



## Building and Development Dispute Resolution Committees—Decision

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### **Sustainable Planning Act 2009**

**Appeal Number:** 91- 10

**Applicant:** Patrice Emmerton

**Assessment Manager:** Gold Coast City Council ("Council")

**Concurrence Agency:**  
(if applicable)

**Site Address:** 51 Alison Road, Carrara and described as Lot 578 on RP 151774  
— the subject site

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### **Appeal**

Appeal under section 533 of the *Sustainable Planning Act 2009* (SPA) against the decision of the Council in giving an Enforcement Notice under section 248(1) of the *Building Act 1975* (BA).

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**Date of hearing:** 21 January 2011

**Place of hearing:** The subject site

**Committee:** Chairperson – Geoff Mitchell  
General Referee – Dean Misso

**Present:** Patrice Emmerton – Applicant

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### **Decision:**

The Committee, in accordance with section 564 (2) (b) of the SPA **changes** the Enforcement Notice given by the Council dated 3 December 2010 by **deleting** under the second paragraph "You are required" (page 1) the following words and requirements:

- (a) Immediately cease use of the carport; and
- (b) Immediately fence off the carport to protect persons; and
- (c) Immediately, under the direction of a Registered Professional Engineer of Queensland (RPEQ), secure the carport (whether by a system of support or in another way); and
- (d) Provide to Council within 20 business days from the date of the Enforcement Notice, a report from the RPEQ assessing the structural adequacy of the carport including the provision for any work necessary to ensure the carport is structurally adequate and no longer dangerous; and

- (e) Carry out the work in accordance with the RPEQ report within a consequent 40 business days; and
- (f) Submit to Council a satisfactory completion certificate from a RPEQ certifying the structural adequacy of the carport as soon as possible after the rectification work as been completed.

**AND replacing them with the following words and requirements:**

You are required to do the following:

- (a) Immediately cease to use the south west corner of the carport; and
- (b) Immediately fence off the affected south west corner of the carport to prevent persons from accessing the area.

The Committee notes that at the time of the hearing the conditions of the altered Enforcement Notice had been satisfied.

**Background**

1. On 21 October 2010 Council issued an Enforcement Notice requiring certain actions be undertaken by the Appellant within 20 business days of the giving of the notice.
2. The Enforcement Notice was given on the basis that *"the excavation may adversely affect the stability of the adjoining property located on 51 Alison Road Carrara"*.
3. Written submissions were made by the Appellant with respect to that Enforcement Notice.
4. On 3 December 2010 Council issued a further Enforcement Notice requiring certain actions to be undertaken by the Appellant immediately. This Enforcement Notice was given on the basis that *"There has been an excavation under a part of the footing and slab of the carport and as a consequence there is no foundation supporting the footing and slab of that part of the carport"*.
5. The Committee observed that, at the date of the hearing, that building work had been conducted on the adjoining property, which:
  - has affected the subject site
  - has caused the destruction of a Class 10a shed on the subject site
  - has caused severe erosion damage under the carport structure on the subject site

**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 13 December 2010.
2. Correspondence from Mr Derek Cowan, 49 Alison Road Carrara ("the adjoining property") to the Appellant dated 3 October 2010.
3. Enforcement Notice issued by the Council dated 21 October 2010.
4. Undated correspondence from the Appellant and enclosing five (5) photographs of the subject site.

5. Correspondence from the Committee to the Appellant dated 29 October 2010.
6. Enforcement Notice issued by the Council dated 3 December 2010.
7. Correspondence from the Appellant to the Committee dated 9 December 2010.
8. Oral submissions from the Appellant at the hearing for the appeal.
9. The *Building Act 1975* (BA).
10. The *Sustainable Planning Act 2009* (SPA).
11. The Building Code of Australia (BCA).

### Findings of Fact

The Committee makes the following findings of fact:

- Council issued two Enforcement Notices related to the subject site dated 21 October 2010 and 3 December 2010 respectively.
- The Council advised that it would not make representations at the hearing or provide written submissions for the appeal.
- The Committee observed that, at the date of the hearing, there was considerable erosion to the batters between the subject site (no. 51) and the adjoining property (no. 49) Alison Road, Carrara. This erosion has undermined and exposed the foundations to the South West Corner of the Carport within the subject site.
- The Committee observed that, at the date of the hearing, the same erosion had:
  - Caused the collapse of a portion of the garden shed on the subject site
  - Rendered the garden shed and the affected portion of the carport on the subject site unsafe
- The Committee observed that, at the date of the hearing, the affected area of the carport and the garden shed had been screened with a temporary barrier to prevent persons walking onto the affected area.
- The Committee observed that, at the date of the hearing, there was building work being conducted on the adjoining property that involved excavation in the immediate proximity of the property boundaries between the subject site and the adjoining properties.
- At the date of the hearing, the Appellant advised the Committee that the applicant had not performed any building work since the purchase of the property, on or about 1986.

### Reasons for the Decision

- The Appellant has/is not conducting any building work.
- There is current building work being conducted on the adjoining property that has involved excavation below the level of the existing ground surface and the alteration/removal of the original retaining structures.
- In relation to the adjoining building work Section 75 of the BA requires:
  - “If soil conditions, ground levels, excavation or filling make it necessary to protect land, buildings or structures in the neighbourhood of building work—*
  - (a) retaining walls must be built, or other suitable methods used, to prevent soil movement; and*
  - (b) drainage of the land, buildings or structures must be provided”.*
- In relation to the adjoining building work clause 3.1.1.2 BCA requires:

**"3.1.1.2 Excavation adjacent to vacant adjoining property**

*Excavation work, using unprotected embankments, adjacent to another allotment can be undertaken provided—*

- (a) there are no buildings or structures on the adjoining allotment within 3 m of the allotment boundary adjacent to the excavation; and*
- (b) the excavation commences at the allotment boundary and is within the area defined as being suitable for excavation ...; and*
- (c) the slope of the unprotected embankment of the excavation complies with the appropriate soil classification slope ...".*

- In relation to the adjoining building work clause 3.1.1.3 BCA requires:

**"3.1.1.3 Excavation adjacent to existing buildings**

*Excavation work for footings, drainage trenches or other similar works, adjacent to existing buildings can be undertaken provided—*

- (a) the angle to determine the safe area for excavation is taken from the bottom of the shallowest point of the existing footing...; and*
- (b) the excavation is within the area defined as being suitable for excavation.....; and*
- (c) the slope of the unprotected embankment of the excavation complies with the appropriate soil classification...; and*
- (d) for footing excavation adjacent to existing footings—*
  - (i) the footing is placed as soon as practicable after exposing the existing footing; and*
  - (ii) the existing footing, where on an adjoining property, is completely isolated from the new footing by means of a flexible bond breaker not less than 10 mm thick; and*
- (e) the adjoining footing is not left exposed at the completion of works".*

- The Committee considers that there are offences against the BA in relation to the building work at the adjoining property. Council should address those offences by the issuing of the notice(s) it deems appropriate.

**NOTE**

The Committee advises that the rectification of the damaged works at the subject site is likely to be resolved by way of a civil dispute. Any such dispute will exceed the jurisdiction of the Committee.

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**Geoff Mitchell**  
**Building and Development Committee Chair**  
**Date: 01 March 2011**

## **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 Infrastructure and Planning  
PO Box 15009  
CITY EAST QLD 4002  
Telephone (07) 3237 0403 Facsimile (07) 3237 1248