

Record fine imposed for unauthorised works to a single dwelling

By Peter Gillett

A recent decision in the Perth Magistrates Court shows that Magistrates are prepared to impose significant penalties in relation to residential development carried out without development or building approval.

A South Australian based development company was recently convicted and sentenced for carrying out alterations and additions to an existing two-story brick and tile residence. The alterations and additions included a ground floor extension comprising an open living area and butler's pantry for an extended kitchen, an upper level rooftop court yard above an existing double garage, an additional upper level bedroom and raised decking in the rear yard.

Development approval was required due to a proposed 5.4m high boundary wall to the rooftop courtyard and the need for screening to prevent overlooking of adjacent properties. Whilst an application for development approval had been submitted by the company, no development approval or building permit had been issued prior to the works commencing.

While the works were proceeding, the local government advised the company that no approvals were in place and that all works must cease. Despite that, works continued. When asked why the works were continuing, a director of the company advised the local government that the company couldn't afford to stop work because materials had been supplied and trades persons booked and the company was having to pay significant interest payments for the property.

At the time of sentencing, planning approval had been granted but there were still outstanding planning issues and no building approval had yet been issued. In addition, it became apparent that the company had purchased the property for approximately \$1.2m in November 2023 and that the property had recently sold for approximately \$2.5m.

When sentencing the company, the Magistrate noted the decision of Justice Hasluck in *Swan Bay Holdings Pty Ltd v City of Cockburn* [2010] WASC 81, where his Honour commented that planning controls exist for the benefit of the community as a whole and that their efficacy depends not only on formal enforcement, but also upon a pervasive culture of general observance and respect for the underlying communal purpose. His Honour further commented that breaches of the law needed to be underpinned by significant penalties in order to deter infringements, particularly where the offending was motivated by commercial considerations.

In light of the company's failure to cease works when directed to do so by the local government, and the fact that the company clearly made a commercial decision to continue to build despite not having the appropriate approvals, the Magistrate considered the company's offending to be both premeditated and flagrant. Having sold the property at a considerable profit, the Magistrate also considered the offending was motivated by commercial considerations and resulted

in a considerable commercial benefit to the company.

Taking the above factors into account, the Magistrate considered there was a need to impose a penalty which provided both personal deterrence to the company and general deterrence to ensure the building industry generally was on notice that builders and developers must comply with planning and building controls. Having formed that view, the Magistrate imposed a fine of \$150,000 for the offence under the *Planning and Development Act 2005*, being 15% of the \$1M maximum penalty, and fine of \$40,000 of the offence under the *Building Act 2011*, being 16% of the \$250,000 maximum penalty for that offence. In total, the fines amounted to \$190,000 and was the largest penalty ever imposed for unauthorised renovations and additions to an existing single dwelling.

The importance of the Magistrate's decision in this instance is that it shows significant penalties will be imposed where works are carried out without the requisite planning and building approvals in circumstances where the offending is flagrant and commercially motivated, even where the extent of works could be considered relatively modest. It also shows that developers and builders should think twice before commencing building or renovation works without the relevant planning and building approvals as the threat of significant penalties being imposed if convicted is now very real.

The information contained in this article should not be relied upon without obtaining further detailed legal advice in the circumstances of each case. For any comments or questions on this article please contact Peter Gillett (pgillett@mcleods.com.au).

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