



Building and Development Dispute Resolution Committees—Decision

Sustainable Planning Act 2009

Appeal Number:	37 – 14
Applicant:	Brendan Browne
Assessment Manager:	Brisbane City Council (Council)
Concurrence Agency: (if applicable)	N/A
Site Address:	369 Toohey Road, TARRAGINDI, QLD 4121 and described as Lot 32 on SP 242190 – the subject site

Appeal

Appeal under section 533 of the *Sustainable Planning Act 2009* (SPA) against the giving of an Enforcement Notice by Council under section 578 and 582 of the SPA.

Date and time of hearing:	29 October 2014 commencing at 11:00 AM
Place of hearing:	Building Codes Queensland, Mineral House Level 16 /41 George Street, BRISBANE.
Committee:	Geoffrey Mitchell – Chair Robert Laidely - Member
Present:	Brendan Browne – Applicant Simon Hammer – Applicant’s representative Richard Thorn – Council representative Glen Davidson – Council representative

Decision:

The Building and Development Dispute Resolution Committee (Committee) notes that the Applicant has withdrawn the Appeal following the revocation of the Enforcement Notice by Council as the Assessment Manager. The Committee therefore has no jurisdiction to decide the Appeal or, alternatively, there would be no utility in doing so.

Background

A dwelling and an attached secondary dwelling has been approved and constructed on the subject site. The relevant approvals were issued by Professional Certification Group.

On 11 December 2013 the Council inspected the premises and formed the view the premises were being used by more than one (1) household group which it considered, amongst other things, to be in conflict with the provisions of the *Building Act 1975* (BA) and City Plan 2000.

On 16 December 2013 the Council issued a Show Cause Notice to the Applicant.

As Council received no representations on the Show Cause Notice it proceeded with the issue of an Enforcement Notice on 28 August 2014.

On 24 September 2014 the Applicant lodged the Appeal with the Committee's Registrar, being an appeal against the issue of the Enforcement Notice on the basis that the building works has the relevant Development Approvals and that the use complied with City Plan 2000.

On 29 October 2014 a hearing was held off site. During the discussion Council offered to revoke the Enforcement Notice on the understanding that the Applicant would withdraw the Appeal.

Council subsequently issued a Revocation Notice on the 26 November 2014 and the Applicant withdrew the Appeal on 2 December 2014.

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 24 September 2014.
2. Copies of the Building Development Approval issued by Professional Certification Group dated 26 July 2012 provided by the Applicant 26 September 2014.
3. Correspondence from Council dated 10 October 2014.
4. Various emails between the parties.
5. Verbal submissions at the hearing.
6. Revocation Notice issued by the Council dated 26 November 2014.
7. Email from the Applicant to the Committee's Registrar dated 2 December 2014 requesting withdrawal of the Appeal.

Findings of Fact

The Committee makes the following findings of fact:

- Professional Certification Group issued a Building Development Approval on 26 July 2012 for a dwelling and an attached dwelling.
- Professional Certification Group issued a Certificate of Classification for new dwelling and attached secondary dwelling (Class 1a) on 11 April 2013.
- Council issued a Show Cause Notice in relation to alleged offences under s578,s580 and s582 of the SPA on 16 December 2013.
- Council issued an Enforcement Notice in relation to alleged offences under s578 and s 582 of the SPA on 28 August 2014.
- The Applicant appealed the Enforcement Notice on 24 September 2014.
- The Council issued a Revocation Notice on 26 November 2014/
- The Applicant withdrew the Appeal on 2 December 2014.

Reasons for the Decision

During discussions in the hearing, the Council made an offer to revoke the Enforcement Notice on the understanding that that revocation would result in the Appeal being withdrawn. The Committee adjourned the hearing to allow time for this to occur.

Council issued a Revocation Notice on 26 November 2014 and the Applicant subsequently withdrew the Appeal on 2 December 2014.

In the circumstances, the Committee no longer has any jurisdiction to decide the Appeal or, alternatively, there would be no utility in doing so.

Geoffrey Mitchell
Building and Development Committee Chair
Date: 11 December 2014

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