



Building and Development Dispute Resolution Committees—Decision

Sustainable Planning Act 2009

Appeal Number:	32 - 14
Applicants:	Simon & Rebekah Bird and Neill & Karen Bosch
Assessment Manager:	Glenn Murrant – Murrant Certification
Concurrence Agency: (if applicable)	Gold Coast City Council (Council)
Site Address:	53 Limetree Parade, Runaway Bay and described as Lot 369 on SP165407 – the subject site.

Appeal

Appeal under section 533 of the *Sustainable Planning Act 2009* (SPA) against the giving of an Enforcement Notice by the Council under Section 578 of the SPA. The Enforcement Notice was issued by Council in relation to existing unapproved building works on site being Bali hut, deck and covered barbeque area (building works) without a Building Development approval for these building works.

Date and time of hearing:	11.00am. Tuesday 23 September 2014.
Place of hearing:	The subject site.
Committee:	Georgina Rogers– Chair
Present:	Simon Bird – Applicant Neill Bosch - Applicant Oscar Thompson – Applicant’s representative Terry Harvey – Council representative Martin Roberts – Council representative

Decision:

The Building and Development Dispute Resolution Committee (Committee), in accordance with Section 564 of the SPA **sets aside** the decision appealed against as the Enforcement Notice dated 29 July 2014 given in respect of the unapproved building works at the subject site has been complied with as evidenced by correspondence from the Council.

Background:

The subject site is situated within an established Residential neighbourhood with canal frontages. This appeal is against the issue of an Enforcement Notice for assessable development (building work) without a development permit as required under the *Sustainable Planning Act 2009* (SPA).

The Committee, throughout this appeal, consistently requested documentation from the Applicant and Council relating to the background leading up to the issue of the Enforcement

Notice. Despite these requests, and verbal discussion at the appeal hearing seeking clarity of the sequence of events, it is apparent from the chronology of documentation provided by the parties that there is documentation that has not been provided and/or events that have not been disclosed to the Committee. The Committee must base their decision on the documentation and verbal representations provided by the parties.

On 12 March 2014 Gold Coast City Council officer Peter Krook undertook an inspection of the subject site as part of completing a Referral Agency Assessment. The Assessment Report includes a number of photographs of the subject property and references Building Application Number BLD 201401814 and PN file number PN264524/04/06. The report, dated 19 June 2014, recommends:

'support the referral agency application subject to reasonable and relevant conditions'.

The officer's assessment refers to:

'both the Bali Hut, deck and BBQ are 'as constructed' albeit that the deck is to be modified to retain a 1 metre maintenance zone behind the revetment wall Both the size of the Bali Hut and the expanse of the deck have been/or are to be modified (see file) and this will achieve an acceptable response to the waterside location with minimal impact on adjoining landowners'.

It is not clear to the Committee what events took place between the Referral Agency Assessment on 12 March 2014 and the issue of a Show Cause Notice on the 13 March 2014.

On 13 March 2014 Council issued a Show Cause Notice to the Applicant requesting a response by 17 April 2014 or Council would issue an Enforcement Notice. The Show Cause was issued for:

"Assessable development (building work) has been carried out at the subject property without a development permit as required under the SPA.

"The building work relates to the construction of a timber deck and a Bali hut structure, constructed within the waterfront setback, and a roofed patio extension built to the eastern side property boundary.

"Section 578(1) of the SPA states, "a person must not carry out assessable development unless there is an effective development permit for the development'."

On the same date, 13 March 2014, Council also issued an Information Request to the Applicant stating the need for the deck to be reduced in width to allow a one metre maintenance zone behind the revetment wall and reference to the Bali Hut. It is not clear to the Committee how the Show Cause Notice and the Information Notice came to be issued on the same day by Council nor if the Applicant responded to the Show Cause Notice by the required date of 17 April 2014.

It can be assumed that sometime between 13 March and 19 June 2014, a siting variation Application was submitted to Council because on 19 June 2014 Council, as the Referral Agency, advised the Assessment Manager that the Application for building works could not be approved on the grounds that they were non-compliant with the Gold Coast Planning Scheme 2003 and the Queensland Development Code.

Following the Referral Agency advice, an amended plan was submitted to the Assessment Manager by the Applicant - Plan by Qubd - BIR-RUN-200 C ground floor plan 17.06.14 –TQ Deck reduced in size and setback 1 metre back from the existing retaining wall. Subsequently, on the 28 July 2014 the Assessment Manager issued a Building Approval - BA 14/147.

On 29 July 2014, Council issued an Enforcement Notice (No.43829565, Reference No.264524/16(P1) which is the subject of this appeal. The Enforcement Notice included the exact same content as stated above in the Show Cause Notice issued on 13 March 2014. It also required the Applicant to comply with the following by 26 August 2014:

"Remedy the commission of the offence by obtaining a development approval for the building work, being the construction of a timber deck and a bali hut structure constructed

within the waterfront setback; and a roofed patio extension built to the eastern side property boundary: or

Remove the above mentioned unlawful building work if it is not possible and practical to make the work comply with a development approval.”

From the documentation provided to the Committee, the Assessment Manager submitted a 'Form 20 - Lodgement of Building Work Documentation', for Bali hut, deck and covered BBQ to Council on 1 August 2014.

The Applicant lodged an appeal against the Enforcement Notice with the Committees Registry on 25 August 2014.

An appeal hearing was held on the subject site on Tuesday 23 September 2014 at 11.00am. During the hearing the Applicants provided the Committee with a copy of a letter from Council dated 16 September 2014 which stated:

“The non-compliance which was described as building work without approval, in Enforcement Notice dated 29/07/14, document number 43829565 has been rectified. Council of the City of Gold Coast (Council) has determined this matter is now resolved and no further action will be taken in relation to the non-compliance with was raised within this notice. The matter of continued non-compliance with building work carried out, being not in accordance with approval 2014/07131 is a separate matter in which Council will continue to pursue. Thank you for your cooperation in finalising this matter. “

Following the hearing, the Council provided an electronic copy of the above letter to the Committee. The Council also provided an electronic copy of a Show Cause Notice dated 16 September 2014 which had been issued to the Applicants after the Enforcement Notice the subject of this appeal, but not received by the Applicants until after the appeal hearing. This Show Cause Notice is not relevant to this appeal but the reason for its issue was:

‘Assessable development, being building work, has been carried out at the premises in contravention of a previous development permit which is considered an offence under section 580 of the Sustainable Planning Act 2009.

The building work relates to:

- (a) The building work carried out not in accordance with a previous approval, namely Council reference 201407131; and*
- (b) In particular, Council is of the belief that the stairs to the pontoon and the rear deck should either be removed in order to comply with the Council's siting variation approval number 2014/01814, and the building approval Council reference number 2014/07131, or*
- (c) You may wish to obtain a further approval for the changes to approval number 2014/01814.*

Material Considered

The material considered in arriving at this decision comprises:

1. 'Form 10 – Application for appeal/declaration', grounds for appeal and correspondence accompanying the appeal lodged with the Committees Registrar on 25 August 2014. Reasons for Building appeal being 'about an enforcement notice given under the *Sustainable Planning Act 2009* (s590).
2. Council's referral agency report by GCCC officer Peter Krook undertaken on 12 March 2014 and dated 19 June 2014.

3. The Council's Show Cause Notice dated 13 March 2014, being for deck, covered barbeque area and Bali hut.
4. The Council's Information Request dated 13 March 2014, being for deck to be reduced in width to allow 1 metre maintenance zone behind the revetment wall and reference to Bali hut.
5. Council's Referral Agency Response to Assessment Manager dated 19 June 2014 for a siting variation application number 201401814. Council did not approve the building works on the grounds of non-compliance with the Gold Coast Planning Scheme 2003 and/or the Queensland Development Code (QDC).
6. Assessment Manager's Decision Notice, Reference No. B/A 14/147, dated 28 July 2014 - being for deck, covered barbeque area and Bali hut provided approval, subject to conditions – Siting Variation BLD201401814.
7. Plan by Qubd - BIR-RUN-100 B site plan with references "A- 20.02.14 TQ initial issue" and 'B 25.03.14 TQ Bali Hut size revised'
8. Plan by Qubd - BIR-RUN-200 B ground floor plan with the same reference dates on them as BIR-RUN-100.
9. Plan by Qubd - BIR-RUN-200 C ground floor plan with the same reference dates on them as BIR-RUN-100 B and BIR-RUN-200 B but also an additional reference "C-17.06.14 –TQ Deck reduced in size and setback 1 metre back from the existing retaining wall
10. Approved plans BIR-RUN-100, version "C", stamp dated 28 July 2014; Building Approval number BA 14/147 by the Assessment Manager – notation states 'see Decision Notice for conditions'.
11. Council's Enforcement Notice No.43829565, Reference No.264524/16(P1), dated 29 July 2014, being for deck, covered BBQ area and Bali hut.
12. 'Form 20 – Lodgement of Building Work Documentation', for Bali hut, deck and covered BBQ area' lodged by certifier, dated 1 August 2014.
13. Council letter 16 September 2014 to Applicants advising that the non-compliance described in Enforcement Notice document number 43829565 (subject of this appeal) has been rectified and Council have determined this matter is resolved. The letter also advises that the continued non-compliance with building work being not in accordance with approval 2014/07131 is a matter Council will continue to pursue.
14. Council Show Cause Notice dated 16 September 2014, being for stairs to pontoon.
15. Verbal, photographic and written submissions from the Applicant's representative given at, and subsequent to, the hearing.
16. Verbal and written submissions from Council's representative given at, and subsequent to, the hearing.
17. Gold Coast City Council -
 - a. Local Law No. 17 (Maintenance of Works in Waterway Areas) 2013
 - b. Subordinate Local Law No. 17.1 (Works in Non-Coastal Waterway Areas) 2013

18. The *Sustainable Planning Act 2009* (SPA).
19. The *Building Act 1975* (BA).
20. Queensland Development Code (QDC).

Findings of Fact

The Committee makes the following findings of fact:

- The subject site is situated within an established Residential neighborhood with canal frontages.
- The building works subject to the appeal are constructed and being used by the current owners. The Committee was advised by the Applicants that the building works were in existence prior the current owners purchasing the property in 2013.
- On 29 July 2014 Council issued an Enforcement Notice (Number 43829565) in relation to existing unapproved building work on site being Bali hut, deck and covered barbeque area (building works) without a Building Development approval for the building works.
- On 25 August 2014, the Applicant lodged an appeal against the Enforcement Notice.
- On 23 September 2014 at 11.00am, an appeal hearing was held on the subject site.
- Following the appeal hearing, Council emailed the Committee Registrar an electronic copy of a letter from Council to the Applicants dated 16 September 2014. This letter advised the Applicants that Council had determined that the non-compliance stated in the Enforcement Notice subject of this appeal has been rectified and that the matter was now resolved. Council further advised in the same letter that the continued non-compliance with building work not being in accordance with building approval 2014/07131 is a separate matter which Council will continue to pursue.
- On 16 September 2014, Council issued a Show Cause Notice for:

'Assessable development, being building work, has been carried out at the premises in contravention of a previous development permit which is considered an offence under section 580 of the Sustainable Planning Act 2009.

The building work relates to:

- (d) The building work carried out not in accordance with a previous approval, namely Council reference 201407131; and
- (e) In particular, Council is of the belief that the stairs to the pontoon and the rear deck should either be removed in order to comply with the Council's siting variation approval number 2014/01814, and the building approval Council reference number 2014/07131, or
- (f) You may wish to obtain a further approval for the changes to approval number 2014/01814.

Reasons for the Decision

The appeal against the Enforcement Notice is set aside because Council wrote to the Applicants on 16 September 2014, some five business days before the appeal hearing on 23 September, advising the Applicants that the Enforcement Notice requirements had been complied with and the matter was now resolved.

Georgina Rogers
Building and Development Committee Chair
Date: 29 October 2014

Appeal Rights

Section 479 of the *Sustainable Planning Act 2009* provides that a party to a proceeding decided by a Committee may appeal to the Planning and Environment Court against the Committee's decision, but only on the ground:

- (a) of error or mistake in law on the part of the Committee or
- (b) that the Committee 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 Committee's decision is given to the party.

Enquiries

All correspondence should be addressed to:

The Registrar of Building and Development Dispute Resolution Committees
Building Codes Queensland
Department of Housing and Public Works
GPO Box 2457
Brisbane QLD 4001
Telephone (07) 3237 0403 Facsimile (07) 3237 1248