Building and Development
Dispute Resolution Committees—Decision

Sustainable Planning Act 2009

Appeal Number:	**33- 12**
Applicant:	Apex Car Rental Pty Ltd
Assessment Manager:	Brisbane City Council (Council)
Concurrence Agency: (if applicable)	Not Applicable
Site Address:	400 Nudgee Rd Hendra described as Lot 21 SP102856 – the subject site

Appeal

Appeal under section 535(2) of the *Sustainable Planning Act 2009* (SPA) about an error in the calculation of a charge under the Brisbane Adopted Infrastructure Charges Resolution (No.2) 2011.

Date of hearing:	Appeal by written submissions
Place of hearing:	No hearing
Committee:	John Panaretos – Chair
Present:	

Decision:

The Building and Development Dispute Resolution Committee (Committee), in accordance with section 564(2)(a) of the SPA, confirms the decision appealed against and dismisses the appeal.

Background

On 18 April 2012, Council issued a Decision Notice for the use of the subject site for the purpose of *Display and Sale Activities (car hire operation)*. At the same time, Adopted Infrastructure Charges Notices were issued by Council and Queensland Urban Utilities (QUU). The Applicant disputes the Council's interpretation of the definition of gross floor area (GFA), upon which the charges are based.

Under Brisbane Adopted Infrastructure Charges Resolution (BAICR)(No.2) 2011, infrastructure charging for the water, sewerage, transport and community facilities networks is based on the GFA of the approved use. Council and QUU rely on the Brisbane City Plan 2000 (City Plan) definition of GFA to contend that,

in this case, the entire floor space of 2,474 m^2 constitutes GFA, whereas the Applicant contends that the portion set aside for storage of the approved 270 hire vehicles is excluded by virtue of the definition of GFA contained in the BAICR(No.2); hence, GFA encompasses only the ancillary office area of 202.5 m^2.

Differences in the definition of GFA between BAICR(No.2) and City Plan give rise to confusion in interpretation. The definition in the City Plan excludes:

- *areas used or intended for the parking of motor vehicles, where the parking is incidental to, and necessarily associated with, the use of some premises*.

whereas, the comparable exclusion in BAICR(No.2) is simplified to:

(d) parking, loading or manoeuvring of vehicles

Conversely, the Brisbane Priority Infrastructure Plan 2011 (BPIP) relies on the City Plan definition in the calculation of charging rates.

In response to the appeal, Council also argues that it erred in applying the wrong rate to the transport and community facilities charge, and a higher rate should be applied.

Material Considered

The material considered in arriving at this decision comprises:

1. 'Form 10 – Appeal Notice and grounds for appeal.
2. Development Application forms for *Display and Sale Activities* with accompanying documentation including planning and code compliance reports and proposal plans.
3. Development Approval documents dated 18 April 2012 including conditions package and Adopted Infrastructure Charges Notices #IC8861 issued by Council and QUU.
4. Representation made to Council by the Applicant dated 15 May 2012 requesting a change to the calculation of infrastructure charges, and Decision Notice (refusal) issued by Council dated 13 July 2012.
5. Written submissions to the Committee made by the Applicant dated 24 September 2012 and 8 October 2012.
6. Written submission to the Committee made by Council dated 5 October 2012.
7. Brisbane City Council's Adopted Infrastructure Charges Resolution (No.2) 2011 (BAICR(No.2)).
8. Brisbane Priority Infrastructure Plan 2011 (BPIP).
9. Brisbane City Plan 2000 (City Plan)
10. *Sustainable Planning Act 2009* (SPA).

Findings of Fact

The Committee makes the following findings of fact:

- The Applicant made an Impact Application for, and was issued with, a Development Permit for *Display and Sales Activity (Car Hire Operation)* on part of the subject site (Unit 1B), subject to development plans with the following notation highlighted in red: *Carparks 10 spaces (existing)* (drawing 00567-01 C).

- The development site is subject to infrastructure charging based on the BPIP and the BAICR (No.2).
- The primary activity of the land use is secure storage of vehicles for hiring purpose, along with tasks such as vehicle inspection and detailing.
- The total floor area of the subject site is 2,474 m^2, divided between 2,271.5 m^2 of vehicle storage and 202.5 m^2 of ancillary office space.

Reasons for the Decision

Essential activities of a vehicle hire operation are secure storage of vehicles, along with vehicle inspection, light maintenance and cleaning, odometer reading and other activities. Exclusion of space used for *parking, loading and manoeuvring* from GFA does not exclude that space where it is used for other essential activities, regardless of the nature of the vehicles in question, where they be cars, trucks, cranes, agricultural equipment or trailers. Hence, the entire floor area of Unit 1B is GFA for the purposes of infrastructure charging.

The Development Permit upon which the infrastructure calculations are based is consistent with the above and approved plan 00567 02 C, titled *Site Plan – Carparking* notating "10 parking spaces". This notation apparently refers to the external visitor parking spaces shown on the site plan. It can be inferred from this notation that the internal area, where hire cars are stored, is not considered 'parking spaces' for the purposes of the Development Permit.

Council goes on to argue that it erred in applying the *High Impact Industry* rate of \$30/ m^2 of GFA for transport and community purposes networks instead of the *Commercial (bulk goods)* rate of \$104/ m^2. In fact, Council and QUU have both applied the *High Impact Industry* rate to all network charges.

In the absence of evidence tendered in respect of the reason for the application of this rate to all networks, the Committee makes no determination on this matter.

John Panaretos
Building and Development Committee Chair
Date: 15 October 2012

Appeal Rights

Section 479 of the *Sustainable Planning Act 2009* provides that a party to a proceeding decided by a Committee may appeal to the Planning and Environment Court against the Committee's decision, but only on the ground:

(a) of error or mistake in law on the part of the Committee or
(b) that the Committee 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 Committee's decision is given to the party.

Enquiries

All correspondence should be addressed to:

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