



## Building and Development Dispute Resolution Committees—Decision

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### *Sustainable Planning Act 2009*

**Appeal Number:** 01 – 2011

**Applicant:** Harry Poulos Architects

**Assessment Manager:** Brisbane City Council

**Concurrence Agency:** N/A  
(if applicable)

**Site Address:** 33 Ford Street Clayfield and described as Lot 8 on RP 19201 – “the subject site”.

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### **Appeal**

Appeal under section 519 of the *Sustainable Planning Act 2009* (SPA) against the decision of the Brisbane City Council to refuse a development application for carrying out building work and for a Material Change of Use of premises for the erection of a dwelling with an overall height exceeding 8.5 metres.

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**Date of hearing:** Friday 11 February 2011 and Friday 11 March 2011.

**Place of hearing:** Level 5 - 63 George Street. Brisbane.  
**Committee:** Paul Smith – Chair  
Debbie Johnson; and  
Victor Feros

**Present:** At the Friday 11 February 2011 hearing –  
Mr P Smith – Committee;  
Ms D Johnson - Committee;  
Mr V Feros – Committee;  
Mr S Adams - BCC;  
Mr H Poulos - Appellant;  
Mr L Ng;  
Ms Scanlon  
Mr P Scanlon.

At the Friday 11 March 2011 hearing –  
Mr P Smith – Committee;  
Ms D Johnson - Committee;  
Mr V Feros – Committee;  
Mr S Adams - BCC;  
Mr H Poulos - Appellant;

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## **Decision:**

The Committee, in accordance with section 564 of the SPA **sets aside** the decision appealed against, and the application be **refused**. The Committee orders the Brisbane City Council to assess and decide the application anew on the basis that the Committee found that the proposed height of the building complies with the performance criteria P2 of clause 4.1 of the Brisbane City Council House Code.

## **Background**

On 2 September 2010 the appellant made a combined development application to the assessment manager for a development permit for carrying out building work assessable under the planning scheme and a development permit for a material change of use to erect a new house on a vacant lot.

The subject land is situated in a Low-Medium Density Residential Area designation under City Plan 2000.

A development application for a house on the subject land that complies with the acceptable solutions of the Brisbane City Council House Code is self assessable, i.e. does not require a development application to Brisbane City Council.

Under City Plan 2000 a development application for a material change of use was required to be made to the assessment manager for, what is referred to as, a "Notifiable Code Assessment" application. Namely it required code assessment under SPA but also required limited public notification under City Plan 2000.

The proposed development does not comply with the Brisbane City Council House Code, Acceptable Solution A2, namely a part of the house is more than 8.5m above ground level.

By letter dated 16 December 2010, the assessment manager refused the application, stating that the grounds for its decision was that the application did not comply with the Brisbane City Council House Code.

At the Friday 11 February 2011 hearing, the representative of the assessment manager advised, to the effect, that the reason for refusal was that the applicant did not provide sufficient information to enable the assessment manager to properly assess the application against the criteria set out in the Brisbane City Council House Code. The assessment manager advised that he would be willing to reconsider its decision to refuse the application should the applicant provide that further information.

The Committee agreed with the assessment manager that insufficient information had been provided to properly assess the application. The Committee recommended that the applicant have without prejudice discussions with the assessment manager and provide further information to specifically address the criteria set out in the House Code.

Following the Friday 11 February 2011 hearing the appellant provided further information to the assessment manager and entered into without prejudice discussions. At the reconvened Friday 11 March 2011 hearing both the appellant and the assessment manager reported to the Committee that agreement had been reached.

The Committee agreed with the recommendations of both parties.

## **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 Registrar on 19 January 2011.

2. The development application dated 27 August 2010 and associated plans and supporting information.
3. Oral submissions made by the parties.
4. Documents presented at the hearings by the appellant.

### **Findings of Fact**

The decision of the assessment manager was based on a finding that insufficient information was provided to assess the application.

Once further information was provided the assessment manager agreed that the application would comply with performance criteria P2 of table 4.1 of Brisbane City Council House Code and should be approved subject to reasonable and relevant conditions.

The Committee found that, after consideration of the further information provided by the appellant, the proposed development would comply with performance criteria P2 of table 4.1 of Brisbane City Council House Code.

### **Reasons for the Decision**

The applicant, by providing additional information, demonstrated that the proposed development complied with the Brisbane City Council House Code.

**Paul Smith**  
**Building and Development Committee Chair**  
**Date: 27 May 2011**

## **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 Infrastructure and Planning  
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CITY EAST QLD 4002  
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