



## Building and Development Tribunals – Decision

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### *Integrated Planning Act 1997*

**Appeal Number:** 3–08–058

**Applicant:** Dario Sacilotto

**Assessment Manager:** Fraser Coast Regional Council

**Concurrence Agency:** N/A  
(if applicable)

**Site Address:** 16 Hillcrest Avenue, Scarness and described as Lot 6 on RP119678—the subject site.

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### **Appeal**

Appeal under section 4.2.13 of the *Integrated Planning Act 1997* (IPA) against the decision of Fraser Coast Regional Council to issue an enforcement notice requiring the applicant to obtain a development approval for a fence exceeding two metres in height already erected on the rear boundary of the subject site.

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**Date of hearing:** 11am – Wednesday 10 September 2008

**Place of hearing:** The subject site

**Tribunal:** Mr Geoff Cornish – Chair  
Mr Laurie Barnett – Member

**Present:** Mr Dario Sacilotto – Applicant  
Mr Chris Olive – Private Certifier, Fraser Coast Building Certification  
Mr Stephen Clark – Fraser Coast Regional Council Representative  
Mr John Fraser – Fraser Coast Regional Council Representative

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### **Decision:**

The Tribunal, in accordance with section 4.2.34 (2)(c) of the IPA **sets aside** the decision of the Fraser Coast Regional Council to issue an enforcement notice and upholds the appeal. The assessment manager is directed to withdraw the notice.

## **Background**

The matter concerns the decision of the Fraser Coast Regional Council to issue an enforcement notice in respect of an existing over-height fence constructed on the northern boundary of the subject site.

The notice required the applicant to remedy the offence by obtaining a development approval for the fence. Before granting an approval, the applicant's certifier was obliged to seek the permission of the Council for the increase in height. The Council, as a concurrence agency, refused to vary the permissible height for the fence, thus preventing the certifier from issuing the required approval.

The Council had previously indicated its lack of any objection to the existing structure. It had, however, placed conditions on the applicant to obtain the neighbours' written agreement. A long standing dispute between the applicant and his neighbours on other issues had resulted in such an agreement being unreachable. The Council initially took action regarding this fence in early March 2007, but failed to resolve the underlying problem that prevents an agreement from being reached.

The Tribunal heard a separate appeal in respect of the refusal and determined to approve of the increase in height. The outstanding enforcement notice therefore needs to be withdrawn.

## **Material Considered**

The material considered in arriving at this decision comprises:

- The application, including Form 10 - Notice of Appeal and supporting documentation;
- Council's enforcement notice dated 31 July 2008;
- Verbal submissions from all the parties at the hearing;
- The Tribunal's decision in respect of Council's concurrence agency advice;
- The *Building Act 1975*; and
- The IPA.

## **Findings of Fact**

The Tribunal makes the following findings of fact:

- The fence to which the enforcement notice applies was erected without the necessary prior approval.
- The Council issued the enforcement notice in order to require the applicant to obtain formal approval for the fence.
- The Council indicated in writing to the applicant that it raised no objection to the increased height of the fence.
- The applicant complied with the notice by applying for the necessary approval.
- The applicant's certifier sought and obtained the Council's advice, as a concurrence agency, with respect to the increase in height.
- The Council refused to approve an increase in height.
- The certifier refused the development application.
- The enforcement notice is still current.
- A separate appeal hearing was held in respect of the concurrence agency advice and the Tribunal decided to uphold the appeal and order the issuing of an approval.

## **Reasons for the Decision**

- The fundamental intent of the enforcement notice was to obtain either compliance with the Building Act in respect of an approval for the fence as constructed or, failing that, to remedy the commissioning of an offence by reducing the height of the fence to no more than that permitted under the Queensland Development Code Part MP 1.2.
- The Tribunal decision in respect of the appeal against the concurrence agency advice preventing the issue of an approval has determined to order an approval.
- As an approval has now been obtained for the fence, this notice has been satisfied and should be withdrawn.

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**Geoff Cornish**  
**Building and Development Tribunal Chair**  
**Date: 8 October 2008**

## **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  
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