



Building and Development Dispute Resolution Committees—Decision

Sustainable Planning Act 2009

Appeal Number:	28-14
Applicant:	Ronald S Donaldson
Assessment Manager:	Mackay Regional Council (Council)
Concurrence Agency: (if applicable)	N/A
Site Address:	3024 Bruce Highway Kuttabul and described as Lot 23on SP105837—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 plumbing and drainage on the subject site.

Date and time of hearing:	12 th September 2014 at 10:43am
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 section 564(1) to re-issue the Enforcement Notice to the Applicant.

1. On page one:
 - under the section titled ‘*Premises*’
 - amend a) to read *clay brick toilet block*
 - amend b) to read ‘*on site sewerage disposal area*’
 - *remove c) and d)*
 - under the section titled ‘*An inspection by a Council Compliance Officer.....*’
 - amend a) to read – *Assessable plumbing and drainage work has been conducted without a compliance permit.*

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:
 - '*lodge a request for compliance assessment of the subject land application area at the rear of the hotel*'
 - '*give written notice to Council advising that the existing septic tank at the rear of the hotel and the on-site sewerage facility for the clay brick toilet block are no longer required*'.
 - '*obtain written authorisation from Council for the dismantling or taking away the septic tank at the rear of the hotel and the redundant plumbing and on-site sewerage facility for the clay brick toilet block*'.
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 of the Committee decision.

Background

Council issued an Enforcement Notice dated 17 July 2014 under Section 116(1) of the *Plumbing and Drainage Act 2002* for plumbing and drainage work on the site.

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.

A hearing was held on site on 12 September 2014 at 10.43am.

The subject site is lot 23 on SP 105837. The site is a large rural lot that contains a hotel building and variety of other buildings. Reticulated water infrastructure is not available in the area therefore the lot is serviced by its own water supply and on-site sewerage facilities.

In November 2012 Council issued a Show Cause Notice to the Applicant for plumbing work in the *High Set Managers House* and the *Clay Brick Toilet Block* and subsequently issued an Enforcement Notice for the plumbing work associated with these buildings in January 2013.

On 12 June 2014 Council withdrew all the Show Cause and Enforcement Notices related to the subject site and advised the Applicant that Council intended to further pursue the matter. Council advised the Committee at the hearing that the reason for Council withdrawing all Notices was based on legal advice to Council that precedence could be set from another similar case currently before the Courts.

Upon withdrawing all previous Notices, Council reissued a Show Cause Notice for plumbing and drainage work in the high set manager's house, clay brick toilet block, on site sewerage disposal area, and general plumbing and drainage infrastructure which required a written response by 15 July 2014.

Council states in the Enforcement Notice dated 17 July 2014, the subject of this appeal, that a search of Councils records on 16 July indicated that a development application had not been submitted to Council or a development permit given by Council in respect of the regulated plumbing/drainage work. As a consequence, Council issued an Enforcement Notice to the Applicant on 17 July 2014 for non-compliance with Show Cause Notice issued on 12 June 2014.

Page One of the Enforcement Notice

The Enforcement Notice states the following under the section titled 'Premises':

*Council reasonably believes that **plumbing & drainage** on the premises is in a condition, or functions in a way, that constitutes a danger or health risk to occupiers of the premises or the public.*

Premises:

- a) High set Manager' House*
- b) Clay Brick Toilet Block*
- c) On site sewerage disposal area*
- d) General Plumbing & Drainage infrastructure*

Council did not provide further information by way of an attachment to the Enforcement Notice to identify the specific items as noted in point d) 'General Plumbing & Drainage infrastructure'. During the hearing Council was unable to provide specific details about these items to warrant their inclusion in the Enforcement Notice. Without specific details about point d), the Applicant is unable to take reasonable action to rectify these items to Councils' satisfaction.

The Enforcement Notice also states the following:

'An inspection by a Council Officer on Tuesday March 18th 2014 revealed that':

- a) Assessable plumbing or drainage work has been conducted during construction/restoration work; and.*
- b) Previous compliance/plumbing & drainage permits which were granted have lapsed; or,*
- c) Plumbing and drainage work has been carried out without the necessary Compliance Permit; or,*
- d) Plumbing and drainage work has been carried out by Un-registered/licensed Plumbers/Drainers.*

With respect to point b) above, Council did not include in the Enforcement notice or as an attachment, details about when and what plumbing and drainage permits were issued for the relevant buildings.

During the hearing the Committee requested Council to provide a copy of the relevant approvals as referred to above to establish what plumbing permit had been issued and for what building and if the plumbing permit had lapsed. Council provided further information after the hearing but this did not demonstrate the permit had lapsed.

With respect to point d) above, Council did not include in the Enforcement Notice or as an attachment, evidence to establish that plumbing and drainage work had been carried out by Un-registered/licensed Plumbers/Drainers. The property owner had therefore, not been provided with the relevant specifics (e.g. list of specific items) from Council to enable him to respond.

Page Two of the Enforcement Notice

Page two of the Enforcement Notice states the following:

"On Thursday June 12th 2014 Mackay Regional Council issued a Show Cause Notice pursuant to Section 115 Plumbing and Drainage Act 2002 in relation to this regulated plumbing/drainage work.

As at the nominated compliance date Tuesday July 15th 2014 you had not complied with this Show Cause Notice, and the matter is still currently outstanding'.

Council did not provide the relevant Show Cause Notice number in the Enforcement Notice to enable the Applicant to identify which Show Cause Notice was being referenced. Council had issued a number of

Show Cause Notices and Enforcement Notices for the same site. It is assumed the relevant Show Cause Notice is CRS 417074 – 417065 – 417077 however this is not specified.

During the on-site hearing the Committee noted that there was some minor plumbing installed in the manager's house; the clay brick toilet block had been substantially demolished; the water service appears to be connected to the building; and the on-site sewerage facility (septic system) is still in place. The '*on-site sewerage disposal area*' referred to by Council in the Enforcement Notice has been constructed at the rear of the hotel and was in use. The Committee also noted there is a redundant septic tank at the rear of the hotel which is in poor condition.

Council offered no explanation to the Committee about why compliance action had not been taken by Council prior to November 2012 when it is evident that Council has issued letters to the Applicant for, among other things, defective plumbing on the property in May 2005.

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. The Queensland Plumbing and Wastewater Code (QPWC).
6. The *Plumbing and Drainage Act 2002* (PDA).
7. The Standard Plumbing and Drainage Regulation 2003 (SPDR).
8. Verbal submission from the Applicant and his representative John Vikland at the hearing.
9. Verbal submissions from Council representatives at the hearing.
10. Observations made during the site inspection.

Findings of Fact

The Committee makes the following findings of fact:

1. The Applicant confirmed during the hearing that the on-site sewerage disposal area (disposal trench) at the rear of the hotel was a new trench and not a replacement or repair of an existing trench.
2. The Committee is satisfied that the extent of the existing plumbing in the manager's house is minor and is most likely remnant from its previous siting.
3. There is no infrastructure available to the site therefore item (d) '*general plumbing & drainage infrastructure*' in the Show Cause and Enforcement Notices does not apply nor has Council provided a current list of specific items for (d) in the 17 July 2014 Enforcement Notice.
4. The Committee is satisfied that the redundant septic tank at the rear of the hotel poses a safety risk for vehicle and pedestrian movements through the area at the rear of the hotel. There is evidence that the structure has already incurred some damage from vehicle movements.
5. The Committee is satisfied that the septic tank and plumbing and drainage for the clay brick toilet block is redundant and no longer required.

Reasons for the Decision

1. The Schedule Dictionary of the PDA nominates compliance assessable work as plumbing or drainage work that is not notifiable work, minor work or unregulated work.
2. Schedules 2, 3 and 4 of the SPDR do not nominate the installation of a land application area or the taking away or dismantling of a septic tank as notifiable work, minor work or unregulated work therefore is deemed compliance assessable work.
3. Pursuant to Section 83 of the PDA a person must not carry out compliance assessable work unless a compliance permit has been issued for the work
4. Pursuant to Section 128 of the PDA a person must not dismantle or take away all or part of an on-site sewerage facility unless written authorisation is given by the local government.
5. Pursuant to Section 128R of the PDA where an on-site sewerage facility is no longer required the owner must give written notice to the local government as soon as reasonably practicable.

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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