



Building and Development Dispute Resolution Committees—Decision

Sustainable Planning Act 2009

Appeal Number:	21 – 13
Applicant:	Brennan Brook
Assessment Manager:	Brisbane City Council (Council)
Concurrence Agency: (if applicable)	N/A
Site Address:	121 Besham Pde Wynnum and described as Lot 10 on SP 254565 – the subject land

Appeal

Appeal under section 527 of the *Sustainable Planning Act 2009* (SPA) against conditions imposed in a Development Approval.

Date of hearing:	17 th June 2013
Place of hearing:	Building Codes Queensland Level 7, 41 George St Brisbane 4001
Committee:	Geoffrey Mitchell – Chair Michael Labone – Member
Present:	Brennan Brook – Applicant Simon Hammer – Applicant’s representative Steve Adams – Council representative Kirsty Cronan – Council representative John Laing – Council representative

Decision:

The Building and Development Dispute Resolution Committee (Committee), in accordance with section 564 of the SPA **changes the decision** appealed against by removing condition 4: of the Council Development Permit.

Condition 7 of the Development Permit is removed by consent of the parties.

Background

The land subject to this appeal is located at 121 Besham Parade Wynnum.

The subject land is included in the Low Density Residential Area and the Wynnum /Manly Neighbourhood Plan under City Plan 200 Demolition Control Precinct.

On or about the 21 March 2013, the Applicant submitted a Development Application for A Material Change of Use and a Preliminary Approval to carry out Building Work for a house in a Demolition Control Precinct.

On 17 May 2013 Council approved the Development Application with conditions.

On 30 May 2013 the Applicant submitted an appeal to the Building and Development Committee registry against two of the ten conditions imposed in the Development Permit, namely condition 4 and condition 7 detailed below:

Condition 4: The building/premises to be used for the purpose of a HOUSE

The building/premises to be used for the purpose of a HOUSE;

- (a) The lot is only to be used for one house (including secondary dwelling) as defined by Brisbane City Plan 2000.
- (b) The main dwelling, together with any secondary dwelling, is used by a household group comprising:
 - (i). 1 person maintaining a household, or
 - (ii). 2 or more persons related by blood, marriage or adoption, or
 - (iii). not more than 5 persons, not necessarily related by blood, marriage or adoption; or
 - (iv). not more than 5 persons under the age of 18 and not necessarily related by blood, marriage or adoption, together with 1 or 2 adult persons who have care and control of them, or
 - (v). not more than 6 persons with disabilities permanently occupying a dwelling where care or assistance is provided by other persons, provided that no more than 2 of these other persons reside at the dwelling; and
- (c) The house is to be used strictly in accordance with the House Code (Brisbane City Plan 2000) and is to be strictly in accordance with the approved plans.
- (d) All future owners or future prospective owners or purchasers of the property are advised of this requirement.

Condition 7: External Details

External details of the building, facade treatment and external materials, colours and finishes are to be generally consistent with the approved drawings as amended in red.

The Applicant's grounds for appeal were stated as;

"Condition 4 of the Approval is unclear and not properly defined. We need more information on what constitutes the lawful use of the property and in a form that can be passed to future owners of the property.

Condition 7 – Render to Front Façade is not in line with the Typical Streetscape...."

During the hearing the Committee was advised that the building subject to the approval had already been constructed under a Development Approval for Building Work which was incorrectly issued by a private certifier prior to other required Development Approvals being effective.

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 2013.

2. The *Sustainable Planning Act 2009* (SPA)
3. The *Building Act 1975* (BA)
4. The *Building Regulation 2006* (BR)
5. The Building Code of Australia (BCA)
6. Brisbane City Plan 2000 (City Plan)
7. Additional correspondence received from the Applicant at the hearing
8. Verbal representation by the parties at the hearing

Findings of Fact

The Committee makes the following findings of fact:

- On 17 May 2013 Council issued a decision notice approving Building Work (Preliminary Approval) and a Material Change of Use (Development Permit) in respect of the subject land for a House in a Demolition Control Precinct (the approval). The approval was issued subject to 10 conditions.
- An appeal about the conditions of the approval was lodged with the Building and Development Committee registry on 30 May 2013.

Reasons for the Decision

During the hearing, Council informed the Committee that it consents to the removal of condition 7 of the approval. Council also agreed with the removal of condition 4 of the approval, however requested that it be relocated to the “Standard Advice” section of the approval.

The Development Application submitted to Council was for approval to carry out Building Work (Preliminary Approval) and a Material Change of Use (Development Permit) in respect of the subject land for a House in a Demolition Control Precinct. The Development Application was approved subject to conditions.

Section 345 (1)(b) of the SPA relevantly provides that:

(1) A condition must—...

(b) be reasonably required in relation to the development or use of premises as a consequence of the development.

Condition 4 of the approval requires that the “building/premises be used for the purpose of a “HOUSE”, followed by what is largely a direct extract from Acceptable Solution A8 of the House Code in the Brisbane City Plan. In the circumstances of the approval of this Development Application, the definition of “house” in the Brisbane City Plan applies to the use of the premises. A separate condition of approval requiring the use to comply with the definition of “house” in the Brisbane City Plan is not reasonably required.

The Committee considers that condition 4 of the Development Permit is not reasonably required. Condition 7 of the Development Permit is removed by consent of the parties.

Geoffrey Mitchell
Building and Development Committee Chair
Date: 10 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
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Department of Housing and Public Works
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