



APPEAL

Integrated Planning Act 1997

BUILDING AND DEVELOPMENT TRIBUNAL - DECISION

Assessment Manager: Tablelands Regional Council

Site address: *withheld*- 'the subject site'

Applicant: *withheld*

Nature of Appeal

Appeal against the decision of Tablelands Regional Council to issue an Enforcement Notice (dated 15 May 2008) under the *Building Act 1975*. The Enforcement Notice relates to a Class 10a Shed, which Council reasonably believes is in a dilapidated condition and is a danger to persons.

Date and Place of hearing 11.30 am, Tuesday 3 June 2008

Tribunal	Mr L F Blumkie	Chairperson
Present	Applicants	
	Mr Robin Arnold	Council Representative
	Mr Peter Warman	Council Representative
	Mr Malcolm Liston	Council Representative
	Applicants' Carpenter/Builder	

Decision

The Tribunal, in accordance with section 4.2.34 (2) (b) of the *Integrated Planning Act 1997* (IPA), **changes** the requirements of the Enforcement Notice by deleting the words in the fourth paragraph of page 1 namely "*you are required to demolish or remove the sheds and/or removing them from the site and clearing the site of all associated debris and rubbish*" and replacing them with the following words:-

"You are required to:-

A Public Access and Safety Plan

Prepare a public access and safety plan to the satisfaction of Council and implement the safety plan as soon as possible. The objective of the public access and safety plan is to prohibit or restrict access by the public (the subject of this decision) whilst the demolition and remedial works are being carried out.

B Demolition Work

- (1) Make a proper IDAS application for the demolition of the rear north west portion of the L shaped building and the first bay (approximately 3m) of the northern side section of the remaining building (as shown as single hatching on the site plan annexed hereto and marked with the Letter "A") and lodge with the assessment manager by the 10 June 2008.
- (2) Demolish the rear north west portion of the L shaped building and the first bay (approximately 3m) of the northern side section of the remaining building (as shown as single hatched on the site plan annexed hereto and marked with the Letter "A")
- (3) Remove the demolished structure from the site and clear from the demolition portion of the site all associated debris and rubbish.
- (4) Where required by Council, purify and disinfect the area of the demolished shed to the satisfaction of Council.
- (5) Any materials and timber from the demolished structure, which is to be re-used in the remedial work (referred to in C below) is to be stacked neatly on-site.
- (6) Any car or truck parts situated in the portion of the structure to be demolished, should be removed and neatly stacked on site.
- (7) Complete items 2 to 6 above by 5.00 pm on the 14 July 2008 unless otherwise extended by the assessment manager before the expiry date. Any request for extension of time shall be in writing and be submitted before the expiry date and include acceptable legitimate reasons for the request.

C Remedial Work

- (1) The Applicants shall make a proper IDAS application in respect of those structures cross hatched and (measuring 20m x 12.1m approximately) on the site plan annexed hereto and marked with the Letter "A" to be lodged with the assessment manager in respect of the remedial works required on that structure by the 17th of June, 2008.

The remedial works must comply with the requirements of the *Building Act 1975*.

The assessment manager shall assess the structural adequacy of the remedial works and request additional information if required.

- (2) In respect of those structures cross hatched in black on the site plan annexed hereto and marked with the Letter "A" the following works are required to be undertaken by a qualified registered builder:-
 - Upgrade tie-down of the structure by fixing to existing concrete and by installing additional footings where required and providing tie-down connections to C2 wind conditions.
 - Install an appropriate positive structural connection at the base of all main uprights to resist uplift wind loadings to a C2 rating.
 - Repair and replace deteriorated and defective timber framing to a standard equal to appropriate wind loading code to a C2 standard.
 - Tie-down all structural members to ensure a continuous chain of connections is maintained as per usual building standards to a C2 wind loading.

- Provide and fit structural bracing to the walls and roof structure to resist racking.
- Provide supporting posts and head sections over all openings and particularly to the rear wall to carry roof loads.
- Upgrade the strut connections to the main roof truss members by providing a type 17 screw connection at all member intersections and/or provide a similar approved method of connection of the truss frame.
- Install additional members to overcome the excessive span of some roof purlins ensuring these meet the timber framing code for spans and tie-down.
- Fit all associated external doors and windows to resist a C2 wind loading.
- Screw down all roof and wall cladding to the manufacturer's specifications for a C2 wind rating.

(3) The owner shall ensure all mandatory inspections are carried out as work progresses.

(4) The whole of the remedial works detailed under item 2 above are to be completed by 5.00p.m. on the 15th September 2008 unless otherwise extended by the assessment manager before the expiry date. Any request for extension of time shall be in writing and shall be submitted before the expiry date and include appropriate reasons for the request.

NOTE

The Applicants may proceed with the demolition and the remedial works required to be undertaken pursuant to this determination pending

- Implementation of the Public Access and Safety Plan
- lodgement and processing of the IDAS applications referred in items B (1) and C (1) above".

Background

The property is a residential block in the small Town of Yungaburra. It has an "L" shaped shed, which has current registration by Council for use as Metal Recovery and Motor Vehicle Workshop.

The *withheld* family has used the site and sheds for the above purposes for a number of generations.

The shed is in a poor state of repair, dilapidated condition and would appear to have had no maintenance carried out in recent times. In considering the age of the shed, it is unlikely that any approval was ever obtained from Council for its erection.

The owners agreed much of the material/parts stored in the shed was of no use and should be sorted with those parts of no use being removed from the site.

Since receiving the Enforcement Notice and after lodgement of the appeal, the owners held further discussion with Council regarding a change to the Notice.

As a result of these discussions, Council agreed to prepare conditions for presentation and discussion at the Appeal hearing to:-

- allow portion of the "L" shaped shed to remain subject to remedial work being carried to bring that portion of the shed up to current structural and waterproof standards and
- provide the remaining portion of the shed was demolished, the contents sorted and stored on site and the remainder of materials/parts not suitable for re-use, removed from the site.

The owners claim that it has been difficult to obtain a registered builder to undertake the work particularly after Cyclone Larry hit the area.

Material Considered

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

- Enforcement Notice dated 15 May 2008;
- 'Form 10 – Notice of Appeal' lodged with the Registrar on 23 May 2008 including grounds for appeal and correspondence accompanying the appeal;
- Verbal submissions from the applicants;
- Verbal and written submissions from the Tablelands Regional Council representatives;
- Email from Tablelands Regional Council detailing conditions with respect to changing the Enforcement Notice dated 4 June 2008;
- Applicant provided further comments to the Tribunal following the on-site hearing by telephone 4 June 2008;
- The *Building Act 1975* (BA);
- The Building Regulation 2006;
- The *Integrated Planning Act 1997*.

Findings of Fact

The sheds referred to in the Enforcement Notice are in a very poor state of repair, dilapidated condition and in my opinion are structurally inadequate, not water proof, and most likely harbour vermin.

The North West portion of the "L" shaped shed is beyond repair and should be demolished. The unwanted materials/parts stored in the sheds should be removed from the site.

The sheds are a danger to the public and trading should be stopped until the buildings are demolished/made structurally safe.

A public access and safety plan should be prepared to the satisfaction of Council and implemented immediately.

Reasons for the Decision

The discussions between Council and the owners, which occurred after the issuing of the Enforcement Notice and before the hearing, resulted in a change to the requirements of the Notice.

In the Tribunal's opinion, the proposed changes to the requirements of the Notice are an acceptable and appropriate outcome and with the remedial work proposed, will make the remaining shed structural adequate and fit for its intended use.

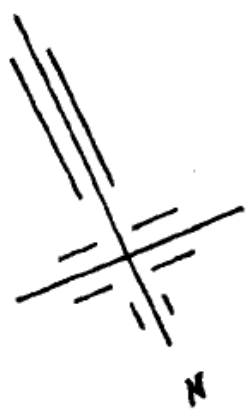
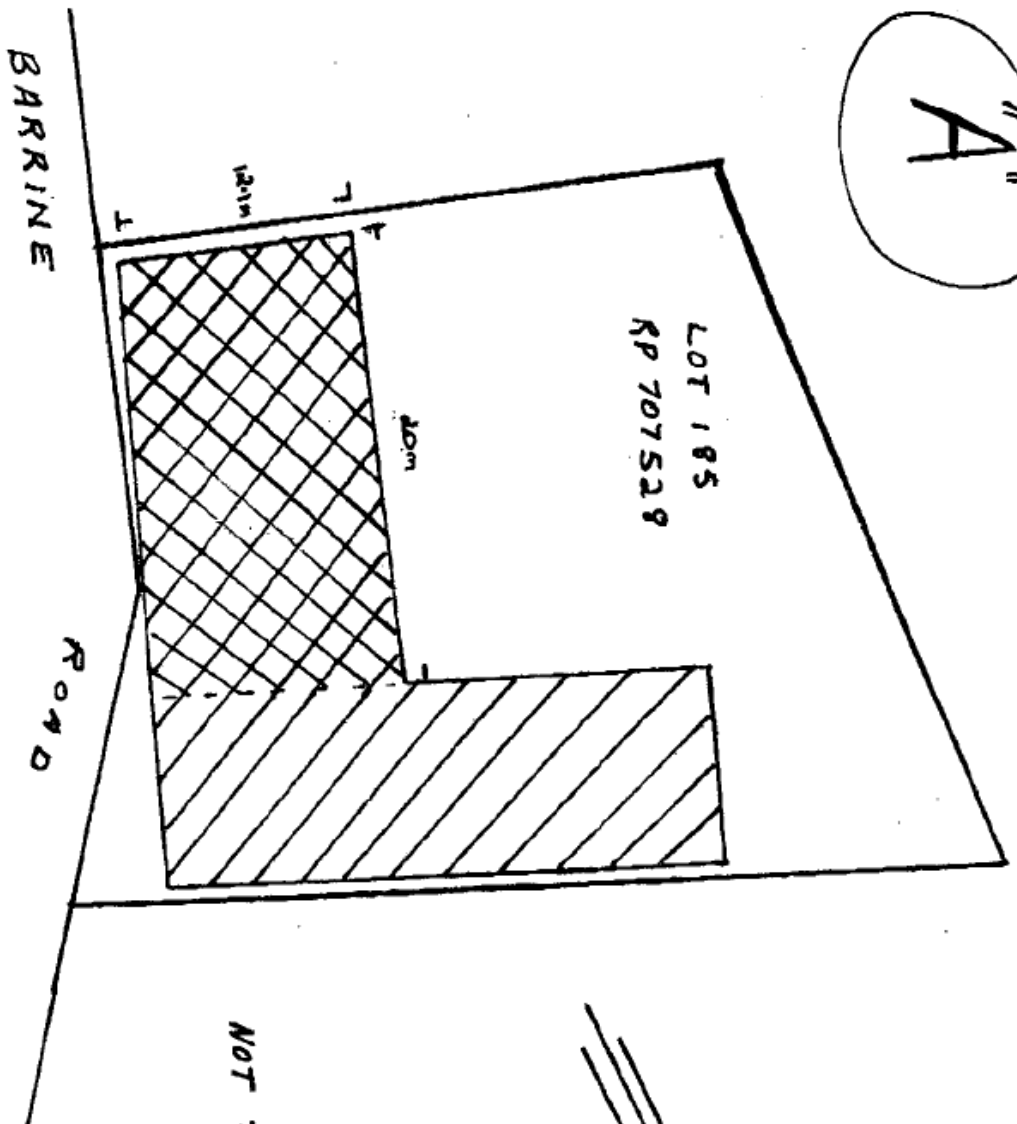
The owners confirmed their acceptance of the conditions proposed at the hearing, by phone on the 4 June 2008, subject to the dates for completion of the stages of the work able to be extended, should legitimate reasons, acceptable to Council, be presented.

The determination, grants Council the power to extend the time for completion, provided a written request is received before the expiry date and legitimate and acceptable reasons are presented.

A public access and safety plan should be put in place immediately to protect the public and others who may have recently visited or intend to revisit the site.

Leo F Blumkie
Building and Development Tribunal Chairperson
Date: 6 June 2008

"A"



NOT TO SCALE

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