



Building and Development Dispute Resolution Committees—Decision

Sustainable Planning Act 2009

Appeal Number:	17-16
Applicant:	BAIC – Suresh Chandra
Assessment Manager:	Redland City Council (Council)
Concurrence Agency: (if applicable)	N/A
Site Address:	9 Lapford Court, Alexandra Hills and described as Lot 61 on SP 182979 – the subject site

Appeal

Appeal under section 533 of the *Sustainable Planning Act 2009* (SPA) in relation to an Enforcement Notice issued by the Council about a concrete block retaining wall, being:

- a) an Enforcement Notice issued pursuant to section 248 of the *Building Act 1975* (BA) in respect of building work that the Council reasonably believes is dangerous.
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Date and time of hearing:	Thursday 16 June 2016 at 10:30 AM
Place of hearing:	The subject site
Committee:	Geoffrey Mitchell – Chair Adam Reilly - Member
Present:	Suresh Chandra – Applicant Graham Simpson – Redland City Council Robbie Newman – Redland City Council

Other parties were present including the adjoining property owner and representatives to enable an inspection of the subject structure, however they did not participate in the formal hearing.

Decision:

The Building and Development Dispute Resolution Committee (Committee), in accordance with section 564 of the SPA, **dismisses** the appeal and confirms the Enforcement Notice issued by the Council.

Background

The appeal was lodged by the Applicant in response to an Enforcement Notice issued by the Council to the property owners' company (Bree Holdings Pty Ltd as Trustee) as the registered owner of the subject site. The appeal was filed pursuant to section 533 of the SPA.

The retaining wall/s subject to the Enforcement Notice (Notice) received a retrospective approval from Council on 23 June 1992, Council File reference 92.2328.

The above approval was issued on the basis of an engineer's inspection that that the wall/s were structurally adequate.

In 2013, at a date not known to the Committee, a portion of the wall failed and Council subsequently issued an Enforcement Notice, Council File reference ENF006731.

The matter of the failed wall triggered a dispute between the owners of the subject property and the adjoining owners. The Committee is advised that an action in relation to the matter was commenced in the Queensland Civil and Administrative Tribunal (QCAT).

After discussions between the owner and Council, Notice ENF006731 was withdrawn by Council on 27 May 2013. Council advises that the Notice was withdrawn in anticipation of the matter being resolved in the QCAT.

In April 2015 Council received an engineering report, raising a number of issues and advising that the wall was not structurally sound and could be subject to collapse.

On 11 March 2016 Council wrote to the owner advising of its concerns at the contents of the report and requesting the owner obtain an independent engineering report on the condition of the wall. Council also advised in the correspondence that the area where the wall had collapsed in 2013 was still not adequately stabilised.

On 12 May 2016 Council issued Enforcement Notice ENF007216 (the notice subject to this appeal), requiring the area to be made safe and the wall to be brought into conformity with the Building Code of Australia or be removed.

Pursuant to section 248(4) of the *Building Act 1975* (BA), Council dispensed with the issue of a show cause notice as it considered the wall to be dangerous.

On 20 May 2016, the Applicant lodged an appeal against the Enforcement Notice with the Committee registry.

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 20 May 2016.
2. Verbal representations at the hearing.
3. The *Sustainable Planning Act 2009* (SPA).
4. The *Building Act 1975* (BA)
5. The National Construction Code (NCC) Volume 2 Part 3.1.1 (NCC)

Findings of Fact

The Committee makes the following findings of fact:

- On 23 June 1992 Council issued a building approval (reference number 92.2328) for a patio cover and retaining walls on the subject site.

- In 2013, at a date not known to the Committee, a portion of the wall failed.
- At a date not known to the Committee, Council issued Enforcement Notice ENF00673.
- On 27 May 2013 Council withdrew Enforcement Notice ENF00673.
- On 12 May 2016 Council issued Enforcement Notice ENF007216.
- On 20 May 2016, the Applicant appealed Enforcement Notice ENF007216.
- On the day of the appeal hearing the Committee inspected the subject wall and noted: -
 - (a) A portion of the wall had collapsed exposing an earth bank approximately 1.0m high;
 - (b) There were signs of erosion to the un-retained earth bank;
 - (c) There were no signs of core filling in the exposed parts of the wall in the area that could be viewed;
 - (d) There were no signs of horizontal steel reinforcement in the wall in the area that could be viewed;
 - (e) There was a timber fence structure of approximately 1.8m high constructed on top of the wall;
 - (f) Other retaining walls on the property were showing signs of structural failure

Reasons for the Decision

The evidence presented shows the retaining walls on the subject site are compromised.

The un-retained earth bank, in the area where the subject wall has collapsed, does not comply with the NCC.

The Applicant, a Registered Professional Engineer, gave verbal evidence that he would be unable to certify the retaining wall as structurally adequate.

Due to the existing collapse and the engineering reports received, it was reasonable for the Council to consider the building work to be dangerous.

The Council is entitled under section 248 of the BA to give a Notice (an Enforcement Notice) to the owner of the structure on the subject site.

Geoffrey Mitchell
Building and Development Committee Chair
Date: 4 July 2016

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) 1800 804 833 Facsimile (07) 3237 1248