



Building and Development Tribunals—Decision

Integrated Planning Act 1997

Appeal Number:	03-09-040
Appellant:	Julie Gerhardt
Respondent:	Gympie Regional Council (Council)
Concurrence Agency: (if applicable)	N/A
Site Address:	17b Hall Lane, Gympie and described as Lot 2 on SP176039 — the subject site

Appeal;

Appeal under section 4.2.13 of the *Integrated Planning Act 1997* (IPA) against the issuing of an Enforcement Notice by Gympie Regional Council. The notice relates to an alleged development offence pursuant to section 4.3.1 of IPA (carrying out assessable development without a permit) namely the construction of a shed.

Date of hearing:	Tuesday 16 June 2009 at 1:00pm and Wednesday 7 October 2009 at 2:00pm
Place of hearing:	Level 5, 63 George St, Brisbane and subsequently at the Strathpine Offices of the Moreton Bay Regional Council
Tribunal:	Chris Harris – Chair Jenny Owen – Member
Present:	Trevor Gerhardt – Appellant’s representative Ross Bishop – Council’s representative

Decision:

The Tribunal, in accordance with section 4.2.34 (2)(a) of the IPA, **dismisses** the enforcement notice issued by Gympie Regional Council, dated 8 April 2009 and upholds the appeal by the appellant.

Background;

The grounds of the appeal submitted by the appellant are summarised as follows.

The owner / appellant engaged the services of a private building certifier for the approval process relating to the construction of a shed, retaining wall and a swimming pool.

The buildings were to be located on two lots, 17 and 17b Hall Lane, both owned by the appellant.

The appellant's private certifier lodged the approved documents with Council, which were received on 3 December 2008.

Following correspondence with Council the appellant sent an amended "lodgement of building work documentation (form 20)" and the associated plans to Council on 12 March 2009. The appellant is of the opinion that this proves that the building approval was lodged with Council and a permit was issued for a shed, swimming pool and a retaining wall.

Council's response;

Council agree that the appellant's Private Certifier sent those documents relating to the construction of a shed, pool and retaining wall on 3 December 2009. However, Council did not acknowledge receipt of those documents as they disputed the lodgement of one application covering two separately titled lots. The Council requested that 2 lodgement fees needed to be paid to separate the applications, one to each title.

Council returned the lodged documentation and fee to the appellant's private certifier requesting that they re-lodge the application with the appropriate fee.

Council has provided a copy of the re-lodged application, from the private certifier, on the 16th February 2009. The form 20 refers to a retaining wall and swimming pool on Lot 1, 17 Hall Lane only. The shed and Lot 2 17b Hall Lane have been omitted from the form.

Subsequently, Council is of the opinion that an application for the shed on 17b Hall Lane has not been lodged with them, is still required and was subject of the Enforcement notice.

Material Considered;

The material considered in arriving at this decision comprises:

1. 'Form 10 – Appeal Notice', grounds for appeal and correspondence accompanying the appeal lodged with the Registrar on 15 May 2009.
2. Documentation provided to the Tribunal by Gympie Regional Council on 23 June 2009.
3. Further documentation provided to the Tribunal by the appellant on the 11 August 2009.
4. Sections 86, 87 and 88 of the *Building Act 1975*.

Findings of Fact;

The Tribunal makes the following findings of fact:

- A Show Cause Notice was issued to the appellant, dated 2 March 2009.
- An Enforcement Notice was issued to the appellant, dated the 8 April 2009.
- A shed, subject of the notice, has been constructed on the said property.
- A building permit has been issued for the shed..

Reasons for the Decision;

The documentation provided to the Tribunal shows that the original application including the form 20 submitted by the private certifier was returned to the certifier and not acknowledged by the Council. A form 20 and the relevant plans were re-lodged by the applicant's private certifier on the 16 February 2009, which had deleted the shed and address 17b.

The appellant, following the receipt of a Show Cause Notice in March, re-lodged the application with the correct form 20, decision notice and approved plans. This form 20 was stamped and acknowledged by an officer of Council.

Therefore the Tribunal is of the opinion that the Council has received a form 20 and the subsequent documentation relating to the approval and construction of a shed on 17b Hall Lane and that a Building Permit has been issued for the work.

Chris Harris
Building and Development Tribunal Chair
Date: 22 October 2009

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 Infrastructure and Planning
PO Box 15009
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