



Building and Development Dispute Resolution Committees—Decision

Sustainable Planning Act 2009

Appeal number:	24-10
Applicant:	James and Melanie Scott
Assessment manager:	Ipswich City Council
Concurrence agency: (if applicable)	N/A
Site Address:	6 Barclay St, Bundamba described as Lot 47 on RP 22435 – the subject site

Appeal

Appeal under section 532 of the *Sustainable Planning Act 2009* (SPA) against the decision of the Ipswich City Council as the assessment manager to refuse a building development application for relocation of a dwelling, additions to an existing dwelling and garage. The application was refused on the grounds that the construction is not in accordance with a condition of Council's development permit for single residential development within a development constraint (underground mining).

Date of hearing:	10:00am on Tuesday 1 June 2010
Place of hearing:	Level 1, 45 Roderick St, Ipswich
Committee:	Paul Smith - Chairperson
Present:	Mr James Scott – Applicant Dr Ian Gray – Applicant's engineer Mr Martin Wallis – Assessment manager Mr Michael Bond – Assessment manager

Decision

The Committee, in accordance with section 564 of the SPA **confirms** the decision appealed against and dismisses the appeal.

The effect of this decision is that the application dated 14 April 2008 (referred to by the assessment manager as application no. 2939/2008/BW) is refused.

Background

On 18 April 2007 a decision notice for a development permit for a single dwelling located within a development constraints overlay was issued. The development permit dealt with matters related to the mining subsidence and included the following conditions:

Condition 3(c)(i):

The proposed development shall be designed and constructed in accordance with the approved recommendations as outlined in the geotechnical report by Moreton Geotechnical Services Pty Ltd titled Mining Study at 6 (Lot 47) Barclay Street, Bundamba and dated 12 March 2007 and supplementary letter prepared by Moreton Geotechnical Services Pty Ltd titled Mining Study at 6 (Lot 47) Barclay Street, Bundamba, dated 2 April 2007.

Condition 8. Mining:

- a) The proposed development shall be designed and constructed in accordance with the approved recommendations as outlined in the geotechnical report by Moreton Geotechnical Services Pty Ltd titled Mining Study at 6 (Lot 47) Barclay Street, Bundamba and dated 12 March 2007 (the MGS Mining Report) and supplementary letter prepared by Moreton Geotechnical Services Pty Ltd titled Mining Study at 6 (Lot 47) Barclay Street, Bundamba, dated 2 April 2007.
- b) Prior to any Building Works approval, the Developer shall submit to the Development Manager a Structural Engineer's Certificate certifying that the proposed structures have been designed in accordance with the abovementioned geotechnical report.

An advisory note says:

“Previous Underground Mining

Council records indicate that the land to which this approval relates is almost entirely contained within a zone of influence for underground mining operations....”

The relevant Moreton Geotechnical Services Pty Ltd Mining Study report includes statements “that there is a possibility of undocumented mining, “a cautious approach should be taken”; and recommends “means to reduce the risk includes the construction (or relocation) of a stump type residence only to the top front right corner of the site” and “this option also assumes that the house can be re-levelled if or when required...”.

An application dated 14 April 2008 (referred to by the assessment manager as application no. 2939/2008/BW) for the construction of a 2 storey dwelling incorporating a relocated timber dwelling with adjustable columns located below the floor level of the ground floor was approved on 14 January 2009.

On 30 June 2009 an application to request to change an existing approval under development permit 2939/2008/BW was received by the assessment manager requesting a change to the ground floor construction to include a concrete slab-on-ground with adjustable columns in lieu of the ground floor framing on adjustable stumps.

The assessment manager refused the request to change the existing approval and it is that refusal which is the subject of this appeal.

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 Registrar on 14 April 2010;
2. Letter received 5 April 2007 from Melanie Scott for James Scott to Council 18 April 2007 – Decision Notice;
3. Application form dated 2 April 2008;
4. Letter dated 7 June 2008 from the assessment manager to James Scott requesting further information;
5. Letter dated 29 October 2008 from the assessment manager to James Scott requesting further information;

6. Letter received by the assessment manager on 14 November 2008 from James Scott with a request to change or cancel condition;
7. Memo dated 25 November 2008 Council - request to change or cancel condition;
8. Letter dated 3 December 2008, from the assessment manager to James Scott replying to the request to change or cancel condition;
9. Building approval dated 14 January 2009;
10. Letter dated 12 August 2009 from the assessment manager to James Scott requesting further information (superseded);
11. Letter dated 21 September 2009 from the assessment manager to James Scott replying to the request to change or cancel condition;
12. Decision notice issued by the assessment manager dated 17 March 2010;
13. Copies of plans of the proposed development forwarded to the Registrar by the applicant by email dated 6 May 2010.
14. The applicant's written submissions dated 26 May 2010;
15. The assessment manager's written submissions dated 31 May 2010;
16. The SPA;
17. Oral submissions made by the parties at the hearing.

Findings of Fact

The Committee makes the following findings of fact:

1. The site on which the proposed dwelling is to be located is at risk of movement due to underground mining.
2. The risk of substantial movement is probably low.
3. The recommendation in the relevant Moreton Geotechnical Services Pty Ltd titled Mining Study concerning the "construction (or relocation) of a stump type residence only to the top front right corner of the site" is only one form of construction that could be approved. Other forms of construction that facilitated the re-levelling of the house, which did not result in significant damage, would be acceptable.
4. The method now proposed by the applicant to level the building in the event of movement would result in significant damage to a substantial area of the ground floor of the dwelling.
5. The method of levelling the building in the event of movement that provides for adjustable supports below the floor of the ground floor of the dwelling, which was approved on 14 January 2009, would not result in significant damage.

Reasons for the Decision

While the Committee is of the opinion that the risk of ground movement due to underground mining is probably low, the consequence of such movement would, if the method of levelling the structure was to be built into the fabric of the ground floor of the building, as now proposed by the applicant, result in significant and unacceptable damage to the building.

While the applicant advised that the method of levelling the building in the event of movement that was approved on 14 January 2009 would be more expensive than the method now proposed, the Committee is of the opinion that the approved method would not result in significant and unacceptable damage to the building.

In this circumstance the possibility that additional costs, if any, may be incurred, is not sufficient reason to approve the method now proposed.

Paul Smith
Building and Development Committee Chair
Date: 16 June 2010

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
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