Building and Development Dispute Resolution Committees — Decision

Sustainable Planning Act 2009

Appeal Number:	**27 - 13**
Applicant:	Beaumont Investments Pty Ltd c/-RPS Australia East Pty. Ltd.
Assessment Manager:	Gladstone Regional Council
Concurrence Agency: (if applicable)	N/A
Site Address:	9 Wuruma Court Clinton and described as Lot 27 on SP 241220 – the subject site

Appeal

DECLARATION under s510 of the *Sustainable Planning Act 2009* (SPA) about whether a development application for Reconfiguration of Land (RoL) was properly made.

Date and time of hearing:	Appeal decided by written submissions – as agreed to by all parties
Place of hearing:	N/A
Committee:	John Panaretos – Chair Tamara Peverill - Member
Parties:	Beaumont Investments Pty Ltd (represented by RPS) – Applicant Gladstone Regional Council (Council) - Respondent

Decision:

The Building and Development Dispute Resolution Committee (Committee), declares that the development application for RoL lodged with Council by RPS on behalf of the Applicant is a properly made application within the meaning of the SPA and, pursuant to s564(1) of SPA, orders that Council assess the application in accordance with the IDAS process.

Background

On 22 August 2013, RPS lodged an application for a Development Permit, via Smart eDA, for reconfiguration of the subject site from 1 into 4 lots plus 1 balance lot. On 29 August 2013, Council requested payment of $14,670 in application fees, comprising fees for the RoL and an accompanying Material Change of Use (MCU) application. The Applicant paid the RoL application fee of $4,370 on 3 September 2013.

Council subsequently issued correspondence stating that the application was 'not properly made' due to the following omissions:

- *The application constitutes both an MCU & ROL and as such requires the submission of IDAS Form 5 & Application Fees of:*
    - *Reconfiguration of a Lot (1 into 5) $4,370.00*
    - *Material Change of Use (Small Lot Housing, 4 Lots) $10,300.00*

RPS contends that *"no material change of use is required or being sought for the four (4) detached dwellings on the proposed lots (less than 600 m^2) as a dwelling house within the residential zone is self-assessable under the Suburban Locality Code."*

RPS lodged plans and other documents relating to the four houses in accordance with Part 15 Planning Scheme Policies – Division 4 – Master Plans and Plans of Development Planning Policy 15.8. RPS argues that this documentation is merely required supporting information accompanying the RoL application.

In arriving at its decision that the RoL must be coupled with an MCU application for the 4 houses, Council argues the following:

- Under the SPA, a Material Change of Use of Premises is defined as, *'a material increase in the intensity or scale of the use of the premises'*. By creating lots under the minimum Code Assessable lot size of 600 m^2 the intensity and scale of use is increased through reduced setback requirements, site coverage and density.

- The planning scheme does not define the term "Small Lot Housing", which consequently is caught under the umbrella of *'any other use not defined'* in the relevant level of assessment table. Hence, the undefined use is Impact Assessable.

- The concept of small lot housing is recognized in the Residential Code, which references the former Queensland Residential Guidelines, now the Queensland Development Code (QDC).

- The application triggers Impact Assessable development providing the opportunity for the increase in intensity and scale to be publicly advertised allowing scrutiny by the wider public.

- This triggering of a combined application has been Council's consistent approach since the implementation of the *Gladstone Plan 2006.* Hence, payment of the MCU fees is required to render the application 'properly made'.

In addition, it could be argued that the *Reconfiguring of a Lot Code* combines with the small lot provisions of the *Residential Code* and the *Master Plans and Plans of Development Planning Policy* to trigger the requirement for an MCU application to accompany the RoL.

Material Considered

The material considered in arriving at this decision comprises:

1. 'Form 10 – Application for Declaration, documents and correspondence accompanying the appeal lodged with the Committees Registrar on 5 September 2013, including the RoL development application and 'not properly made' letter issued by Council dated 30 August 2013;
2. Written submission from Council dated 19 September 2013;
3. Correspondence from RPS dated 18 September and 26 September 2013;
4. Gladstone Plan 2006.
5. *Sustainable Planning Act* 2009 (SPA);

Findings of Fact

The Committee makes the following findings of fact:

1. Sections 261 and 260 of the SPA list the criteria required for an application to qualify as properly made, including 260(d)(i): *if the assessment manager is a local government—the fee for administering the application fixed by resolution of the local government*

2. The subject site is in the *Suburban Locality* of the *Gladstone Plan 2006* and in the *Residential Zone*.

3. Under the *Suburban Locality Code*, reconfiguration is Impact Assessable where lots less than 600 m^2 in area are proposed to be created, and the lots will be assessed against the *Reconfiguring a Lot Code*. Pursuant to "Lot Layout" Probable Solution 1.1 and Table 11-13 of the code, lots less than 600 m^2 and greater than 300 m^2 satisfy the Probable Solution where *"undertaken in accordance with a plan of development"*;

4. Part 15 Division 4 *Master Plans and Plans of Development Planning Policy* (s15.8 Development on Small Lots (<600 m^2)) lists detailed plan information to accompany any development application;

5. The planning scheme does not define "small lot house" as a discrete land use, separate to *dwelling house*. Hence, a dwelling house is Self Assessable in the *Residential Zone* pursuant to the Assessment Criteria of the *Suburban Locality Code* where it is proposed on a lot less than 600 m^2, subject to compliance with the *Residential Code*.

Reasons for the Decision

1. Under s10 of the SPA, the creation of new allotments is distinguished from the proposed use of those allotments, irrespective of lot size. Reconfiguration of land to create additional lots, regardless of lot size, implies proposed intensification of use of the land, but is not intensification of use.

2. In respect of development applications, s114 of the SPA limits the effect of Planning Scheme Policies to *"…information a local government may request for a development application"*. Hence, a planning scheme policy cannot require that an application be lodged for a development, or elevate the level of assessment of a development.

3. Contrary to Council's contention that the relevant codes imply that small lot house is a land use distinguishable from *dwelling house*, when used in the scheme, the term *dwelling house* is used to apply to situations where lots are as small as 300 m^2. See for instance "Development of Small Lots" section of the *Residential Code* which states, *"A dwelling house on lots less than 800 m2 and more than 300 m2 is…"*

4. Since the RoL requires an Impact Application, Council may assess it against any relevant part of the planning scheme. However, no evidence has been presented as to the relevance of the *Residential Code* to an RoL application. Nevertheless, were this link to be established, the consequences of any failure to satisfy its standards are in the layout, design and servicing of the subdivision.

5. Specific Outcome 2. of the Lot Layout section of the *Reconfiguring a Lot Code* merely requires that, *Reconfiguring a Lot…is undertaken in accordance with an overall plan of development which…complies with the relevant provision of the Residential Code…*There is no requirement for a combined application.

6. The Specific Outcomes and Probable & Acceptable Solutions of the *Development of Small Lots* section of the *Residential Code* refer to "Development on lots", i.e. the code provisions do not apply to reconfiguration of land.

7. To be clear, subject to s11.58 of the scheme, *Compliance with the Residential Code*, a proposed *dwelling house* on a lot <600 m^2 remains self assessable where it is consistent with the code's acceptable solutions. Development that is not consistent with the acceptable solutions is assessable development and is assessed against the Specific Outcomes when an MCU application is lodged.

John Panaretos

Building and Development Committee Chair
Date: 17 October 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
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