



Building and Development Dispute Resolution Committees—Decision

Sustainable Planning Act 2009

Appeal Number:	31-14
Applicant:	Ronald S Donaldson
Assessment Manager:	Mackay Regional Council (Council)
Concurrence Agency: (if applicable)	N/A
Site Address:	3034 Bruce Highway Kuttabul and described as Lot 22 on SP 105837—the subject site

Appeal

Appeal under section 533 of the *Sustainable Planning Act 2009* (SPA) about Council giving an Enforcement Notice under Section 116 (1) (a) (ii) & (iv) of the *Plumbing and Drainage Act 2002* (PDA) for various aspects of plumbing and drainage on the subject site.

Date and time of hearing:	12 th September 2014 at 1:21pm
Place of hearing:	Kuttabul Hotel 3024 Bruce Highway Kuttabul
Committee:	Gordon Heelan - Chair Ian Mac Donald - Member
Present:	Ronald S Donaldson – Applicant and property owner John Viklind - Applicant's Representative Steven Gatt - Council Representative Andrew Cridland - Council Representative Robert Maher - Council Representative

Decision:

The Building and Development Dispute Resolution Committee (Committee), in accordance with section 564(2)(c) of the SPA **sets aside** the decision of Council to issue the Enforcement Notice dated 17 July 2014. The Committee makes the following amendments to the relevant sections of the 17 July Enforcement Notice and directs the Council, under 564(1) of the SPA to re-issue the Enforcement Notice to the Applicant.

1. On page 1
 - change the property lot number to lot 22
 - under the section titled Premises a) amend to '*Caravan Park ablutions*'
 - under the section titled 'An inspection by a Council Compliance Officer.....'
 - amend a) to read – '*Assessable plumbing and drainage work has been conducted during construction/restoration work and found to be defective*'
 - remove b), c) and d); and

- add a replacement b) to read *'sections of plumbing and drainage on the nominated premises has not been maintained in good condition and does not operate properly'*.
2. On page two under the section titled *'Action required to be taken by owner of premises'*
 - remove (1) and (2) and replace with the following:
 - *'Rectify all defective sanitary plumbing and drainage. The work is to comply with Legislation in force at the time the approval was issued.'*
 - *'Notify Council when the work has been rectified and call for an inspection of the work'*.
 3. On page two under the section titled *'Compliance Date'* change to *Close of Business 20 business days from the date of the Committee decision*
 4. On page three under the section titled *'Issued'* change the date from 17 July 2014 to the date on the Committee decision.

Background

The subject site lot 22 on SP 105837 is a large rural lot that contains a caravan park, caravan park amenities building, manager's office/care takers dwelling and a variety of other building structures including several small cottages. Reticulated water infrastructure is not available in the area therefore the lot is serviced by its own water supply and on site sewerage facilities.

The plumbing and drainage work for the caravan park amenities block has a history that dates back to 1976 and for the remaining buildings that are the subject of this appeal a history that dates back to between 1991 and 2000.

In November 2012 Council issued Show Cause Notices to the Applicant for plumbing and drainage work in buildings and on-site sewerage located on Lot 22 SP 105837 and subsequently issued Enforcement Notices relating to the Show Cause Notices for the plumbing drainage work in January 2013.

On 12 June 2014 Council withdrew all of the Notices and advised the Applicant that Council intended to further pursue the matter and reissued a Show Cause Notice for plumbing and drainage work. The Show Cause Notice issued on 12 June 2014 was for plumbing and drainage which required a written response by 15 July 2014 in relation to the following:

- a) caravan park ablutions
- b) caravan park managers residence
- c) low set re-site house/cabin- first in line on eastern side of the Bruce Highway
- d) low set re-site house/cabin-second in line on eastern side of the Bruce Highway
- e) low set re-site house/cabin-third in line on eastern side of Bruce Highway
- f) low set re-site house/cabin-fourth in line on eastern side of Bruce Highway
- g) High set re-site house/cabin-fifth in line on eastern side of Bruce Highway
- h) low set re-site house/cabin-seventh in line on eastern side of Bruce Highway

As a consequence of an unsatisfactory response from the Applicant to the Show Cause Notice Council issued an Enforcement Notice to the Applicant on 17 July 2014.

The Applicant lodged an appeal against the Enforcement Notice with the Committee Registrar on 20 August 2014 stating he had received the Enforcement Notice on 12 August 2014. The Applicant provided a Statutory Declaration dated 20 August 2014 declaring he had been away from Mackay at the time the Enforcement Notice was issued assisting his family members with the administration of his deceased brother's estate.

Council alleges in the Show Cause and Enforcement Notices among other things, that previous plumbing and drainage compliance permits have lapsed, plumbing and drainage work has been carried out without the necessary compliance permit or plumbing and drainage work has been carried out by un-registered/licenced plumbers/drainers

A site inspection of the buildings nominated in the Enforcement Notice was conducted prior to the appeal hearing on 12 September 2014.

Available Council records for the property are inconclusive and it is not possible for Council or the Committee to determine if all of the plumbing applications have been finalised. However there is a record of defective plumbing and drainage detected during a plumbing inspection on 28 September 1994. In addition there is a condition on approval documents to the effect that the dwellings are not to be occupied until the common effluent line and disposal area is completed. The Committee noted that most of the buildings that are the subject of this appeal are occupied or in use.

Council advised the Committee at the hearing that the reason for Council withdrawing all action was based on legal advice to Council that precedence could be set from another similar case currently before the Courts.

Council offered no explanation as to why compliance action had not been taken by Council prior to November 2012.

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 20 August 2014.
2. Written submissions provided by the Applicant's representative Taylors Solicitors
3. Written submissions provided by Council
4. The *Sustainable Planning Act 2009* (SPA)
5. *Sewerage, Water Supply and Gasfitting Act 1949*
6. Standard Sewerage By-Laws
7. *Sewerage and Water Supply Act Amendment Act 1981*
8. Standard Sewerage Law
9. *The Plumbing and Drainage Act 2002* (PDA)
10. Verbal submission from the Applicant and his representative John Vikland at the hearing
11. Verbal submissions from Council representatives at the hearing
12. Observations made during site inspection

Findings of Fact

The Committee makes the following findings of fact:

1. The lot number of the property the subject of the appeal is lot 22 not lot 23 as written on the Enforcement Notice dated 17 July 2014.
2. During the hearing, Council confirmed that the premises referred to on page one of the Show Cause and Enforcement Notices after *Premises a)* is the Caravan Park ablutions not '*absolutions*' as written.
3. During the hearing, Council confirmed that during the era around the time when the subject buildings were approved it was a usual practice for Council to issue plumbing and drainage approval with the building approval.

4. The Committee is satisfied from the information provided by Council and the Applicant that the plumbing approvals given by Council between 1976 and 2000 are for the buildings nominated in the Enforcement Notice.
5. The Committee is not satisfied that the previous compliance permits for the buildings nominated in the Enforcement Notice have lapsed or that the work has been carried out by unlicensed plumbers/drainers due to inconclusive Council records.
6. The Committee found during the site inspection on 12 September 2014 that the eleven defect items nominated by Council after an inspection on 28 September 1994 are consistent with the plumbing in the buildings nominated in the Enforcement Notice.
7. The Committee is unable to confirm that the plumbers nominated on the Council plumbing application forms or from the Applicants documentation held the appropriate licences in 1976 and between 1991 and 2000. Council has not been able to provide the Committee with any information to support the Statement within the Enforcement Notice that the work has been carried out by unlicensed plumbers/drainers.
8. The Committee is satisfied that Council had not suspended or cancelled the permits for plumbing and drainage the subject of this appeal.

Reasons for the Decision

1. Pursuant to Section 128G of the PDA the owner of a property must take all reasonable steps to ensure that the plumbing and drainage on a premises is kept in good condition and operates properly.
2. The *Sewerage, Water Supply and Gasfitting Acts 1949*, the *Sewerage and Water Supply Act Amendment Act 1981* and the Standard Sewerage Law in force at the time of the plumbing applications do not nominate a time period for the currency of plumbing and drainage permits therefore the permits have not lapsed.
3. Council has not provided information to demonstrate that the permits for the plumbing and drainage have lapsed or that the work was carried out by unlicensed plumbers and drainers.

Gordon Heelan
Building and Development Committee Chair
Date: 7 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
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