



APPEAL
Integrated Planning Act 1997

File No. 3/07/026

BUILDING AND DEVELOPMENT TRIBUNAL – DECISION

Assessment Manager: Bundaberg City Council
Site Address: *withheld*-“the subject site”
Appellant: *withheld*

Nature of Appeal:

Appeal under Chapter 9 Section 250 of the *Building Act 1975* against the issuing of Enforcement Notice by Bundaberg City Council for failure to comply with section 119 of the *Building Act 1975* which provides – A person must not use a building, other than a Class 1, 2, 3 or 4 building, for residential purposes unless the use is approved by the Local Government for the building.

The building has not been approved as a class 1, 2, 3 or 4 building. It was approved as a garage/shed (Class 10a Building). The building is on land located at “the subject site”.

Date and Place of Hearing: Based on written submission as well as a teleconference was conducted on Monday 2nd July 2007 at 10.30 am.
Tribunal: Mr Paul R Smith – Chairperson
Ms Jenny Owen – General Referee
Present at teleconference: Appellant / Owner;
Mr R. Thompson – Bundaberg City Council representative;
Mr S. Curran – Bundaberg City Council representative.

Decision:

That the Enforcement Notice issued by the Bundaberg City Council, the subject of this appeal, dated 29 March 2007 is **confirmed**.

Material Considered

The material considered in arriving at this decision include:

- Lodgment of 'Form 10 - Notice of Appeal' and payment of prescribed fee received by the Registrar on 12 April 2007;
- Written submissions received from the Appellant;
- Written submissions received from Bundaberg City Council;
- Oral submissions from both parties during the teleconference;
- Bundaberg City Council Enforcement Notice dated 29th March 2007;
- The *Integrated Planning Act 1997*; and
- The *Building Act 1975*.

Background and Reasons for decision

The Tribunal formed the opinion that:

1. the building, the subject of this appeal, is a non residential class 10a (shed/garage) which was approved by Bundaberg City Council for use as a habitable dwelling on 11th April 1989 for a period of 5 years only. This approval lapsed some 14 years ago;
2. the building continued to be used (unlawfully) as a permanent residence, namely a class 1a dwelling, after Bundaberg City Council's approval had lapsed and until Council issued the Enforcement Notice, the subject of this appeal;
3. Council has sought expert advice and, based on that advice, has established a Q50 floor level on the subject site at 7.6m AHD;
4. the floor level of the existing building is in the order of 1.5 metres below that level;
5. in the circumstances, there would be a risk to the life and health of occupants of the building if the existing class 10a building was permitted to be used for permanent occupation as a dwelling;
6. the existence of other dwellings in the area that were erected, with a floor level at or near the floor level of the building the subject of this appeal, prior to Council adopting its current flood level, does not form sufficient grounds to approve a new building or, in this case, the reclassification of an existing non-residential building, to permit its use for permanent occupation as a dwelling; and
7. the appellant's submissions concerning his belief that the building could be lawfully used as a dwelling when he purchased the property is not a relevant matter to be considered in this appeal.

I complement the representatives at the hearing

- The Tribunal complements all representatives at the hearing for their candid, respectful and helpful submissions.

Paul Smith

Building and Development Tribunal General Referee (Chair)

Date: 12 July 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
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