



Building and Development Dispute Resolution Committees—Decision

Sustainable Planning Act 2009

Appeal Number:	31 - 15
Applicant:	Straloch Pty Ltd
Assessment Manager:	Hinchinbrook Shire Council (Council)
Concurrence Agency: (if applicable)	N/A
Site Address:	7–17 Herbert Street, Ingham and described as Lot 29 on SP 168637 – the subject site

Appeal

Appeal under section 533 of the *Sustainable Planning Act 2009* (SPA) against an Enforcement Notice (Ref: 03-2015) dated 21 August 2015, issued by Hinchinbrook Shire Council (Council) under section 248 of the *Building Act 1975* (BA) for dangerous buildings or structures at the subject site. The Enforcement Notice was issued by the Council on the grounds that it reasonable believes the buildings on site are dangerous, in a dilapidated condition and unfit for occupation.

Date and time of hearing:	Wednesday 23 September 2015 at 11.00am
Place of hearing:	An inspection of the building at 7-17 Herbert street was conducted and then all parties relocated to the Hinchinbrook Shire Council meeting room at 25 Lannercost Street, Ingham.
Committee:	Bruce Shephard - Chair
Present:	Chris Castles – Applicant’s representative Adrian Chinott – Applicant’s representative Joe Chinott – Applicant’s representative Cheryl Skene – Applicant’s representative Kai Simmons – Council representative Anne Warring – Council representative Leon Doutre – Council representative

Decision:

The Building and Development Dispute Resolution Committee (Committee), in accordance with section 564 of the SPA **sets aside** the Enforcement Notice issued by Council on 21 August 2015 and directs the Council to issue a new Enforcement Notice for the May’s coffee shop and a Show Cause Notice for the Barra Building as agreed by all parties during the appeal hearing. The Committee approves the attached draft copies of these notices prepared by Council (**Attachments to the decision**).

Background

The subject site is a flat irregularly shaped allotment located on the main road through the township of Ingham. The site consists of a corner lot which fronts onto both Herbert Street and Gort Street. There are two separate buildings located on site, the smaller yellow building on the corner is referred to as May's Coffee shop and the larger white building is referred to as Barra Building.

Straloch Pty Ltd was started by a group of local families with the goal of injecting economic stimulus into the local area. The site was purchased by Straloch Pty Ltd in about 2002 for a proposed hotel development and later a subsequent site was purchased by the group which is now where the hotel has been constructed. Since the group has purchased the site it has largely been vacant with only some minor storage use for school sporting equipment.

The buildings appear to be unkempt and generally in a poor state of repair. The Council had received complaints regarding the state of the buildings and undertaken a visual inspection of the property from outside the property boundaries on the 25 August 2015. From this external inspection Council issued the Enforcement Notice on 21 August 2015 to the Applicant as they considered the building to be dangerous under section 592 of SPA. The Council representatives stated at the appeal hearing they had received legal advice that they could not issue a Show Cause Notice on a building which is considered to be dangerous and therefore must go directly to the issue of an Enforcement Notice.

The Applicant acknowledges the May's coffee shop building is in a poor state of repair and structurally compromised. The Applicant has been obtaining quotes for the demolition of the May's coffee shop building only. The May's coffee Shop has been the subject of verbal correspondence between both parties and is not being contested by the Applicant.

After communication with the Applicant, Council attended the subject site with a representative of the Applicant on the 26 August 2015 and inspected the internal condition of the Barra building. Once the inspection was completed, minutes of the inspection meeting were written by the Applicant's representative Adrian Chinotti.

Following the inspection, the Council's Building Certifier Kai Simmons completed a Building Inspection Report (the Report) dated 18 September 2015. The Committee notes that this is not a building certifying function as detailed under section 10 of the BA and outside the roles and responsibilities of a certifier as listed on the Queensland Building and Construction Commission web site. When the Committee raised this issue with Council in the hearing, Council advised they had delegated the enforcement function to Kai Simmons and they would provide a copy of the delegation. At the time of the appeal decision being finalised the Committee had not been provided with this delegation.

The Report noted numerous weather proofing issues allowing water ingress; lack of security; non-compliant egress; broken glass in areas of the building, asbestos wall and ceiling cladding; and mold on the front footpath. All of these issues were stated in the Report to be dangerous and as a result, the Council took action under section 248 of BA.

On 6 October 2015 Council provided a draft Show Cause Notice for the Barra Building and a new draft new Enforcement Notice for the May's building to the Committee for review based on discussions at the hearing. These draft notices were provided to the Applicant for review. On 19 October 2015, the Applicant provided comment to the Committee on the draft notices which was also forwarded to Council for their information.

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 Committees Registrar on 28 August 2015.
2. Enforcement Notice 03-2015 issued by Council on 21 August 2015.
3. Letter from Rosemary Pennisi of Council dated 21 August 2015 to the Director of Straloch Pty Ltd. (Chris Castles)
4. Email from Rosemary Pennisi of Council dated 28 August 2015 to Chris Castles.
5. Letter from Chris Castles dated 28 August 2015 to Rosemary Pennisi of Council.
6. Minutes for the inspection of Barra Motors on 26 August 2015 from Adrian Chinotti.
7. Building Inspection Report (the Report) prepared by Kai Simmons of Council dated 18 September 2015.
8. Draft Show Cause Notice for the Barra building and draft new Enforcement Notice for the May's building provided by Council to the Committee on 6 October 2015.
9. Applicant's response via email to the Committee dates 10 October 2015 regarding the draft notices provided by Council.
10. The *Building Act 1975* (BA)
11. The *Sustainable Planning Act 2009* (SPA)
12. Verbal representations by both parties at the hearing

Findings of Fact

The Committee makes the following findings of fact:

1. The subject site is a flat irregularly shaped allotment located on the main road through the township of Ingham. The site consists of a corner lot which fronts onto both Herbert Street and Gort Street. There are two separate buildings located on site, the smaller yellow building on the corner is referred to as May's coffee shop and the larger white building is referred to as Barra building.
2. Under section 248(4) of the BA, a local government is not required to issue a Show Cause Notice prior to the issue of an Enforcement Notice where the matter is considered to be dangerous or not of a minor nature.
3. Both the Council and Applicant agree the May's building is structurally compromised and should be demolished. This building should be considered dangerous.
4. The Barra building has significant weather proofing issues, is in a dilapidated condition and unfit for occupation.
5. The state of the two buildings on the subject site has been a concern for both the Council and Applicant for some time and the subject of correspondence between the parties.

Reasons for the Decision

The Enforcement Notice issued by Council on 21 August 2015 encompassed both buildings and treated them in the same manner. Following inspection of the recent works undertaken by the Applicant as part of the hearing, Council agreed the security and fire safety issues had been addressed and the Council no longer consider the Barra building to be dangerous. Once this was established both parties agreed that the two buildings should be assessed under separate processes and as such, the current all-encompassing Enforcement Notice should be withdrawn.

Both the Council and Applicant agree the May's coffee shop is structurally compromised and should be demolished. During the hearing both parties agreed to Council issuing a new Enforcement Notice on the May's Building

During the hearing there were extensive discussions regarding the condition of the Barra building and it was clear there was a difference of opinion with respect to the building's condition. Despite these differences, both parties agreed the building was not dangerous and Council should issue a Show Cause Notice on the Barra Building.

As a result of the agreements made between the parties at hearing, Council has provided a draft Show Cause Notice for the Barra Building and a draft new Enforcement Notice for the May's building. The Committee approves of the draft notices which are attached to this decision.

The document below are attached to, and form part of, this decision:

- Draft Show Cause Notice for the Barra building dated 6 October 2015 and;
- Draft new Enforcement Notice for the May's building dated 6 October 2015

Bruce Shephard
Building and Development Committee Chair
Date: 20 October 2015

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