

## Brisbane City Council

### Prosecution Report

**Case:** *Brisbane City Council -v- Nomad Investment Fund Pty Ltd*

**Court:** Brisbane Magistrates Court

**Magistrate:** Costello

**Date:** 28 April 2017

**Charges and Background:** 1. Nomad Investment Fund Pty Ltd (“Nomad”) was charged with one (1) offence against section 578(1) of the *Sustainable Planning Act 2009* (“the SPA”), for carrying out assessable development without a development permit, and one (1) offence against section 580(1) of the SPA for contravening a development approval.

2. The maximum penalty prescribed to each offence is 1665 penalty units (\$196,137.00).

**Plea:** 3. Duncan James Bourne, sole director of Nomad (“Mr Bourne”), appeared on behalf of Nomad and entered a plea of guilty to the charges on the Complaint.

**Facts & Circumstances**      **BACKGROUND**

4. The matter relates to the demolition of a dwelling on the premises located at 8 -10 Stafford Street, East Brisbane (“the premises”).

5. The premises are located in a Low-Medium Density Residential (2 or 3 Storey Mix) Zone, is subject to the East Brisbane - Coorparoo District Neighbourhood Plan and is subject to the Dwelling House Character Overlay, Traditional Building Character Overlay and the Traditional Building Character Overlay – Neighbourhood Character Sub-Category.

6. The premises is owned by Nomad Investment Fund Pty Ltd (“Nomad”) as trustee, having acquired its interest in the premises on 25 January 2016.

7. Nomad is a registered company with ACN 600 434 955, having first been

registered on 30 June 2014. Mr Bourne is the sole director.

## **FACTS**

8. On 8 April 2016, Noosa Building Certifiers issued a Development Application Decision Notice (“the Building Permit”) permitting demolition of the secondary dwelling and the post 1946 aspects of the main dwelling on the premises. The plan attached to the Building Permit identifies the part of the main dwelling not to be damaged or demolished.
9. On 19 May 2016, Council received complaints about the demolition of the main dwelling on the premises.
10. On 20 May 2016, Council Officer Colin Bryer (“Officer Bryer”) attended the premises and observed:
  - The dwellings had been demolished and only a small section of wall on the northern boundary of the premises remained standing;
  - A large amount of rubble, including timber walls, roofing iron, concrete stumps and garage doors was spread over the premises;
  - A blue Kobelco machine was parked on the premises;
  - There was no one present at the premises; and
  - There were no builders details displayed at the front of the premises.
11. Statements have been obtained from neighbours to the premises which confirm:
  - The main dwelling on the premises had building additions carried out to it over the years;
  - The secondary dwelling on the premises had been brought onto the premises in about 2002;
  - On 18 May 2016, demolition of the secondary dwelling and the additions to the main dwelling were carried out;
  - On 19 May 2016, the remainder of the main dwelling was demolished, except for one (1) wall; and
  - On 20 May 2016, the main dwelling had been completely demolished.
12. On 23 May 2016, Mr Bourne called the Council Call Centre and advised the

dwelling had been completely demolished as it was structurally unsound and was going to fall into the neighbouring property. He states he had a friend doing the demolition for him and he was interstate when it occurred.

13. Luke Neller and Terry Neller, from Noosa Building Certifiers, have provided statements confirming:

- Mr Bourne applied for a development permit;
- Luke Neller dealt directly with Mr Bourne, via email and phone;
- Mr Bourne initially sought approval to demolish both dwellings and clear the blocks. Once the issue of the pre-1946 dwelling was apparent Mr Bourne advised he wanted to restore the pre-1946 dwelling and only demolish the secondary dwelling and the enclosed balcony and rear addition to the pre-1946 dwelling;
- The Building Permit was for the demolition of the secondary dwelling and the removal of the external post 1946 part of the primary dwelling;
- The Building Permit did not permit the demolition of the whole dwelling; and
- Email correspondence with Mr Bourne confirmed this is the case.

14. Mr Bourne has provided an Engineers Report in support of the structural/safety issues with the premises. This report is dated 25 February 2016 and refers to the date of the assessment of the premises on 16 February 2016.

15. Carmal Black, a Senior Historian in Council's Architecture and Heritage Team, has assessed the premises and determined the main dwelling was constructed prior to 1904.

## **SUBMISSIONS BY THE COMPLAINANT**

16. The prosecution tendered the following documents:

- Statement of Fact;
- Development Application Decision Notice dated 8 April 2016;
- Prosecution Reports for:
  - *Christopher McCahon (Brisbane City Council) v Michael John Edgar;*

- *Brisbane City Council v Hanh Hong Truong and Hao Van Cheng*; and
- *Glenn Davidson (Brisbane City Council) v Daniel Lawrence Portelli*.

17. The prosecution submitted...

#### **SUBMISSIONS BY THE DEFENDANT**

18. Mr Bourne explained to the Court that he went to a building certifier as he wanted to renovate the dwelling.

19. With respect to his personal circumstances, Mr Bourne informed the Court that:

- He was currently setting a not-for profit for domestic violence;
- His wife is currently on maternity leave and they rely solely on the profit from previous renovations; and
- He was currently in \$710,000 debt for properties purchased and \$360,000 for the unit.

20. Mr Bourne submitted to the Court that when the dwelling was being demolished in accordance with the permit, the rest of the dwelling had become unsafe and that he was directed to knock it down for safety reasons. Mr Bourne also stated that he had thought the dwelling was going to fall onto the neighbour's property.

#### **MAGISTRATE'S COMMENTS**

21. His Honour noted that the defendant had entered in an early plea of guilty.

22. His Honour took into account the amount of debt the defendant currently has.

23. Accordingly, His Honour made the following Orders:

**Penalty:**                    **Nomad Investment Fund Pty Ltd**  
**Fine:** \$7,000.00  
**Court costs:** \$97.60

No conviction recorded. Referred to SPER.

**Complainant's** Kevin Cartledge  
**Solicitor:** Brisbane City Legal Practice

**Defendant's** Self-represented  
**Solicitor:**