



APPEAL
Integrated Planning Act 1997

BUILDING AND DEVELOPMENT TRIBUNAL - DECISION

Assessment Manager: Gold Coast City Council

Site Address: *withheld*—‘the subject site’

Applicant: *withheld*

Nature of Appeal

Appeal under Chapter 9 Section 250 of the *Building Act 1975* against the Gold Coast City Council’s decision to issue an Enforcement Notice, dated 4 December 2007. (No. PN93075/16). The Enforcement Notice required the applicant to rectify the portions of the boundary fence on “the subject site” so that it is no longer dilapidated and in a dangerous state.

Date and Place of Hearing: 10.00 am Monday 21 January 2008 at Gold Coast City Council Chambers followed by written submissions at various dates as identified herein.

Tribunal: Mr Paul Smith Chairperson

Present: Applicant
Adjoining Neighbour
Mr Darren Barnett Gold Coast City Council Representative

Decision

The Tribunal, in accordance with section 4.2.34 of the *Integrated Planning Act 1997* **changes** the Enforcement Notice by deleting the paragraphs after the photographs at the bottom of page 1 of the Enforcement Notice and substituting the following:

“You are required to do the following:

- a) Rectify the portion of the boundary fence so that it is no longer dilapidated and in a dangerous state; and
- b) Fence off the area of the subject within 5 metres of the dividing fence with a fence (herein referred to as the **safety fence**) meeting the design requirements of a swimming pool fence under the Building Act; and

- c) Give directions to all visitors to the subject land advising them of the dilapidated and dangerous state of the dividing fence and, except for workers and others engaged to rectify the boundary fence as required by subparagraph a) hereof, advise all persons that they are prohibited from accessing the fenced off area; and
- d) Placing a sign on the safety fence warning people of the dilapidated and dangerous state of the dividing fence and prohibiting them accessing the fenced off area; and
- e) Keep the safety fence secured and in good order to meet the requirements of subparagraph b) to d) hereof until the dividing fence is no longer in a dilapidated and dangerous state.

You are required to comply with the requirements of subparagraphs b) to e) of the preceding paragraph immediately. You are required to comply with subparagraph a) of the preceding paragraph as soon as is practicable but no longer than 6 months from the date of this decision.”

Background

The Tribunal has decided this appeal partly on the basis of submissions made at the hearing on 21 January 2008 and partly on submissions subsequently made in writing as identified herein.

The Tribunal formed the opinion, from inspecting photographs of the dividing fence and from the submissions received, that the dividing fence was dilapidated and in a dangerous state. This was the common view expressed by the parties, The Tribunal formed the opinion that a site inspection would not assist in forming this decision.

The Tribunal was advised that the two neighbours involved were negotiating an agreement as to how the dividing fence would be made safe. The Tribunal formed the view that it has no jurisdiction to determine who should carry out the necessary work or to how it was to be carried out. Accordingly the Tribunal agreed to adjourn the hearing, and its final decision, to give the neighbours the opportunity to finalise their negotiations, subject to the applicant agreeing to immediately fence off the area to prevent persons being injured in the event of the collapse of the dividing fence.

Further written submissions were received, following the hearing, which reveal that, unfortunately, no agreement has been, or is likely to be, reached between the neighbours.

The appellant immediately after the hearing on 21 January 2008, installed a temporary safety fence and on this basis the Tribunal is of the opinion that there is no immediate urgency to have the rectification work carried out, although the Tribunal is of the opinion that the temporary safety fence is not a long term solution to the problem and believes a six months limit to require the work to be performed is a reasonable time for the neighbours to resolve their dispute over how the work is to be performed and who should pay.

Material Considered

In coming to a decision, consideration was given to the following material:

1. ‘Form 10 – Notice of Appeal’ lodged with the Registrar on 12 February 2008 including grounds for appeal and correspondence accompanying the appeal.
2. Photographs of the subject fence.

3. Enforcement Notice from Gold Coast City Council, dated 4 December 2007.
4. Verbal submission from the applicant at the hearing and copies of written correspondence dated 22, 24 and 29 January 2008 and 18 March 2008.
5. Verbal submission from the applicant's neighbour at the hearing and copies of written correspondence dated 15 and 24 January and 25 March 2008.
6. Gold Coast City Council verbal submission at the hearing.
7. The Kaldoe Building Inspection report dated 3 October 2007.
8. The *Building Act 1975*.
9. The *Building Regulation 2006*.
10. The Queensland Development Code Part 12.
11. The *Integrated Planning Act 1997*.
12. The Gold Coast City Council planning scheme.

Findings of Fact

The Appeal was lodged within the prescribed timeframe.

Reasons for the Decision

See the reasons set out under the heading "Background".

Paul Smith
Building and Development Tribunal Chairperson
Date: 31 March 2008

Appeal Rights

Section 4.1.37. of the IPA 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
PO Box 15009
City East QLD 4002
Telephone (07) 3237 0403 Facsimile (07) 3237 1248