



Building and Development Tribunals

Queensland Government

Department of Local Government and Planning

APPEAL

Integrated Planning Act 1997

File No. Insert No. 03-06-034

BUILDING AND DEVELOPMENT TRIBUNAL - DECISION

Assessment Manager: Cook Shire Council

Site Address: *withheld*-“the subject site”

Applicant: *withheld*

Nature of Appeal

Appeal against Cook Shire Council issue of an enforcement notice on the 16 February 2006 in respect of construction of a retaining wall at the corner of *withheld*.

Date and Place of Hearing: No hearing took place.

The appeal was considered after written submissions were received from both the Applicant and Cook Shire Council.

Tribunal: Greg Rust

Decision

Taking into consideration the relevant facts and circumstances, the Tribunal **confirms** the Enforcement Notice appealed against issued by the Cook Shire Council on 16 February 2006 requiring the applicant to remedy the commission of the offence bringing the work into conformity with Development Approval DA1533.

Background

- On the 12 October 2005 Cook Shire Council issued a Show-cause notice to *withheld* in respect of carrying out assessable development without a development permit. The notice required the applicant to:
 - Cease all work immediately;
 - Provide the necessary structural engineering plans and specifications for a retaining wall and excavation and/or filling of the site including drainage, site levels and contours;
 - Fence the site in accordance with Workplace Health and Safety requirements for a building site.

- In his response to council's Show Cause Notice dated 12 October 2005 the applicant alleges that on 30 September 2005 Council Officers agreed to allow construction of the retaining walls. He also advised that he was obtaining engineering plans for the retaining wall in question and will supply Council with the required documents when available. He also believed that he had not committed a development offence as the works were undertaken under Operational Works permit with verbal permission from Council officers after an on site meeting on a condition that these walls are to be certified once built. He also agreed not to continue the wall until he had Council approval.
- On 14 December 2005, a development application for retaining walls was lodged by the applicant with the Cook Shire Council.
- On 15 December 2005, the Council issued a Development Permit Decision Notice approving retaining wall construction.
- On 19 December 2005 Council served the applicant with a Show-Cause Notice stating that construction of the retaining wall was not being carried out in accordance with the Development Permit issued on 15 December 2005.
- On 21 December 2005 the applicant responded to Council's Show-Cause Notice confirming that the retaining walls will be constructed in accordance with the Development Permit and the existing wall constructed on site was of a temporary nature.
- On 16 February 2006 Council served the applicant an Enforcement Notice that stated the Council reasonably believed that the construction did not comply with the Development Permit and a Development offence had resulted. The notice required the work be brought into conformity with the permit by 5pm on 4 April 2006.
- The applicant lodged appeal 03-06-034 to the Building and Development Tribunal to appeal against Enforcement Notice dated 16 February 2006 from Cook Shire Council.

Material Considered

- Notice of appeal 3-06-034 and supporting information 15 March 2006;
- Written submission of the applicant dated 1 May 2006;
- Written submission of the applicant undated received by registrar 10 May 2006;
- Written submission of Cook Shire Council dated 24 April 2006 and supporting information;
- The *Integrated Planning Act 1997*;
- The *Building Act 1975*;
- The *Standard Building Regulation 1993*.

Findings of Fact

- That the construction work on site exceeds the limits of self assessable development under the *Standard Building Regulation 1993* which limits retaining walls to a height of less than 1 metre.

- Retaining walls greater than 1 metre are assessable development and require a Development Permit.
- That the work on site presented a structural concern and had been built without a permit (confirmed by Douglas Partners Report).
- The Building Permit issued failed to include requirements for the existing building work constructed on site. This work was also excluded in the engineers report as not part of engineer's certification. The Council was aware that a retaining wall had already been built as it had served notice and therefore, if it believed a structural safety concern was apparent, was obligated to address this in its permit.
- The retaining wall that had been constructed was not in conformity with the permit despite assurances by the applicant that the work would comply. A submission of appropriate timeframes could have essentially addressed this concern.

Reasons for the Decision

The construction of the retaining wall in excess of one metre in height firstly without a development permit and secondly not in accordance with the permit granted by the Cook Shire Council is a breach of sections 4.3.1 and 4.3.3 of the *Integrated Planning Act 1997*. The Cook Shire Council has a responsibility when its attention is given to assessable development being conducted without a permit or not being constructed in accordance with a permit to order that the offence being committed is brought into conformity with the Act.

Greg Rust
Building and Development
Tribunal Referee
Date: 09/06/06

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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