



## Building and Development Dispute Resolution Committees—Decision

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### *Sustainable Planning Act 2009*

<b>Appeal Number:</b>	37-13
<b>Applicant:</b>	Stephen J Hemphill
<b>Assessment Manager:</b>	Redland City Council (Council)
<b>Concurrence Agency:</b> (if applicable)	N/A
<b>Site Address:</b>	322 Queens Esplanade Birkdale and described as Lot 87 on RP 93909 – the subject site

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### Appeal

Appeal under section 532 of the *Sustainable Planning Act 2009* (SPA) by the Applicant against the issue of an Information Notice for defective under slab drainage at the subject site by Redland City Council as the Assessment Manager

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<b>Date and time of hearing:</b>	10:00 am Tuesday 14 January 2014
<b>Place of hearing:</b>	Office of Building Codes Queensland level 16, 41 George Street Brisbane
<b>Committee:</b>	Mr. Ian Mac Donald – Chair
<b>Present:</b>	Mr. Stephen Hemphill – Applicant Mr. Mark Hartnett – Applicant’s Technical Adviser Mr Carl Huysing – Council Representative Mr. Robert Vande Griendt – Council Representative Mr. Alexander Selletin – 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 decision of Council to issue an Information Notice for under slab drainage as the compliance permit and approved plans are invalid and are of no force or effect.

### Background

On 22 October 2013 Council issued a compliance permit PD230657 for ‘*domestic hydraulics-additions*’ at 322 Queens Esplanade Birkdale.

The approved plans issued with the compliance permit indicate the compliance permit is for a shower, basin and water closet in a detached class 10a structure at the rear of the property to connect to the existing sanitary drainage. The approved plans are made of a dot plan (template) for recording the ‘as constructed’ details and a design plan which were prepared and approved by Council. The approved plans contain sanitary drainage but do not contain any underground water services.

There is nothing to link the approved plans to the compliance permit as the stamped approved plans are not listed on the compliance permit.

The compliance permit contains 23 conditions of Council and three conditions of Redland Water however an information notice stating the decision and the reasons for the decision has not been provided with the compliance permit.

Some conditions on the compliance permit are irrelevant as they are either noted on the compliance permit as general information, or they are requirements of the *Plumbing and Drainage Act 2002* (PDA) or the Standard Plumbing and Drainage Regulation 2003 (SPDR).

The conditions required by Redland Water are irrelevant as the approved plan does not include any reference to a swimming pool on the property and the proposed sanitary drainage is shown on the approved plans connecting to the existing sanitary drainage.

On 20 November 2013 Council inspected the under slab drainage and sanitary drainage at the subject site at the request of the Applicant and as required by condition 10 of the compliance permit.

The Committee notes that inspection requirements are also a requirement of the SPDR.

During the inspection, Council noted that the shower outlet was untrapped and the pipe connection between the shower outlet and the overflow relief gully (ORG) riser was 50mm in diameter.

Council advised the Applicant during the inspection that the shower discharge pipe connected to the ORG riser is defined as drainage, must be trapped and is required to be a minimum size of 65mm.

Council agreed with the Applicant to return to the site at a later time on the 20 November 2013 to assess the rectified shower discharge pipe.

The Applicant phoned Council to discuss the defected work as he believed the standards allowed the subject shower discharge pipe to be a minimum of 50mm. After further discussion about the defected work, Council advised the Applicant that the sanitary drainage was acceptable and the open trench could be backfilled however the defected shower discharge pipe must be rectified.

Council issued a compliance certificate for the drainage inspection on 20 November 2013.

Council issued an Information Notice to the Applicant on 22 November 2013 for the under slab inspection implying that a compliance certificate could not be issued for this component of the work because of the defected work noted on the Information Notice for the shower discharge pipe connected to the ORG.

On 6 December 2013 Council contacted the Applicant by phone and left a message on the Applicant's phone message service requesting a return call to discuss the defective work.

The Applicant lodged an application for appeal/declaration - Form 10 with the Building and Development Dispute Resolution Committee Registrar on 10 December 2013 against the issue of the Information Notice by Council for the under slab drainage.

During the appeal hearing the Applicant agreed that the shower outlet requires a trap and advised that a 50mm self cleansing trap has been fitted to the shower outlet.

## **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 10 December 2013.

2. Written submissions provided by the Applicant at the appeal hearing.
3. Written submissions provided by Council prior to the appeal hearing.
4. Further written submissions provided by Council after the appeal hearing
5. Verbal submissions from the Applicant at the appeal hearing.
6. Verbal submissions from Council at the appeal hearing.
7. The *Sustainable Planning Act 2009* (SPA).
8. The *Plumbing and Drainage Act 2002* (PDA).
9. The Standard Plumbing and Drainage Regulation 2003 (SPDR).

## Findings of Fact

The Committee makes the following findings of fact:

- The compliance permit was issued within the 20 business days prescribed by the PDA.
- The compliance permit contains 23 conditions of Council and a further 3 conditions of Redland Water.
- Section 85 '**Process for assessing plans**' (7) of the PDA states-  
*'A compliance permit may be given on reasonable and relevant conditions decided by the local government for achieving compliance.'*
- An information notice has not been provided with the compliance permit for the 26 conditions contained in the compliance permit however reference has been made in part '**4. Rights of appeal**' about starting an appeal and contact details for the Building and Development Disputes Resolution Committee.
- Section 85 '**Process for assessing plans**' (10) of the PDA states-  
*'If the local government refuses to give a compliance permit **or gives a compliance permit on conditions**, the local government must give the person who made the request an information notice about the decision.'*
- Pursuant to the Schedule Dictionary of the PDA an '**information notice**' means—  
*'for a decision of the chief executive or **a local government**, under part 4 or 5, a notice stating the following—*  
  - (i) the decision;
  - (ii) the reasons for the decision;
  - (iii) that the person to whom the notice is given may appeal against the decision to a building and development dispute resolution committee within 20 business days;
  - (iv) how the person may appeal against the decision'.
- The approved plans do not contain details of the underground water service for the work, the registration and/or licence numbers of the person who designed the plumbing and drainage and the location of the connection point to the service provider's water supply
- Relevant parts of section 14 '**General requirements for plans the subject of a compliance request**' of the SPDR that apply to the compliance permit the subject of this appeal states-  
  - (1) *This section imposes requirements for a plan the subject of a compliance request.*
  - (2) *The plan must be drawn to scale and show sufficient dimensions and information to allow the local government to assess the proposed plumbing and drainage.*

(3) Without limiting subsection (2), the plan must include, or be accompanied by, the documents or information mentioned in—

(a) any of the following—

(i) for compliance assessable work—section 14A;

(4) The plan must show—

(a) the name of the person who designed the plumbing and drainage; and

(b) for the person mentioned in paragraph (a)-

(i) if the person is registered or licensed under a law applying in the State to practice in the aspect of the work — the person's registration or licence number;'

- Relevant parts of section 14A '**Additional requirements for plans for compliance assessable work**' of the SPDR that apply to the compliance permit the subject of this appeal states-

*'(1) This section applies, as well as section 14, to a compliance request for compliance assessable work.*

*(2) There must be a site plan of the premises on which the compliance assessable work is to be performed showing each of the following—*

*(a) .....*

*(b) .....*

*(c) the location of each connection point to—*

*(i) a service provider's water supply or sewerage system; or*

*(d) if the work is to be performed on any of the following—the approximate location on the premises of the below ground water supply pipes and sanitary drainage pipes for any plumbing and drainage for the work—*

*(i) a building classified under BCA as a class 1 building, on a lot that is not part of a community titles scheme;*

*(ii) a building classified under BCA as a class 10 building;*

- The Committee can not include in their consideration of this appeal whether the work is defective or not because the compliance permit and approved plans are invalid and are of no force or effect.

## **Reasons for the Decision**

1. Compliance permit PD230657 issued by Council on 22 October 2013 is invalid because an Information Notice was not issued with the compliance permit pursuant to the PDA for the 26 conditions on the compliance permit.
2. The approved plans designed and approved by Council do not comply with the requirements of the SPDR

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**Ian Mac Donald**  
**Building and Development Committee Chair**  
**Date: 22 January 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 Planning and Environment Court 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) 3237 0403 Facsimile (07) 3237 1248**