



## Building and Development Dispute Resolution Committees—Decision

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### *Sustainable Planning Act 2009*

<b>Appeal Number:</b>	27- 14
<b>Applicant:</b>	Mr Ronald Donaldson
<b>Assessment Manager:</b>	Mackay Regional Council (Council)
<b>Concurrence Agency:</b> (if applicable)	N/A
<b>Site Address:</b>	3034 Bruce Highway, Kuttabul and described as Lot 22 on SP105837 (the subject site)

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### Appeal

Appeal under section 533 of *Sustainable Planning Act 2009* (SPA) against an Enforcement Notice (Ref: CRS No. 417074-417065-417077) dated 17<sup>th</sup> July 2014, issued by Mackay Regional Council (Council) under section 248 of the *Building Act 1975* for a Dangerous Building or structure at the subject site. The Enforcement Notice was issued by the Council on the grounds that it reasonably believes the building is a dangerous building.

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<b>Date and time of hearing:</b>	10.00am Friday 12 <sup>th</sup> September 2014
<b>Place of hearing:</b>	The subject site
<b>Committee:</b>	Mr Gordon Heelan – Chair Mr Ian Mac Donald - Referee
<b>Present:</b>	Mr Bob Donaldson – Applicant and property owner Mr John Viklund - Applicant representative (Town Planner) Mr Andrew Cridland - Council representative Mr Steven Gatt - Council representative Mr Robert Maher - Council representative

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### Decision:

The Building and Development Dispute Resolution Committee (the Committee) in accordance with section 564 of the SPA, **changes** the Enforcement Notice issued by the Council dated 17<sup>th</sup> July 2014 as follows:

Section 4 of the Enforcement Notice is amended by substituting the following under “Required Action”:

#### Required Action:

The Applicant is to take the following actions by the specified time:

- Immediately upon receipt of this Decision stop carrying out any further building and or plumbing work on the premises/building as identified in Development Approval 00/0614.

- b) Within 3 business days upon receipt of this Decision, secure the high-set premises and ensure the premises are safe and building material etc will not blow away (from strong winds, etc) onto the neighbouring structures or the adjacent property (with the railway line) to the north of the dwelling. Advise Council in writing when this work has been completed and the site is secure.
- c) Within 40 business days upon receipt of this Decision, provide to Council a 'structural report' from a registered professional engineer (RPEQ) demonstrating the existing building and building elements (e.g., footings, timber framing, flooring etc) are structurally adequate (loadbearing capacity, etc) and will comply with the Building Code of Australia (BCA)2014 and relevant Australian Standards (e.g. AS1170, AS1684, etc) for the wind rating for that particular location.
- d) Within 50 business days upon receipt of this Decision:
  - 1) In the event the 'structural report' indicates the building will comply with the BCA 2014 and relevant Australian Standards, apply for and gain building and plumbing approvals; or
  - 2) Submit a demolition application for the building/structure in the event the 'structural report' indicates the building cannot comply with the BCA 2014 and relevant Australian Standards;
  - 3) Submit a plumbing application for the removal of the plumbing and on-site sewerage facility. (property owner should consult with Council for more information)

## Background

The subject site - Lot 22 on SP105837 has an area of 35,842 m<sup>2</sup> and consists of a number (approximately 10) of buildings.

Council issued an Enforcement Notice to the property owner dated 17<sup>th</sup> July 2014 and on 19<sup>th</sup> August 2014 the property owner lodged an appeal against the Enforcement Notice with the Committees Registrar. A hearing was held on site on 12<sup>th</sup> September 2014.

The subject building as identified in the Enforcement Notice is a 'high set timber resite dwelling'. The documentation provided for this appeal includes a building approval (98/2280) Decision Notice. The building approval was issued by the Council on 30<sup>th</sup> December 1998 for a Resite House - Class 1a. The building approval documents do not include plans (stamped, endorsed or referenced by Council) for the approved dwelling. A site plan has been provided and stamped by the Council however the site plan was drawn in March 2000. It is assumed this site plan is not part of this building approval (98/2280).

The Enforcement Notice is poorly laid-out and poorly written for the intended audience (the average citizen) who are unfamiliar with the building approval process including enforcement action.

The Enforcement Notice does not provide a section for the description of building works (the subject building works) or document the following information for the property owner;

- a) If a building approval was issued by Council or a private building certifier,
- b) When the building approval was issued, if any,
- c) The description of the building works approved, if any, (e.g. a high set timber framed weatherboard dwelling) or building works not approved (e.g. illegal building works) and
- d) The approved plans and related documents for the building approval, if any.

The Enforcement Notice provides the following information in **Section 2 - Details of offence**, under sub-heading - **Location of building**;

*3034 Bruce Highway Kuttambul QLD 4741 on Lot 22 SP 105837*

*'The dilapidated dangerous structure (dwelling house) is located on the northern property boundary adjacent to the main Queensland Rail east coast railway line. The structure is a high set timber fibro construction with the sheeting and roof trusses missing and is the sixth re-site house in from the Bruce Highway.'*

It can only be assumed the building approval (98/2280) Decision Notice provided for this appeal relates to the building described in the Enforcement Notice, sub-heading - **Location of building**. Council has not provided the property owner with a stamped site plan or stamped dwelling plans (stamped, endorsed or referenced by Council) to accurately identify the correct building relating to this Enforcement Notice. Council has provided an aerial site photo from Council's records indicating the location of the building. Council records appear to be incomplete for building approval 98/2280.

Building Approval (98/2280) Decision Notice states the approval shall lapse if:-

- a) *The building work is not commenced within twelve (12) months after the day on which the approval is given; or*
- b) *The building work is not substantially completed within eighteen (18) months from the date on which the approval was given.*

The Decision Notice nominates 2 inspections are to be completed;

- 1) *Trenches with steel in place and*
- 2) *On completion prior to occupation.*

Council cannot confirm what inspections have been completed, however it is assumed the 1<sup>st</sup> inspection may have been completed as the building has progressed past this particular stage.

The Enforcement Notice provides the following information in **Section 2 - Details of offence**, under sub-heading - **Description**;

*The Council believes it is not possible and practical to repair or rectify the building or structure, nor secure the building or structure, (whether by a system of supports or in another way), nor to fence off the building or structure to protect persons nor to cleanse purify and disinfect the building structure.*

The Council has not provided to the property owner, a report from a RPEQ Civil Engineer (Structural) or similar to authenticate the claim that *'it is not possible and practical to repair or rectify the building or structure'*. The Council Team Leader of Compliance is a Queensland Building Construction Commission (QBCC) licensed builder and a QBCC licensed Building Certifier Level 3 and may have considerable building knowledge. However, the Team Leader is performing a compliance role and not that of a registered builder or a Building Certifier.

The Enforcement Notice provides the following information in **Section 4 - Details of required action**;

- a) *Within ten (10) business days of this notice obtain building approval from a Private Building Certifier to demolish and remove the dwelling from the property.*
- b) *All other approvals relating to the demolition to be in place within (10) business days of receiving this notice.*
- c) *By the stated compliance date of this notice, have the building demolished and removed entirely from the premises.*

Council has instructed the property owner to demolish the building. Council has not provided the property owner, an opportunity to demonstrate if the building can/may comply with the current *Building Act 1975*, BCA and relevant Australian Standards for a Class 1a Dwelling in its current location.

The building has been left partly built and without a roof for a number of years.

Council advised the roof of the partly built building blew off and the building suffered damage during cyclone Ului of March 2010, the property owner confirmed same. The building appears to be in need of major repair including structural upgrade. The property owner advised maintenance and/or repair to the building has been sparse.

During the hearing Council confirmed Enforcement Notices dating back to 6<sup>th</sup> November 2012 have been issued in relation to buildings on this site however Council have not followed through with any Court action despite the property owner's noncompliance with any of these Notices.. Council advised the Committees that after receiving legal advice on 12<sup>th</sup> June 2014, Council wrote to the property owner withdrawing all previously issued Show Cause Notices and Enforcement Notices.

During the hearing Council advised Building Approval (98/2280) has been replaced by Building & Plumbing Approval 00/0614 issued on 4<sup>th</sup> April 2000 which accurately identifies the correct building (by way of endorsed site and house plans) as referenced in this Enforcement Notice.

The above approval (00/0614) does not provide a completion date or building time frame. The *Integrated Planning Act 1997* (IPA) Reprint 2D was effective from 17 February 2000. IPA states:

Clause 3.5.21

(1) the approval will lapse at the end of the currency period.

(c) A Building approval will lapse at the end of 2 years if the building work has not substantially commenced.

IPA does not state when all building work must be completed including the issuing of the final inspection documents (e.g. form 21).

During the hearing all parties agreed to allow the property owner the opportunity to provide a 'structural report' from a registered professional engineer (RPEQ) demonstrating the existing building and building elements (e.g., footings, timber framing, flooring etc) are structurally adequate (loadbearing capacity, etc) and will comply with the BCA 2014 and relevant Australian Standards (e.g. AS1170, AS1684, etc) for the wind rating for that particular location. In the event the building cannot comply with the current building codes the building will be demolished.

The property owner indicated at the hearing that the building was in need of major repair and it may not be economically viable to upgrade and repair the building however this will be determined when the structural report has been completed.

## **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 Committee Registrar on 19th August 2014.
2. The Enforcement Notice dated 17th July 2014
3. Verbal representations by the parties at the hearing
4. Additional information provided by the Council at the hearing
  - a. Statement of Witness
  - b. Exhibit Time Line
  - c. Building & Plumbing Approval - 00/0614 issued by Mackay City Council Business Unit 'Complete Approval Service' on 4<sup>th</sup> April 2000 (Consisting of Decision Notice and approved plans).

5. The *Sustainable Planning Act 2009* (SPA)
6. The *Building Act 1975* (BA)
7. The *Integrated Planning Act 1997* (IPA)
8. The Sustainable Planning Regulation 2009 (SPR)
9. Queensland Development Code MP1.2 (QDC MP1.2)
10. Building Code of Australia 2014 (BCA)

## **Findings of Fact**

The Committee makes the following findings of fact:

- The Enforcement Notice was poorly written as previously noted in the 'Background' section of this Decision.
- Building Approval (98/2280) has specified the building approval will lapse if the building work is not substantially completed within eighteen (18) months from the date of the approval. The building work had not been completed and the building approval had lapsed.
- Council advised Building Approval (98/2280) has been replaced by Building & Plumbing Approval 00/0614 issued on 4<sup>th</sup> April 2000 to allow the building work to continue and this approval identifies the correct building on the site.
- The roof of the partly built building blew off and the building suffered damage during cyclone Ului of March 2010. The building appears to be in need of major repair including structural upgrade. The property owner advised maintenance and/or repair to the building has been sparse.
- Council advised during the hearing they are prepared to allow the property owner the opportunity to provide a 'structural report' from a registered professional engineer (RPEQ) demonstrating the existing building and building elements (e.g., footings, timber framing, flooring etc) are structurally adequate (loadbearing capacity, etc) and will comply with the BCA 2014 and relevant Australian Standards (e.g. AS1170, AS1684, etc) for the wind rating for that particular location.

## **Reasons for the Decision**

- All parties agreed during the hearing that the property owner be given the opportunity to provide a structural report from a RPEQ structural engineer to demonstrate if the building can comply with the current *Building Act 1975*, BCA and relevant Australian Standards for a Class 1a Dwelling in its current location.
- If the structural engineers' report is acceptable to Council, the property owner will apply for the relevant approvals.

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**Gordon Heelan**  
**Building and Development Committee Chair**  
**Date: 7<sup>th</sup> October 2014**

## **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) 3237 0403 Facsimile (07) 3237 1248**