



**APPEAL**  
*Integrated Planning Act 1997*

**File No. 03-08-021**

## **BUILDING AND DEVELOPMENT TRIBUNAL - DECISION**

**Assessment Manager:** Toowoomba Regional Council

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

**Applicant:** *withheld*

### **Nature of Appeal**

Appeal under the *Building Act 1975* and the *Integrated Planning Act 1997* (IPA) against an enforcement notice issued by Toowoomba City Council (now Toowoomba Regional Council) requiring a large fence structure to be removed or reduced in height to below 2m above ground level by 4 April 2008.

**Date and Place of Hearing:** 8:30 am on Friday 18 April 2008 at ‘the subject site’

**Tribunal:** David Kay – Chairperson

**Present:** Applicants/Owners  
Bob Orr – Toowoomba Regional Council Representative  
Ross Ford – Toowoomba Regional Council Representative

### **Decision**

In accordance with section 4.2.34 (2)(b) of the IPA, the Tribunal **changes** the enforcement notice issued by the Toowoomba City Council, dated 29 February 2008, by amending the third paragraph to read as follows:-

**You are required to remedy the commission of the offence by removing the large fence structure adjacent to the southern boundary of the property or reducing the height to below 2m above ground level. You are required to do this within two months of the date of this Tribunal decision.**

### **Background**

#### *Applicant's submission to the tribunal*

The grounds of appeal submitted by the applicant are summarised as follows:-

- The applicants purchased the property in 1994. In 1997, the tennis court was relocated from the western side of the property to its current position on the eastern side.
- The fencing and posts were moved and the applicants chose to have the southern side of the tennis court fenced.
- In 2007, the owners were served notice to remove vegetation from the southern side boundary. The adjacent property was also required to remove vegetation.
- Due to privacy reasons arising from the removal of the vegetation and the construction of units over the road, shade cloth was recently placed on the existing fence structure.
- Evidence of the erection of the fence in 1997 has been provided.

Toowoomba Regional Council submission to the tribunal

- The enforcement notice issued was as a result of a complaint received.
- As the siting of the fence structure does not comply with the QDC the Council was obliged to act on the matter.

**Material Considered**

- 'Form 10 – Notice of Appeal' with accompanying material submitted with the Registrar;
- Enforcement notice, dated 29 February 2008;
- Written submission from the applicants provided at the on-site hearing;
- Letter from adjoining neighbour, dated 16 April 2008.
- The *Integrated Planning Act 1997* (IPA);
- The *Building Act 1975*;
- The *Building Regulation 2006*; and
- *The Queensland Development Code Part MP1.2* (QDC).

**Findings of Fact**

- The fence structure is approximately 3.5m in height with shade cloth and chain wire mesh extending from 1.5m above ground level to the top of the fence structure.
- The fence structure is approximately 0.8m from the existing 1.8m high timber paling side boundary fence.
- The fence structure exceeds 2m in height within 1.5m of the side boundary fence.

**Reasons for the Decision**

In addressing the applicants appeal the following reasons are provided:

- The QDC Part MP1.2 Acceptable Solution A2(a)(i) is the relevant siting requirement applicable to this fence structure.
- The maximum height of a fence structure within 1.5m of the side boundary is 2m unless the referral concurrence agency has received an application and approved an alternative siting provision under the Performance Criteria P2.
- There has been no application made to the Council and no approval given.
- The Council representatives indicated that it was unlikely that such an application, if made, would be approved.
- There has been concern expressed by adjacent residents relating to the structure.
- The structure could be relocated to a distance of more than 1.5m from the side boundary and would not require Council's approval as a concurrence agency under the Queensland Development.

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**David Kay**  
**Building and Development Tribunal Chairperson**  
**Date: 29 April 2008**

## **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**