



Building and Development Dispute Resolution Committees—Decision

Sustainable Planning Act 2009

Appeal Number:	24 - 12
Applicant:	Dominique Keirens
Assessment Manager:	Brisbane City Council (Council)
Concurrence Agency: (if applicable)	N/A
Site Address:	17 Olive Street Morningside and described as Lot 6 on RP44362 – the subject site

Appeal

Appeal under Section 533 of the Sustainable Planning Act 2009 (SPA) against a Brisbane City Council (Council) Enforcement Notice issued under Section 590 of the SPA on the 18 May 2012. The Notice was issued for carrying out assessable development without a permit.

Date of hearing:	11 July 2012
Place of hearing:	The subject site
Committee:	Greg Rust - Chairperson
Present:	Dominique Keirens – Applicant Mark Harrison – Brisbane Certification Group Mark Higgin Brisbane City Council Peter Bryer – Brisbane City Council Kevin McLeish – Brisbane City Council

Decision:

The Building Development and Dispute Resolution Committee (Committee), in accordance with section 564 of the *Sustainable Planning Act 2009* (SPA) **sets aside** the Enforcement Notice given by Brisbane City Council Notice and in respect to the Development Application for the single unit dwelling meeting the requirements of P3 of the Character Code, be approved.

Background

On 19 July 2011 Council approved a design and siting variation to raise and relocate the existing dwelling on the subject site, in accordance with the siting conditions.

Building Approval to carry out the raising and relocation of an existing dwelling was given on 17 February 2012 by Brisbane Certification Group and included the conditions provided by Council as concurrence agency.

On 28 November 2011 Urban Strategies lodged a RiskSmart application on behalf of the Applicant to Brisbane City Council for Material Change of Use (Development Permit) and Carry Out Building Works (Preliminary Approval) for Single Unit Dwelling (1 Unit) and Multi Unit Dwelling (2 Units) and Reconfiguration of a Lot (Development Permit) – 1 Lot into 2 Lots.

The proposal has two stages:

- Stage 1 – re-use of an existing pre-1946 house as a Single Unit Dwelling at the front of the site and the Reconfiguration of Lot (1 Lot into 2 Lots)
- Stage 2 – new Multi Unit Dwelling (2 units) at the rear of the site

In deciding the matter the Committee has only taken into consideration matters that relate to the existing pre-1946 construction dwelling on the subject site.

Council officers completed an inspection on 11 May 2012 to determine compliance with the provisions of the SPA which revealed that:

- (a) the dwelling had been relocated;
- (b) the dwelling has been placed on steel support columns; and
- (c) the dwelling had a reduced road boundary setback of 3200mm to the outermost projection of the landing.

Acting on investigation Council officers attended the site and subsequently issued the Applicant an Enforcement Notice dated 18 May 2012. The Enforcement Notice was issued for carrying out building work without an effective Development Permit.

The Council believe that a Development Application for Code Assessment is required prior to the building approval having been given.

The dwelling as viewed at the hearing has been raised and repositioned generally in accordance with the approved plan.

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 30 May 2012.
2. The Enforcement Notice issued to the Applicant on the 18 May 2012.
3. Emails from the Applicant dated 10 July 2012 attaching items 4 – 20.
4. Copy of Council referral agency response dated 19 July 2011 to Brisbane Certification Group.
5. Copy of Ian Webb Architect plans dated April 2011 and July 2011.
6. AJS Surveys Subdivision Proposal Plan No: L0023-P3 dated 21 November 2011.

7. AJS Surveys Staging Plan No. L0023-Staging dated 21 November 2011.
8. Integrated Development Assessment System (IDAS) Form 1,5,6 & 7 and Checklist 1,2 &3
9. Copy of Current Title Search dated 7 March 2011.
10. Cop of Urban Strategies letter to Brisbane City Council dated 28 November 2011.
11. Copy of Council RiskSMART Application dated 24 November 2011.
12. Copy of Urban Strategies Pty Ltd Town Planning Assessment Report prepared November 2011.
13. Copy of Development Assessment Report dated 22 December 2011.
14. Copy of submission provided on behalf of the Applicant.
15. Council siting approval plans A003075176 dated 19 July 2011.
16. Brisbane City Plan 2000.
17. Queensland Development Code (QDC) MP 1.2 – Design and Siting Standard for Single Detached Housing on lots 450 square metres and over.
18. *Sustainable Planning Act 2009.*
19. *Building Act 1975.*

Findings of Fact

The Committee makes the following findings of fact:

The subject site has a total area of 668 m² and has a frontage of 16.64m.

The Brisbane City Plan 2000 (City Plan) outlines the level of assessment required when building work is intended to be carried out. Chapter 3 of the City Plan deals with the determination for the level of assessments for which applications must be considered.

The subject house is located within a Low-Medium Density Residential Area within a Demolition Control Precinct (DCP) and also within the Cannon Hill District Local Plan Area.

Part 5 of Chapter 3 of the City Plan covers residential areas. In accordance with the level of assessment the following codes are relevant to the single unit dwelling which forms part of this appeal.

- Residential Design – Character Code
- Residential Design – Low Density, Character Low-medium Density Code
- Residential Design – Single Unit Dwelling Code; and
- The House Code

The subject site is located within the Cannon Hill District Local Plan, however no specific requirements apply to the site and need not be further mentioned.

The subject site falls within a Demolition Control Precinct area. In the City Plan the proposed works falls under the definition of 'Minor Demolition Work'.

Minor Demolition Work as defined in the Brisbane Plan 2000 states – '*demolition or relocation of a building where the work is relocation of a building forwards or backwards on a lot provided: the proposed setback of the building is a minimum of 6m to any road frontage, or within 20% of the average setback of the buildings next door where those buildings have a setback less than 6m.*'

Reasons for the Decision

In accordance with the level of assessment of the City Plan it is determined that the proposed development requires Code Assessment and a Development Permit is required. The building certifier was incorrect in his determinations in that the work was self assessable and only a siting variation was required.

MP 1.2 of the Queensland Development Code establishes amongst other things the design and siting standards for single detached housing on lots 450m² and over. The Purpose of MP 1.2 of the Code is defined in the Code as follows:- *'To provide good residential design that promotes the efficient use of a lot, an acceptable amenity to residents, and to facilitate off street parking'*.

Minor Demolition Work as defined in the Brisbane Plan 2000 states – *'demolition or relocation of a building where the work is relocation of a building forwards or backwards on a lot provided: the proposed setback of the building is a minimum of 6m to any road frontage, or within 20% of the average setback of the buildings next door where those buildings have a setback less than 6m.'*

If the proposed development meets the criteria of 'Minor Demolition Work' it does not exempt the development from being assessed against the Character Code.

Under the Character Code P3 states *'The building setting must complement the traditional setting of pre-1946 houses nearby in the street' by meeting the requirements of A3.1 – 'buildings are set back from any road alignment (excluding eaves, awnings, stairs and garage) within 20% of the average setback of the nearest pre-1946 buildings fronting the same street'*.

In determining whether the design and siting variation complies, the Committee has not included the stair landing in the setback for reasons it is not considered part of the building rather part of the stairs which is excluded from setbacks.

Council contends that a Development Application is required. From the Committee's assessment above, when the Council received the application for a siting variation, in their assessments building work that is required to be assessed against the Planning Scheme should have been considered before providing a decision. The Committee is of the opinion that Council should have refused it or returned the application requesting a development application.

The concurrence agency conditions make no mention that a further development application is required. It is acknowledged that the advisory note makes mention that other permits may need to be addressed required by the Planning Scheme.

The Committee considers the proposed development meets both the Performance Criteria of the QDC and the Character Code and will have no impact on the site development.

As both the building certifier and Council made errors in assessing the development, the Committee decides that the Enforcement Notice is set aside and in respect to the Development Application for the single unit dwelling meeting the requirements of P3 of the Character Code, be approved.

Greg Rust
Building and Development Committee Chair
Date: 13 August 2012

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
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CITY EAST QLD 4002
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