



Building and Development Tribunals—Decision

Integrated Planning Act 1997

Appeal Number: 3—09—052

Applicant/ appellant: Douglas Robin Philip

**Assessment Manager/
Respondent:** Toowoomba Regional Council

Concurrence Agency: N/A
(if applicable)

Site Address: 624-634 Alderley Street, Harristown, Toowoomba and described as Lot 275 on RP856567, Parish of Drayton — the subject site

Appeal

Appeal under section 4.2.13 of the *Integrated Planning Act 1997* (IPA) against the decision of the assessment manager dated 1 June 2009 to issue an Enforcement Notice under section 4.3.11 of IPA.

The appeal specifically in relates to the earth banks (exceeding 1 metre in height) which are stated as:

1. assessable development under schedule 8, part 1- item 1 of IPA; and
 2. have been constructed without a development permit first being obtained for the building work.
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Date of hearing: 8:30am – Tuesday, 4 August 2009

Place of hearing: The subject site

Tribunal: Mr Leo Blumkie - Chair

Present: Mr Douglas Robin Philip – Applicant / Appellant
Mr Bob Orr - Toowoomba Regional Council
Mr Ross Ford - Toowoomba Regional Council
Mr Leo Blumkie - Tribunal

Decision:

The Tribunal, in accordance with section 4.2.34 (2) (a) of the IPA, **confirms** the decision appealed against and extends the date to remedy the committing of the offence from 4:00pm on Wednesday 1 July to 4:00pm on the day 4 weeks after the date of this determination.

Background

The subject site is approximately 6 acres in area and has been developed with numerous buildings including an office building, class 10A sheds, class 10B platforms and earth banks exceeding 1 metre in height.

There are 2 large earth banks on the site, which are approximately 5 metres in height and have a batter of about 1 to 1.

The buildings and earth banks apparently have been constructed without a development permit being obtained for the building work.

Approximately 2 years ago (2007), a "Show Cause notice" was issued by the then Toowoomba City Council indicating that, in their opinion, building works had been undertaken on the site without a development permit.

As a result of the 'Show Cause Notice' the owner submitted a development application on 14 November 2008 for the whole site (excluding the earth banks) which was subsequently approved by the Toowoomba Certification Group on the 30 June 2009.

Both parties agreed that there were no outstanding matters in relation to the buildings.

The retaining walls (earth banks) were not shown on the site plan nor included in the development application referred to above.

The owner submitted correspondence dated 14 November 2008 from consulting engineers regarding the embankments to the Toowoomba Regional Council.

The correspondence referred to a site investigation carried out approximately 10 years ago and the firm's knowledge of the site over a period of some 10 years.

No development application had been submitted for the earth embankments.

On 22 June 2009 the appellant lodged an appeal with the Registrar.

On 31 July 2009 the acting Registrar advised the appellant and assessment manager in writing that a Tribunal had been established to consider the appeal.

On 31 July 2009 the Tribunal advised the appellant, assessment manager, and concurrence agency in writing of the time, date and location for the hearing.

Material Considered

The material considered in arriving at this decision comprises:

1. Enforcement Notice dated 1 June 2009 from the Toowoomba Regional Council.
2. Letter to the Registrar dated 22 June 2009 appealing against two directives of the Enforcement Notice and attached correspondence.
3. 'Form 10 – Appeal Notice' forwarded to the Registrar on 22 June 2009.
4. Verbal submissions from the appellant at the hearing.
5. Verbal submissions from the Council representatives.
6. The *Building Act 1975*.
7. The *Building Regulation 2006*.

8. The IPA.

Findings of Fact

The Tribunal makes the following findings of fact:

- The definition of "building work" outlined in section 1.3.5 of IPA includes excavating and filling.
- The subject site has been filled and two large earth embankments have been established on the site.
- The embankments are approximately 5 metres in height and have a batter of about 1 to 1.
- The *Standard Building Regulation 2006* defines self-assessable building work under Part 2 as that prescribed under schedule 1.
- Schedule 1 includes filling up to 1 metre in height, with a batter of 4 horizontal to 1 vertical as self-assessable.
- The embankments are greater than 1 metre in height are therefore not self-assessable.
- The development application submitted in November 2008 did not indicate both embankments on the site plan and did not dimension their position on the site.
- No development application had been submitted for the earth embankments.

Reasons for the Decision

- The filling is building work as outlined under IPA.
- The embankments are not self-assessable as they exceed the height and batter as prescribed under Schedule 1 Item 4 of *Building Regulation 2006*. Therefore the embankments are assessable development.
- The embankments, being building work that is not self-assessable requires a development approval under IPA.
- No development approval has been obtained for the embankments.
- The Toowoomba Regional Council, in the opinion of the Tribunal, is correct in requiring a development permit for the embankments.
- It would be reasonable to allow the appellant 4 weeks from the date of this determination to obtain the development permit for the earth embankments.

Leo Blumkie
Building and Development Tribunal Chair
Date: 19 August 2009

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 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