



## Building and Development Dispute Resolution Committees—Decision

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### *Sustainable Planning Act 2009*

**Appeal Number:** 49-10

**Appellant:** Mr Italo Gosti

**Assessment Manager:** Gold Coast City Council (Council)

**Concurrence Agency:**  
(if applicable)

**Site Address:** 25 Whiting Street, Labrador described as BUP 2778, CTS 12367 – the subject site.

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### Appeal

Appeal under section 533 of the *Sustainable Planning Act 2009* (SPA) against the decision of the Gold Coast City Council to issue an Enforcement Notice under sections 248 and 249 of the *Building Act 1975* (BA) requiring the demolition of a two storey unit development that the Council reasonably believes is dangerous and is impossible and impractical to repair, rectify, secure or to fence off.

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**Date of hearing:** 10.00am - Wednesday 23 August 2010

**Place of hearing:** The subject site

**Committee:** Mr Don Grehan – Chair  
Mr Max Fica - General Referee

**Present:** Mr Italo Gosti - Appellant  
Mr John Cillekens - Appellant Representative

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### Decision:

The Committee, in accordance with section 564(2)(b) of the SPA, **changes** the enforcement notice issued by Council dated 21 June 2010 and, in accordance with section 564(1) of the SPA, **makes directions** as considered appropriate.

The Enforcement Notice (Ref No. PN36712/16(P1), dated 21 June 2010 is changed to the following extent:

(a) The requisitions in relation to the two storey unit development are deleted and are replaced by:

1. No later than the twenty sixth (26<sup>TH</sup>) day of November 2010, carry out the following works to the satisfaction of the Gold Coast City Council:

- (a) Cease all occupation of the subject site for residential purposes;
- (b) Decommission all electrical services on or within the building save for any security lighting or alarm systems and any fire detection or alarm systems; and
- (c) Secure access to and within the two storey brick veneer unit block (inclusive of verandas, balconies and walkways) by means of security fence or similar to prevent access by unauthorised persons.

2. By no later than the first (1<sup>st</sup>) day of February 2011, carry out the following:

- (a) Make a properly made application in accordance with the provisions of the *Sustainable Planning Act 2009* to the Gold Coast City Council ("Council") or to a private certifier (class A) for a development permit for building work to repair the two storey unit development in its entirety so as to comply with the provisions of the Building Code of Australia 2010 as a Class 2 Building; and
- (b) Prior to any to subsequent use or occupation of the building, obtain a Certificate of Classification pursuant to the Building Act 1975; **or alternately**
- (c) Make a properly made application in accordance with the provisions of the Sustainable Planning Act 2009 to the Gold Coast City Council ("Council") or to a private certifier (class A) for a development permit for building work to demolish the two storey unit development and complete such demolition, inclusive or removal of all debris and waste material from the subject site to Council's waste disposal facility no later than the first (1<sup>st</sup>) of April 2011.

The directions in relation to this matter that are considered appropriate are as follows:

- (b) Both Council and the Appellant are reminded of that it is an offence against section 594 of the SPA to fail to comply with an Enforcement Notice, additionally, because the Enforcement Notice is issued under section 248 of the BA, should works failed to be perform under the Enforcement Notice, Council may be able to enter the premises and perform the work at the expense of the owner under the Local Government Act 2009 with amounts incurred by the Council becoming a debt owing against the land that may be recovered as if it were an overdue rate.

## **Background**

A two-storey brick veneer unit complex, located on the subject site, has fallen into a state of disrepair following the effects of differential subsidence, fire damage and lack of maintenance.

Council in the belief that the building is dangerous, dilapidated and unfit for use or occupation seeks demolition of the building on the grounds that it is not possible and practical to take steps to repair, rectify, secure or to fence off the building.

The Appellant is dissatisfied with Council's enforcement action given the belief that it is possible to implement such measures and to salvage the building.

## **Material Considered**

The material considered in arriving at this decision comprises:

- Form 10 – Appeal Notice and Appellant's correspondence accompanying the appeal lodged with the Registrar on 28 June 2010, inclusive.
- Council's Enforcement Notice, Ref No. PN36712/16 (P1), dated 21 June 2010.

- Verbal submissions from the Appellant and their representative at the hearing.
- Verbal submissions from Council's representative at the hearing.
- Written submissions presented by Council's representative at the hearing.
- Written submissions presented by the Appellant's representative at the hearing.
- The *Sustainable Planning Act 2009* (SPA).
- The *Building Act 1975* (BA).

## Findings of Fact

The Committee makes the following findings of fact:

- A two-storey brick veneer unit complex, constructed circa 1970, is located on the subject site.
- The building has a history of structural issues dating from the mid 1990's in relation to gradual but significant differential subsidence of foundation materials and accordingly shows evidence of structural damage to floor slabs and brickwork.
- In 1998, the Appellant engaged the services of a Registered Professional Engineer of Queensland to undertake site investigations and to detail works aimed to stabilize the subsidence and accordingly the building shows evidence of attempted repair and rectification work.
- Repair and rectification work are on going matters and the success or otherwise of the stabilisation measures is an area of contention between the Appellant, their representatives and Council.
- The building shows evidence of recent significant fire damage to the first floor centre unit.
- Notwithstanding the effects of differential subsidence and fire damage, the building is generally in need of substantial maintenance with evidence of severe corrosion and decay to weather exposed steel and timber members particularly stairs, handrail/balustrades and balcony walkways.
- Following inspections of the building on 20 May and 7 June 2010, including discussions with the Appellant, Council came to the determination that the the building, in its current condition, was dangerous; was in a dilapidated condition and was unfit for use or occupation.
- Council, on 21 June 2010, issued an Enforcement Notice, Ref No. PN36712/16(P1) requiring the Appellant to:
  1. By Friday 16 July 2010 make application in accordance with the provisions of the *Sustainable Planning Act 2009* to Council or to a private certifier (class A) for a development permit for building work to demolish the two storey brick veneer unit building on the Premises.
  2. In respect of the application:
    - Not discontinue the application; and
    - Take all necessary and reasonable steps to enable the application to be decided as quickly as possible.
  3. If a development permit for the building work described in paragraph (1) is given, carry out the building work and remove all building debris from the Premises within 2 months of the date of the development permit is given.
- In absence of specific definition in either the SPA or the BA, the key terms dangerous, dilapidated and unfit are taken in the context of their common use or meaning and to this end the Macquarie Dictionary

provides the following definitions:

Dangerous: Full of danger or risk; causing danger; perilous; hazardous; unsafe.

Dilapidated: Reduced to, or fallen into, ruin or decay.

Unfit: Not adapted or suited; unsuitable.

- Section 248 of the BA clarifies the circumstances where Council may give an Enforcement Notice and the procedural requirements associated with the giving of the Enforcement Notice.
- Section 249(1) of the BA clarifies the specific requirements of an Enforcement Notice.
- Section 249(2) of the BA clarifies the specific circumstance whereby demolition of a building or structure can be imposed.

### **Reasons for the Decision**

- The Committee agrees that the building located on the subject site, in its current condition, is **dangerous**.
- The Committee agrees that the building located on the subject site, in its current condition, is **dilapidated**.
- The Committee agrees that the building located on the subject site, in its current condition, **is unfit for use or occupation**.
- The Committee is satisfied that Council's action in giving the Enforcement Notice complies with the relevant circumstances and requirements of section 248 of the BA.
- The Committee is satisfied that Council's Enforcement Notice, Ref No. PN36712/16(P1), dated 21 June 2010 complies with the specific requirements of section 249(1) of the BA.
- With reference to section 249(2) of the BA, while acknowledging Council's concerns, neither Council nor the Committee are privy to the financial means of the Appellant and as such the Committee cannot be satisfied that it is not practical to take steps to repair, secure, fence off or to cleanse the building in lieu of requiring demolition. Similarly, the Committee is not satisfied that it is not possible to return the building to a condition that is fit for use or occupation given the appropriate expenditure of capital.

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**Don Grehan**  
**Building and Development Committee Chair**  
**Date: 29 October 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**