



Building and Development Tribunals
Queensland Government

Department of Local Government, Planning,
Sport and Recreation

APPEAL
Integrated Planning Act 1997

File No. 03-06-040

BUILDING AND DEVELOPMENT TRIBUNAL - DECISION

LOCAL GOVERNMENT: Cairns City Council

SITE ADDRESS: *Withheld – “the subject site”*

APPLICANT : *Withheld*

NATURE OF APPEAL: Appeal under Chapter 4 of Part 2 of the *Integrated Planning Act 1997*, against the decision of the Cairns City Council to give an Enforcement Notice to the Applicant, requiring the applicant to demolish the building located at “the subject site”.

DATE AND PLACE

OF HEARING: 10.00 am on Wednesday 12th April, 2006.

TRIBUNAL: Nigel Daniels.

PRESENT: ”Applicant”
“Applicant”
Licensed Builder.

Kerry Maggs - Building Surveyor, Licensed Builder. .

DECISION:

Under the provisions of the *Integrated Planning Act 1997*, section 4.2.34, the Tribunal **sets aside the decision appealed against and makes a decision replacing the decision set aside (the new decision).**

The new decision, replacing the decision made by the Cairns City Council, is as follows:

The owner of the building located at “the subject site” is required, within six calendar months from the date of this decision, to effect repairs to damage to the building and restore deteriorated structure and linings to the building sufficient to bring the whole of the building to current structural standards required under the provisions of the *Building Act 1975* and subordinate legislation, including, but not limited to the following:

- 1. An inspection must be made by a person holding a licence issued by the Building Services Authority, being a "Termite Management - Chemical" licence or a "Completed Residential Building Inspection" licence, to identify the extent and location of all termite damage in the building; and to identify all structural members and all linings which are termite damaged to**

the extent that they must be replaced. A report must be prepared by the person making the inspection. The report must state the extent and location of all termite damage in the building and state which structural members and linings are termite damaged to the extent that they must be replaced.

2. The structure of the building, including the roof framing, must be up-graded to current standards. Note that the site is within wind region "C" cyclonic. A schedule, if necessary accompanied by drawings, must be submitted to the Cairns City Council, showing the structural alterations necessary to comply with this requirement. The schedule and drawings (if any) must be accompanied by a certificate from a registered practising engineer (structural) identifying that the building work, when completed, will comply with the required standards
3. An inspection must be made of the existing roof sheeting and rainwater goods, including the window hoods, if any. Their removal and replacement with new materials is required where corroded or otherwise defective. If part only of the roofing and/or rainwater goods requires replacement, then new materials must be compatible with existing materials.
4. Examination must be made of the existing framing, flooring and linings for deterioration and damage (whether from termite damage, weather damage or otherwise); where deteriorated or damaged so as to be unserviceable, they must be removed and replaced with new.

BACKGROUND:

The building was damaged by Cyclone Larry to the extent that the Cairns City Council formed the belief that the structure was unfit for use or occupation due to structural damage to roof and walls, lack of cyclone tie downs and under sized (structural) members.

The Council also stated its belief that it is not possible and practical to repair or rectify the building, nor to secure the building, nor to fence the building to protect persons, nor to cleanse, purify and disinfect the building, in lieu of demolition.

REASONS FOR THE DECISION:

The damage caused to the building by the cyclone is not of itself sufficient to warrant demolition of the building.

However, the structure of the building, generally, had deteriorated to a level of unserviceability that makes repairs to the cyclone damage, alone, insufficient to establish that the building will be structurally sound or sufficiently serviceable for future use.

The only realistic options, therefore, are:

1. Demolish the building; or
2. Carry out repairs to the building that will ensure that the building as a whole is structurally safe and serviceable.

The Tribunal formed the opinion that repair to the damage and restoration of the existing building are feasible and that the applicant should be offered the opportunity to establish that repair and restoration are possible.

Note that this decision relates only to structural safety and serviceability. The reason for limiting the decision to structural safety and serviceability is to confine the repair and restoration work to recovery from the effects of the cyclone. For that reason, matters of aesthetics, energy efficiency and sustainability,

which might otherwise be addressed when extensive work is being done to a dwelling, do not form part of the Tribunal's decision.

MATERIAL CONSIDERED:

- Form 10 – Building and Development Tribunals Appeal Notice from “applicants”, and material attached to the Notice;
- Verbal submissions, at the hearing;
- Inspection of the building;
- The *Building Act 1975*;
- The *Standard Building Regulation 1993*; and
- The *Integrated Planning Act 1997*.

FINDINGS OF FACT:

1. The building had received damage as the result of the cyclone. The damage alone would not have been sufficient to warrant demolition of the building
2. The building showed signs of deterioration during its life. Some repairs to deterioration had been carried out.
3. The building is capable of repair and restoration; although extensive.

Nigel Daniels,
Referee, Building and Development Tribunal.
Date: 12 May 2006.

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, Building & Development Tribunals
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