



## Building and Development Dispute Resolution Committees—Decision

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### *Sustainable Planning Act 2009*

<b>Appeal Number:</b>	20 - 16
<b>Applicant:</b>	Mr Chris Butler
<b>Assessment Manager:</b>	Mr Trevor Gerhardt (GECON)
<b>Concurrence Agency:</b> (if applicable)	Brisbane City Council (the Council)
<b>Site Address:</b>	68 Real Avenue, Norman Park and described as Lot 20 on RP 13135 (the subject site)

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### Appeal

Appeal under section 527 of the *Sustainable Planning Act 2009* (SPA) against the decision of the Assessment Manager to refuse a building development application for alterations, additions and demolition to an existing house at the direction of the Council as Concurrence Agency for matters related to the amenity and aesthetic impact of the building or structure.

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<b>Date and time of hearing:</b>	N/A with agreement of all parties, the appeal was determined by written submissions
<b>Place of hearing:</b>	N/A with agreement of all parties, the appeal was determined by written submissions
<b>Committee:</b>	Robin King-Cullen – Chair Danyelle Kelson - Member John Panaretos - Member
<b>Present:</b>	N/A

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### Decision:

The Building and Development Dispute Resolution Committee (Committee), in accordance with section 564 of the SPA:

- a) **sets aside** the decision of the Assessment Manager dated 16 June 2016 to refuse the Application for a development permit for building works to permit alterations, additions and demolition to the rear of the existing class 1(a)(i) dwelling; and
- b) **approves the application** subject to the following conditions:
  1. Development is to be generally in accordance with the following Approved Plans by Ross Reddick for Proposed Extension to the Existing Dwelling at 68 Real Avenue, Norman Park:

Plan No	Plan Name	Date
16-007Butler Sheet 1 of 9	Timber Schedule, Tie Down Specification and Notes	4 May 2016
16-007Butler Sheet 2 of 9	Existing Lower Floor Plan	4 May 2016
16-007Butler Sheet 3 of 9	Existing Upper Floor Plan	4 May 2016
16-007Butler Sheet 4 of 9	Existing Views – Front – South Right – East Rear – North Left - West	4 May 2016
16-007Butler Sheet 5 of 9	Proposed Upper Floor Plan	4 May 2016
16-007Butler Sheet 6 of 9	Proposed Views – Left – West Rear - North	4 May 2016
16-007Butler Sheet 7 of 9	Proposed Views – Front - South Right - East	4 May 2016
16-007Butler Sheet 8 of 9	Section Extension, Foundation Plan – Sub Floor and Bracing Calculation – Sub Floor	4 May 2016
16-007Butler Sheet 9 of 9	Typical Detail, Extension, Bracing Plan Upper Floor and Bracing Table – Upper Floor	4 May 2016

- 2 Construction is to be compliant with Brisbane City Council Residential Design Codes, *Building Act 1975*, Building Regulation 2006 and the National Construction Code 2015.
- 3 The Applicant must ensure that one (1) set of the Approved Plans for the development is available for inspection at the subject site whilst the building works are in progress.
- 4 Inspections are required for the following stages of the building works upon 24 hours' notice:
  - (a) Building Certifier/Structural Engineer – footings, slabs, floors, wall and roof frames;
  - (b) Building Certifier – Final Inspection upon completion of all building work.
- Note:** Building work must not proceed past any stage of mandatory inspection until the Building Certifier has given authority to proceed with the work.
- 5 Energy efficiency requirements are to comply with the Queensland Development Code Mandatory Part 4.1- Sustainable Buildings (QDC MP4.1).
- 6 Prior to the final inspection by the Building Certifier, an identification survey prepared by a registered surveyor stating that the dwelling additions, location, and height have been sited in accordance with the approved plans.
- 7 Stormwater from the roof must discharge to an approved point of discharge.
- 8 Glazing to windows, doors, partitions and shower screens are to be installed in accordance with AS1288 -2006: Glass in Buildings- Selection and Installation (AS1288-2006).
- 9 For window openings in bedrooms 2m or more above the surface beneath, window sill heights must be a minimum of 1700mm height above the floor or restricted to a maximum opening of 125mm or fixed metal screens in accordance with the National Construction Code Part 3.9.2.5 (NCC 3.9.2.5).

- 10 Stairs and landings to be installed in accordance with NCC Part 3.9.1 and AS1170.1 – Structural Design Actions; compliant stairs and balustrades (AS1170.1)  
**Note:** Treads must have a slip resistance finish or a suitable non-skid near the edge of the nosing of the flight of stairs.
- 11 Balustrades and handrails to be installed in accordance with NCC 3.9.2 and AS1170.1.  
**Note:** Handrails to stairs must be located along at least one side of the flight of stairs.
- 12 Hard wired smoke detectors, with battery backup, are to be installed in locations in accordance with NCC Part 3.7.2 and AS3786 –Smoke Alarms (AS3786).
- 13 Mechanical ventilation and artificial lighting must be provided to sanitary compartments where natural ventilation and lighting is not provided in accordance with the NCC and AS1668 – the use of Ventilation and Air-conditioning in Building Set (AS1668).
- 14 Roofs, walls, floors, windows and doors must comply with NCC Part 3.7.4 Bushfire areas.
- 15 Prior to commencement of any Plumbing and Drainage works the appropriate approvals must be obtained from the local water and sewer authority.
- 16 Prior to the issue of the Final Inspection Certificate (Form 21), the following certification must be provided to the Building Certifier:
- (a) Inspection Certificates (Form 16) for all footings, piers, slabs, floor, wall and roof frames;
  - (b) Roof trusses certification in accordance with AS1170.1 and AS1170.2;
  - (c) Certification for the termite treatment barrier certification in accordance with AS3660.1- Termite Management (AS3660.1);
  - (d) Certification for all waterproofing to wet areas in accordance with AS3740 – Waterproofing of Domestic Wet areas (AS3740);
  - (e) Certification for all glazing to windows, doors, partitions and shower screens installed in accordance with AS1288;
  - (f) Certification from the electrical contractor stating that the smoke detectors have been installed in accordance with the NCC and AS3786;
  - (g) Certification from the installer stating the roof, gutter and downpipes have been installed in accordance with the manufacturer's installation specifications and AS1562.1- Design and installation of sheet roof and wall cladding (AS1562.1);
  - (h) Certification from the drainage contractor stating that all stormwater drainage has been installed in accordance with AS/NZ3500.3 – Plumbing and Drainage (AS/NZ3500.3);
  - (i) Certification for the installation of all stairs, handrails and balustrades in accordance with NCC Parts 3.9.1 and 3.9.2 and AS1170.1;
  - (j) Certification from the builder stating that the energy efficiency installations have been installed in accordance with the energy efficiency requirements of QDC MP4.1;
  - (k) Certification from the builder stating that the building works have been carried out in accordance with standard building practices, this building approval and the Approved Plans;
  - (l) Builder siting certificate stating that the dwelling additions, location and height have been sited in accordance with this building approval and the Approved Plans;
  - (m) Set out and height certificate prepared by a registered surveyor stating that the dwelling additions, location and height have been sited in accordance with this building approval and the Approved Plans;
  - (n) Form 4 or final plumbing and drainage certificate from the local water and sewer authority; and
  - (o) Certification for all building work and installations must be in the form of a Form 16.

17 Development in accordance with this approval must be substantially started within 2 years of the date of this decision.

## Background

The subject site is a regularly shaped allotment of 878m<sup>2</sup> located at 68 Real Avenue, Norman Park. It is currently improved with a two storey class 1(a)(i) dwelling and appurtenant carport. The subject site is within the CR1 Character zone under Brisbane City Plan 2014 (CP2014) and is subject to the Dwelling House Character and Traditional Building Character overlays.

A building development application (Development Application No 0002016231) was lodged with the Assessment Manager, Trevor Gerhardt of GECON, on or about 26 May 2016 seeking approval for alterations, additions and demolition work to the dwelling to extend the living and veranda areas of the upper level.

On or about 26 May 2016, the Assessment Manager referred the Application to the Council as concurrence agency pursuant to its Concurrence Agency jurisdiction triggered by Schedule 7, Table 1, Item 17 of the Sustainable Planning Regulation 2009 (SPR) to assess “(t)he amenity and aesthetic impact of the building or structure if the building work is carried out”.

On or about 31 May 2016, the Council requested that the Assessment Manager provide it with all the referral agency material, including the IDAS forms required under SPA. The Assessment Manager provided the material requested to the Council on or about 2 June 2016.

In correspondence dated 10 June 2016, Council advised the Assessment Manager

*“I acknowledge receipt of an acknowledgement notice dated 26th May 2016 (received 30th May 2016) for a building application for building work being the demolition of a dwelling house at the above site.*

*I advise that Council considers that the above concurrence agency referral is invalid for the following reasons*

*The building work subject of the building development application does not trigger any of the codes identified in Table 1.7.4 of CP2014.*

*Accordingly, I advise that Council considers that the above concurrence agency referral by the applicant is improper and has no force or effect under the SPA. Consequently, Council has no power under the SPA to respond to the alleged referral and, if a concurrence agency response was given, it would have no force or effect.*

*In any event, I have attached a concurrence agency response to this letter.”*

Attached to the above correspondence was a Concurrence Agency response on the amenity and aesthetics impact of the building work which provided as follows

*“I advise that the acknowledgement notice dated 10052016 for the building development application over the above site has identified that the proposed building work relates to the demolition of a dwelling house, is specified in Schedule 7, table 1, item 17(a) of the Sustainable Planning Regulation (SPR) and is in a locality and of a form specified in item 17(b) of the SPR and is declared in section 1.7.4 of the Brisbane City Plan 2014 (CP2014) to (i) have an extremely adverse effect on the amenity, or likely amenity of the locality; or (ii) be in extreme conflict with the character of the locality.*

*Council has assessed the application in accordance with section 282 of the SPA. I advise that the Council’s delegate considers that the building work for the demolition of a dwelling house will*

- a) have an extremely adverse effect on the amenity or likely amenity of the locality; or*
- b) be in extreme conflict with the character of the locality.”*

*Council, as concurrence agency, hereby directs you, as the assessment manager for the relevant building application, to refuse the application.*

*The reasons for refusal are-*

- a) the building work for the demolition of a dwelling house will have an extremely adverse effect on the amenity or likely amenity of the locality; or*
- b) loss of aesthetics of the building or structure as a consequence of its demolition will be in extreme conflict with the character of the locality.”*

As a consequence of the direction to him, the Assessment Manager issued a Development Application Decision Notice dated 15 June 2016 refusing the Development Permit. Attached to the Decision Notice were the Concurrence Agency Response and Development Permit (Building) conditions.

The Applicant lodged an appeal against the decision of the Assessment Manager to refuse the application with the Building and Development Committees' Registrar on 17 June 2016.

After notice of the hearing of the appeal had been given, but before the hearing took place, Council, through its representative, Kevin Cronin, Planning Specialist Manager, contacted the Committees' Registry by email sent at 11.25am on 7 July 2016 and submitted the following for this Committee's consideration as the Council's position in the appeal-

- “6. The Co-Respondent assessed the building development application against the Relevant codes prior to issuing its concurrence agency response on 10 June 2016.*
- 7. However, in light of this appeal the Co-Respondent has undertaken a review of its concurrence agency response and no longer contends that the building development application should be refused on the grounds of the concurrence agency response.”*

At the request of this Committee, the Applicant's representative (Mr Trevor Gerhardt) was asked whether in light of the communication from Council, his client wished to pursue or withdraw the appeal. By a response email received by the Committees' Registry at 12.37pm on 7 July 2016, Mr Gerhardt requested that this Committee determine the appeal based on written submissions, dispensing with the need for a hearing.

Subsequently, the Committee made directions for the delivery of written submissions, which were communicated to the parties by the Committees' Registry by email sent 7 July 2016.

In accordance with those directions, the Committee received submissions from the Applicant (by Mr Gerhardt) on 8 July 2016 and from the Council on 12 July 2016. The Committee allowed the Applicant to make submissions in response, which were received by the Committees' Registry by email on 18 July 2016.

Other than the Council's direction to the Assessment Manager to refuse the Application for the reasons contained in its Concurrence Agency response dated 10 June 2016, there are no impediments to the approval of the proposed building works on the conditions proposed by the Assessment Manager.

### **Material Considered**

The material considered in arriving at this decision comprises:

#### **Application and supporting material**

1. 'Form 10 – Appeal Notice', grounds for appeal and correspondence accompanying the appeal lodged with the Committees' Registry on 17 June 2016;
2. Gecon Development Application Decision Notice dated 15 June 2016;

3. Bundle of plans (numbered 1 to 9 in a series of 9) stamped approved by Gecon and prepared by Ross Reddick for Proposed Extension to Existing Dwelling for Mr C Butler;
4. Integrated Development Assessment System (IDAS) Form 1 – Application details (including notification of engagement of a private certifier);
5. IDAS Form 2 – Building work requiring assessment against the *Building Act 1975*;
6. Acknowledgement Notice dated 26 May 2016 issued by the Assessment Manager;
7. Letter dated 10 June 2016 from the Council to the Assessment Manager re: invalid concurrence agency referral;
8. Concurrence agency response issued by the Council on 10 June 2016.

### **Submissions and statements**

9. Email from Council (Kevin Cronin, Planning Specialist Manager) to the Manager of the Registry of the Committees sent Thursday 7 July 2016 at 11.25am;
10. Written submission from the Applicant's representative (Mr Trevor Gerhardt) received 8 July 2016;
11. Written submission from the Council received 12 July 2016;
12. Further written submission from the Applicant's representative (Mr Trevor Gerhardt) received 18 July 2016 in response to the Council's submission of 12 July 2016.

### **Legislation**

13. Brisbane City Plan 2014 (CP2014)
14. The *Building Act 1975* (BA)
15. The *Sustainable Planning Act 2009* (SPA)
16. The Sustainable Planning Regulation 2009 (SPR)

### **Findings of Fact**

The Committee makes the following findings of fact:

#### **The subject site**

1. The subject site is located at 68 Real Avenue, Norman Park.
2. The subject site is a regularly shaped allotment having an area of 878m<sup>2</sup>.
3. Under CP2014, the subject site is within the CR1 Character Zone and is subject to the Dwelling House Character Overlay and the Traditional Building Character Overlay – Neighbourhood Character sub-category.
4. The subject site is currently improved with a 2 storey detached dwelling and appurtenances (car port to street).
5. The dwelling is a class 1(a)(i) building.
6. The dwelling is a pre-1946 dwelling and exhibits traditional building character.
7. The surrounding properties within Real Avenue and the immediate area of the surrounding suburb are predominantly single detached dwellings exhibiting traditional building character consistent with the CR1 Character Zone and overlays (House Character and Traditional Building) affecting the immediate geographic area.

8. Many of the surrounding houses show evidence of alterations, additions and extensions which are moderately to quite sympathetic to the area's traditional building character.

### **The Application**

9. The Application made to the Assessment Manager was for a development permit for alterations and extension of the existing dwelling on the subject site and for minor demolition works to the rear of the dwelling to facilitate the works.
10. The plans show an extension of the upper level of the dwelling towards the rear of the lot to provide additional living and veranda areas.
11. The extension will be constructed in materials (weatherboard cladding and corrugated roof sheeting) to match the existing dwelling. The use of these materials is consistent with the traditional building character of the dwelling itself and other dwellings in the surrounding area.
12. There will be no change to the dwelling's setbacks from the front and side boundaries.
13. Once completed, the alterations and extension to the dwelling will not alter its classification as a class 1(a)(i) building.
14. Other than the Concurrence Agency response dated 10 June 2016 directing refusal of the Application on the grounds set out in that correspondence, the Assessment Manager was satisfied that there were no impediments to the approval of the proposed building works and formulated proposed conditions of approval for the building works.

### **The amenity and aesthetics assessment by Council as Concurrence Agency**

15. Council as Concurrence Agency has undertaken a review of its Concurrence Agency response dated 10 June 2016.
16. Council no longer contends that the Application should be refused.
17. Council has no Concurrence Agency requirements of the Application made 26 May 2016.

### **Reasons for the Decision**

#### The Committee's jurisdiction

The Committees have no inherent jurisdiction but only the limited jurisdiction which is bestowed upon them by the provisions of Chapter 7 Part 2 of SPA. In particular, the Committees' powers to make declarations are limited to those set out in Division 3 Subdivision 1 of the Part as follows:

- whether a development application has been properly made<sup>1</sup>
- about a matter stated in an acknowledgment notice for a material change of use for certain prescribed buildings (currently a Class 1 or Class 10 building)<sup>2</sup>
- about the lapsing of a request for compliance assessment<sup>3</sup> and
- about changes to a development approval for a material change of use for certain prescribed buildings<sup>4</sup>.

This appeal comes before the Committee as an appeal against a refusal of a building development application pursuant to section 527(1)(a) of the SPA. The powers of the Committee to make orders in an appeal are stated in section 564 of the SPA. They include, but are not limited to setting aside the decision appealed against and making a decision to replace the one set aside, however they do not include any power to make declarations generally about the appeal.

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<sup>1</sup> SPA, s 510

<sup>2</sup> SPA, s 511

<sup>3</sup> SPA, s 512

<sup>4</sup> SPA, s 513

In this matter, the extensive submissions filed on behalf of the Applicant requested that the Committee make *inter alia* the following orders and declarations:

- c. *that a decision/declaration be made that through the operation of section 1.7.4 of City Plan 2014 that section 1.7.4 (CP2014) is still engaged and the concurrence agency be made to respond in accordance with the mandatory requirements of column 3 contained in Schedule 7 Table 1 Item 17 (SPR);*
- d. *that a decision/declaration be made that the planning provisions nominated as being acceptable codes be considered to be redundant, of no effect and lacking capacity;*
- e. *that a decision/declaration be made that the planning scheme with regard to the codes contained in section 1.7.4 (CP2014) has been structured in an incorrect and unlawful manner;*
- f. *and that the decision/declaration can be relied upon with regard to any future Amenities and Aesthetics under section 1.7.4 (CP2014) applications made to Brisbane City Council.”*

The Committee simply has no jurisdiction to make the declarations and orders set out above.

The Committee has considered the submissions and matters put before it by the parties within the context of its jurisdiction limited by the appeal before it, in this instance, an appeal against the Assessment Manager's decision to refuse a building development application for alterations, additions and demolition to an existing house at the direction of the Council as Concurrence Agency for matters related to the amenity and aesthetic impact of the building or structure.

#### The Committee's findings

The building development application (Application) the subject of this appeal involved alterations and additions to a 2 storey pre-1946 dwelling constructed on the subject site. The dwelling is classified as Class 1(a)(i) under the NCC.

Under CP2014, the subject site is within the CR1 Character Zone and is subject to the Dwelling House Character Overlay and the Traditional Building Character Overlay – Neighbourhood Character sub-category. The subject site is surrounded by land which is similarly zoned and affected by the same overlays. The surrounding area is predominantly developed with houses (many pre-1946) exhibiting traditional building character, so the zoning and overlays reflect the character and nature of the area.

The alterations proposed are limited to the rear upper level of the dwelling and involved an extension of the living and veranda areas. The intended materials to be utilised are weatherboards and corrugated roofing to match the existing dwelling. The materials and proposed extension are sympathetic to the traditional building character of the dwelling and of the area more generally.

Some demolition of the existing dwelling as part of the alterations is proposed. Although the extent of such demolition is unclear, it is limited to the rear of the dwelling and does not affect the roof line or other elements of the dwelling that would be visible from the street frontage. The Committee is satisfied that the extent of demolition would be considered minor.

There is no dispute that the Application made was a building development application and that it was properly made to the Assessment Manager, a private certifier. It was common ground between the parties that the Assessment Manager was qualified to act in that capacity being a Private Building Certifier licensed in Queensland and accredited to level 1 by the Queensland Building and Construction Commission.

The Application was made to the Assessment Manager on or about 26 May 2016. On or about the same date, the Assessment Manager referred the Application to the Council as concurrence



agency pursuant to the “*amenity and aesthetics*” referral agency trigger in Schedule 7 Table 1, Item 17 of the SPR, namely,

<b>Column 1 Application involving</b>	<b>Column 2 Referral agency and type</b>	<b>Column 3 Referral jurisdiction</b>
<p>17 Building work for a building or structure if it is—</p> <p>(a) a single detached class 1(a)(i) building, class 1(a)(ii) building comprising not more than 2 attached dwellings or a class 10 building or structure; and</p> <p>(b) in a locality and of a form for which the local government has, by resolution or in its planning scheme, declared that the form may—</p> <p>(i) have an extremely adverse effect on the amenity, or likely amenity, of the locality; or</p> <p>(ii) be in extreme conflict with the character of the locality</p>	<p>The local government— as a concurrence agency</p>	<p>The amenity and aesthetic impact of the building or structure if the building work is carried out</p>

The referral of the Application to the Council as Concurrence Agency was not in issue in this appeal. This is despite the letter from Council to the Assessment Manager dated 10 June 2016, which stated that the Concurrence Agency referral was invalid as it did not trigger any of the codes identified in Table 1.7.4 of CP2014.

Originally, the material submitted by the Assessment Manager to the Council did not include all relevant material including the IDAS forms required under section 272 of the SPA. This issue was raised with the Assessment Manager on 31 May 2016 and was addressed on or about 2 June 2016. On that date, the Council’s referral agency role was enlivened and it was required to undertake its role as Concurrence Agency in accordance with section 282 of the SPA and assess the Application to the extent relevant to the development and within the limits of its jurisdiction.

Section 1.7.4 of the CP2014 sets out the declaration Council has made within CP2014 for the purpose of the referral trigger as follows:

**“1.7.4 Declaration for amenity and aesthetic impact referral agency assessment**

For the purpose of Schedule 7, item 17 of the Regulation, building work for a building or structure which is a single detached class 1(a)(i) building, class 1(a)(ii) building comprising not more than 2 attached dwellings or a class 10 building or structure in a locality identified in Table 1.7.4 that does not comply with the acceptable outcomes in the codes identified in Table 1.7.4, is declared to:

- (a) have an extremely adverse effect on the amenity or likely amenity of the locality; or
- (b) be in extreme conflict with the character of the locality.

**Table 1.7.4—Declared locality and building form for amenity and aesthetic referral agency assessment**

Locality	Codes
Land in the following zones: (a) Rural zone (b) Rural residential zone (c) Environmental management zone (d) Low density residential zone (e) Character residential zone and zone precincts (f) Low–medium density residential zone and zone precincts (g) Medium density residential zone (h) Emerging community zone	Dwelling house code Dwelling house (small lot) code
Land in the Traditional building character overlay	Traditional building character (design) code
Land in a neighbourhood plan area	A relevant neighbourhood plan code to the extent provided

Given the zoning of the subject site (Character Residential) and the Traditional Building Character overlay applying to it under CP2014, the relevant codes against which the Application was to be assessed by the Council were the Dwelling house code and the Traditional building character (design) code. Given the size of the subject site, the Dwelling house (small lot) code was not applicable.

On 10 June 2016, the Council provided a Concurrence Agency response to the Assessment Manager advising that it had assessed the Application in accordance with section 282 of SPA and directed the Assessment Manager to refuse the Application, as it considered the building work for the demolition of the dwelling house would-

- “(a) have an extremely adverse effect on the amenity or likely amenity of the locality; or*
- (b) be in extreme conflict with the character of the locality.”*

The Council's reasons for the refusal were-

- “(a) the building work for the demolition of a dwelling house will have an extremely adverse effect on the amenity or likely amenity of the locality; or*
- (b) loss of aesthetics of the building or structure as a consequence of its demolition will be in extreme conflict with the character of the locality.”*

It is noted the Council's stated issue with the amenity and aesthetics of the proposed building works related only to that aspect of the Application that related to demolition and not to the proposed alterations and additions. It is therefore presumed that its assessment of those aspects of the Application relating to the alterations and additions themselves were not of concern.

Following receipt of the Concurrence Agency response, on 15 June 2016 the Assessment Manager issued his Decision Notice refusing the Application, as he was required to do by section 325(4) of the SPA. However, as required by section 308 of the SPA, the Assessment Manager had also continued his assessment of the Application despite the Council's direction and, with the Decision Notice, issued draft conditions which but for the directed refusal, would have attached to an approval of the Application.

Having regard to the relevant codes, and the extent of the demolition proposed, the Committee does not agree with the Council's position stated in its Concurrence Agency response of 10 June 2016. Neither the Dwelling house code nor the Traditional building character (design) overlay code apply to demolition work. Further, given the relatively minor demolition work proposed, there is little basis for finding that the demolition work per se would have any effect on the amenity and aesthetics of the local area.

That said, in its submissions to the Committee on the issue, the Council having reassessed its position, no longer contended that the Application should be refused, and further, stated that it had no requirements for the development within the exercise of its relevant jurisdiction.

The Committee is satisfied that there is no other impediment to approval of the Application. The Committee respectfully considers that the conditions proposed by the Assessment Manager are reasonable and relevant and therefore appropriate to impose upon an approval of the Application with the exception of condition 5 (and linked reference in condition 16) insofar as it refers to "*the attached energy efficiency assessment*". In the absence of any "*attached energy efficiency assessment*" in the documentation made available to the Committee, the mandatory requirements of QDC 4.1 have instead been referred to in condition 5.

In the circumstances, the Committee:

- a) sets aside the decision of the Assessment Manager dated 16 June 2016 to refuse the application for a development permit for building works to permit alterations, additions and demolition to the rear of the existing class 1(a)(i) dwelling; and
- b) approves the application subject to reasonable and relevant conditions.

#### The nature of the Concurrence Agency referral and the assessment criteria for amenity and aesthetics

The Applicant has sought a number of declarations about CP2014 and the codes declared to be applicable to an amenity and aesthetics assessment by the Council. For the reasons stated above, the Committee does not have the jurisdiction to entertain such matters.

Under section 563(2) of the SPA, the Committee is obliged to apply the laws and policies applying when the Application was made. The Committee must therefore apply and interpret the laws as it finds them.

The Application made was a building development application, a term defined in section 6 of the BA as "*an application for development approval under the Planning Act to the extent it is for building work*". The Planning Act referred to is the SPA.

Relevantly, section 20 of the BA declares that all building work is assessable development unless it is exempt development under the BA or self-assessable development under either the SPA or the BA. If building work is assessable development, an application for development approval is necessary.

A development application must be made to the "*assessment manager*"<sup>5</sup>. A private certifier (class A) may perform the role of assessment manager for a building development application if he or she is performing the functions of a private certifier under section 48 of the BA<sup>6</sup>. The powers under section 48 expressly include receiving and assessing a building development application as if the certifier were the assessment manager under the SPA.

For this Application, it was common ground that the Assessment Manager, a private certifier had the qualifications necessary to act as an assessment manager of the Application and that he was in fact the Assessment Manager for the Application.

Section 247 of SPA provides that the assessment manager may not always assess all aspects of development for a particular application. It is a feature of IDAS that applications are referred to "*referral agencies*"<sup>7</sup> which can be "*advice agencies*"<sup>8</sup> or "*concurrence agencies*"<sup>9</sup>. The jurisdiction of a referral agency to assess and respond to parts of an application is prescribed under the

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<sup>5</sup> SPA, section 247

<sup>6</sup> BA, section 11

<sup>7</sup> SPA, section 252

<sup>8</sup> SPA, section 250

<sup>9</sup> SPA, section 251

SPR<sup>10</sup>. Schedule 7 of the SPR sets out the referral agencies, their jurisdiction and whether they are an advice or concurrence agency for the referral.

In the extract from Schedule 7, Table 1, of the SPR set out above, the referral jurisdiction in relation to building work assessable against the BA is “*the amenity and aesthetic impact of the building or structure if the building work is carried out*”; the referral is a concurrence agency referral and importantly, the trigger is an application for building work if it is-

- (a) *a single detached class 1(a)(i) building, class 1(a)(ii) building comprising not more than 2 attached dwellings or a class 10 building or structure; and*
- (b) *in a locality and of a form for which the local government has, by resolution or in its planning scheme, declared that the form may –*
  - (i) *have an extremely adverse effect on the amenity, or likely amenity, of the locality; or*
  - (ii) *be in extreme conflict with the character of the locality*

The dwelling the subject of the Application in this appeal is a single detached class 1(a)(i) building and thus the first criterion for the referral trigger is satisfied.

In relation to the second trigger criterion, the Council has included section 1.7.4 (as extracted above) in CP2014. Section 1.7.4 identifies both the locality (by reference to zones, overlays and neighbourhood plan areas in Table 1.7.4) and form (development that does not comply with the acceptable outcomes in the codes identified in Table 1.7.4) of development that may have the undesirable amenity and aesthetic impacts. The second criterion of the trigger is satisfied in this case as both zoning (Character Residential) and the Traditional building character overlay apply to the subject site.

Accordingly, the Council is the Concurrence Agency for the Application and has the jurisdiction to consider its amenity and aesthetic impact. That the Council was a Concurrence Agency for this purpose was common ground between the parties.

Insofar as the Concurrence Agency assessment is triggered, section 46 of the BA relevantly provides that-

- (1) *This section applies if, under the Planning Act, a concurrence agency has jurisdiction for a part of building assessment work.*
- (2) *Only the concurrence agency may assess the part.*
- (3) *Assessment of the part by the concurrence agency must be done under the building assessment provisions.”*

Pursuant to the BA, a private certifier who is an assessment manager cannot grant a building development approval if under SPA a concurrence agency has jurisdiction for part of building assessment work until that part has been assessed by the concurrence agency under the building assessment provisions<sup>11</sup>.

Under the BA, the “*building assessment provisions*” are listed in section 30 as-

- (a) IDAS;
- (b) chapter 3 and this chapter;
- (c) the fire safety standard;
- (d) the fire safety standard (RCB);
- (e) any provisions of a regulation made under this Act relating to building assessment work or self-assessable building work;

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<sup>10</sup> SPA, section 254

<sup>11</sup> BA, section 83(1)(d)

- (f) any relevant local law, local planning instrument or resolution made under section 32 or any relevant provision under section 33;
- (g) the BCA;
- (h) subject to section 33, the QDC.

Other than IDAS, the building assessment provisions are codes for IDAS<sup>12</sup>, and IDAS applies subject to the other building assessment provisions mentioned in section 30(1)<sup>13</sup>. IDAS is detailed in Chapter 6 of the SPA. It includes the requirement in section 254 that referral agencies exercise the jurisdiction prescribed under the SPR. The relevant item in the SPR states the way in which a local government might give effect to the jurisdiction it is empowered to exercise (to the exclusion of others including the Assessment Manager). In the present appeal, the referral agency jurisdiction is given effect, in the matter specifically contemplated by the SPR trigger, by section 1.7.4 of CP2014.

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Robin KingCullen  
**Building and Development Committee Chair**

**Date: 17 August 2016**

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<sup>12</sup> BA, section 31(1)

<sup>13</sup> BA, section 34

## **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**