



Building and Development Dispute Resolution Committees—Decision

Sustainable Planning Act 2009

Appeal Number:	52 - 16
Applicant:	Jean Jacques and Kate Le Faou
Assessment Manager:	Pacific Building Certification Queensland
Site Address:	6 Gannet Street, Peregrine Beach, Qld 4573, Lot 52 P9316 — the subject site

Appeal

Appeal under section 533 of *Sustainable Planning Act 2009* (SPA) against the Enforcement Notice of the Assessment Manager for not giving a notice of inspection to the Assessment Manager in relation to the footing, slab and frame stages of construction and progressing past the mandatory stages of inspection without a certificate of inspection from the Assessment Manager, contrary to condition 1 of the Development Application Decision Notice that formed part of the Development Approval for Building Work.

Date and time of hearing:	19 December 2016 10:30 am
Place of hearing:	The subject site
Committee:	Mr. Richard Prout – Chair Mr. Andrew Parker – Member
Present:	Mr. Jean Jacques Le Faou – Property owner and Applicant Ms. Kate Le Faou – Property owner and Applicant Mr. Mark Lobwein – Friend of property owners Mr. Don Grehan – Assessment Manager

Decision:

The Building and Development Dispute Resolution Committee (Committee), in accordance with section 564 of the SPA **sets aside** the Enforcement Notice issued by the Assessment Manager under section 590 of SPA.

Background

The subject site is a 539.56m² allotment located at 6 Gannet Street, Peregrine Beach, Qld 4573, Lot 52 P9316 and is zoned Detached Housing under the Noosa Plan. The allotment is rectangular in shape with a street frontage of 18 m.

In March 2015, the Applicants lodged a Development Application for Building Work with Pacific Building Certification Queensland (Assessment Manager) for the following additions and renovation to the existing dwelling at the subject site namely:

- A roofed veranda and deck on the eastern side of the dwelling;
- A Class 10a carport located on the western side of the dwelling between the dwelling and the front road boundary;
- A Class 10a storeroom located on the southern side of the dwelling; and

- Some internal alterations to the existing dwelling.

The owners intended to carry out the building work themselves and as such obtained an Owner Building Licence from the Queensland Building and Construction Commission (QBCC), date issued 13 April 2015 which was valid until 13 April 2021.

The Assessment Manager issued a Development Approval for Building Work on the 27 April 2015 for Class 1a and Class 10a Alterations and Additions.

On the 2 November 2016 the Assessment Manager issued the Applicants with an Enforcement Notice under Section 590 of the *Sustainable Planning Act 2009* (SPA) for a development offence under Section 580 of SPA (Compliance with a development approval) in that:

You have not given a notice for inspection to the Building Certifier in relation to the Footing, Slab and Frame stages of construction and have progressed past these mandatory stages of inspection without a certificate of inspection from the Building Certifier (or a competent person lawfully acting on the Building Certifiers behalf) stating that stage complies with the building development approval. This is contrary to Condition 1 of the Development Application Decision Notice that forms part of the Development Approval for Building Work (Attached).

The Applicants lodged a notification of appeal Form 10 with the Building and Development Registrar on 29 November 2016 against the Enforcement Notice.

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 29 November 2016;
2. Assessment Manager Decision Notice, Permit No: 20150081, dated 27 April 2015, approving alterations and additions, Classification 1a and 10a;
3. Client Engagement Agreement, Dated 4 March 2015;
4. Assessment Managers Conditions;
5. The following drawings that formed part of the Development Approval for Building Work:
 - Elevations, by Ace Space Design, Project No 13.160, Drawing CD.301, Issue H, Dated 5/8/2015;
 - Elevations by Ace Space Design, Project No 13.160, Drawing CD.302, Issue H, Dated 5/8/2015;
 - Ground Floor Plan, by Ace Space Design, Project No 13.160, Drawing CD.101, Issue H, Dated 5/8/2015;
 - Sub Floor Plan, by Ace Space Design, Project No 13.160, Drawing CD.102, Issue H, Dated 5/8/2015;
 - Titles, by Ace Space Design, Project No 13.160, Drawing CD.305, Issue H, Dated 5/8/2015;
 - Cover Page, by Lindsay Consulting, Drawing 15-0413-F1;
 - Foundation Design, by Lindsay Consulting, Drawing 15-0413-F2;
 - Foundation Details, by Lindsay Consulting, Drawing 15-0413-F3;
 - Typical Step Detail, by Lindsay Consulting, Drawing 15-0413-F4;
 - Structural Plan, by Lindsay Consulting, Drawing 15-0413-F5;

6. Form 15 (Compliance Certificate for building Design or Specification) signed by Jason Lindsay, dated 14 August 2015 certifying: all member sizes, bracing and tie down, wall framing sizes, footing and slab design, blockwork design;
7. IDAS Form 1 - Application Details, IDAS Form 2 - Building work requiring assessment against the *Building Act 1975*;
8. Form 16 (Inspection Certification/Aspect Certificate/QBSA Licensee Aspect Certificate) signed by the Assessment Manager dated 27 April 2015, certifying the footings for the rear deck area;
9. Form 16 (Inspection Certification/Aspect Certificate/QBSA Licensee Aspect Certificate) signed by Jason Lindsay, dated 26 October 2016 certifying: Structure inspection of existing residence following renovations including footing and slab, tie down, bracing and frame inspection of existing residence;
10. Statutory Declaration signed by Andrew Freeman Buckley, Dated 7 October 2016 stating:
All construction involving the footing, concrete, structural timber framing, bracing and tie down has been installed in accordance with Lindsay Consulting P/L drawings 15-0413 sheets F1 to F5, issue 5, dated 14/8/15, as no inspection with certifier or engineer was organised.
11. Photographs of the building work at varying stages i.e. footing, slab and frame;
12. Email dated 3 September 2015 from Lindsay Consulting to Applicant confirming that they had inspected the Parallel Flange Channel (PFC) beams components and all members were erected adequately to their specifications;
13. Email dated 17 August 2015, from Applicant to Assessment Managers office requesting they contact them regarding the footing for the carport and asking if they need to carry out a site visit;
14. Email dated 14 August 2015, from Lindsay Consulting to Applicant with revised plans for the carport structural design and footing design with Form 15 Compliance Certificate;
15. Email dated 19 August 2015, from Assessment Managers office to Applicant with amended plans for alterations and additions at 6 Gannet Street, Peregian Beach;
16. Email dated 3 September 2015, from Applicant to Assessment Managers office advising that the carport would be finished on Monday 7 September 2016 and requesting when the Assessment Manager would be available to carry out a site inspection and approve the back deck and carport;
17. Email dated 3 September 2015, from Applicant to Assessment Managers office with attached photos and confirming that Lindsay Consulting had been onsite during renovations and viewed the structural work;
18. Form 16 Inspection Certification, signed by Jason Lindsay, dated 17 January 2017 certifying the internal alterations to the structural frame of the existing dwelling;
19. Show Cause Notice dated 22 September 2016, issued by the Assessment Manager to the Applicants;

20. Enforcement Notice date 2 November 2016, issued by the Assessment Manager to the Applicants;
21. Email/letter dated 17 November 2016, from Applicant to Assessment Manager responding to Show Cause Notice of 22 September 2016 and Enforcement Notice dated 2 November 2016;
22. Letter dated 2 November 2016, from the Assessment Manager to the Applicants dated 2 November 2016 responding to their showing cause letter/email of 17 November 2016;
23. Letter undated from the Applicants to the Committee detailing the grounds for their Appeal;
24. Verbal submissions at the hearing from all parties to the appeal;
25. The *Sustainable Planning Act 2009* (SPA);
26. The *Building Act 1975* (BA);
27. Building Regulation 2006 (BR)

Findings of Fact

The Committee makes the following findings of fact:

Subject Site

1. The subject site is a 539.56m² allotment located at 6 Gannet Street, Peregrine Beach, Qld 4573, Lot 52 P9316 and is zoned Detached Housing under The Noosa Plan;
2. The allotment is rectangular in shape with a street frontage of 18 m;
3. The existing dwelling on the site was built approximately 40 years ago and was compliant with the requirements of the BA;
4. The following buildings and structures were noted onsite at the hearing:
 - A dwelling built approximately in 1975;
 - An in ground swimming pool located on the eastern side of the dwelling approved in 2015;
 - A roofed veranda and deck on the eastern side of the dwelling, approved in 2015 subject of Enforcement Notice; and
 - A carport located on the western side of the dwelling between the dwelling and the front road boundary, approved in 2015 subject of Enforcement Notice.

Application Process

1. In March 2015, the Applicants lodged a Development Application for Building Work with the Assessment Manager for the following additions and renovation to their existing dwelling at the subject site namely:
 - A roofed veranda and deck on the eastern side of the dwelling;
 - A Class 10a carport located on the western side of the dwelling between the dwelling and the front road boundary;
 - A Class 10a storey room located on the southern side of the dwelling; and
 - Some internal alteration to the existing dwelling.
2. The property owners intended to carry out the building work themselves and as such obtained an Owner Building Licence from the QBCC date issued 13 April 2015, valid until 13 April 2021;
3. However the proposed carport did not comply with Schedule 1 Minimum Boundary Setbacks For Building and Other Structures, Table 1.1 Standard Minimum Setbacks for Zones which states the following:

Detached Housing Zone – Frontage 6 m

4. The Assessment Manager lodged a request for referral agency response for building work with the Noosa Council on 11 March 2015 along with plans detailing the location and design of the proposed carport;
5. The Noosa Council issued a Concurrence Agency Response on the 23 March 2015 conditionally approving the carport;
6. The Assessment Manager issued a Development Approval for Building Work on the 27 April 2015 for Class 1a and Class 10a Alterations and Additions.

Mandatory Inspection Process

1. On the 27 April 2015 the Assessment Manager inspected the footings for the roofed veranda and deck on the eastern side of the dwelling. Following the inspection the Assessment Manager issued a Form 16 Inspection Certificate;
2. On the 17 August 2015, the Applicants emailed the Assessment Manager's office, stating the following:

Hi Tony

Apologies I missed your call.

Jacques would like to speak to you prior to digging the footings for the carport as I understand that you may need a site visit?

Can you please ring me at your earliest convenience.

At the hearing the Applicants stated that they received notification from the Assessment Manager's office, stating that the carport did not require a footing inspection.

The above email and statement formed part of the Applicant's response to the Assessment Manager Enforcement and Show Cause Notice of the 17 November 2016;

3. It was confirmed at the Hearing that the slab to the carport was never poured and the concrete pour within the dwelling was a topping to an existing slab only. This is confirmed on Lindsay Consulting, Foundation Design drawing 15-0413-F2, which formed part of the amended approve issued by the Assessment Manager. The drawings have the following notation:

100 mm Topping Slab with SL72 Fabric Centrally

It was an agreed fact between the parties that this was not a structural footing/slab and as such did not trigger a mandatory inspection;

4. As per Part 6 (Inspections of assessable building work) of the BR the footing and slab for a Class 10a building is not a mandatory inspection;
5. At the frame stage of the alteration inside the dwelling the work was inspected by representatives from Lindsay Consulting. This was confirmed by them in an email dated 3 September 2015 to the Assessment Managers office and the Applicants which states:

Hi Tony

I've been to the site a few weeks back after the PFC was installed to give some further advice and in the visit I did inspect the beam components and all members were erected adequately to our specifications.

If you need any further info please let me know.

Show Cause and Enforcement Process

1. On the 22 September 2016, the Assessment Manager issued the Applicants with a Show Cause Notice, stating the following;

You are invited to show cause as to why an Enforcement Notice should not be issued pursuant to section 590 of the Sustainable Planning Act (SPA) requiring that construction work on the subject dwelling cease until the further notice and the relevant work be

deconstructed to the extent that the mandatory footings, slab and frame inspections can be completed in accordance with Guidelines for the Inspection of Class 1 & 10 Buildings and Structures, Version 1, December 2011 published by the Department of Housing and Public Works.

The Show Cause Notice required the Applicants to make representation to the Assessment Manager by 31 October 2016.

2. On the 2 November 2016 the Assessment Manager issued the Applicants with an Enforcement Notice under Section 590 of the SPA for a development offence under Section 580 of SPA (Compliance with a development approval) in that:

You have not given a notice for inspection to the Building Certifier in relation to the Footing, Slab and Frame stages of construction and have progressed past these mandatory stages of inspection without a certificate of inspection from the Building Certifier (or a competent person lawfully acting on the Building Certifiers behalf) stating that stage complies with the building development approval. This is contrary to Condition 1 of the Development Application Decision Notice that forms part of the Development Approval for Building Work (Attached).

3. The Applicants responded to the Show Cause Notice and Enforcement Notice on 17 November 2016. As part of their justification they provided copies of the email correspondence between themselves and the Assessment Manager and Lindsay Consulting;
4. The Assessment Manager responded to the Applicants Show Cause Notice response on the 2 November 2016 stating:

The submitted Form 16 Inspection Certificate relates to the 'Structural Inspection of existing residence following renovations including Footing and Slab, Tie Down, Bracing and Framing Inspection of the existing residence' however the Conditions of the Development Approval clearly requires the satisfactory inspections of the following stages:

- *Footing excavations (including prior holes) with reinforced steel in place, prior to the placement of concrete;*
- *Slabs, including suspended slabs, with framework and reinforcing steel in place prior to the placement of concrete;*
- *Framing, including structural members, tie down and bracing prior to the placement of linings.*

7. The Applicant lodged a Notice of Appeal (Form 10) with the Building and Development Registrar on the 29 November 2016.

Reasons for the Decision

The Committee **sets aside** the Enforcement Notice issued by the Assessment Manager for the following reasons:

At the hearing, the following was agreed to by all parties with respect to the footing/slab inspections:

Footing/Slab Inspections

- The footing at the rear of dwelling was inspected by the Assessment Manager on 27 April 2015 and was found to be complying;
- No concrete slab was poured for the carport as there was an existing double width concrete driveway which was suitable for vehicle parking; plus
- As per Part 6 (Inspections of assessable building work) of the *Building Regulation 2006* the footing and slab inspections for a Class 10a building are not mandatory inspections; and

- The concrete pour within the dwelling was a topping to an existing structural concrete slab only and was not considered to be a mandatory inspection.

As such it could be demonstrated that the Applicants had complied with the requirements of the BA with respect to the footing/slab inspection requirements.

Frame Inspection

- It was noted at the hearing that the carport and the roofed veranda/deck had not been sheeted and the structural framework for both buildings was clearly visible and could be inspected;
- The Applicants again confirmed that representatives from Lindsay Consulting had inspected the structural alterations within the dwelling prior to the sheeting of the walls; and
- The Assessment Manager confirmed at the hearing that if the Applicants could provide a correctly worded Form 16 Inspection Certification from Lindsay Consulting that this would satisfy the condition of the Development Approval for Building Work.

The hearing was suspended to provide the Applicants with the opportunity of obtaining a Form 16 Inspection Certificate for the structural alteration to the dwelling frame for the Committee and the Assessment Manager to consider.

The Applicants provided the Form 16 Inspection Certificate from Lindsay Consulting on the 18 January 2017 and the Assessment Manager responded to the Form 16 Inspection Certificate on 19 January 2017 advising the following:

- 1. I am happy to accept the Form 16 from the RPEQ as confirmation of the satisfactory completion of the mandatory Frame Stage Inspection;*
- 2. As discussed at the hearing, I acknowledge that the footings and slab inspection relates to a Class 10 part of the approved works and I am happy to accept these as being self-assessable aspects.*
- 3. The confirmation of Building Set-out noted on the submitted Form 16 is not sufficient to satisfy requirements of my Decision Notice, I will require a set out confirmation signed by a Licenced Cadastral Surveyor (Note: this was not a contention of the Enforcement Notice).*

Accordingly, I am happy to withdraw the Enforcement Notice.

Richard Prout
Building and Development Committee Chair
Date: 27 January 2017

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