



Building and Development Dispute Resolution Committees—Decision

Sustainable Planning Act 2009

Appeal Number:	28-13
Applicant:	Mr Christopher Paul Herring and Ms Tanya Vicki Harlow
Assessment Manager:	Scenic Rim Regional Council (Council)
Concurrence Agency: (if applicable)	N/A
Site Address:	20-30 Sundown Court, Tamborine, and described as Lot 10 on SP 846110 — the subject site

Appeal

Appeal under section 532 of the *Sustainable Planning Act 2009* (SPA) against the decision of the Assessment Manager to impose conditions and inspection requirements on a Compliance Permit, as well as requiring a change to the proposed wastewater treatment system (WTS) for the Beard and Brau Farmhouse Brewery (Brewery).

Date and time of hearing:	10.00 am on Wednesday 2 nd October 2013
Place of hearing:	The subject site
Committee:	Chris Trewin – Chair
Present:	Christopher Herring – Applicant Tanya Harlow – Applicant John Barraud – Council Representative Shane Rooks – Council Representative

Decision:

The Building and Development Dispute Resolution Committee (Committee), in accordance with section 564 of the SPA:

- a) **Sets aside** the decision of Council to apply conditions 2 and 4 to the Compliance Permit and directs Council to re-issue the Compliance Permit omitting conditions 2 and 4 within five (5) business days from the date that this decision takes effect.
- b) **Confirms** the decision of Council to apply conditions 1 and 3 to the Compliance Permit.
- c) **Confirms** the decision of Council to apply inspection requirements to the Compliance Permit.
- d) **Confirms** the decision of Council to issue the Compliance Permit indicating an Aqua Nova, Model 80100 with an upstream pre-treatment device as the approved wastewater treatment system

Background

Council issued a Development Permit for Material Change of Use (MCU) with conditions on 18 February 2013 to establish a Home Based Business (Boutique Brewery) that required further approvals for building work, plumbing and drainage work, food licensing, liquor licensing and if appropriate, advertising signage.

A Form 1 - compliance assessment application for plumbing, drainage and on-site sewerage work was lodged with Council by the Applicant on 14 May 2013 for plumbing and drainage work that had previously been carried out.

On 24 May 2013 Council issued an Information Request to the Applicants.

On 15 July 2013 Aqualogical provided information to Council in response to the Information Request.

On 24 July 2013 Council issued a second Information Request to the Applicants.

On 26 July 2013 Everhard Industries Pty Ltd wrote to the Council's Deputy Mayor and Councillor Division 3.

On 31 July 2013 Council issued a third Information Request to the Applicants.

On 2 August 2013 a meeting was convened at Council's offices attended by the Applicants, representatives from Everhard, Aqualogical and Council officers to discuss the plumbing and drainage application for the subject site.

Council raised concerns that the proposed WTS differed from the CEA and it's proposed use was outside of the original design parameters that the CEA was based on.

The Brewery had arranged for the installation of an Aqua Nova "Commercial MBR" system which was installed prior to the plumbing and drainage application being lodged. This system was claimed to have been granted approval under CEA number 04/2010.

The Applicants contend that the proposed WTS should have been permitted to remain in place.

The WTS listed in section 8 of the Form 1 lodged with Council, the site and soil evaluation report prepared by Envirodisposal Pty Ltd and the plans provided to Council on 6 August 2013 lists an Aqua Nova Model 80100 which is one of the systems granted approval under CEA number 11/2010.

The WTS manufacturer modified the wastewater inflow to the Aqua Nova Model 80100 by designing an aeration tank and some pre-filters upstream of the WTS to cater for the nature of the wastewater expected from the brewery.

Council issued a Compliance Permit (PA13/00133) following consultation with BCQ on the 9 August 2013 with four (4) conditions and some inspection requirements that the Applicants didn't agree with.

There are a number of other issues in relation to the Compliance Permit that should be mentioned:

- The Applicant is listed as "Mr Christopher Paul Herring & Ms Tanya Vicki Harlow" when the Form 1 indicates the Applicant as "Chris Herring"
- Under the "Proposal" section the works are indicated as "Class 8 Microbrewery Conversion from a Shed & OSSF" when it may have been more appropriate to say the works were a "Factory Fitout" or something similar, as there was no previously approved OSSF connected and the shed had already been reclassified to a factory (Class 8 building). Whether or not the building approval should have been issued for the conversion of the shed to a factory prior to the Compliance Permit being issued is questionable, but not applicable to this matter.

- Even though there is a stamped plan and other documents, they are not listed on the Compliance Permit. It is usual that all the documents that comprise the approval are specifically listed on the permit to tie them altogether.
- Section 85(7) of the PDA states a Compliance Permit may be given on reasonable and relevant conditions decided by the local government for achieving compliance.
- However, section 85(10) requires an Information Notice must be given to the Applicant about the decision when a local government refuses to give a compliance permit or a compliance permit with conditions". Council did not give an Information Notice.

The Applicants also contend that the Compliance Permit listed required inspections that were not applicable because they believe that the brewery fitout is a 'processing plant'. They also claim a sink to be a "process wash down area" and not a fixture. They hold that this work is not compliance assessable plumbing and drainage work and therefore do not require approval or inspection.

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 6 September 2013.
2. Approval of conditions for the MCU (No. MCBd212/00037) issued by Council on 18 February 2013.
3. Compliance Permit for Plumbing and Drainage Work (No. PA13/00133) issued by Council on 9 August 2013.
4. Further correspondence received from the Committees Registrar via email on 9 October 2013.
5. Further correspondence received from Beard and Brau Farmhouse Brewery via email on 10 October 2013.
6. *Sustainable Planning Act 2009 (SPA)*
7. *Plumbing and Drainage Act 2002. (PDA)*
8. *Standard Plumbing and Drainage Regulation 2003.(SPDR)*
9. Verbal communication with the applicant at the hearing.
10. Verbal communication with the Council representatives at the hearing.
11. Written submissions provided by the Applicant.
12. Written submissions provided by Council.
13. Chief Executive Approval 04/2010.
14. Chief Executive Approval 11/2010.
15. AS/NZS 3500.0:2003 Glossary of Terms (Glossary).
16. Queensland Plumbing and Wastewater Code – Published 01/04/2011 (QPW Code).
17. Queensland Development Code MP 4.1 – Sustainable Buildings.

Findings of Fact

The Committee makes the following findings of fact:

- The subject plumbing and drainage work was carried out illegally, prior to the application being lodged.
- Council does not have the power to issue approvals incorporating WTS's that do not have a CEA.
- If a WTS without CEA is proposed, an application can be lodged with BCQ for a testing approval as outlined in Part 5 of the PDA.
- BCQ had not received an application under Part 5 of the PDA as of 4 June 2013 for the subject site.
- BCQ granted permission to modify the CEA number 11/2010 by the addition of an aeration tank and filters as a pre-treatment device upstream of the WTS.
- The appropriate WTS was decided on and mutually agreed on by the attendees at the meeting held at Council's chambers on the 2 August 2013.
- Council issued the Compliance Permit (PA13/00133) on the 8 August 2013.
- When issued, the Compliance Permit reflected the application. Council approved what had been applied for.
- An Information Notice should have been provided by Council about the decision to impose conditions on the Compliance Permit.
- Condition 1 of the Compliance Permit is a reasonable and relevant condition as section 86A (3)(b) of the PDA allows Council to require as-constructed drawings.
- Condition 2 of the Compliance Permit is not reasonable or relevant as all plumbing and drainage work is required to comply with the relevant parts of AS 3500. Further, the Queensland Development Code (QDC) MP4.1 – Sustainable Buildings does not apply to Class 8 buildings.
- Condition 3 of the Compliance Permit is a reasonable and relevant condition as it is merely advising Council is willing to accept a notice of compliance (Form 8 – Notice of Compliance On-site sewerage work) from the designer, as permitted by section 86(6) of the PDA.
- Condition 4 of the Compliance Permit is an irrelevant and unreasonable condition as it refers to the operation and maintenance of the WTS and not the construction/installation. It should be located on the Compliance Certificate as described in section 86C (3) of the PDA.
- The approved plan indicates "*process water*" running between two "*rainwater water tanks*", a "*brew skid*" and an "*equipment wash down area*"
- "*Rainwater tank*" is defined in the QPW Code as "*a covered tank or combination of covered tanks used to collect rainwater from a building roof.*"
- The Standard Plumbing and Drainage Regulation 2003 (SPDR) defines "*water plumbing*" as "*an apparatus, fittings, or pipe for carrying water within premises*".

- The SPDR also defines an “*apparatus for water plumbing*” as including “*a backflow prevention device, cistern, pump, domestic water filter, water meter, siphon, tap, valve, water heater or water softener; but does not include an appliance, fitting or straight pipe*”.
- The PDA describes “*premises*” as “*a building or other structure; or land (whether or not a building or other structure is situated on the land)*”.
- An “*appliance*” is defined in the Glossary as “*A piece of equipment designed to connect to a plumbing system to perform a specific task*”.
- The glossary defines a “*sink*” as “*a fixture for containing one or more bowls for temporarily retaining water for cleansing purposes, and for receiving domestic, culinary, laboratory or industrial wastewaters. Each bowl has the provision for a waste connection*”.
- The PDA defines “*compliance assessable work*” as “*plumbing work or drainage work that is not notifiable work, minor work or unregulated work*”.
- The provision of the BCC permit confirms that Brisbane City Council disagreed with the argument posed by the Aqualogical paper, as they still issued a Compliance Permit.
- The Aqualogical paper bears no relevance as there are no details provided of what work it is pertaining to. (i.e. there are no plans)
- There is a discrepancy in the dates indicated on the BCC permit (18 March 2009) and the Aqualogical paper (10 September 2013).

Reasons for the Decision

1. The definition of a sink in the glossary clearly describes the “equipment wash down area” depicted on the approved plan.
2. The definition of an appliance in the glossary clearly describes the “brew skid” depicted on the approved plan.
3. The “process water” indicated as running between two “rainwater water tanks”, a “brew skid” and an “equipment wash down area” on the approved plan is clearly defined as water plumbing by the SPDR.
4. The water plumbing at the subject site is compliance assessable work, as it clearly meets the definition contained in the PDA.
5. The Compliance Permit reflected the application and therefore Council did not require the WTS to be changed.
6. Compliance Permit conditions 2 and 4 are irrelevant and unreasonable conditions.

Chris Trewin
Building and Development Committee Chair
Date: 19 November 2013

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.

Any appeal to the Planning and Environment Court must be started within 20 business days after the day the 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
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