



## Building and Development Dispute Resolution Committees—Decision

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### *Sustainable Planning Act 2009*

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| <b>Appeal Number:</b>                         | 23- 15  |
| <b>Applicant:</b>                             | Gilbert Property Qld Pty Ltd  |
| <b>Assessment Manager:</b>                    | Gold Coast City Council (Council)   |
| <b>Concurrence Agency:</b><br>(if applicable) | N/A   |
| <b>Site Address:</b>                          | 14 Gidgee Court Molendinar and described as Lot 18 on SP 181852 –<br>the subject site |

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### Appeal

Appeal under section 533 of the *Sustainable Planning Act 2009* (SPA) in relation to an Enforcement Notice issued by the Gold Coast City Council on the grounds that it reasonably believes that the premises were being used for a purpose that is not a lawful use, that certain buildings have been placed upon the premise and fill has been imported and trees cleared to facilitate the use.

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| <b>Date and time of hearing:</b> | Thursday 8 October 2015 10:00AM   |
| <b>Place of hearing:</b>         | The subject site  |
| <b>Committee:</b>                | Geoffrey Mitchell – Chair   |
| <b>Present:</b>                  | Melanie Gilbert – Applicant<br>Brett Gilbert – Applicant’s Representative<br>Gerard Van Eyke – Building Certifier – Applicant’s Representative<br>Kerry Dart – Council Representative<br>Lisa Watson- Council Representative<br>Rachel Duncan – Council Representative<br>Roxanne Gray – Council Representative |

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### Decision:

The Building and Development Dispute Resolution Committee (Committee), in accordance with section 564 of the SPA **dismisses** the appeal on the grounds it does not have jurisdiction to decide on an appeal about an Enforcement Notice issued in respect to the use of the premises.

### Background

The appeal was lodged by Melanie Gilbert (the Applicant) in response to an Enforcement Notice issued to the Applicant by the Council as owner of the subject land. The appeal was pursuant to section 533 of the SPA.

The Enforcement Notice stated that the Council reasonably believed that the Applicant was committing a development offence contrary to section 582 of the SPA. The grounds for the Enforcement Notice included a number of statements in relation to a number of issues namely

1. Renovations to an existing dwelling to establish two separate self-contained units.
2. The use of the property for the purposes of Industry.
3. Importation of Fill and the clearing of trees. (Operational Work).
4. Erection of a number of structures on the premises.

Before the appeal was heard, the Council acknowledged that the matter in relation to the renovations to the existing dwelling had been resolved.

The Council issued an additional two Enforcement Notices to deal with the Building Work being carried out without approval and Operational Work being carried out without approval.

The two additional Enforcement Notices were included in the Applicants submission however it was clarified by the Applicant that it was only the Enforcement Notice in relation to the use of the premises as Industry that was to be appealed.

As there was the mention of building work in the Enforcement Notice being appealed the Committee was initially of the view that it may be a matter that could be decided by the Committee.

At the hearing the Council went over the history of the events leading up to the issue of the Enforcement Notice which was in response to a number of complaints and investigations by Council.

The Applicant outlined their responses in rebuttal to each of the claims by Council.

During the hearing considerable noise was observed in the nature of metal on metal contact from the adjoining industrial complex. (Aluminium Boat Construction). This was discussed as a probable source of the industrial noise and odours, the subject of the complaint.

The Committee found no evidence of significant metal working machinery or evidence of metal working at the subject premises.

During the hearing the Committee attempted to broker an agreement between the parties to resolve the Enforcement Notice, with the Council to produce an Agreement to be signed by the Applicant.

Council provided an Agreement to the Committee which was passed to the Applicant.

The Applicant declined to sign the agreement as written, as it was doing no more than requiring the Applicant to comply with requirements that were already imposed by the Council Planning Scheme.

## **Material Considered**

The material considered in arriving at this decision comprises:

1. 'Form 10 – Appeal Notice', grounds for appeal and correspondence accompanying the appeal lodged with the Committees Registrar on 4 August 2015.

2. Documents submitted to support the appeal including the two Enforcement Notices that were not subject to the appeal.
3. Written submission provide to the parties by the Council at the hearing.
4. Verbal representations at the hearing.
5. Copy of signed undertaking provide by the Council (signed 20 October 2015).
6. Applicant's response to the signed undertaking received by the Committee (Dated 1 November 2015).

## **Findings of Fact**

The Committee makes the following findings:

### **Jurisdiction of the Committee**

Section 508 of the SPA establishes the jurisdiction of Committees, and in particular matters are set out in Divisions 4 to 7. Division 4 deals with appeals about particular material changes of use; Division 5 about compliance assessment; Division 6 about building, plumbing and drainage matters; and Division 7 about infrastructure charges. The enforcement Notice issued by the Council states that it may be appealed under section 533 of the SPA to the Committee. Section 533 is contained in Division 6, which relates to only building, plumbing and drainage matters. Section 526 outlines matters about which a person may appeal under Division 6, which does not include matters related to the use of premises other than under the Building Act 1975.

### **Reasons for the Decision**

The Committee does not believe it has the jurisdiction to decide an appeal about the use of the premises as it relates to definitions in Council's Planning Scheme.

The Committee apologises to the parties for not identifying the jurisdictional issue earlier. The Committee observes that the requirements of Council's Enforcement Notice appear to have been addressed by the applicant.

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**Geoffrey Mitchell**  
**Building and Development Committee Chair**  
**Date: 22 December 2015**

## **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 Housing and Public Works  
GPO Box 2457  
Brisbane QLD 4001  
**Telephone (07) 1800 804 833 Facsimile (07) 3237 1248**