



Building and Development Dispute Resolution Committees—Decision

Sustainable Planning Act 2009

Appeal Number:	11 - 13
Applicant:	Mr Paul Anthony Kelsall and Mrs Eunice Ying Teng Kelsall
Assessment Manager:	Brisbane City Council (Council)
Concurrence Agency: (if applicable)	Not Applicable
Site Address:	26 Grange Road, Grange and described as Lot 1 on RP106054 (the subject site)

Appeal

Appeal under section 526 of the *Sustainable Planning Act 2009* (**SPA**) against the giving of an Enforcement Notice (Ref: C1425417) by Council for carrying out assessable development without a development permit.

Date of hearing:	30 May 2013 at 10.00am
Place of hearing:	The subject site
Committee:	Greg Rust - Chair Kelly Alcorn - Referee
Present:	Paul Kelsall - Applicant Bob Harding - Applicant's representative Mark Higgin – Council representative Colin Bryer – Council representative Colin Neilsen – Council representative

Decision:

The Building and Development Dispute Resolution Committee (**the Committee**), in accordance with section 564 of the SPA, **confirms the decision** of the Council to issue the Enforcement Notice dated 15 February 2013 but amends the Enforcement Notice by substituting the “Requirements” as follows.

Requirements:

The Applicant is to take the following actions by the specified time or date:

1. Immediately upon receipt of this Notice stop carrying out any further development or building work on the premises.

2. Within forty-eight hours of receipt of this Notice, secure the premises and ensure the premises are safe.
3. Within 40 business days upon receipt of this Notice, apply for planning approval for a Material Change of Use and preliminary building approval.

Background

The site is located in the Low-Medium Density Residential zone and is subject to the Grange District Local Plan as defined in *Brisbane City Plan 2000 (the Plan)*.

The site was approved for use as a service station in 1964 with further additions approved in 1976, 1977 and 1978. The Applicant intends to continue the operation of the site as a service station and shop, however the Applicant considered that the existing building required structural repair and presented a danger to its occupants and the general public.

On 24 February 2012, Council officers attended the site after receiving a complaint in relation to storm water issues due to building work being carried out on the site. At this time, the Applicant informed the Council officers that the works being undertaken were maintenance to the existing structure.

Following further investigation, Council formed the view that the building works were assessable and a development permit was required. On 15 February 2013, Council issued an Enforcement Notice on the following grounds:

"1. Council reasonably believes that you have committed, or are committing, a development offence under the Sustainable Planning Act 2009 ("the Act") in that under:

Section 578 – Carrying out assessable development without permit, (1) a person must not carry out assessable development unless there is an effective development permit for the development.

2. This Enforcement Notice is being issued without a Show Cause Notice as Council reasonably considers that the development is significant and further work may not be able to be remedied if works are permitted to continue while representations from a Show Cause Notice are considered."

The specific instances of non-compliance relied upon by Council to issue the Enforcement Notice were:

- (a) the complete garage section of the roof, including structural beams, had been raised and temporarily supported by timber supports and part of the front block wall and front fascia wall (above the roller doors) was removed and rebuilt;
- (b) the complete garage section roof was lowered back on to the existing and newly constructed walls;
- (c) the replacement of glass panels at the lower front section of the building with block walls; and
- (d) the addition of a second storey to the front section of the building.

The Enforcement Notice required the Applicant to:

1. Immediately upon receipt of this Notice stop carrying out any further development or building work on the premises;

AND

2. Within forty-eight hours of receipt of this Notice, secure the premises and ensure the premises are safe;
- AND

3. Within 40 business days upon receipt of this Notice, apply for planning approval for a development approval - Material Change of Use and Preliminary Building Permit with a view that if successful apply for a Building Permit from a Private Certifier.

The Applicant appealed the Enforcement Notice on the basis that the building work undertaken is not assessable.

Material Considered

The material considered in arriving at this decision comprises:

1. 'Form 10 – Appeal Notice', grounds for appeal, documents and correspondence accompanying the appeal lodged with the Registrar on 19 March 2013;
2. Enforcement Notice issued 15 February 2013;
3. Verbal submissions by the Applicant and Council representatives at the appeal hearing;
4. Further submissions from the applicant and Council requested by the Committee
5. *Sustainable Planning Act 2009 (SPA)* ;
6. Sustainable Planning Regulation 2009
7. *Building Act 1975 (BA)*;
8. Building Regulation 2006; and
9. Brisbane City Plan 2000.

Findings of Fact

The Committee makes the following findings of fact:

The building work

At the date of the hearing, it was reasonably apparent that the alterations and additions had been made to the building as part of the works. It was observed that the building work consisted of:

- structural steel members being installed;
- an increase to the building height;
- an increase to floor area; and
- strengthening of the existing walls.

At the hearing, Council presented records and documentation, including historical photographs, which indicated that a significant change to the building has occurred between the time of the photographs and the date of the hearing. Despite numerous requests made by the Applicant and the Committee for the photos presented by the Council at the hearing to be provided, the Council refused to supply a copy of the earlier photographs on the basis that Council's legal representatives do not consider that the earlier photographs are relevant to the issues in the appeal. Although the earlier photographs in question do not alter the Committee's determination in this matter, it is noted that the Committee does not agree with Council's legal advice in this regard.

Reasons for the Decision

It is an offence under s.578(1) of SPA to undertake assessable development without an effective development permit for the development. Under the BA, s.20 provides that all building work is assessable development and therefore requires an effective development permit before it can be undertaken, unless it falls within certain categories of self-assessable or exempt development.

Council's inspection of the site on 24 February 2012 revealed that building work had been undertaken which was not insignificant and certainly involved assessable development. There was no permit in effect which authorised the carrying out of any building works at the site in place at the time of Council's inspection.

The level of assessment for Low-Medium Density Residential zoned land prescribed by the Plan shows building work (not being defined as "minor building work" under the Plan) or a Material Change of Use for a use as a service station as assessable development requiring an application to be lodged with Council.

While the Applicant submits that the works were "minor building work" and therefore are not assessable, the Committee does not agree that the works are of a minor nature. The Committee finds that the addition of the second storey of the building and resultant increase in gross floor area materially increases the intensity and scale of the use and does not satisfy the definition of "minor building work" under the Plan.

Accordingly, to the extent that building work had been undertaken or was being undertaken on the site, it was undertaken without a permit in contravention of s.578(1) of SPA and a development offence has been committed.

Having regard to the above, the Committee is satisfied that there were sufficient grounds for Council to issue the Enforcement Notice under appeal but has varied the requirements to better secure the outcomes sought.

Greg Rust
Building and Development Committee Chair
Date: 30 July 2013

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
PO Box 2457
Brisbane QLD 4001
Telephone (07) 3237 0403 Facsimile (07) 3237 1248