



Building and Development Dispute Resolution Committees—Decision

Sustainable Planning Act 2009

Appeal Number:	30 - 13
Applicant:	Behrouz Majd
Assessment Manager:	Matrix Certification Services
Concurrence Agency: (if applicable)	n/a
Site Address:	37 Koorngl Road Jindalee and described as Lot 80 on RP101132 – the subject site

Appeal

Appeal under section 532 (1) (b) (ii) of the *Sustainable Planning Act 2009* (SPA) against the Non-compliance Notice issued by Matrix Certification Services who reasonably believes the final inspection of the stairs is not compliant with the National Construction Code (NCC) and does not comply with the approved plan conditions.

Date and time of hearing:	24 October 2013 at 10am
Place of hearing:	The subject site
Committee:	Greg Rust– Chair
Present:	Roya Majd – Applicant’s representative Cliff Rix - Matrix Certification Services Laa Tay – Matrix Certification Services

Decision:

The Building and Development Dispute Resolution Committee (Committee), in accordance with section 564 of the SPA **confirms** the decision to issue a Non-compliance Notice stating that the work does not comply with the NCC or with the approved plan conditions.

Background

Matrix Certification Services as Assessment Manager approved a Building Development Permit for a new house to be built at the subject address, which has been recently completed.

The Assessment Manager carried out a final inspection of the premises and a Form 16 – Inspection Certificate confirming the inspection 19 April 2013 was completed. After the first notice (Form 16) a second notice, Form 61 – Non-compliance Notice was then issued on 15 August 2013 stating that part of the work does not comply with the *Building Act 1975* (BA) and the NCC concerning elevated stairs constructed at the street frontage of the house.

The matter of the first notice (Form 16) was not extensively discussed at the hearing as it is the Non-compliance Notice (Form 61) that was the subject of the appeal.

An appeal was lodged with the Committee Registrar on 9 September 2013.

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 9 September 2013.
2. Form 16 – Inspection Certificate issued on 19 April 2013
3. Form 61 – Non-compliance Notice issued on 15 August 2013
4. Amended Plans – 2012-031 dated 04/12
5. Verbal evidence provided by parties at the hearing date
6. National Construction Code (NCC) - Part 3.9.1 Stair Construction
7. *Sustainable Planning Act 2009* (SPA)
8. *Building Act 1975* (BA)
9. Building Regulation 2006 (BR)

Findings of Fact

The Committee makes the following findings of fact:

- A development permit for building work for construction of a house on the site was provided by Matrix Certification Services.
- The approved plans show a pedestrian Ramp/Stair connecting the upper first floor balcony to the road reserve/alignment.
- The house construction is near to or has been completed.
- At final inspection, or at least prior to the final certificate (Form 21) being given, a Non-compliance Notice (Form 61) was issued stating that the stair did not meet the geometry requirements and requires balustrades to be built to the National Construction Code.
- A barrier has been built at the first floor balcony that prohibits access from the stair to the upper level house balcony. This in effect means the stair leads from the street level and rises to cease at the barrier built across the upper level balcony.
- The Applicant's representative explained that the stair is not intended for pedestrian use but is a cultural platform/feature used for placement of pot plants and future water fountain. Plants presently are positioned on the platform/stair.

It was explained at some length by the Applicant's representative that the subject stair was in fact not a stair or ever intended as a stair to enter the building. It was argued that for Persian cultural reasons, persons entering or leaving the house will transgress the driveway, proceed under the stair/platform and use the compliant stair at the side of the building for entry and exit. The platform is used to display plants and a possible future water calming feature. This should have been detailed by the draftsman on the plans when prepared and is the reason the plans are very detailed in respect to the platform shown.

It is clear to the Committee that the ramp is very detailed on the plans. However, the use (contended as a class 10 horticultural structure), was not conveyed to the Assessment Manager to make an assessment in that regard.

As the approved plans with notations made by the Assessment Manager indicate the platform is a stair, the Committee is satisfied that this approval is the applicable document which applies to the house approval. The Committee, during the hearing, requested the Assessment Manager measure the stair and demonstrate why the geometry fails to satisfy the National Construction Code stair requirements. The Committee is of the opinion that the Applicants have a clear understanding of the Non-compliance.

Reasons for the Decision

The approved plans clearly document the intent of the construction under the building and development permit. The plan is very detailed in this regard and the stair is shown on the site plan 2012-031 – Plan 11 and specifically details a large cross section of the approved construction. The approved plan includes additional notes placed on the plan by the approving certifier requiring compliance with Part 3.9.1 of the NCC as a stair.

Despite the fact that the Applicants may not have intended the stair to be used as an entry stair, the draftsman's plans do not reflect this. The approved plan reflects that the platform has been approved as a stair.

Having regard to the above the Committee was advised that the Applicant's representative intends to provide amended plans to the Assessment Manager including an explanation to reflect the intended use of the stair.

For these reasons the Committee **confirms** the decision to issue the Non-compliance Notice.

Greg Rust
Building and Development Committee Chair
13 November 2013

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
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Brisbane QLD 4001
Telephone (07) 3237 0403 Facsimile (07) 3237 1248