Building and Development
Dispute Resolution Committees—Decision

Sustainable Planning Act 2009

Appeal Number:	**44- 15**
Applicant:	Stephen Glowacz
Assessment Manager:	Brisbane City Council (Council)
Concurrence Agency: (if applicable)	N/A
Site Address:	27 Gotha Street, Camp Hill and described as Lot 94 on RP41987 ─ 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 in an infrastructure charges notice given under the Brisbane Adopted Infrastructure Charges Resolution (No. 5) 2015 (Charges Resolution).

Date and time of hearing:	Appeal decided on the basis of written submissions
Place of hearing:	Not applicable
Committee:	Samantha Hall – Chair Linda Tait - Member
Present:	Not applicable

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 28 August 2015, the Applicant lodged a Development Application (Application) for reconfiguring a lot (1 lot into 2) for the subject site.

The subject site is a corner block that has frontage to both Gotha Street and Samuel Street. Aerial photography of the subject site indicates that it has been improved by two existing residential buildings each with separate driveways and carports, one with vehicular access to Gotha Street and the other to Samuel Street.

A Council search of building approvals for the subject site dated 2 November 2015, identified that a dwelling, garage and granny flat had all been approved for the subject site (Council search). In particular, the building approval for the granny flat was given on 27 May 2003.

On 21 October 2015, the Council gave the Applicant a decision notice approving the Application.

An Adopted Infrastructure Charges Notice dated 21 October 2015 (Charges Notice), was also given to the Applicant in which a charge for local government trunk infrastructure networks (community purposes, stormwater and transport) was levied under the Charges Resolution. The amount of the charge was $14,000.00, being for the creation of one additional lot on the subject site.

On 10 November 2015, the Applicant made representations to the Council under section 361 of the SPA, that the Council had incorrectly calculated the charge in the Charges Notice.

On 4 December 2015, the Council advised the Applicant that pursuant to section 363(5) of the SPA, it did not agree with the representations made by the Applicant and that the Charges Notice continued to apply to the development.

On 31 December 2015, the Applicant lodged a Form 10 – Notice of Appeal with the Committee's Registrar. The grounds stated by the Applicant in the appeal application were:

> "*It is contended that the Levied Charge set in the Infrastructure Charges Notice (ICN) supplied by BCC with the development approval for 27 Gotha Street, Camp Hill does not comply with section 636 of the Act, as BCC has included an existing lawful use of the premise in their calculation of Additional Demand upon trunk infrastructure networks*".

The supporting material provided by the Applicant provided the following further explanation of the grounds of the appeal:

- *"No additional demand for trunk infrastructure will be generated by the development. Demand for trunk infrastructure will be equal to existing lawful uses already taking place on proposed lot 1 or 2 (the premises).*

- *The formula set in the Brisbane Adopted Infrastructure Charges Resolution for the working out of additional demand has a technical shortcoming, as it does not appropriately account for existing uses already taking place on proposed lot 1 or 2 (the premises).*

- *The ICN and Levied Charge does not appropriately account for existing lawful uses taking place on proposed lot 1 or 2 (the premises).*

- *To comply with section 636 of the Act, existing lawful uses taking place on proposed lot 1 or 2 (the premises) must not be included in the working out of additional demand".*

Effectively, the Applicant contended that the two existing residential buildings on the subject site should be considered existing lawful uses for the calculation of additional demand under section 636 of the SPA, that is, as two Dwelling house uses already taking place on proposed lot 1 and lot 2. On this basis, the Applicant contended that the Application for reconfiguring a lot to create two lots was not creating any additional demand and so no infrastructure charge should be levied.

The Committee requested and received the consent of the parties for the appeal to be decided on the basis of written submissions.

On 3 February 2016, the Committee received a written submission from the Council.

The Council's submission referred to the Council search, noting the building approval given for a granny flat on the subject site. The Council's submission referred to the Brisbane City Plan

2000 (City Plan 2000) as the planning scheme in effect at the time of the building approval given for the granny flat on 27 May 2003. The Council's submission stated that a "granny flat" was defined as a secondary dwelling in City Plan 2000 and it noted that "a secondary dwelling must be occupied by one or more members of the same household as the primary dwelling. The lawful use of the subject site is therefore for a Dwelling house and a Secondary dwelling".

Accordingly, the Council's submission was that the existing secondary dwelling was part of the Dwelling house use. On this basis, the Council submitted that its calculation of the infrastructure charge was correct, as the lawful use of the subject site was for a Dwelling house (including a Secondary dwelling) which received a demand credit of $14,000.00. Therefore, the development approval for reconfiguring a lot was creating one additional lot which attracted a charge of $14,000.00.

On 9 February 2016, the Committee received a written submission from the Applicant.

The Applicant's written submission did not raise any new matters that were not already substantially addressed in the supporting material provided by the Applicant with the appeal application.

Material Considered

The material considered in arriving at this decision comprises:

1. 'Form 10 – Appeal Notice', grounds for appeal and correspondence accompanying the appeal lodged with the Committees Registrar on 31 December 2015.
2. Written submissions provided by the Council by email dated 3 February 2016.
3. Written submissions provided by the Applicant by email dated 9 February 2016.
4. The *Sustainable Planning Act 2009* (SPA).
5. Brisbane City Plan 2000 (City Plan 2000).
6. Brisbane City Plan 2014 (City Plan 2014).
7. Brisbane Adopted Infrastructure Charges Resolution (No. 5) 2015 (Charges Resolution).

Findings of Fact

The Committee makes the following findings:

1. This appeal relates to the calculation of infrastructure charges for a development approval for reconfiguring a lot (1 lot into 2) for the subject site.
2. The Applicant has appealed the calculation of infrastructure charges on the basis that the land contains two existing residential buildings, which the Applicant considers to represent an existing use and existing demand.
3. The Committee has disregarded the suggestion in the supporting material provided by the Applicant to the appeal that there is a technical shortcoming in "*the formula set in the Brisbane Adopted Infrastructure Charges Resolution for the working out of additional demand*", as the Committee does not have the jurisdiction pursuant to section 535(3)(a) of the SPA to hear an appeal about the adopted charge itself.
4. The City Plan 2000 applied on 27 May 2003 when the building work approval was given for a granny flat on the subject site.
5. In Chapter 3 of the City Plan 2000, "House" was defined as "*a use of premises principally for residential occupation by a domestic group or individual/s that may include a secondary*

dwelling, whether or not the building is attached, but does not include a single unit dwelling". In addition, the House Code in the City Plan 2000 included provisions regarding the composition of a household within a House.

6. The City Plan 2000 did not include a variety of residential uses and in particular did not include a distinct Dual Occupancy or Duplex use. Therefore, the Multi-Unit Dwelling use applied unless a residential development constituted a House.

7. Multi–Unit Dwelling was defined in the City Plan 2000 as follows:

   "a use of premises as the principal place of longer term residence by several discrete households, domestic groups or individuals irrespective of the building form. Multi–unit dwellings may be contained on one lot or each dwelling unit may be contained on its own lot subject to Community Title Schemes. Examples of other forms of multi–unit dwelling include boarding house, retirement village, nursing home, orphanage or children's home, aged care accommodation, residential development for people with special needs, hostel, institution (primarily residential in nature) or community dwelling (where unrelated people maintain a common discipline, religion or similar). The term multi–unit dwelling does not include a house or single unit dwelling as defined elsewhere".

8. Pursuant to the City Plan 2000, no development approval was required to use the subject site for a House and no evidence has been presented to the Committee that a development approval for Impact Assessment (Generally Inappropriate) development has been granted by the Council for the dwellings on the subject site to be used for a Multi-Unit Dwelling.

9. The two existing residential buildings on the subject site for which building approvals had been granted for a house and granny flat, would constitute a single House use under the City Plan 2000, being a primary dwelling (the house) and a secondary dwelling (the granny flat).

10. The Application for the subject site was made under the City Plan 2014.

11. Dwelling House is defined in the City Plan 2014 as "*A residential use of premises for one household that contains a single dwelling. The use includes outbuildings and works normally associated with a dwelling and may include a secondary dwelling*". The Dwelling House Code includes provisions regarding the composition of a household within a Dwelling House.

12. The existing residential buildings on the subject site comprise one Dwelling House as defined in the City Plan 2014, comprising a primary dwelling and a secondary dwelling.

13. Section 636(1) of the SPA, provides that an infrastructure charge "*may only be for additional demand placed upon trunk infrastructure that will be generated by the development*" (additional demand).

14. The Charges Resolution sets out the methodology for the calculation of infrastructure charges consistent with section 636(1) of the SPA, which relevantly requires that the adopted charge is multiplied by the additional demand.

15. To identify the additional demand that will be generated by the development, the Charges Resolution provides a calculation whereby the demand credit is subtracted from the development demand. The Charges Resolution identifies a "*demand credit*" as "*the demand placed upon the local government trunk infrastructure networks generated by previous development if applicable"*.

16. Section 16(3) of the Charges Resolution prescribes the methodology for determining the demand credit, including by reference to an existing "*lawful use*" of the site.

17. The Charges Resolution is consistent with section 636(2)(a) of the SPA, which provides that in working out additional demand, the calculation must not include the demand on trunk infrastructure generated by "*an existing use on the premises that is lawful and already taking place on the premises*".

18. The existing use of the subject site that was lawful at the time the Application was lodged was for a single Dwelling House, comprising a dwelling and a secondary dwelling, as defined in the City Plan 2014.

19. Further, section 636(2)(c) of the SPA provides that in working out additional demand, the calculation must also not include "*other development on the premises if the development may be lawfully carried out without the need for a further development permit*."

20. Under the City Plan 2014, the two existing residential buildings on the subject site could be considered a Dual Occupancy, being "*Premises containing two dwellings on one lot (whether or not attached) for separate household*s", however, to carry out this use on the subject site would require a further impact assessable development permit for a material change of use.

21. Similarly, under the City Plan 2014, for the two existing residential buildings to be separate Dwelling House uses and not require a further development permit, they would need to be on two separate lots and not be on the same lot as is the case with the subject site. However, the subdivision of the subject site would require a development permit for reconfiguring a lot.

22. Therefore, section 636(2)(c) of the SPA is not applicable, as a further development permit is required for the two existing residential buildings to be considered either a Dual Occupancy use or as two separate Dwelling House uses.

Reasons for the Decision

1. In respect of the two existing residential buildings on the subject site, a demand credit under the charges resolution is applicable for a single Dwelling House use but no further demand credit is applicable for the secondary dwelling.

2. The demand credit is an amount of $14,000 under Schedule 2, Table B, Column 4 of the Charges Resolution.

3. The approved development for the subject site has a development demand of $28,000 under schedule 2, Table A, Column 2 of the Charges Resolution.

4. In accordance with the methodology for the calculation of additional demand set out in the Charges Resolution, the demand credit of $14,000 is subtracted from the development demand of $28,000 and multiplied by the one additional lot, to result in an infrastructure charge of $14,000.

Samantha Hall
Building and Development Committee Chair
Date: 8 March 2016

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:

The Registrar of Building and Development Dispute Resolution Committees
Building Codes Queensland
Department of Housing and Public Works
GPO Box 2457
Brisbane QLD 4001
Telephone (07) 1800 804 833 Facsimile (07) 3237 1248