



## Building and Development Dispute Resolution Committees—Decision

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### *Sustainable Planning Act 2009*

**Appeal Number:** 76-11  
**Applicant:** AAD Design Pty Ltd  
**Assessment Manager:** Brisbane City Council  
**Concurrence Agency:** N/A  
(if applicable)  
**Site Address:** 33 Llewellyn Street, New Farm and described as Lot 3 & 4 on RP 8727 – the subject site

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### **Appeal**

Appeal under section 527 of the *Sustainable Planning Act 2009* (SPA) against the decision of the Brisbane City Council (Council) to refuse a Development Application to demolish the house on the subject site on the grounds that it is contrary to *Brisbane City Plan 2000* (City Plan), including the Demolition Code and New Farm and Teneriffe Hill Local Plan.

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**Date of hearing:** 1:00pm on Wednesday 2 November 2011  
**Place of hearing:** Department of Local Government and Planning offices, Level 5, 63 George St, Brisbane  
**Committee:** John Brannock – Chair  
Peter Ho – General Referee  
Ain Kuru – General Referee  
**Present:** Andrew Bajic – Owner  
Albert Daher – Architect, AAD Design Pty Ltd  
Jody Box – Senior Town Planner, AAD Design Pty Ltd  
Peter Leeds – Acting Principal Architect, Council  
Helena Lulham – Urban Planner, Council  
Milena Mog – Senior Planner, Council  
Anita Chesterman – Architect, Council

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### **Decision:**

The Building and Development Dispute Resolution Committee (Committee), in accordance with section 564 of the SPA, **confirms** the decision of Council to refuse the application.

## **Background**

The appeal was made in response to Council's refusal of an application to demolish an existing house at the subject site. The application to demolish the house was refused on the grounds that it was contrary to the City Plan, including the Demolition Code and New Farm and Teneriffe Local Plan.

## **Material Considered**

The material considered in arriving at this decision comprises:

1. Development application for demolition of a house including IDAS application forms and accompanying Town Planning Report;
2. Decision Notice issued by Brisbane City Council dated 23 August 2011 refusing the application;
3. Form 10 - Application for Appeal to the Building and Development Dispute Resolution Committees and accompanying Report dated 19 September 2011;
4. Written submission prepared by Brisbane City Council dated 28 October 2011;
5. Brisbane City Council *City Plan 2000*;
6. *Sustainable Planning Act 2009*; and
7. Verbal submissions provided at the hearing by applicant and Brisbane City Council representatives.
8. Planning and Environment Court case described as *Leach v Brisbane City Council*.

It should also be noted that the applicant was not provided with a copy of Council's written submission dated 28 October 2011. As a result, the Chair provided the applicant with the opportunity of reviewing the submission at the hearing and to make a further written submission.

## **Findings of Fact**

The Committee makes the following findings of fact:

1. AAD Design lodged a Development Application for a *Material Change of Use and Preliminary Approval of Building Work* to demolish an existing house on the subject site with the Council on 24 June 2011.
2. The proposed demolition is defined as *Development* under SPA .
3. The proposed demolition is assessable under section 5.2.3 of the City Plan as the site is located in the *Low-medium Residential* area, within a Demolition Control Precinct and the house was constructed prior to 1946. The site is also subject to the New Farm – Teneriffe Hill Local Area Plan.
4. The applicable codes are the Demolition Code and the New Farm – Teneriffe Hill Local Area Plan.
5. Council requested the applicant undertake consultation as required under the Demolition Code, and nine submissions were received.

6. Council refused the application on 23 August 2011 as the proposal is:
- i. Contrary to the Desired Environmental Outcomes and Strategies for the City in the Strategic Plan which states that existing buildings which contribute to the City's character should be protected.
  - ii. Contrary to the Desired Environmental Outcomes for the Low-Medium Density Residential Area in that the proposal does not retain pre-1946, timber and tin buildings in Demolition Control Precincts.
  - iii. Contrary to Development Principle 2.1 – 3 of the New Farm and Teneriffe Hill Local Plan which – Encourage the retention of New Farm's characteristic diversity of built form and village feel.
  - iv. Contrary to the purpose of the Demolition Code in that it does not protect the residential buildings that give the Residential areas in the Demolition Control Precincts their traditional character and amenity or ensure preservation of buildings where they form an important part of the streetscape and where the buildings and streetscape were constructed and/or established in/or prior to 1946.
  - v. Contrary to the Performance Criteria and Acceptable Solutions A1.1 to A1.4 of the Demolition Code as:
    - The building does represent traditional building character. The house is a timber building of pre-war construction. The building is not deemed to have been substantially altered and reflects a form and scale characterized by a pre-1946 house.
    - The structural unsoundness of the building has not been addressed. There are no apparent structural issues from a street inspection and the house appears to be in good repair and sound condition.
    - The surrounding houses in Llewellyn Street are of pre-1946 construction and the section of the street retains a strong pre-1946 character. Removal of the subject house would result in the loss of traditional building character.
    - The streetscape contains character houses located nearby in traditional settings and hence features traditional building character to which the subject house contributes in a positive way.
7. The applicant AAD Design subsequently lodged an appeal on 23 August 2011, and then by Valentina Bajic as one of the owners, attaching a declaration from both owners that AAD Design may act on their behalf. The grounds of appeal were cited as "Appeal against Refusal" and in a submission attached to the appeal it states:
- i. Our argument is based upon compliance with Dot Point 3 of Performance Criterion P1 of the Demolition Code.
  - ii. We submit that the character of the street (as defined by P1 and by the Planning and Environment Court case – *Leach v Brisbane City Council*) is chiefly modern apartment buildings to the south western side of the street (being the side the subject site is located on), and pre 1946 masonry and tile on the other side of the street. Including the subject house, there are only two timber and tin houses on the identified streetscape.
  - iii. We submit that timber and tin building proposed to be demolished is not consistent with this character, and indeed diminishes from it because it is a lesser quality building than the surrounding structures.

## Reasons for the Decision

The applicant submits that demolition of the house satisfies dot point 3 of Performance Criteria P1 of the Demolition Code.

The Performance Criteria P1 states *the building must not represent "traditional building character", or must not be capable of structural repair, or must not contribute positively to the visual character of the street.*

The applicant submits that the building does not contribute positively to the character of the street for two reasons. Firstly the house is not a good example of a traditional Queenslander in that it was cheaply constructed, and lacks important features such as a front verandah and traditional front entry stairs. They conclude by stating that it is a plain building not consistent with any pre-war architectural style.

The second reason is that the street comprises predominantly of a mix of modern apartment buildings and pre-1946 masonry and tile buildings, and there are only two "timber and tin" buildings in the street. As "timber and tin" is not the dominant building style evident in the street, removal of the building would not diminish the character of the street.

To support their premise, the applicant refers to a Planning and Environment Court case described as *Leach v Brisbane City Council*. Drawing from this case, the applicant submits:

- performance criteria and acceptable solutions contain alternative rather than cumulative requirements so that aspects of the code may be read in isolation from each other; and
- that a street exhibits a single character which comprises an aggregate of individual features evident in the street.

In response the Council advised that the purpose of the Demolition Code was to protect traditional character in the Demolition Control Precinct, and specifically ensure the preservation of buildings where they form part of an important streetscape established prior to 1946.

In supporting their refusal, Council provided a submission which rejects the argument that the house is not a good example of a Queenslander as a subjective assessment beyond the scope of the Demolition Code, and cites two Court cases where the architectural merit of a building was not a relevant planning consideration.

The submission provides considerable detail about the meaning of "traditional building character" as described under the Demolition Code. It also provides an architectural analysis, which finds that the house is representative of an interwar style known as a Double Gable House. The submission concludes by submitting that the house is representative of "traditional building character" which Council seeks to preserve in the Demolition Control Precinct, and that the street contains many other examples of pre 1946 housing, which constitute a complementary streetscape into which the subject house is considered to make a positive contribution.

The Committee agrees with the position provided by Council and finds that the house does display "traditional building character", and the submission as to whether it is a particularly good example of a pre war house is not a relevant planning consideration under the Demolition Code.

The Committee also agrees that removal of the building would result in a loss of traditional building character. At the hearing there was considerable discussion about whether the building contributed positively to the streetscape. The Committee notes that there are several newer high density buildings on the street, however finds that these are mostly constructed on the lower side of the street, are well landscaped and do not dominate the streetscape to the extent that it no longer displays a pre-1946 character. On the high side of the street there are numerous pre-1946 buildings,

and while these have a different architectural style to the traditional Queenslander, are nevertheless recognised as contributing to "traditional building character" under the Demolition Code. As a result the street continues to display a predominant streetscape with a character comprising of pre-1946 buildings.

The Committee finds that in respect of the New Farm – Teneriffe Hill Local Area Plan, demolition of the house would be inconsistent with Development Principle 2.1 (3) *Encourage the retention of New Farm's characteristic diversity of built form and village feel* and Precinct Intent 3.2 of the Low-medium Density Living Precinct which states *new proposals should retain existing houses*.

The Committee also notes that while not part of the assessment criteria, the intent of the Low-medium Density Residential Area states that in Demolition Control Precincts, *pre-1946 'timber and tin' housing will be retained and new development will reflect pre-1946 architectural character. Where feasible, development in Demolition Control Precincts will incorporate pre-1946 dwellings at the front of the new development*.

The Committee therefore upholds the Council's *Grounds of Refusal* that the proposed demolition of the building is contrary to the Purpose and Performance Criteria of the Demolition Code and contrary to the Development Principle 2.1 of the New Farm and Teneriffe Hill Local Plan.

**Building and Development Committee Chair**

**Date: 28 November 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:

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