



Building and Development Dispute Resolution Committees—Decision

Sustainable Planning Act 2009

Appeal Number:	33 - 14
Applicant:	Simonds Homes
Assessment Manager:	Professional Certification Group
Concurrence Agency:	Redland City Council
Site Address:	3 Somersby Court, Birkdale and described as Lot 7 on SP 261313 subject site

Appeal

Appeal under section 531 of the *Sustainable Planning Act 2009* (SPA) against the Decision Notice issued by Professional Certification Group as the Assessment Manager following Concurrence Agency advice from Redland City Council. The appeal is on the grounds that Condition 5 of Build over Sewer approval BWP 0022436 issued by Council as the Concurrence Agency on 20 August 2014 is unfairly onerous. Condition 5 relates to the Performance Criteria of the Queensland Development Code MP1.4 (QDC MP1.4).

Date of hearing:	19 September 2014 10.00am to 10.20am
Place of hearing:	Redland City Council Chambers, Cnr. Bloomfield and Middle Streets Cleveland QLD 4163
Committee:	Mr Kenneth Crase – Chair Mr David Mansell – General Referee
Present:	Mr Judson Win-Boh – Applicant, Simonds Homes Mr Adam Tracey – Observer, Simonds Homes Mr Albert Semenzin – Professional Certification Group Mr James Dunstan – Professional Certification Group Mr Adam Webb – Council representative Mr Albert Semenzin – Council representative

Decision:

The Building and Development Dispute Resolution Committee (Committee), in accordance with section 564 of the SPA advises the Applicant withdrew the Application for Appeal following an offer by Council at the commencement of the appeal hearing to issue a Negotiated Concurrence Agency Response with Condition 5 removed. Given Condition 5 was the grounds for appeal, the Applicant subsequently withdrew the Appeal on 21 September 2014 upon receipt of the Negotiated Concurrence Agency Response dated 19 September 2014.

Background

A dwelling house is proposed to be constructed on the subject site within proximity of the Relevant Service Provider (Redland City Council) underground infrastructure being a sewer main.

Council is the Concurrence Agency under the Sustainable Planning Regulation 2009 Schedule 7 Table 1 in relation to the development application for building works.

On 20 August 2014, the Council issued a Concurrence Agency Response for the proposed dwelling house. Condition 5 of the Response requires;-

Construct bored piers according to drawings G02/B and G08, and replace the existing sewer pipe of 150mm uPVC for DIEL type pipe over the length of the house and additional 1.0m in both ends

On 20 August 2014, the Assessment Manager issued a Decision Notice. Number 3 on the Notice under the sub-heading 'Local Authority Planning Scheme Conditions' states;-

'Build Over/Near Sewer Approval, Applicant is to ensure Condition 5 of the Building over Sewer Approval BWD 002436, issued by Redlands City Council is complied with.'

On 29 August 2014 the Applicant lodged an Application for Appeal/Declaration – Form 10 with the Committee's Registrar with respect to changing or cancelling conditions imposed on the building development approval. Details of the Engineers Footing and Slab Design were also provided with the appeal documentation.

Material Considered

The material considered in arriving at this decision comprises:

1. Application for Appeal/Declaration – Form 10, grounds for appeal and correspondence accompanying the appeal lodged with the Committee's Registrar on 29 August 2014.
2. DEQ Consulting Engineers Job No 14.1283 Drawing Numbers G02/B and G08.
3. Simonds Homes Site Plan Job Number Q1749 sheet No:1.1 dated 11.04.14
4. Redland City Council Concurrence Agency Response dated 20 August 2014.
5. Assessment Manager's Decision Notice from Professional Certification Group Pty Ltd dated 20 August 2014.
6. Negotiated Concurrence Agency Response dated 19 September 2014 issued by Council following the appeal hearing.
7. Email from Applicant to the Committee's Registrar dated 21 September 2014 requesting withdrawal of the Application for appeal - email received by the Registrar 22 September.

Findings of Fact

The Committee makes the following findings of fact:

- The structure's floor slab has been designed as a cantilever bridging beam with the Council sewer being a minimum distance of 1000mm from the base of the footings.
- No additional load from the structure is proposed to be transferred onto the sewer.
- Full access to the sewer is proposed for a width of 1500mm for the full length of pipe.
- A sewer manhole is located adjacent to the property for maintenance and clearing purposes.

- The sewer is likely to be in good condition as it has only recently been installed for this development.

Reasons for the Decision

Upon commencement of the appeal hearing on 19 September 2014, Council made an offer to the Applicant to issue a Negotiated Concurrence Agency Response without Condition 5. Given this offer was made at the beginning of the hearing, all parties agreed not to proceed with a full hearing of the issues as the matter in dispute had been agreed. Subsequently, Council issued the Negotiated Concurrence Agency Response without Condition 5 immediately following the hearing on 19 September and the Applicant withdrew the Appeal on 21 September 2014.

Ken Crase

Building and Development Committee Chair
Date: 3 December 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) 1800 804 833 Facsimile (07) 3237 1248