

BUILDING AND DEVELOPMENT TRIBUNAL - DECISION

Assessment Manager: Brisbane City Council

Site Address: 4 Briggs Street, Taringa.

Nature of Appeal: Appeal under Section 4.2.13 of the Integrated Planning Act 1997 against the decision of Brisbane City Council to issue an enforcement notice in respect of the safety of a fence and excavations on the western side boundary of land described as Lot 1 RP 23429, situated at 4 Briggs Street, Taringa.

Date and Place of Hearing: 11.00am Thursday 5 July, 2001, on site at 4 Briggs Street, Taringa.

Tribunal: Geoff Cornish

Present The Applicants
Errol George and Joe McCormack on behalf of Brisbane City Council.
With the agreement of the parties, solicitors for the applicants and Brisbane City Council attended as observers.

Decision: In accordance with Section 4.2.34 of the Integrated Planning Act 1997, I hereby change the decision appealed against so that items (a) to (d) of the original notice are deleted and substituted by the following-

1. Subject to Brisbane City Council providing the applicants with written confirmation that they hold documentation certifying that the retaining wall and carpark on 44 Morrow Street do not surcharge the excavation at the north-western corner of the 4 Briggs Street site, the applicants shall provide the Council with a plan showing the details of the shotcrete treatment of the excavated embankment and a certificate from a registered professional engineer that the shotcrete has been installed in accordance with the submitted plan.
2. The applicants shall repair the fence adjacent to the above excavation, attach it to the south-eastern corner of the retaining wall of the 44 Morrow Street carpark and to the wall of the 4 Biggs Street building adjacent to the air-conditioning duct, and provide Council with a registered professional engineer's certificate showing the repaired fence complies with the handrail and balustrade loading provisions of AS 1170 Part 1.
3. The applicants shall ensure that the backfill against the southern section of the western wall of the 4 Biggs Street building has filled all voids between the wall and the excavated bank, and provide the Council with written confirmation to this effect.

4. The applicants shall comply with the requirements of this notice within two months of the date on which the Brisbane City Council provides the written confirmation set out in Item 1 above.

Consequent upon the completion of these actions, the Council's records shall be notated to show that the notice is no longer current and will not show in any future property search.

Reasons:

The appeal relates to the matters of safety and drainage in respect of the excavation that was required to the western boundary of the 4 Biggs Street site during the construction of the building in 1996 and contained in the enforcement notice of 11 May 2000. Three issues need to be considered and these are that Council contends that-

1. The excavation on the western boundary of the property at the north-western corner of the Biggs Street building is not supported by a retaining wall and drained in accordance with the development approval.
2. The western boundary fence at the above excavation is unsafe.
3. The excavation on the western boundary of the property adjacent to the southern section of the western wall of the building has not been adequately backfilled so as to fill all voids between the building and the excavated bank.

These matters will be addressed separately. In considering these matters, the Tribunal is constrained to considering only those issues that are relevant to the application of the Integrated Planning Act, the Building Act and the Standard Building Regulation in respect of the development approval process for building works. While individual parties to this appeal may consider that other matters impact upon these issues, this Tribunal has no jurisdiction to consider those matters.

1. North-western corner embankment.

The appellant submitted that the work carried out on the excavated embankment, at the time of the construction of the carpark on the adjoining 44 Morrow Street property, had been done as a precautionary measure and not because the embankment was considered to be unstable. The appellant was verbally advised by Council at that time to contact the certifier of the adjacent site works to verify that the work did not surcharge the 4 Biggs Street embankment. The appellant was advised by the certifier that he held a report stating that no surcharge applied. Further, the appellant submitted that the approved plans for the 1996 construction of his own building showed no requirement for the backfilling and drainage of this excavation adjacent to the wall of the building, as contended by Council. He contended that the excavation was in stable shale material and did not require any special support and that the only instability related to additional fill material that had been placed above the embankment by the contractor engaged by the adjoining property owner.

Further, the appellant reported that he had inspected the site after heavy rain and that the area did not pond water and therefore did not require any further specialised drainage provision. The appellant reported that the shotcrete applied to the embankment was reinforced and drained, and he was in a position to provide plan details of the work and registered professional engineering certification that the work had been carried out in accordance with those details.

The Council stated that the matters had been brought to their attention and that they had been required to act under their “Duty of Care” in respect of public safety in response to that report. They were not in a position to advise how the matters had been reported. They were aware that certification existed stating that no surcharge applied to the embankment and that they were prepared to provide the appellant with written confirmation that no surcharge effect applied. They were seeking details of the shotcrete that had been applied to the embankment and the drainage of that shotcrete, and required professional engineering certification of that construction.

My examination of the approved drawings submitted by the appellant and Council shows no specific details applying to this corner of the building. While it may have been intended, it cannot now validly be inferred that backfill was required against this section of wall. The evidence supplied by Council suggests that stabilisation of the excavated batter was required. Such work has been undertaken. There is no further evidence to indicate that this remedial work is unsatisfactory. Central to this assumption is the Council statement that documentation exists that the building work on the adjoining 44 Morrow Street property does not impose any surcharge on the embankment. Documentary evidence of this should be provided to the applicant as agreed on site.

On the above basis, the submission by the appellant to Council of a drawn detail showing the nature of the stabilisation and drainage, together with a registered professional engineer’s certification that the work has been carried out in accordance with that detail, should suffice to satisfy this aspect of Council’s notice. It is recommended that no specific building application or approval needs to be applied to this submission.

2. Fence at north-western corner

The appellant submitted that the fence had been structurally sound and adequate prior to commencement of work on 44 Morrow Street and that the damage to the fence was caused by the actions of the contractors working for the adjoining neighbour during construction on that property. Evidence submitted by Council suggests that the damage may have occurred at the time of excavation for the construction of the appellant’s building. There is no conclusive evidence to indicate which of these two situations actually applies, or whether there were a number of contributing factors resulting from the actions of the adjoining neighbours over time. What is clear is that the fence is not currently structurally sufficient to withstand the loading that would be required to be carried by a correctly constructed handrail and balustrade adjoining a drop exceeding one metre in height.

Without admitting any liability, the appellant has agreed to have this section of fence repaired, firmly attached to the south-eastern corner of the retaining wall of the 44 Morrow Street carpark and the outer corner of his own building adjacent to the air-conditioning duct, and sufficiently supported between these points. This will be undertaken so as to enable the provision to Council of a registered professional engineer’s certificate attesting to the structural capacity of the fence to withstand a lateral loading of 0.75kN per metre length of fence in order to comply with the requirements of AS 1170 Part 1 – Australian Standard Loading Code.

The repair of this section of fence and the provision of the necessary certificate to Council should satisfy this aspect of the enforcement notice.

3. Southern section of western boundary.

The appellant stated that he was not aware of any problems relating to a lack of backfill between the southern section of his western wall and the adjoining property boundary. Council provided evidence that there had been a void in this area that was progressively being filled by the migration of soil from the adjoining property. The existing extent of the problem was not clear, although there was some evidence that voids may still exist as the ground surface in this area is quite uneven.

The appellant undertook to investigate this area, fill any voids found, and provide Council with written advice that the problem no longer existed.

This should satisfy this aspect of the enforcement notice.

CONCLUSION

The Council acted to issue the enforcement notice on the basis of a complaint received and its consequent "Duty of Care" obligations. The appellant appears not to have understood Council's requirements at the "Show Cause" response stage, thus leading to the serving of the enforcement notice.

As a consequence of the appeal hearing, both parties agreed to a basis for resolution of the problems leading to a withdrawal of the notice, notwithstanding that there was no agreement as to who was responsible for the original creation of the individual problems.

The basis of agreement was that-

1. Council would provide the appellant with written evidence held by it that the construction on 44 Morrow Street did not impose a surcharge load on the excavated embankment at the north-western corner of the 4 Biggs Street site.
2. The appellant would provide the Council with drawn details of the shotcrete protection applied to the excavated embankment and a registered professional engineer's certificate that the shotcrete had been applied in accordance with those details.
3. The appellant would repair the section of fence adjacent to the above excavation so that it would be structurally capable of complying with the handrail and balustrade provisions of AS1170 Part 1, and supply Council with a registered professional engineer's certificate to that effect.
4. The appellant would investigate the area between the southern section of his western wall and the neighbouring property, ensure that voids no longer existed or were adequately filled, and provide Council with written advice to that effect upon completion of the work.

5. Consequent upon the above actions, Council would withdraw the notice and notify the appellant that the notice had been withdrawn. This would ensure that these matters did not appear in any future property search at the time of sale of the property.

G.S.CORNISH
Building and Development
Tribunal Referee
Date: 17 July 2001

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:-

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