



## Building and Development Dispute Resolution Committees—Decision

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### *Sustainable Planning Act 2009*

<b>Appeal Number:</b>	28 - 12
<b>Applicant:</b>	Legat Bros Pty Ltd
<b>Assessment Manager:</b>	Gold Coast City Council (Council)
<b>Concurrence Agency:</b> (if applicable)	Not Applicable
<b>Site Address:</b>	59 Barden Ridge Rd, Reedy Creek and described as Lot 861 on SP 198490 — the subject site

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### **Appeal**

Appeal under section 533 of the *Sustainable Planning Act 2009* (SPA) against the giving of an enforcement notice by the Gold Coast City Council under section 578 of the SPA. The enforcement notice was issued by Council in relation to Earthworks not being retained in accordance with s75 of the *Building Act 1975* (BA)

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<b>Date of hearing:</b>	26 <sup>th</sup> September 2012
<b>Place of hearing:</b>	59 Barden Ridge Rd, Reedy Creek , Queensland
<b>Committee:</b>	Geoffrey Mitchell – Chair Desmond Lang – General referee
<b>Present:</b>	Robert Legat – Applicant’s representative Brian Gobie – Council representative Mark Newton – Council representative

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### **Decision:**

The Building and Development Dispute Resolution Committee (Committee), in accordance with section 564 of the SPA **confirms** the decision of Council to give the enforcement notice. The Committee also **amends** the enforcement notice by replacing the requirements to read.

- a. Engage the services of a Building Certifier by 9 November 2012 to provide a development permit for the construction of a retaining wall to the excavation along the eastern side boundary; and
- b. Construct the retaining wall in accordance with the development permit within 90 days of the date of the development permit or before 31 March 2013 whichever is the lesser.

### **Background**

The land, subject to this Appeal is located at 59 Barden Ridge Road Reedy Creek. On the subject land is a partially completed dwelling. Along the eastern side of the dwelling is an un-retained earth bank which

appears to be in close proximity to the property alignment.

The Applicant had engaged the services of a builder to construct the residence on the property which included the construction of a retaining wall to the offending earth bank. The builder failed to complete the construction which has subsequently been the subject of an insurance claim to the Building Services Authority.

On or around 18 January 2012, the Council issued a Show Cause Notice in relation to the requirement to retain the earthworks along the eastern side boundary.

On or around 2 February 2012, the Applicant responded to the Show Cause in terms of not disputing the requirement for the construction of a retaining wall, but outlined delays being incurred by the failure of the builder to complete the work and the process being undertaken by the Building Services Authority in assessing the claim under its insurance scheme.

On or around 18 May 2012, the Building Services Authority advised the Applicant that they were eligible for insurance assistance.

On or around 21 May 2012, the Council issued an Enforcement Notice requiring the Applicant to construct a retaining wall along the eastern boundary by obtaining a Development Permit and completing the construction within 20 days of receiving the Development Permit.

The Applicant appealed the decision of Council to the Committee on 18 July 2012 on the grounds that:

- a. The time frame given in the Notice is unreasonable and unable to be complied with as there is only 6 business days between the date of delivery of the Notice (8 June 2012) and the date required for obtaining a Development Permit (19 June 2012);
- b. The Council has failed to take into account, respond, or to take action regarding the issues raised by the Applicant in their letter of response to the Show Cause Notice which materially affect the Applicant's ability to construct the works;
- c. If the Applicant constructs the works in accordance with the Notice it would be in breach of clauses 7.1 and 7.5 of the BSA Home Warranty Insurance Policy Conditions in respect to the claim;
- d. The Notice fails to take into account the material impact on the works, specifically with regard to necessity and timing caused by the actions of the third party owner of the adjoining lot; and
- e. The Applicant does not dispute the necessity of the works and fully intends to erect a retaining wall in accordance with all legal requirements however it is not reasonable to undertake works at this time with the practical constraints currently placed upon them.

## **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 Committee Registrar on 22 June 2012
2. The *Sustainable Planning Act 2009* (SPA)
3. The *Building Act 1975* (BA)
4. Email correspondence from the Applicant to the Committee
5. Correspondence from Council provided at the hearing
6. Verbal representation by the parties at the hearing

## Findings of Fact

The Committee makes the following findings of fact:

- On the subject land; is a partially completed dwelling. Along the eastern side of the dwelling is an un-retained earth bank which appears to be in close proximity to the property alignment.
- The BA at s75 states:
  - “**Earthworks and retaining walls**  
If soil conditions, ground levels, excavation or filling make it necessary to protect land, buildings or structures in the neighbourhood of building work—  
(a) retaining walls must be built, or other suitable methods used, to prevent soil movement; and  
(b) drainage of the land, buildings or structures must be provided.
- The earth bank in its current form does not comply with s75 of the BA.
- On or around 18 January 2012, the Council issued a Show Cause Notice as required under s247 of the BA.
- On or around 21 May 2012, the Council issued an Enforcement Notice under s248 of the BA.

## Reasons for the Decision

The site as presented requires a retaining wall under s75 of the BA. The previous reason for delay, awaiting the determination of the Building Services Authority has now been resolved. The Applicant has agreed to construct the retaining wall as soon as the required approvals have been obtained. The Council has agreed to accept the time frames set by the Committee.

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**Building and Development Committee Chair**  
**Date: 29 October 2012**

## **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  
PO Box 15009  
CITY EAST QLD 4002  
**Telephone (07) 3237 0403 Facsimile (07) 3237 1248**