact:

1. There has been substantial differential settlement at the columns supporting the outer end of the roof, resulting in significant deflection of the roof structure.
2. As a consequence of deflection, support for glazing panels has been removed to the extent that gaps have opened in places between the glazing panels and the supporting structure.
3. The partially unsupported glazing panels are dangerous.
4. The area beneath the glazed panels has been barricaded off to prevent public access beneath the panels most at risk pending rectification work.
5. The columns in question are located within the road reserve of Union Street.
6. The Building Act, Regulations and Standard Building By-Laws, in force at the time of the building's approval, provided for Council to approve construction of the awning over part of the road reserve as an adjunct to the building.
7. The building application and approval provided for such an awning.

Reasons for the Decision

After assessing the facts and the submissions of the parties, I have reached the following conclusions:

- The roof glazing in the area in question is dangerous.
- Urgent action is required to make the building safe.
- The actions of the building's owner to date, the written grounds of appeal and the verbal submission made to the Tribunal all indicate a recognition by the owner of the need for rectification of the problem.
- Responsibility for the maintenance and safety of the roof structure rests with the building's owner consistent with the provisions of the building law that permitted the approval of the roof structure to extend beyond the allotment boundary and over part of the road reserve.
- Council has a duty of care to both the public and the building's owner to ensure that proper maintenance and safety measures are undertaken to remove the problem.
- The issuing of an Enforcement Notice to the owner of a building under Section 22 of the Building Act is the appropriate course of action, provided for in the legislation, where immediate rectification of a dangerous situation is required.
- The jurisdiction of this Tribunal is limited to determining the appropriateness of the course of action and of the Enforcement Notice as issued.
- Jurisdiction does not extend to determining whether there has been any contribution to the existing situation stemming from the actions or inaction of someone other than the building's owner. Should that situation exist, the building's owner may have recourse to a separate action in another jurisdiction.

G.S.Cornish
Building and Development
Tribunal Referee
Date: 11 June 2003

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 Local Government and Planning
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