



Building and Development Tribunals

Queensland Government

Department of Local Government and Planning

APPEAL

Integrated Planning Act 1997

File No. 3/06/094

BUILDING AND DEVELOPMENT TRIBUNAL - DECISION

Assessment Manager: Brisbane City Council

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

Applicant: *Withheld*

Nature of Appeal

Appeal against the decision made by Brisbane City Council about the amount and form of security required for the removal and rebuilding of a dwelling at “the subject site”.

Date and Place of Hearing: 10.30am on Thursday 21 December 2006 on site at “the subject site”, and then at 11.45am at Mineral House, 41 George St., Brisbane.

Tribunal: Geoff Cornish

Present: “*withheld*” – Applicant/Owner
Greg Kranz – Brisbane City Council Representative
Tanya Bell – Brisbane City Council Representative
Kevin McLeish – Brisbane City Council Representative

Decision

The Building and Development Tribunal does not have the jurisdiction to decide this appeal on the basis that, under section 47 of the *Building Act 1975*, a request to a local government for advice as to the amount and form of security the local government requires for building work associated with the rebuilding of a dwelling removed from another site **must** be made by the **private certifier** to whom the application is made for an approval to carry out the building work.

Background

The matter concerns the approval of the resiting of a dwelling from “withheld”, to “the subject site”, without the local government having set an amount or form of security required for the undertaking of the associated building work. The private certifier involved in the work issued his approval after not having received advice from the local government within the specified timeframe set out under section 47(7) of the Act. The local government has no record of any request having been made to it in accordance with section 47 of the Act, and took action in response to complaints received by it in relation to the building. Subsequent to the issuing of a Stop Work notice to the owner, the owner applied to the local government for advice as to the amount and form of security required by the local government for the undertaking of the work. The appeal relates to the local government’s response to this request.

Material Considered

1. Form 10 - Building and Development Tribunals Appeal Notice, with attachments, lodged by the applicant;
2. Copy of a Footway Permit dated 22 August 2006 issued by Brisbane City Council to the removalist in respect of the originating house site;
3. Copy of a Footway Permit dated 29 August 2006 issued by Brisbane City Council to the removalist in respect of the current house site;
4. Copy of a House Movement Approval dated 29 August 2006 issued by Brisbane City Council to the Queensland Police Service for the movement of the house;
5. Copy of Brisbane City Council’s Stop Work Notice issued to the applicant on 20 September 2006;
6. Copy of a letter dated 9 November 2006 from Greg Kranz to the certifier, Richard Shann;
7. Copy of the certifier’s amended Stop Work notice issued to the applicant on 14 November 2006;
8. Letter dated 5 December 2006 from the applicant’s certifier, Mr Richard Shann, of Queensland Building Consulting Group, in support of the appeal and setting out why the appeal should be upheld;
9. Copy of a letter dated 18 December 2006 from the applicant to Councillor Graham Quirk requesting assistance to have the security bond waived;
10. Verbal submission made by the applicant on 21 December 2006 setting out why he believed the appeal should be allowed;
11. Verbal submissions made by Greg Kranz, Tanya Bell and Kevin McLeish setting out why they believed the appeal should be dismissed;

12. The *Building Act 1975*;

13. The *Integrated Planning Act 1997*.

Findings of Fact

I made the following findings of fact:

1. The certifier was appointed as the applicant's certifier on 24 July 2006.
2. To assist the applicant in his appeal, the certifier provided the applicant with a copy of a letter dated 20 July 2006 from the certifier to the Council requesting advice as to the amount and form of security Council required for the carrying out of the building work.
3. The certifier received no advice from the Council in response to his request.
4. The certifier issued the applicant with a development application decision notice on 2 August 2006 for building work relating to the resiting of a dwelling onto the property at "the subject site".
5. The Council issued permits to the removalist relating to crossing the footpaths at the originating and final properties.
6. The Council issued the Queensland Police Service with a permit relating to the movement of the dwelling by road between the two properties.
7. The dwelling was moved by road between the two properties in accordance with the approvals issued to the removalist and the Police Service.
8. The certifier, Richard Shann, issued a Stop Work notice to the applicant on 21 September 2006 following an approach from Greg Kranz of Brisbane City Council.

Reasons for the Decision

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

1. The request said to have been sent by the certifier to the Council for advice as to the amount and form of security required for the undertaking of the building work is dated four days before the certifier was formally engaged as the applicant's certifier.
2. Section 47 of the Building Act does not prescribe how any such request for advice should be made to the Council.
3. Section 47 of the Building Act also does not require any proof of postage, nor does it specify what should occur if the request is not received by the Council.

4. Despite having a detailed system recording incoming mail and other documents, the Council advises that it has no record of any request having been received from the certifier for advice on the amount and form of security required of the building.
5. Section 47(3) of the Building Act requires the **certifier** to ask the Council for advice as to the amount and form of security required.
6. Section 5.3.3(1)(b)(ii) of the *Integrated Planning Act 1997* (IPA), as in force at the time of the certifier's letter to Council, states that a certifier is a person who enters into contractual arrangements with clients to certify work for the code.
7. I am of the view that, until such time as the certifier has been formally engaged by the applicant by way of a contractual arrangement, the certifier does not meet the requirements of IPA as a certifier in respect of his intended client and is not able to accept an application for building work nor is he able to make an application to Council on behalf of an intended client. Therefore I am of the view that any letter sent by the certifier to Council, prior to his formal engagement by the applicant, does not comply with the requirements of section 47(3) of the *Building Act 1975* and therefore that the subsequent building approval that was granted does not comply with the requirements of the legislation.
8. The request sent to the Council by the **applicant** on 26 September 2006 for advice on the amount and form of security required for the work was made on the advice of the applicant's certifier.
9. Section 47(3) of the Building Act, as in force at the time, did not provide for the applicant to make such a request in place of his certifier. That being the case, the request is of no effect and there are no grounds for appeal. Therefore no jurisdiction lies with the Tribunal to determine the matter.

G.S.Cornish
Building and Development
Tribunal Referee
Date: 9 January 2007

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, Planning, Sport and Recreation
PO Box 15031
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