



Building and Development Dispute Resolution Committees—Decision

Sustainable Planning Act 2009

Appeal Number:	5 - 13
Applicant:	Cathedral Downs Pastoral Co Pty Ltd
Assessment Manager:	Toowoomba Regional Council (Council)
Concurrence Agency: (if applicable)	N/A
Site Address:	52 Primrose Drive, Millmerran and described as Lot 32 on RP 146095 – the subject site

Appeal

Appeal under section 533 of the *Sustainable Planning Act 2009* (SPA) against the giving of an enforcement notice by Council under section 578 of the SPA. The enforcement notice was issued by Council in relation to the conversion of a Class 10a Shed to a Class 1a Dwelling without an effective Development Approval for building work

Date of hearing:	21 st February 2013 at 11.30am
Place of hearing:	Applicant's work address - 85 Koplick Rd, Parkridge and Council by Teleconference from Council chambers
Committee:	Geoffrey Mitchell – Chair
Present:	Clarence Gibbons – Applicants representative Cherrie Batterley – Applicants representative Ross Ford – Council representative (via teleconference) Robert Gray – Council representative (via teleconference) Vanessa Hicks – Council representative (via teleconference)

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 words at REQUIREMENTS OF ENFORCEMENT NOTICE;

“You are required on or before 4:00pm Monday, 04 February 2013”; with;

You are required on or before 4:00pm Monday 06 May 2013..

Background

The land subject to this appeal is located at 52 Primrose Drive, Millmerran. On the subject land is a structure that has been approved as a Class 10a shed that is being used for habitable purposes.

The Applicant has in place a "sale on terms" of the subject site wherein the Applicant retains title of the land until such time as full payment has been affected by the purchaser.

The subject building received a Development Approval for building works File No 3915 from the Millmerran Shire Council on 12/10/2006. The registered owner listed for the Development Application was a Cathedral Downs Pastoral Pty Ltd and the Development Application Applicant was a Samantha Roberts. This approval has received its final inspection and the Form 21 final certificate has been issued.

There is a subsequent Development Approval for building works and a compliance permit for plumbing works, File No 4069 from the Millmerran Shire Council dated 14/01/2008 to convert the Garage Class 10a to a Dwelling Class 1a. The owner was listed as Cathedral Downs Pty Ltd and the Development Application Applicant for this approval was an S. Roberts.

Council has no record of any of the inspections required under the *Building Act 1975* (BA) and nor has there been a Form 21 final inspection given.

On the 1st August 2011 the Council as Assessment Manager issued a reminder notice for lapsing of an approval under s95 BA. The Applicant states that they did not receive this notice.

On the 7th December 2011 Council lapsed the approval and advised the Applicant that the matter would be referred to Council's Development Compliance Branch for further enforcement action. The Applicant states that they did not receive this correspondence.

There were subsequent discussions and correspondence between the Applicant and the Council resulting in Council issuing a Show Cause and subsequently the Enforcement Notice on 20 December 2012 which is the subject of this appeal

The Applicant has appealed the Enforcement Notice on the grounds that;

- a. *"Council never dealt with the us;*
- b. *Council has refused to meet to discuss what is going on;*
- c. *Council has made mistakes when they acknowledge that Council should have issued the Enforcement Notice to the people they dealt with to whom they gave the development application"*

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 Committees Registrar on 24 Jan 2013.
2. The *Sustainable Planning Act 2009* (SPA)
3. The *Building Act 1975* (BA)
4. The Building Regulation 2006 (BR)
5. The *Acts Interpretation Act 1954* (AIA)
6. Additional correspondence received from Council on the 12th February 2013
7. Verbal representation by the parties at the hearing

Findings of Fact

The Committee makes the following findings of fact:

- The owner of the subject site is Cathedral Downs Pastoral Co Pty Ltd.
- The building subject to the appeal received a Development Approval as a Class 10a shed on 12 October 2006
- The registered owner listed for the Development Application was a Cathedral Downs Pastoral Pty Ltd and the Development Application Applicant was a Samantha Roberts.
- This Development Approval has been completed and a Form 21 final certificate has been issued for a Class 10a shed.
- On 14 January 2008 Council gave a further Development Approval for building works and a compliance permit for plumbing works to change the structure from Class 10a to Class 1a.
- The registered owner listed for this Development Application was a Cathedral Downs Pty Ltd and the Development Application Applicant was a S Roberts.
- This further Development Approval contained conditions that;
 - a. Required the builder to give the Building Certifier notice that various stages were ready for inspection; and
 - b. The Approval will lapse and be void if:-
 - (i) The building work is not commenced within 12 months of the date of approval, or
 - (ii) The building work is not completed within 24 months of the date of approval.
- The Assessment Manager has not issued a Form 21 final inspection certificate for this further Development Approval.
- On 1 August 2011 Council gave a reminder notice for lapsing of an approval to Cathedral Downs Pastoral Co Pty Ltd (Applicants to this appeal) in relation to the second Development Approval to convert the Shed to a Dwelling
- On 7 December 2011 Council lapsed the Building Development Approval for the conversion under s95 BA
- On 20th December 2012 Council issued an Enforcement Notice for the alteration of the subject building without an effective Development Approval.
- An appeal was lodged with the Building and Development Dispute Resolution Committee registry on the 24th January 2013.
- The Applicant states that the Enforcement Notice was not received until the 2nd January 2013
- The subject building is currently being used for habitable purposes.

Reasons for the Decision

By reference to s39A of the AIA and <http://auspost.com.au/parcels-mail/standard-delivery.html> the Committee has determined that the notice of appeal was submitted on the 20th day and hence the Committee has jurisdiction to hear the appeal.

The Development Application for building works dated 14 January 2013 contained conditions that required various stages to be inspected. Section 27 of the BR requires that the builder must ensure the building certifier is given a notice claiming the stage has been completed.

From the evidence presented there is no record of the builder notifying the building certifier that any particular stage was ready for inspection.

The Applicant for a Development Approval is the responsible party for the conduct of the approval. In this case the Applicant of the Development Approval (Samantha Roberts) is not the owner.

The Assessment Manager is required to deal principally with the Applicant of the Development Approval however there is a requirement to send various notifications, certificates and notices to the owner.

Section 95 of the BA requires the Assessment Manager to send a reminder notice to the owner, if the building work is started but not completed, not more than 6 months and not less than 3 months before a building Development Approval is lapsed.

From the evidence presented the Assessment Manager gave the required notice on 1 August 2011.

The Committee considers the building Development Approval for the conversion of the shed to the dwelling was lapsed on 7 December 2011.

There is no evidence of a Form 21 final inspection certificate for the subject building work being given to change the classification to Class 1a and hence the subject building only holds approval for use as a Class 10a non-habitable structure.

The building is currently being used for habitable purposes and requires a new Development Approval for building work to change the building classification from Class 10a to Class 1a.

Geoffrey Mitchell
Building and Development Committee Chair
Date: 12 March 2013

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
GPO Box 2457
Brisbane QLD 4001
Telephone (07) 3237 0403 Facsimile (07) 3237 1248