



Building and Development Dispute Resolution Committees—Decision

Sustainable Planning Act 2009

Declaration number:	89-10
Applicant:	Brisbane Trading Pty Ltd (“Applicant”)
Assessment manager:	Brisbane City Council (“Council”)
Concurrence agency: (if applicable)	N/A
Site Address:	390-398 Underwood Road, Eight Mile Plains and described as lots 5 and 6 on RP 90217 — the Site

Declaration application

Application for a declaration under section 510 of the *Sustainable Planning Act 2009* (SPA) about whether a development application for a development permit for a material change of use and a preliminary approval for building work was properly made.

Date of hearing:	10am, 15 February 2011
Place of hearing:	Level 5, 63 George St, Brisbane
Committee:	Ms Kari Stephens – Chairperson Mr Robert Quirk - General Referee
Present:	John Panaretos – Urban Strategies (Applicant representative) Helena Lulham – Council representative Steve Adams – Council representative Sharnie Makinson - Manager, Building and Development Dispute Resolution Committees (Observer)

Decision

- [1] The Committee makes the declaration sought that the development application was a properly made application.

Background

- [2] The Site also has frontage to Millers Road. It has an area of 20,234m².
- [3] The Site is configured in an L-shape, with its longest boundary to Underwood Road. It can be described as generally flat, and containing only limited vegetation. There are two existing dwellings on the Site, one located on each of the allotments which make up the Site.
- [4] The proposal is to convert the western dwelling house into a caretaker's residence, and convert the

easternmost house into a gift/souvenir shop. The town planning report supporting the development application designates this proposal as an "interim" use of the site which reuses existing structures.

- [5] The Site is subject to the provisions of the Brisbane City Plan (planning scheme). Within the planning scheme, the site is located in the "Emerging Community" area and is also located within the Kuraby Local Plan area.
- [6] The Applicant made a material change of use application for a development permit and preliminary approval for building work. The development application was made electronically and was received by Council on 5 November 2010.
- [7] On 15 November 2010 Council gave a notice under s. 266 of the SPA that the application was not properly made.
- [8] On 10 December 2010, the Applicant, by its planner, Urban Strategies Pty Ltd, started the current proceeding with the Committee.
- [9] There were initially two issues: the first relating to the alleged failure to provide the written consent of all land owners; and the second with respect to the alleged failure to provide a structure plan and the accompanying assessment fee (being \$8,090) with the development application.
- [10] In relation to the first, the failure to provide the written consent of all land owners, the Applicant maintained that it had been provided when the development application was lodged electronically. The Applicant's letter dated 19 November 2010 provided "another" copy of the written consent of all land owners. Ms Lulham, who appeared for the Council, confirmed that the matter of consent was no longer an issue.
- [11] With respect to the second, in response to questioning by the committee, Ms Lulham clarified that the Council's position was that in terms of the failure to provide a structure plan, the Council said this was mandatory supporting information for the development application required by s. 260(1)(c) of the SPA and IDAS form 5, item 6.

Discussion

- [12] IDAS form 5, item 6 provides:

"A statement about how the proposed development addresses the local government's planning schemes and any other planning documents relevant to the application."

- [13] The Applicant conceded that it did not provide a structure plan. The Applicant agreed that there was a fee associated with the provision of a structure plan, if one was required. It said that the structure plan and the associated fee were not "necessary or justified in this situation".
- [14] The town planning report which accompanied the development application, makes a number of statements about how the proposed development addresses the local government planning scheme. On page 11 there is a specific statement about the provision of a structure plan:

"The proposal does not compromise development of adjoining emerging community sites as it is not a total redevelopment and simply reuses the existing structures on site. The use is seen as a small-scale "interim" use of the site, whilst a longer term plan for the site and surrounding area is formulated, hence a structure plan has not been prepared in this instance. The proposed use is of a low-intensity, with minimal potential to affect the amenity of neighbouring residential properties.....". [our emphasis]
- [15] Both parties took the Committee to numerous parts of the planning scheme. However, it is not necessary to consider them in any depth to resolve the matter before us.
- [16] It is the SPA, not the planning scheme, which principally determines what is a properly made application.

[17] Section 261 of the SPA relevantly provides that:

*“An application is a **properly made application** if –*

(a) the application is made in compliance with section 260(1) and (3);”

[18] The committee considers that the development application, and in particular the town planning report, includes a “statement about how the proposed development addresses the local government’s planning schemes and any other planning documents relevant to the application” as required by IDAS form 5, item 6.

[19] There is no requirement in item 6 to include a structure plan, even by reference. It also does not set a standard for statements. As such, there is no need for the accompanying structure plan assessment fee.

[20] To the extent that it may be necessary to refer to the planning scheme to resolve this matter, we consider that the planning scheme is also consistent with this conclusion. Performance criteria P1 and P2 in the Structure Planning Code does not actually require an applicant generated structure plan. Although, the acceptable solutions refer to applications containing structure plans. In particular, performance criteria P1 states:

“All proposals within the Emerging Community and Future Industry Areas must accord with and implement an adopted Structure Plan where one already exists, or must enable Council to adopt a Structure Plan for the site”

[21] The development application was properly made.

Material Considered

[22] The material considered in arriving at this decision comprises:

- (a) ‘Form 10 – Notice of Appeal’, grounds for appeal and correspondence accompanying the appeal lodged with the Registrar;
- (b) Council’s notice dated 15 November 2010 that the application was not a properly made application;
- (c) The development application and the supporting information;
- (d) Verbal and written submissions from the parties at the hearing;
- (e) Council’s planning scheme.
- (f) The SPA.

Findings of Fact

[23] The Committee makes the following findings of fact:

- (a) The development application was for a material change of use (development permit) to establish a gift/souvenir shop within an existing dwelling. The second dwelling, also existing, is to be converted to a caretaker’s residence. The development application also includes preliminary approval for building work.
- (b) The site is located in the “Emerging Community” area.
- (c) The development application did not include a structure plan or the accompanying assessment fee. The Council, by notice dated 15 November 2010, stated that the application was not properly made under section 266 of the SPA.

- (d) The town planning report which accompanied the development application makes a number of statements about the local government planning scheme, including a statement about the provision of a structure plan.
- (e) The committee considers these statements satisfy IDAS form 5, item 6. Item 6 does not set a standard for statements. Item 6 does not require the inclusion of a structure plan, even by reference.
- (f) Section 261 of the SPA determines what is a properly made application.
- (g) The committee finds that the development application was properly made in accordance with that section.

Reasons for the decision, conclusion and determination

- [24] There was no failure to provide a structure plan and the accompanying assessment fee with the development application.
- [25] The development application was a properly made application.
- [26] Our detailed reasons are set out above.
- [27] The application is granted. The Committee declares that the development application was a properly made development application.

Kari Stephens
Building and Development Committee Chair
Date: 11 April 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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