



## Building and Development Dispute Resolution Committees—Decision

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### *Sustainable Planning Act 2009*

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| <b>Appeal Number:</b>                         | 21 - 12   |
| <b>Applicant:</b>                             | Farid Rizk  |
| <b>Assessment Manager:</b>                    | Brisbane City Council (Council)   |
| <b>Concurrence Agency:</b><br>(if applicable) | N/A   |
| <b>Site Address:</b>                          | 51 Ryan Street West End and described as Lot 2 on RP 43166 – the subject site |

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### **Appeal**

Appeal under section 527 of the *Sustainable Planning Act 2009* (SPA) against the decision of Council to refuse a Development Application for the demolition of a house in a Demolition Control Precinct.

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| <b>Date of hearing:</b>  | By written submission  |
| <b>Place of hearing:</b> | No hearing   |
| <b>Committee:</b>        | Geoffrey Mitchell – Chair<br>Danyelle Kelson – General referee |

### **Present:**

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### **Decision:**

The Building and Development Dispute Resolution Committee (Committee), in accordance with section 564 of the SPA **sets aside** the decision of Council and makes the following decision:

The application for the Demolition of a House in a Demolition Control Precinct is **approved with conditions**.

The conditions that form part of this approval are attached as Schedule 1.

## Background

The land, subject to this appeal is located at 51 Ryan Street West End with the site located in the Demolition Control Precinct (DCP) of the Low-Medium Density Residential Precinct / West End – Woolloongabba District Local Plan.

The Applicant's agents, Urban Strategies Pty Ltd, made application to allow demolition of a pre 1946 house in the DCP to Council on 6 February 2012. The application stated that the house was structurally damaged by the January 2011 floods. The application further states that the initial intention was to restore the house to a habitable state, however subsequent investigations indicated that it was not feasible to restore and that it was not reasonably capable of being made structurally sound. This was based on reports from two structural engineers.

Chapter 3 of the Brisbane City Plan 2000 identifies the level of assessment for the application as being Code Notifiable requiring public notification. The Demolition Code (Code) sets out the process for public notification to be undertaken by the applicant and the disclosure material provides advice to the community that:

- *Any comments you make will be taken into account by Council in assessing the application.*
- *However, making comments does not give you any right to appeal against Council's decision on the application.*

On the 23 April 2010 Council refused the application on the following grounds:

The proposal for demolition of a pre-1946 dwelling in a Demolition Control Precinct conflicts with the purpose and intent of the Demolition Code in that the information supporting this application has not adequately demonstrated nor able to demonstrate that the proposal can achieve the Performance Criteria P1 or Acceptable Solutions for the demolition of a 'residential building' in the Demolition Code for the following reasons:

- a) The existing building has not been substantially altered and despite some modifications and additions to the original house it is clearly identifiable as being constructed in or prior to 1946;
- b) The submitted engineering report and costs estimates to make the building structurally sound include works in excess of that required for the structural soundness of the building. Based on a review of the engineering report, the minimum works required to repair the building and the estimated cost of these works are not considered to be unreasonable;
- c) The dwelling is a weatherboard clad multi-gabled 'tin' roof house and is considered to exhibit traditional timber and tin building character within the Demolition Control precinct here in a Low-medium Density residential area;
- d) The street has a large number of traditional character buildings with the exception of one in-fill house on the southern side of the street; and
- e) The existing pre-1946 building does represent traditional building character, is reasonable (sic) capable of structural repair, and does contribute positively to the character of the street.

The Committee received an appeal application from the Applicant on 15 May 2012 appealing the decision of Council.

## 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 15 May 2012.
2. The SPA
3. Brisbane City Council Decision of 23 April 2012 containing the grounds for refusal.
4. Urban Strategies- Town planning report that accompanied the application to Council.
5. Structural Assessment by Bligh Tanner Consulting Engineers for Brisbane City Council dated 13 August 2012.
6. Brisbane City Plan 2000.
7. Email correspondence between the parties.

### **Findings of Fact**

The Committee makes the following findings of fact:

On the 6<sup>th</sup> February 2012, the Applicant submitted an application to Council seeking approval to demolish an existing dwelling that was located within a DCP.

On the 23 April 2012 Council issued its decision notice to refuse the application.

Subsequent to the appeal Council received its own engineering advice from Bligh Tanner Consulting engineers concurring with the opinion of the Applicants engineers that it would not be economically viable to repair the existing building and that for safety reasons it should be demolished.

### **Reasons for the Decision**

Based on the further engineering advice received by Council the parties have agreed that it would not be economically viable to restore the building to a habitable condition.

Both parties have agreed to the draft conditions which are attached to the decision as Schedule 1.

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**Geoff Mitchell**  
**Building and Development Committee Chair**  
**Date: 3 September 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  
PO Box 15009  
CITY EAST QLD 4002  
**Telephone (07) 3237 0403 Facsimile (07) 3237 1248**