



## Building and Development Dispute Resolution Committees—Decision

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### *Sustainable Planning Act 2009*

<b>Appeal Number:</b>	59 - 16
<b>Applicant:</b>	Compass Consulting Group Pty Ltd
<b>Assessment Manager:</b>	Gold Coast City Council (Council)
<b>Concurrence Agency:</b> (if applicable)	N/A
<b>Site Address:</b>	47 Eden Street Coolangatta and described as Lot 2 on RP 94855— the subject site

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### Appeal

Appeal under section 532 of the *Sustainable Planning Act 2009* (SPA) in relation to item 2 in an Information Request given to Compass Consulting Group Pty Ltd by Council for plumbing and drainage application PN4019/04/06(P1) (Application).

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<b>Date and time of hearing:</b>	Monday 23 <sup>rd</sup> January 10:30 am
<b>Place of hearing:</b>	Meeting Room 2, Level 16 Mineral House 41 George Street Brisbane
<b>Committee:</b>	Mr. Ian Mac Donald – Chair Mr. Chris Trewin - Member
<b>Present:</b>	Mr Colin Wheat – Applicant Mr. Shane Wheat – Applicant representative Mr. Phil Greer – Council representative Mr James Carter - Council Representative

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### Decision:

The Building and Development Dispute Resolution Committee (Committee), in accordance with section 564 of the SPA **sets aside** the appeal as the Committee does not have jurisdiction to consider the appeal.

### Background

On 14 November 2016 the Applicant lodged a plumbing and drainage application (Application) with Council under the *Plumbing and Drainage Act 2002* (PDA) for a compliance permit assessment of a high rise unit development.

On 22 November 2016 Council issued an Information Request to the Applicant listing five (5) items. The item in dispute, and the reason the Applicant subsequently lodged an appeal with the Committee's Registrar, is Item Two (2) – *Stack Vents to discharge to atmosphere as per AS3500:2-Clause 11.4.*

The Applicant addressed all items in the Information Request, including the above mentioned Item 2, and re-submitted the plans to Council for further assessment for a compliance permit to be issued.

On 13 December 2016 Council issued a compliance permit for the plans. The compliance permit contained eleven conditions. An Information Notice was not issued by Council for the conditions.

The Council stamped approved plans do not contain any notations from either the Applicant or Council referring to the termination of the stacks.

On 20 December 2016 the Applicant lodged an appeal with the Committee's Registrar against Item 2 in the Information Request *-stack vents to discharge to atmosphere as per AS/NZS.2:2015 Clause 11.4.*

The Applicant proposed to terminate the stack vents with air admittance valves and amended the drawings to suit Item 2 of the Information Request to obtain a compliance permit on the understanding an appeal could be lodged against Item 2 after the compliance permit had been issued.

The Committee considered the appeal application and associated information and formed the view the appeal could be decided by written submissions from the parties. In accordance with s558(b) of the SPA, the Committee's Registrar sought agreement from the parties to decide the appeal by written submissions. The Applicant agreed, however Council did not agree and a face to face hearing was held on 23 January 2017.

## **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 December 2016
2. The *Sustainable Planning Act 2009* (SPA)
3. The *Plumbing and Drainage Act 2002* (PDA)
4. Written submissions provided by the Applicant.
5. Verbal submissions from the Applicant and Council representatives at the hearing

## **Findings of Fact**

The Committee makes the following findings of fact:

Section 532 of the SPA '***Appeals for building and plumbing and drainage matters***' states:

(1) If-

(a) a person has been given, or is entitled to be given-

(i) an information notice under the Building Act.....; or

(ii) an information notice under the Plumbing and Drainage Act 2002 about a decision under part 4 or 5 of that Act; or

*(b) a person.....'*

Part 4 Section 85(7) of the PDA requires a local government to issue an Information Notice for conditions applied to a compliance permit.

The Applicant complied with all items in the Information Request, including Item 2 in the Information Request -*stack vents to discharge to atmosphere as per AS/NZS.2:2015 Clause 11.4*. Subsequently, Council issued a compliance permit for the plans.

The eleven conditions on the compliance permit do not refer to the termination of the stack vents.

The Committee determined at the hearing that an Information Notice had not been given to the Applicant by Council and the Applicant was not entitled to be given an Information Notice by Council for the termination of the stack vents because the Applicant had complied with Council's Information Request.

The Applicant's reasons for lodging the appeal were to seek a ruling on a technical matter about the termination of stack vents. Given the appeal trigger to the Building and Development Committees under s532 of the SPA is an Information Notice, the Applicant does not have an appeal right.

At the hearing, the Applicant agreed with the Committee that the appeal should not proceed.

### **Reasons for the Decision**

The Committee has no jurisdiction to consider the appeal because there is no right to appeal under s532 of the SPA.

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**Ian MacDonald**  
**Building and Development Committee Chair**  
**Date: 2 February 2017**

## **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**