



Building and Development Dispute Resolution Committees—Decision

Sustainable Planning Act 2009

Appeal Number:	10 - 16
Applicant:	David Edgar Wilson
Assessment Manager:	Bundaberg Regional Council (Council)
Concurrence Agency: (if applicable)	N/A
Site Address:	17 Mcllwraith Street, Bundaberg South and described as Lot 16 on RP 13463, Parish of Bundaberg, County of Cook – the subject site

Appeal

Appeal under section 533 of *Sustainable Planning Act 2009* (SPA) against the giving of an Enforcement Notice (Ref: 326.2015.1097.1) dated 6 April 2016 issued by Bundaberg Regional Council (Council) under section 248 of the *Building Act 1975* for the subject site.

The Enforcement Notice (Notice) was issued by the Council on the grounds that the buildings on site are in a dilapidated and unhygienic condition, structurally dangerous, unfit for habitation and considered to represent a danger to the health and safety of the occupant and the public.

The Notice also required the Applicant (as property owner of the subject site) to ensure the buildings are not used for habitable purposes and are required to be demolished, removed and the site cleared and made safe.

Date and time of hearing:	Friday 17 June 2016 at 10.30am
Place of hearing:	The subject site
Committee:	Gregory Schonfelder – Chair
Present:	David Wilson – Applicant Nicholas Petrohilos – Assisting the Applicant Richard Jenner – Council representative Andrew Bentley – Council Representative Cara Levy – Council Representative

After the hearing, the Chair had informal discussions with the building occupant Ewan Fielding.

Decision:

The Building and Development Dispute Resolution Committee (Committee), in accordance with section 564 of the SPA **confirms** the decision of the Council to issue the Enforcement Notice.

The Notice dated 6 April 2016 issued by Council required the Applicant to ensure the buildings on the subject site are not used for habitable purposes and that the buildings be demolished, removed and the site cleared and made safe.

Background

The subject site is a flat, east facing, heavily vegetated (compared to adjacent properties), 801 m² sized rectangular lot on a side street in the suburb of Bundaberg South.

There is currently a dilapidated single storied timber dwelling and associated outbuildings on the lot with household effects and rubbish occupying most of the rooms in the dwelling and the site especially the front yard. There is a similar dwelling (design and era) in good condition located on the lot to the south of the subject site.

The occupant has resided at the property for over 22 years under a rent free agreement with the Applicant who would like the situation resolved but the occupant is unwilling to vacate the property.

On 7 December 2015 and 15 January 2016 Council inspected the subject site as a result of complaints from the public.

On 21 January 2016, Council issued the Applicant with a Show Cause Notice giving the Applicant until 26 February 2016 to respond to Council's belief that the building (dwelling) was in a dilapidated condition; could be infected with vermin and disease; was unfit for use or occupation; and may represent a danger to the occupant and the public.

On 26 February 2016, the Applicant responded to the Show Cause Notice however Council did not consider the response adequately addressed the issues in the Notice.

On 23 March 2016, a further inspection of the property was undertaken by Council pursuant to a warrant and as a result of this inspection an Enforcement Notice was issued by Council on 6 April 2016. The Enforcement Notice required the Applicant to immediately cease the habitable use of the dwelling and demolish and remove the dwelling and outbuilding from the subject site.

On 14 April 2016, the Applicant responded to the Enforcement Notice however Council did not consider the response again adequately addressed the issues in the Notice.

On 15 April 2016, Council advised the Applicant to either comply with the Enforcement Notice or lodge or appeal with the Building and Development Committees.

The Council also advised that they have made endeavours to assist the Applicant obtain alternative accommodation for the occupier.

On 15 April 2016, the Applicant lodged an appeal with the Building and Development Registrar.

On 14 June 2016, Council reinspected the subject site (from the street) and noted the external condition of the building had not changed although some site-work had taken place.

On 17 June 2016, a hearing was held on site.

The condition of the building and site is such that at the hearing it was not possible to safely enter the building or access the rear of the site. The electricity to the building had been cut off after the recent fire and power is currently being obtained via an extension cord from the adjacent property to the south. Verbal advice from both the Applicant and Council at the hearing, and in Council's submission, confirms that the building does not contain the facilities a building is required to have to be considered habitable.

Following the hearing, the Committee provided the Applicant with the opportunity of submitting a proposal on how he planned to clean up the property. The Applicant responded on 24 June 2016 by letter which outlined the work undertaken on the site since the hearing and the proposed work to be completed.

On 21 June 2016, Council advised the Committee via email that the property was not included in a local of State Heritage Register following a request from the Committee for the information.

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 15 April 2016.
 - Show Cause Notice dated 21 January 2016 issued to the Applicant by the Council
 - Letter dated 21 January 2016 accompanying the Show Cause Notice to the Applicant.
 - Letter dated 26 February 2016 from Applicant to Council responding to the Show Cause Notice.
 - Extract from "My Community Directory" providing information about temporary accommodation (Ozcare Homeless Hostel (Men) in Bundaberg.
 - Enforcement Notice dated 6 April 2016 issued to the Applicant by the Council
 - Letter dated 6 April 2016 accompanying the Enforcement Notice to the Applicant.
 - Letter dated 14 April 2016 from Applicant to Council responding to the Enforcement Notice.
 - Letter dated 15 April 2016 to the Applicant from the Council advising the Enforcement Notice will still stand and that the appeal period will end at close of business on 15 April 2016 if the Applicant wants to appeal Councils decision.
2. Documents submitted at the hearing by the Council. (Copy provided to the Applicant).
 - Document 16 June 2016 – Material relied on by the respondent (Council)
 - Affidavit dated 15 June 2016 – Andrew Bentley, Council Representative
 - Affidavit dated 15 June 2016 – Richard Jenner, Council Representative
3. Email dated 21 June 2016 from Cara Levy, Council Representative advising the subject site is not included in a local or State heritage register.
4. Letter dated 24 June 2016 from the Applicant outlining the work undertaken on the site since the hearing and the proposed work to be completed.
5. The *Building Act 1975* BA)
6. The *Sustainable Planning Act 2009* (SPA)
7. National Construction Code (Code)
8. Verbal representations by both parties at the hearing

Findings of Fact

The Committee makes the following findings of fact:

1. The subject site is a flat, east facing, heavily vegetated (compared to adjacent properties), 801 m² sized rectangular lot on a side street in the suburb of Bundaberg South.
2. There is currently a dilapidated single storied timber dwelling and associated outbuildings on the lot with household effects and rubbish occupying most of the rooms in the dwelling and the site especially the front yard. There is similar dwelling (design and era) in good condition located on the lot to the south of the subject site.
3. The occupant has resided at the property for over 22 years under a rent free agreement with the Applicant as the property owner. Although the Applicant wants the situation resolved, the occupant is unwilling to vacate the property.
4. On 7 December 2015 and 15 January 2016 Council inspected the site as a result of complaints from the public.
5. On 21 January 2016, Council issued a Show Cause Notice. Under section 248(4) of the BA, a local government is not required to issue a Show Cause Notice prior to the issue of an Enforcement Notice where the matter is considered dangerous. However Council issued the Show Cause to provide the Applicant with additional time to relocate the existing occupant and carry out the removal of the building and associated household effects and rubbish.
6. On 26 February 2016, the Applicant responded to the Show Cause Notice however Council did not consider the response adequately addressed the issues in the Notice.
7. On 23 March 2016, Council inspected the property pursuant to a warrant.
8. On 6 April 2016 and as a result of the above inspection, Council issued an Enforcement Notice requiring the Applicant to immediately cease the habitable use of the dwelling and demolish and remove the dwelling and outbuilding from the subject site.
9. On 14 April 2016, the Applicant responded to the Enforcement Notice however Council did not consider the response again adequately addressed the issues in the Notice.
10. On 15 April 2016, Council advised the Applicant to either comply with the Enforcement Notice or lodge or appeal with the Committees Registrar.
11. On 17 June 2016, a hearing was held on site.
12. The condition of the building and site is such that at the hearing it was not possible to safely enter the building or access the rear of the site. The electricity to the building had been cut off after the recent fire and power is currently being obtained via an extension cord from the adjacent property to the south. Verbal advice from both the Applicant and Council at the hearing, and in Council's submission, confirms that the building does not contain the facilities a building is required to have to be considered habitable.
13. Both the Council representatives and the Applicant verbally agreed at the hearing that the buildings are structurally compromised and should be demolished, but in correspondence with the Council the Applicant has claimed that he is not in a position to undertake any major structural work. He believes a high front boundary fence, minor repairs and a general clean-up of the property is all that is required for the building and property.

Reasons for the Decision

Dangerous Building

As a result of the site inspection conducted as part of the hearing, and after consideration of the submissions provided to the Chair, the building and outbuildings on the subject site are considered dangerous and unsafe both to the occupant and the general public.

The structural integrity of the building has been compromised by insect attack, climatic events, foundation subsidence and the lack of waterproofing (decayed cladding, missing windows) and maintenance to the extent that parts of the building may collapse, especially in a high wind event.

The dilapidated state of the building is such that it is not considered economically viable to partially demolish the outer part of the structure (verandahs/lean to) and repair/renovate the core building.

The building cannot be secured and the proposal by the Applicant to fence the subject site may provide a temporary solution to keep the public out of the building and site, however the issue of the building being dangerous will not be addressed by a fence.

Habitation of the Building

The inspection of the building clearly showed it to uninhabitable due to the dilapidated and unhygienic conditions. Such conditions render the building unfit for use or occupation and unsafe for the occupant's to continue to reside in the building.

The lack of many of the mandatory facilities required by the Code to be in a building such weather protection and waterproofing and no connections to public utilities render it uninhabitable. The building has also suffered structural damage and damage to sewer connections. The building's condition, coupled with the significant accumulation of household effects and rubbish within the buildings and on site, reinforce the decision that it is uninhabitable.

The effect of the dwelling being filthy inside with rubbish and debris has the potential for vermin infestation. The building could also be considered a fire hazard and dangerous to the occupant with the build-up of flammable material, lack of smoke detectors, and lack of defined egress from the building. There are no smoke detectors and an incinerator has been used close to the front door of the building.

Gregory Schonfelder
Building and Development Committee Chair
Date: 7 July 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