



## Building and Development Dispute Resolution Committees—Decision

---

### *Sustainable Planning Act 2009*

<b>Appeal Number:</b>	<b>20-10</b>
<b>Applicant:</b>	Simply Signs
<b>Assessment Manager:</b>	Toowoomba Regional Council (Council)
<b>Concurrence Agency:</b> (if applicable)	N/A
<b>Site Address:</b>	236A Taylor Street (corner Wyalla St.) and described as Lot 5 on SP105188 — the subject site

---

### **Appeal**

Appeal under section 532(1)(b)(ii) of the *Sustainable Planning Act 2009* (SPA) against the decision of Toowoomba Regional Council to issue a non-compliance notice for a pylon sign encroaching on Council property.

---

<b>Date of hearing:</b>	9:00am on Thursday 17 June 2010
<b>Place of hearing:</b>	The subject site
<b>Committee:</b>	David Kay – Chair
<b>Present:</b>	George Jovic (Simply Signs)– Applicant David Krumins – Toowoomba Regional Council Geoff Ray – Toowoomba Regional Council Desley McKaniske – Department of Environment and Resource Management (DERM) representative

---

### **Decision:**

The Committee, in accordance with section 564 of the SPA **changes** the decision contained in the Council dated 19 March 2010 by replacing the original paragraph (a) to a changed paragraph (a) as follows:-

- (a) With reference to the survey set out plan and From 16 submitted by Minstaff Survey Pty Ltd (copy attached) we note the pylon sign is encroaching 0.2m onto the road reserve. The pylon sign, including all footings, is to be wholly contained within the boundary of 236A Taylor Street Toowoomba. This matter is to be rectified by:-

Commencing procedures to apply for the closure of part of the road containing the sign structure, including the footing, within one month of the date of this decision and continue the process without delays on behalf of the applicant until such time as that part of the road reserve containing the sign is added to the title deed of the subject site (Lot 5 on SP105188).

## **OR**

- (b) If procedures are not commenced to apply for the closure of part of the road within one month of the date of this decision, the applicant is to relocate the sign structure (including the footing) to ensure that all parts of the sign structure, including the footings, are contained wholly within the subject site within two months of the date of this decision. In relocating the sign structure the Council's building certifier is to inspect the location of the sign footings after excavation and prior to placing of concrete.

## **Background**

At the hearing, the applicant outlined the history of the development and advised the drawing of the sign was the only detail he had access to when erecting the sign. The applicant also advised that when they constructed the sign it was thought to be within the site boundary. It was assumed the garden kerb was the boundary line and that Council should have ensured the kerb was not in the road reserve. It was also requested that consideration be given to the fact that the sign was only 200mm over the boundary into the road reserve. The cost of relocation of the sign would be considerable.

Council advised that if the Committee finds the sign is allowed to remain in its current position, they would be seeking clarification about the powers of the committee to deal with the private acquisition of public property.

Council advised the decision notice for the building approval included conditions to obtain a licensed surveyors certificate before the footings were laid. The survey plan submitted showed the column and base plate encroaching 200mm into the road reserve. Based on plans the footing would extend beyond this distance. It was advised that relocation of the sign should include removal of the footing.

In responding to a question from the Committee Chairperson, Council staff advised they were of the opinion that the sign should be relocated. They were not aware of the costs of relocation or costs associated with the acquisition of any land required for the sign to remain but indicated the subdivision application would cost approximately \$1000. Signing the plan of survey would also cost approximately \$1000, but Council were not aware of cost of land and costs associated with conducting the acquisition process. In addition, the Council would need to consent to the surrender of the land process through DERM.

The DERM representative advised that if the sign remained in its current position it would be an unlawful occupation of the road reserve. DERM would require the use of the land in the road reserve be made lawful and this would involve seeking a permanent closure of part of the road reserve. In order to obtain a permanent closure, other parties would need to consent to the proposed closure, public notification of the proposal would be required (at an estimated cost of \$300), the land would need to be subjected to a market valuation and a survey of the land would be required. All of these aspects would be included in the acquisition costs. There is also no guaranteed outcome that the land can be added to the title of the subject site.

Following discussion of the issues, the applicant indicated that his likely course of action would be to relocate the sign due to the uncertainty of the outcome of any road closure application.

## **Material Considered**

The material considered in arriving at this decision comprises:

1. 'Form 10 – Application for appeal/declaration', grounds for appeal and correspondence accompanying the appeal lodged with the Registrar on 1 April 2010.
2. Development permit for building work dated 7 December 2010.
3. Non-compliance notice issued by Council dated 19 March 2010.
4. Verbal submission by the applicant at hearing.

5. Verbal submission by Council representatives at hearing.
6. Verbal submission by DERM representative at hearing.
7. The SPA
8. The *Building Act 1975*

### **Findings of Fact**

The Committee makes the following findings of fact:

- A portion of the sign is located in the road reserve at the corner of Taylor and Wyalla Streets.
- A development permit for building work for the sign structure was issued for the subject site with a condition that a survey be carried out before the placing of footings.
- The use of road reserve for the erection of buildings and structures is controlled by DERM.

### **Reasons for the Decision**

- A portion of the sign is located in the road reserve at the corner of Taylor and Wyalla Streets.
- The development permit for building work was issued for the erection of the sign on the subject site.
- The development permit for building work was not issued for the erection of the sign on other land.
- Permission from DERM is required to use the land or “occupy” the land forming part of the road reserve.
- The consent of DERM is now required for the use of the land forming part of the road reserve and a formal application is required to use the land or have the land containing part of the sign structure added to the title deed of the subject site (Lot 5 on SP105188).
- The applicant, who is not the owner of the land, would need to discuss with the owner of the land their willingness to proceed with an application to close part of the road reserve. Time should be allowed for this discussion to occur. In the event the owner or the applicant decides not to pursue this option, the sign will need to be relocated.
- The applicant could adjust the location of the sign structure to have it completely contained within the subject site under the current development permit for building work.

---

**David Kay**  
**Building and Development Committee Chair**  
**Date: 4 July 2010**

## **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**