



Building and Development Tribunals

Queensland Government

Department of **Local Government and Planning**

APPEAL

Integrated Planning Act 1997

File No. 03-05-043

BUILDING AND DEVELOPMENT TRIBUNAL - DECISION

Assessment Manager: Gold Coast City City Council

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

Applicant: *withheld*

Nature of Appeal

Appeal under Chapter 4 Part 2 of the *Integrated Planning Act 1997* against the Gold Coast City Council for the issue of an Enforcement Notice in relation to a timber retaining wall believed to not only be dilapidated and in a dangerous condition, but partly built on the Council Road Reserve.

Date and Place of Hearing: Commenced 10.00am, 25 August 2005
at “the subject site”.

Tribunal: Phil Finnimore

Present: *withheld* – Applicant.
withheld – Applicant.
Mr Mark Chat – Gold Coast City Council.

Decision

Under the provisions of section 4.2.34 of the *Integrated Planning Act 1997* (IPA), the Tribunal **confirms** the decision by the Gold Coast City Council to issue an Enforcement Notice in relation to a timber retaining wall believed to not only be dilapidated and in a dangerous condition, but partly built on the Council Road Reserve at “the subject site”.

Background

The applicants (the owners) have owned the property at “the subject site” since 1988. The retaining wall at the front of the property was in existence at the time of purchase by the owners.

The wall has been in a state of disrepair since the purchase of the property and is built partly on the

Gold Coast City Council's (the Council) road reserve. In light of the condition of the wall and its location on the road reserve, the owners approached the Council seeking some form of assistance to have it rebuilt. The assistance being sought was primarily financial and related to the Council's Capital Works base.

Various conversations and meetings with Council officers were held in relation to the condition and location of the wall. As a result, an enforcement notice was issued by the Council requiring the wall to be rebuilt within the property alignment.

The owners disagreed with Council issuing the notice and appealed to the decision to do so to the Building and Development Tribunal (the Tribunal).

Material Considered

Documents forming part of the appeal submission:

- The Form 10 application;
- Copy of letter from the Council to the owners dated 28 June 2005.
- Copy of letter from the owners to the Council dated 13 July 2005
- Copy of Council's enforcement notice to the owners dated 26 July 2005.
- Copy of letter from the owners to the Tribunal dated 29 July 2005.
- Copy of part site plan dated 10 August 2005.

Findings of Fact

1. The property located at "the subject site" was purchased by the applicants in 1988. The retaining wall, being the subject of the Council's enforcement notice, existed at the time of the purchase of the property.
2. The retaining wall is partly constructed over the road reserve and varies in height along its elevations from approximately 0.1m to 3.4m above the finished ground level.
3. The retaining wall, by visual observation, is constructed from hardwood timber and is in a dilapidated condition.
4. There has been no evidence or material provided to indicate the retaining wall has at any time been inspected by a registered engineer.
5. The Council officer who inspected the retaining wall was a qualified building surveyor and formed the view that the wall was not only dilapidated but in a dangerous condition. The basis of this view was formed on observations made from visual inspections only.
6. The owners stated at the time of the hearing that they were in agreement the wall was in a dilapidated and dangerous condition.
7. The Council issued a letter to the owner dated 28 June 2005 stating (in summary) the following:
 - An inspection was carried out on 24 June 2005;

- The retaining wall was in a dilapidated condition and required to be repaired before the situation became dangerous;
 - The continued existence of the wall without the required approval was contrary to the requirements of the *Standard Building Regulation 1993* (SBR) and the *Building Act 1975* (the Act);
 - A further inspection would be carried out after 14 days.
8. No evidence exists or has been put forward indicating any further inspection by the Council took place.
9. The Council issued an enforcement notice dated 26 July 2005 to the owners requiring the wall to be removed and rebuilt within the property boundaries. This was to be done by 31 August 2005.

Reasons for the Decision

10. The Council formed the view by way of a visual inspection of the wall that it was in a dilapidated and dangerous condition. This view led to the reasonable belief that it was in such a condition that warranted the issue of an enforcement notice. The person stated as having carried out this inspection was a qualified building surveyor and can therefore be considered a suitable person to reach this conclusion.
11. Based upon this conclusion, the Council elected to issue the enforcement notice under Section 22 of the Act. This is the appropriate section of the Act to issue such a notice as it relates to the findings of the inspection.
12. At the time of the hearing the owners of the property expressed an understanding that the wall required some level of rectification. They further expressed a level of agreement with the Council that the wall was in a dangerous condition. Although this appears to be in conflict with their written submission dated 29 July 2005, no dispute was raised by the owners. Given the Council and owners hold the same position on this matter, this part of the enforcement notice is effectively unchallenged. Similarly both the Council and owners agree the wall is built partly on the road reserve
13. The enforcement notice focuses on two fundamental issues; the first is the wall being built partly over the road reserve and the second is the dangerous condition it is in. In light of the owners agreement with both of these issues there is no reason to suggest the notice should not have been issued.
14. The owners raise an issue of vehicular access to their property if the wall is to be built wholly within the titled boundary alignment. While the solution to this has not been explored, it is clearly not a matter to be dealt with in an enforcement notice issued in accordance with the provisions of section 22 of the Act.

15. Any reconstruction of the wall would more than likely be considered as assessable development under the Act and therefore require building approval. Any required approval must consider the provisions of the Act and any relevant siting provisions of the Queensland Development Code or Council's Planning Scheme should it apply. Any relaxations or variations to these provisions would become a matter for Council to deal with under the Act or Planning Scheme.

Phil Finnimore
Building and Development
Tribunal Referee
Date: 07 October 2005

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:

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