



## Building and Development Dispute Resolution Committees—Decision

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### *Sustainable Planning Act 2009*

<b>Appeal Number:</b>	<b>08-10</b>
<b>Applicant:</b>	Bella Qld Properties Pty Ltd
<b>Assessment Manager:</b>	Innovative Building Approvals
<b>Concurrence Agency:</b> (if applicable)	Logan City Council (Council)
<b>Site Address:</b>	17 Kettmiss St, Underwood and described as Lot 9 on SP 218061 – 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 a class 1a dwelling. This refusal was based on a deemed refusal from Council as concurrence agency.

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<b>Date of hearing:</b>	11.00 am on Thursday 6 May 2010
<b>Place of hearing:</b>	The subject site
<b>Committee:</b>	Steve Adams – Chair (not present at hearing) Peter Matthews – Referee (proxy chair at hearing)
<b>Present:</b>	Bill Whitla – Applicant's representative Todd Rohl – Council representative Shane Murrphy – Council representative Simon Short – Council representative

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### **Decision:**

The Committee, in accordance with section 564(2)(d) of the SPA **sets aside** the decision by the assessment manager and in accordance with section 564(2)(d)(i) direct the assessment manager upon receipt of an approved material change of use (MCU) application for the proposed dwelling to assess and decide the application for the proposed class 1a dwelling within the timeframes specified by the Act.

Whilst it is beyond the power of the Committee to order the applicant and concurrence Agency to undertake actions in regard to the required MCU application, it is noted that the parties present at the hearing agreed that:

1. the applicant will lodge a new MCU application on the correct IDAS forms for the proposed dwelling;

2. Council will approve the MCU application; and
3. Council would waive the additional \$200 fee for the MCU application, given \$550 had already been paid for the application for a siting relaxation.

## **Background**

The property is a 610m<sup>2</sup> residential block, and is located on the corner of Kettmiss Street and Southwalk Esplanade. The surrounding homes are predominantly two storey homes used for display purposes in The Grove display village.

The builder (Bella Qld Properties Pty Ltd) made application to the assessment manager for the construction of a class 1a dwelling which the required a siting variation from the Council as the concurrence agency. The application for siting variation was submitted to Council on 31 December 2009.

On 6 January 2010 Council determined that the application for a siting variation was not a properly made submission under SPA and requested the applicant make the application in the approved form.

In response the assessment manager wrote to Council on 12 January 2010, disputing the application was properly made.

Council replied to the above letter from the assessment manager on 13 January 2010 confirming the application was not properly made SPA, noting that due to the new legislative changes a MCU application was required as the development involves a modification of the approved building envelope.

On 28 January 2010 the assessment manager refused the application on the basis of a deemed refusal by Council.

An on-site hearing was held and the opportunity was taken to view the development and character of the neighbourhood.

At the hearing Council representatives indicated they had no concerns with the proposed development by Bella Qld Properties Pty Ltd and merely required the correct application be made, being a development application for a MCU.

Council representatives explained that the Infrastructure Overlay in the Logan Planning Scheme applies to the entire city of Logan, this triggers the need for a MCU application rather than a siting variation.

Council representatives also advised the Committee that Council is planning to make changes to this overlay in approximately eight weeks time, so that if an application was made for the proposed dwelling after this time, a MCU application would not be required.

## **Material Considered**

The material considered in arriving at this decision comprises:

1. 'Form 10 – Notice of Appeal' lodged with the Registrar on 8 February 2010 including grounds for appeal and correspondence accompanying the appeal;
2. Decision notice issued by the assessment manager dated 28 January 2010 refusing the development application;
3. Additional information from the assessment manager dated 10 March 2010 regarding the correspondence relating to the siting variation;

4. Verbal submissions from Council representatives at the hearing;
5. Verbal submissions from the applicant's representative at the hearing;
6. Site plan, floor plan and construction details for the development;
7. The *Building Act 1975*;
8. The *Building Regulation 2006*;
9. The Queensland Development Code Part MP 1.2;
10. The SPA;
11. The Logan City Council Planning Scheme.

## **Findings of Fact**

The Committee makes the following findings of fact:

- On 31 December 2009, the assessment manager submitted an application to Council (as the concurrence agency) for a siting variation for a class 1a dwelling at the subject site. The variation sought was for reduced road boundary clearances than those of the Residential Locality and Zones Code.
- On 6 January 2010 Council (as the concurrence agency) determined that the application for a siting variation was not a properly made application under SPA and requested the assessment manager make the application in the approved form.
- The property is located within the Residential 600 Zone of the Logan Planning Scheme.
- Under Chapter 3, Table 3.2.4 of the Logan Planning Scheme a MCU for a "House" is self acceptable where complying with the Acceptable Solutions of the Residential Locality and Zones Code, otherwise it is code assessable.
- The proposal does not comply with Section 3.2.11 of the Residential Locality and Zones Code, specifically Acceptable Solution S31.2 for road boundary clearances, therefore a Code (MCU) application is required for the proposed house under the provisions of the Logan Planning Scheme.
- The subject site is covered by an Infrastructure Overlay under the Logan Planning Scheme, therefore the overriding provisions of Section 232(2) of SPA and Schedule 4, Table 2, Subsection 2 of *Sustainable Planning Regulation 2009* do not apply.

## **Reasons for the Decision**

- The proposed dwelling does not comply with the relevant Code and acceptable solutions for a House under the Logan Planning Scheme therefore a Code (MCU) application is required.
- It appears the assessment manager mistakenly lodged an application for a siting variation, rather than the required MCU application.
- It is clear from the correspondence between the assessment manager and Council that the dispute relates to a misunderstanding regarding the type of application that should have been made to Council and whether or not the application was properly made. Had the assessment manager contacted and discussed the issue with Council it is likely the error could have been corrected and the appeal to the Committee unnecessary.
- Council representatives have indicated they have no concerns with the proposed development and merely required the correct application be made.
- As a result of discussions between the applicant and Council at the hearing it was agreed that:

- a) the applicant would submit a MCU application for the proposal on the correct IDAS forms;
- b) Council would approve the MCU application; and
- c) Council would waive the additional \$200 fee for the MCU application, given \$550 had already been paid for the application for a siting relaxation.

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**Steve Adams**

**Dr. Peter Matthews**

**Building and Development Committee**

**Date: 2 June 2010**

## **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**