



Building and Development Dispute Resolution Committees—Decision

Sustainable Planning Act 2009

Appeal Number:	47-16
Applicant:	Mr Jonathon Leonard Oppelaar
Local Government:	Moreton Bay Regional Council (Council)
Concurrence Agency: (if applicable)	N/A
Site Address:	973 Winn Road, Mt Samson described as Lot 3 on SP 103869 – the subject site

Appeal

The appeal has been lodged under section 533 of the *Sustainable Planning Act 2009* (SPA) against the giving of an Enforcement Notice by the Moreton Bay Regional Council pursuant to section 248 (1) of the *Building Act 1975* (BA), requiring the Applicant to cease occupation of a Class 10a building, which is not suitable for residential purposes.

Date and time of hearing:	28 November 2016 – 3:30pm	
Place of hearing:	The subject site	
Committee:	Mr Peter Rourke	Chairperson
Present:	Mr Jonathon Oppelaar	Applicant
	Ms Tracey Oppelaar	representative of the Applicant
	Mr Chris Trewin	Council representative
	Ms Karen Hilson	Council representative

Decision:

The Building and Development Dispute Resolution Committee (Committee) , in accordance with section 564 of the SPA **changes** the decision of the Council contained in the Enforcement Notice dated 18 October 2016, by **replacing** the part of the Enforcement Notice requiring the Applicant to:

- A. Engage a Private Building Certifier and obtain a Notice of Engagement by no later than 4 November 2016; and
- B. Obtain a building development approval for the conversion of the class 10a building (shed) 1to a class 1a building (habitable dwelling) by no later than 2 December 2016; or
- C. Cease using the class 10a building for habitable purposes by no later than 2 December 2016 until further notice;

with the following:

“The Applicant is to cease occupation of the class 10a building (shed) by 1 March 2017 unless a Development Permit for a change of use, which will allow the building to be used for residential purpose, is issued prior to 1 March 2017.

Background

On 11 November 2010, a Development Permit was issued for the construction of a class 10a building (shed).

The shed is a steel portal framed structure measuring approximately 18 meters long and 12 metres wide. The roof and walls are clad in colorbond metal. Within the external walls of the building, a two-storey structure has been erected consisting of a kitchen, bathroom and laundry on the lower level and a bedroom on the upper level.

On 14 July 2016, the Council carried out an inspection of the shed on the Subject Site and formed the opinion that the shed was being used for habitable purposes.

On 19 July 2016, the Council issued a Show Cause Notice requiring the Applicant to show cause as to why an Enforcement Notice should not be issued on the grounds that the Applicant was occupying a shed for habitable purposes in contravention of the *Building Act 1975* (BA).

On 18 October 2016, the Council issued an Enforcement Notice requiring the Applicant to, among other things, cease using the shed for habitable purposes in contravention of Section 110 of the BA by 2 December 2016.

Section 110 of the BA states:

The owner of a building must ensure a BCA classification or use change is not made to the building unless—

1. (a) a building certifier who is either of the following has approved the change and the building as changed complies with the building assessment provisions—
 - (i) a local government building certifier;
 - (ii) a private certifier (class A); or
2. (b) the change has been approved under section 112.

Under Section 119 of the BA, only a class 1, 2, 3, or 4 building can be used for residential purposes. Council is of the opinion the shed is being used as a Class 1a building.

Section 119 of the BA states:

A person must not use a building, other than a class 1, 2, 3 or 4 building, for residential purposes unless the use is approved by the local government for the building.

A change of use application has not been approved. The Applicant had intended to comply with the Enforcement Notice, but due to personal circumstances, is unable to meet the 2 December 2016 deadline specified in 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 14 November 2016
2. The Enforcement Notice dated 18 October 2016
3. The *Building Act 1975* (BA)
4. Volume 2 of the Building Code of Australia
5. The *Sustainable Planning Act 2009* (SPA)

6. Email dated 23 November 2016 from the Committees Registrar indicating that the Council has offered an extension of time in which to comply with the Enforcement Notice.

Findings of Fact

The Committee makes the following findings of fact:

1. The shed was approved as a class 10a building on 11 November 2010;
2. The Applicant did not dispute the fact the shed was being used for residential purposes;
3. A change of use to allow the shed to be used for residential purposes pursuant to section 110 of the BA has not been approved;
4. The shed is being used for residential purposes in contravention of section 119 of the BA;
5. The Council agreed to an extension of time in which to comply with the requirements of the Enforcement Notice.

Reasons for the Decision

The subject building was originally approved as a class 10a shed. It is currently being used as a class 1a building without a change of use being approved in contravention of section 110 of the BA.

The Applicant does not dispute the building is being occupied for residential purposes and does intend to comply with the Enforcement Notice. However, the time frames specified in the Enforcement Notice are not sufficient to allow for the relocation to alternative premises.

The Council agreed at the hearing it had no objection to extending the time in which to comply with the Enforcement Notice, to 1 March 2017.

Peter Rourke
Building and Development Committee Chair
Date: 1 December 2016

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