

# PLANNING AND ENVIRONMENT COURT OF QUEENSLAND

CITATION: *Heuvel & Anor v Cairns Regional Council* [2018] QPEC 67

PARTIES: **LYNDELL JOY ANN ROSS**  
(appellant no 230 of 2017)

and

**JOHN DENNIS HEUVEL AND ANOTHER**  
(appellant no 231 of 2017)

and

**CAIRNS REGIONAL COUNCIL**  
(respondent no 230 & 231 of 2017)

FILE NO/S: 230 of 2017 and 231 of 2017

DIVISION: Planning and Environment

PROCEEDING: Appeal

ORIGINATING COURT: Cairns

DELIVERED ON: 7 December 2018

DELIVERED AT: Brisbane

HEARING DATE: 7 December 2018

JUDGE: Morzone QC DCJ

ORDER: 1. Order as per draft.

CATCHWORDS: PLANNING AND ENVIRONMENT –appeal against Council for condition imposed on permit – partial approval of development permit for operational clearance – resolution reached by parties.

SOLICITORS: O Williamson of Hopgood Ganim Lawyers for the Appellant/s

LA Hickling of Coors Chambers Westgarth for the

## Respondent

- [1] By these related appeals, the appellants seek to regularise works carried out on their property in respect of appeal number 230 of 2017, 29 Falcon Street, Bayview Heights, described as lot 6 on registered plan 746586. And additionally, in respect of the appeal, number 231 of 2017, property at Anderson Road, Bayview Heights, described as lot 10 on registered plan 857724. Lot 6 contains an area of 1.322 hectares owned by Mr Heuvel and Ms Ross as joint tenants.

### **Background**

- [2] Amidst the dispute as to the work being carried out, for lot 6, the appellant lodged a building works application seeking a preliminary approval of building work for the construction of retaining walls on the 17th of March 2017. Such an application was code assessable and did not trigger a referral to assessment agencies. There was some stall to the process, with dispute about whether the application was properly made. This was followed by an information request and response.
- [3] Ultimately, on the 23rd of November 2017, the council issued a decision notice, dated the 23rd of November 2017 approving part of the building works application, and refusing another part. Part A of the decision notice set out the approval in part, relating to retaining walls referred to as W1 and W2, and sought to impose conditions in respect of that approval. The appellant appealed against the decision of the council in respect of those conditions for that part. And also, initially appealed against that part which was refused.

### **Lot 6**

- [4] As the parties progressed through the matter under this court's supervision, a resolution has been achieved with the acceptance of the appellants to not construct a third retaining wall on lot 6, but reserving the right to do so at some time in the future. The resolution also saw a compromise in the setback for the retaining wall identified as W2, although again, the appellants have foreshadowed some future intent to deal with that aspect in the future.
- [5] But for present purposes, the resolution as between the parties, coupled with regularisation reflecting the position of the appellants, has resulted in an amended notice of appeal for the appeal number 230 of 2017. With those amendments, the parties have been able to align and appropriately balance the requirements that each of them contend in the appeal, which are now embodied in a draft judgment, reflecting the issues that remain between them as resolved, and it seems to me, in a sensibly appropriate way in compliance with the scheme and other regulatory requirements.

### **Orders Appeal 230 of 2017**

- [6] Consequently, I make orders in terms of the judgment, in respect of appeal 230 of 2017, which I initial and will place with the file.

**Lot 10**

- [7] In respect of appeal number 231 of 2017, again, on a similar basis, a resolution has been achieved. This appeal relates to matters of clearing, and involves both lot 6 and lot 10.
- [8] Lot 10 falls within the council's local government area, and comprises 19.95 hectares. As a consequence of disturbance of vegetation, the appellant lodged an application seeking a development permit for operational clearance, vegetation damage, and a development permit for operational works, excavation and fill in respect of both lot 6 and 10. Such an application was code assessable, and was referred to the Department of Infrastructure, Local Government and Planning, pursuant to schedule 7, table 2, item 5, clearing native vegetation of the former Sustainable Planning Act 2009. Subsequent to an information request and a response, the council issued a decision notice on the 23rd of November 2017, which partially approved and partially refused various aspects of the application
- [9] The council refused the part of the operation of works application relating to lot 10, and issued a preliminary approval for part of the operational works application relating to lot 6, but refused the balance of the operational works application. The appellant appealed that decision, but as a result of further negotiation between the parties, again, under the court's management and supervision, a resolution has been achieved, which sees the abandonment of grounds of appeal, now properly reflected in the amended notice of appeal filed today by leave.
- [10] And as a consequence of further consideration of the parties, a resolution is now reflected in a final judgment dealing with appeal number 231 of 2017, which in its terms, it seems to me, are appropriate in all of the circumstances, having regard to the scheme and regulatory requirements, the subject of appropriate consideration in that appeal.

**Orders Appeal 231 of 2017**

- [11] It seems to me that the judgment in respect of appeal number 231 of 2017 should be made in terms of the draft, and I do so in those terms, which I initial and will place on the file.

**Judge Dean P Morzone**