



Building and Development Dispute Resolution Committees—Decision

Sustainable Planning Act 2009

Appeal Number:	81-11
Applicant:	Mr Italo Gosti
Assessment Manager:	Gerard Van Eyk, Accord Building Certifiers
Concurrence Agency: (if applicable)	Not Applicable
Site Address:	25 Whiting Street, Labrador Queensland described as BUP 2778, CTS 12367 – the subject site.

Appeal

Appeal under section 527 of the *Sustainable Planning Act 2009* (SPA) against the decision of the Assessment Manager to refuse a Development Application for Building Works in relation to renovation of a unit block located on the subject site.

Date of hearing:	10.30am – Monday 28 November 2011
Place of hearing:	The subject site
Committee:	Mr Don Grehan – Chair
Present:	Mr Italo Gosti – Applicant Mr Gerard Van Eky – Assessment Manager Mr Brian Gobie – Gold Coast City Council

Decision:

The Building and Development Dispute Resolution Committee (Committee), in accordance with Section 564(2)(c) of the SPA, **sets aside** the decision of the Assessment Manager and, in accordance with Section 564(1) of the SPA, makes the following directions as considered appropriate:

- (a) This Decision is to be read concurrent with the Building and Dispute Resolution Committees Decision - Appeal No. 49-10 dated 29 October 2010.
- (b) The Assessment Manager is directed to re-assess the Development Application for building works, giving due consideration where appropriate to the discretions that may be exercised in determining the application by sections 61, 80 and 81 of the *Building Act 1975* (BA).

- (c) The Assessment Manager is directed to decide the re-assessment, either refusing or approving the application, within 20 business days of the date this decision is given and is reminded that the IDAS Information Request Stage has expired in relation to the application and that BSA Insurance and Q-Leave obligations must be satisfied prior to the issue of a Development Approval for building works.
- (d) The Assessment Manager is directed to include the following condition (a Condition Time), requiring the development to be completed by a particular time as part of any subsequent Development Approval for building works arising from this decision:
- “All works subject to this approval are to be completed, inclusive of satisfactory final inspection and submission of all certificates of compliance and or design, no later than 1 year from the date of approval or this approval will lapse.”
- (e) The Assessment Manager is directed to issue a Form 57 (or equivalent) “Reminder notice for the lapsing of an approval” to the Applicant at least 3 months but no earlier than 6 months before the expiry of the condition time. A copy of the Reminder Notice must be forwarded to Principal Building Surveyor, Gold Coast City Council at the time it is issued to the Applicant.
- (f) The Assessment Manager must not approve an application to extend the Condition Time without the written approval of Council.
- (g) The Applicant and Assessment Manager are advised that the Owner Builder provisions of the *Queensland Building Services Authority Act 1991* do not extend to building work for, or relating to, multiple dwellings (those being buildings comprising 2 or more residential units), as such all renovation and rectification works must be undertaken by a builder licensed for work in Queensland by the Building Services Authority (BSA).
- (h) The Applicant and Assessment Manager are reminded of the provisions of the Building and Dispute Resolution Committees Decision - Appeal No. 49-10 dated 29 October 2010, which remains in effect in relation to the subject site, namely the requirements to:
- Cease all occupation of the subject site for residential purposes;
 - Decommission all electrical services on or within the building save for any security lighting or alarm systems and any fire detection or alarm systems;
 - Secure access to and within the two storey unit block (inclusive of verandas, balconies and walkways) by means of security fence or similar to prevent access by unauthorised persons.
 - Prior to any to subsequent use or occupation of the building, obtain a Certificate of Classification pursuant to the BA.
- (a) The Applicant, Assessment Manager and Council are advised that failure to comply with any part of provisions (a) through (h) of this Decision represents a failure to comply with the Enforcement Notice (Ref No. PN36712/16(P1), dated 21 June 2010 as amended by the Building and Dispute Resolution Committees Decision - Appeal No. 49-10 dated 29 October 2010.

Accordingly, all parties are reminded that it is an offence against section 594 of the SPA to fail to comply with an Enforcement Notice, additionally, because the Enforcement Notice is issued under section 248 of the BA, should works fail to be performed under the Enforcement Notice, Council may be able to enter the premises and perform the work at the expense of the owner under the *Local Government Act 2009* with amounts incurred by the Council becoming a debt owing against the land that may be recovered as if it were an overdue rate.

Background

A two-storey brick unit complex is located on the subject site and has fallen into a state of disrepair following the effects of differential subsidence, fire damage and lack of maintenance.

The unit complex was subject to an Enforcement Notice from Council seeking demolition of the building given the belief that it was not possible and practical to take steps to repair, rectify, secure or to fence off the building and that the building was dangerous, dilapidated and unfit for use or occupation.

Council's action in giving the Enforcement Notice was appealed to the Committee who, following an appeal hearing, could not be satisfied that it was impractical to take steps to repair, secure, fence off or to cleanse the building in lieu of requiring demolition nor that it was not possible to return the building to a condition that is fit for use or occupation given the appropriate expenditure of capital.

Subsequently, the Committee changed Council's Enforcement Notice and required the Applicant, in part, to:

- (a) Make a properly made application in accordance with the provisions of the SPA to the Gold Coast City Council ("Council") or to a private certifier (class A) for a development permit for building work to repair the two storey unit development in its entirety so as to comply with the provisions of the Building Code of Australia 2010 as a Class 2 Building;

In accordance with the Committee's decision, the Applicant made a Development Application to a private certifier, who, following his assessment issued a Decision Notice refusing the application on the basis that:

"it does not show how the building will be made compliant in its' entirety with Building Code of Australia 2010 as directed by the Building and Development Dispute Resolution Committee."

The Applicant, dissatisfied with the refusal, lodged an appeal with the Committee.

Material Considered

The material considered in arriving at this decision comprises:

- Form 10 – Appeal Notice and Applicant's correspondence accompanying the appeal lodged with the Registrar on 27 September 2011.
- Council's Enforcement Notice, Ref No. PN36712/16 (P1), dated 21 June 2010.
- Building and Dispute Resolution Committees Decision - Appeal No. 49-10 dated 29 October 2010.
- Verbal submissions from the Applicant given at the hearing.
- Verbal submissions from Assessment Manager given at the hearing.
- Verbal submissions from Council given at the hearing.
- The *Sustainable Planning Act 2009* (SPA).
- The *Building Act 1975* (BA).
- The *Queensland Building Services Authority Act 1991*.

Findings of Fact

The Committee makes the following findings of fact:

- The Applicant and Assessment Manager acknowledge that the decision to refuse the development application arises following the difficulty in reconciling how an existing two-storey brick veneer unit complex, constructed circa 1970, could be made to comply with the Building Code of Australia 2010, in its entirety, as a Class 2 building given that existing elements such as footings, floor slabs, tie down and bracing were constructed prior to the adoption of many of the Australian Standards identified in the Deemed to Satisfy Provisions in the Building Code of Australia 2010.
- The Committee clarifies that the words “in its entirety” as used as part of the direction to “repair the two storey unit development in its entirety so as to comply with the provisions of the Building Code of Australia 2010 as a Class 2 Building” as given in the Building and Dispute Resolution Committees Decision - Appeal No. 49-10 dated 29 October 2010, is a reference to repairing the unit complex “in its entirety” as opposed to repairing the unit complex to comply with the entirety of the Building Code of Australia 2010.
- Part A.0 of the Building Code of Australia clarifies that to comply with the BCA, building works must satisfy the Performance Requirements and that compliance with the Performance Requirements can be achieved by either: (a) complying with the Deemed-to-Satisfy Provisions; or (b) formulating an Alternative Solution. The Deemed to Satisfy Provisions should not be applied as prescriptive requirements.
- The BA contains a number of provisions which give building certifiers discretion to apply older laws to new building work and existing buildings undergoing assessable building work, alterations and additions such as Sections 61, 80 and 81.
- Section 61 of the BA clarifies that alterations to safe existing work may be approved on basis of earlier building assessment provisions.
- Section 80 of the BA clarifies the requirements in relation to alterations to unsafe existing work.
- Section 81 of the BA clarifies the circumstances where a building development approval for particular alterations may require existing building or structure to comply with building assessment provisions.

Reasons for the Decision

- The Committee acknowledge the potential duplicity in the wording of the Decision - Appeal No. 49-10 dated 29 October 2010.
- The Committee acknowledges Council’s concerns regarding the longevity of the circumstances surrounding the subject site and seeks to ensure that the matter is concluded without undue delay

Building and Development Committee Chair
Date: 27 February 2012

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
PO Box 15009
CITY EAST QLD 4002
Telephone (07) 3237 0403 Facsimile (07) 3237 1248