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NEWS

Development approval conditions are binding

Developers and buyers of land created from development approvals need to understand a recent High Court decision which provides much needed certainty for a contentious area of planning law.

Lawyer Luke Hefferan notes the case confirms that development approval conditions for land are not only the responsibility of the original land owner, but become the responsibility of any subsequent owners, including owners of reconfigured lots created from the land.

KEY POINTS

- Development approval conditions attach to the land.
- Completion of the development works and registration of a survey plan for reconfiguration of the land does not mean the conditions have expired.
- Subsequent buyers of the land (or lots reconfigured from the land) must comply with any outstanding conditions of a development approval at their own cost.

BACKGROUND

Development approval for a reconfiguration of a lot was granted by the Townsville City Council to subdivide a single lot (Base Parcel) into two new lots (Lot 1 and Lot 2). One of the conditions of the approval was the creation of an easement from Lot 1 to Lot 2 before Council would approve the survey plan for reconfiguration and the registration of the easement in conjunction with the survey plan. However, the easement registered by the owners of the Base Parcel was only compliant with some of the terms required in the easement condition so the easement condition remained outstanding.

Despite the Base Parcel owner's failure to fully comply with the easement condition, Council approved the survey plan and Lots 1 and 2 were subsequently created and sold. The new owner of Lot 2 (Pikes) sought compliance with the easement condition by the new owners of Lot 1 (Tighes).

THE RELEVANT LEGISLATION

The relevant legislation was section 245 of the Sustainable Planning Act (SPA) which stated:

- a development approval:

- attaches to the land the subject of the application to which the approval relates
- binds the owner, the owner's successors in title and any occupier of the land
- to remove any doubt, it is declared that subsection (1) applies even if later development, including reconfiguring a lot, is approved for the land or the land as reconfigured.

Although the SPA has since been repealed, this provision is contained in the replacement legislation, being section 73 of the Queensland Planning Act.

ARGUMENTS

The Pikes argued:

- approval of the survey plan by Council (and its subsequent registration), even though the easement condition was not complied with, did not mean the easement condition had expired
- the easement condition applied to the Tighes as successors in title to a reconfigured lot created from the Base Parcel. The Tighes had committed a development offence (as the registered easement did not comply with the easement condition) on settlement of their purchase of Lot 1.

In response, the Tighes argued:

- as the easement condition required the easement to be registered in conjunction with the survey plan, the easement condition expired when the survey plan was registered
 - the easement condition was only binding on the applicant for the approval as they were responsible for carrying out the reconfiguration of the Base Parcel.
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PLANNING AND ENVIRONMENT COURT

The Planning and Environment Court agreed with the Pikes that the Tighes (as successors in title of a reconfigured lot within the Base Parcel) had committed a development offence. The Court issued an enforcement order requiring the Tighes to provide an easement to the Pikes which complied with the easement condition.

The Court of Appeal later overturned this decision and said the easement condition only bound successors in title of the Base Parcel. As it had been reconfigured, the Tighes had no obligations to the Pikes in relation to the easement.

HIGH COURT RULING

The High Court found in favour of the Pikes, and in overturning the Court of Appeal decision ruled:

- the Court of Appeal incorrectly interpreted the reference to "land" in the legislation as relating only to the Base Parcel
- the approval and registration of the survey plan did not extinguish the obligations under the easement condition
- no other provisions of the SPA confirmed the conditions of the approval had expired on the completion of the works authorised under the approval
- the obligations under the easement condition are personal obligations which continued to run with the land despite the completion of the reconfiguration of the Base Parcel
- the easement condition applied to all land created from the Base Parcel. So, the Tighes had committed a development

offence and were required to provide an easement to the Pikes in compliance with the easement condition.

The High Court also confirmed the Tighes had not committed the development offence immediately on settlement of their purchase of Lot 1. Rather, the offence was committed once a reasonable amount of time had passed in which compliance with the easement condition could have been completed.

The High Court said the Tighes' failure to comply with the easement condition after being requested, and given ample time, to do so warranted an enforcement order requiring compliance with the easement condition.

The High Court also confirmed a development offence would be considered to have been committed where a registered owner expressly refused to comply with a condition.

WHAT DOES IT MEAN FOR DEVELOPERS AND BUYERS?

This case is especially pertinent in the area of planning law as it confirms development approval conditions attach to the land and remain binding after a development is completed.

The mere fact development works have been completed and a survey plan registered is not a sufficient basis to assume there will be no ramifications arising from the development approval in the future, which could be particularly costly for the buyer.

Buyers of lots created via a development approval should conduct detailed due diligence to confirm all conditions of the approval have been fully complied with and, if applicable, require the seller to complete any outstanding conditions prior to settlement. If these conditions remain outstanding after settlement, then the buyer must comply with the conditions within a reasonable time.

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