



APPEAL
Integrated Planning Act 1997

File No. 03-05-074

BUILDING AND DEVELOPMENT TRIBUNAL - DECISION

Assessment Manager: Douglas Shire Council

Site Address: *withheld* – “the subject lot”

Applicant: *withheld*

Nature of Appeal:

Appeal lodged under Section 4.2.12A of the *Integrated Planning Act 1997*, against the decision of Douglas Shire Council’s Enforcement Notice to require an absorption bed receiving primary affluent from a septic tank to be constructed with a vertical separation distance of a minimum 1.2 meters between the saturated soil depth and the permanent water table.

Tribunal: Brad Hodgkinson

Present: There were no parties present at the appeal. Written Submissions were prepared and submitted to the Registrar by Douglas Shire Council and the applicant.

Decision

The decision of Douglas Shire Council to issue an Enforcement Notice under Section 116 (2) of the *Plumbing and Drainage Act 2002* is confirmed. The Applicant is required to comply with the requirements of the Enforcement Notice dated 19 October 2005 within 20 business days of receipt of this decision.

Background

On 3 December 2003, Douglas Shire Council issued an approval for plumbing work in association with a plan that detailed the construction of a typical absorption bed. The absorption bed forms part of an on-site sewerage facility that has been installed at “the subject site”. This case relates to the compliance status of the installed absorption bed. The absorption bed approved for the subject property will receive primary treated effluent from a septic tank. The Council approved plan noted that the minimum separation distance from the bottom of the absorption trench to the permanent water table is 1.2 metres. In addition the approved plan noted that all sewerage work shall be carried out in accordance with the On-Site Sewerage Code. An inspection undertaken by Douglas Shire Council reported that the installed absorption bed had been constructed whereby the vertical distance from the bottom of the bed to the permanent water table was 0.75 meters.

An independent site and soil investigation was requested by Council to assess the requirements for the installation of an on-site sewerage facility for the subject land. This investigation reported in part that the subject land is influenced by a high water table in wet seasons.

Douglas Shire Council has issued a show cause notice and an enforcement notice under the *Plumbing and Drainage Act 2002* to the licenced plumber and drainer who has undertaken the construction of the On-site Sewerage Facility at the subject property. Douglas Shire Council has advised that the plumbing and drainage work installed on the subject land does not comply with the On-Site Sewerage Code, namely the construction of the land application area.

Material Considered

- Submission from Douglas Shire Council dated 3 January 2006 (Williams, Graham, Carman Solicitors).
- Submission from Douglas Shire Council dated 23 January 2006 (Williams, Graham, Carman Solicitors).
- Submission from applicant.
- Site and Soil investigation, “the subject site”
- AS/NZS 1547:2000 On-Site Domestic – wastewater management.
- On-Site Sewerage Code.
- Show Cause Notice issued by Douglas Shire Council.
- Enforcement Notice issued by Douglas Shire Council.
- Development Application Decision Notice Approval of Plumbing Work Permit 2633.
- Drawing number 13476-C1 (amendment D) C.M.G. Consulting Engineers.
- Drawing number 12506-C1 (amendment D) C.M.G. Consulting Engineers.

Findings of Fact

On-Site Sewerage Code 2002

Guidelines for Vertical and Horizontal Separation Distance (Section 7.2 Table 3)

Recommended separation distances for protection of water quality (extract)

| Feature | Recommended Separation Distance |
|---|--|
| Unsaturated soil depth to a permanent water table | Primary effluent: 1.2 metres (vertical). |

On-Site domestic – wastewater management

AS/NZS 1547:2000 Section 2.2.2.1(e) states:

‘The on-site sewerage facility shall incorporate “*measures to control the effects of an on-site domestic – wastewater system on surface water and groundwater flows and the quality of natural waters such that subsequent use of those waters is not impaired or compromised.*”’

On-Site domestic – wastewater management

AS/NZS 1547:2000 (Appendix 4.2B)

Land-Application Systems – Guidance on Selection (Table 4.2B1)

Land-Application Systems – Limitations due to Site, Soil and Climatic Factors (extract)

Depth to seasonal water table

System:

Preferably >1.2 metres

Environment:

<1.2 metres may cause increased soil wetness if lateral groundwater flow is slow

On 3 December 2003 Douglas Shire Council gave Approval for Plumbing work and issued permit number 2633 in accordance with drawing number 12506-C1 (amendment D).

Douglas Shire Council

Development Application Decision Notice.

Approval of plumbing work Permit Number 2633 states:

“The work must be carried out in accordance with the approved plans.”

Reasons for the Decision

Douglas Shire Council is responsible for the compliance assessment and ongoing management of on-site sewerage facilities within its municipality to ensure that the risks associated with the discharge of human waste and domestic waste water to the environment is minimized. An independent site and soil investigation acknowledged and reinstated the position of Council that the subject land is influenced by a high water table in wet seasons. It is therefore imperative that the vertical separation between the bottom of the land application area and the top of the groundwater table be of a distance that will protect water quality.

Council’s approval for plumbing work in association with a plan that detailed the construction of a typical absorption bed noted reference to the minimum separation distance from the bottom of the absorption bed to the permanent water table. This plan reference is consistent with the performance requirements and means of compliance given in AS/NZS 1547:2000 (On-site domestic wastewater management). Clause 2.2.2.1(e) of AS/NZS 1547:2000 states: *“The on-site sewerage facility shall incorporate “measures to control the effects of an on-site domestic – wastewater system on surface water and groundwater flows and the quality of natural waters such that subsequent use of those waters is not impaired or compromised.”*

The guideline that supplements the On-Site Sewerage Code provides acceptable solutions that satisfy the performance objectives and the performance requirements and means of compliance given in AS/NZS 1547:2000 (On-site domestic wastewater management).

Douglas Shire Council is responsible for administering compliance requirements for the construction, installation and operation of on-site sewerage facilities under the Plumbing and Drainage Act 2002 and the On-Site Sewerage Code.

A Local Government may only give its approval if the sewerage facility is designed to comply with the On-Site Sewerage Code. Douglas Shire Council issued a Development Application Decision Notice for Approval of Plumbing work under the *Plumbing and Drainage Act 2002*. The construction of the absorption bed located at “the subject site”, as determined by written submission by the Tribunal is not consistent with the *Plumbing and Drainage Act 2002* and in particular the performance requirements of the On-Site Sewerage Code 2002.

Brad Hodgkinson
Building and Development Tribunal General Referee
Date: 13th February 2006

Appeal Rights

Section 4.1.37. of the Integrated Planning Act 1997 provides that a party to a proceeding decided by a Tribunal may appeal to the Planning and Environment Court against the Tribunal's decision, but only on the ground:

- (a) of error or mistake in law on the part of the Tribunal or
- (b) that the Tribunal 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 Tribunal's decision is given to the party.

Enquiries

All correspondence should be addressed to:

The Registrar of Building and Development Tribunals
Building Codes Queensland
Department of Local Government and Planning
PO Box 15031
CITY EAST QLD 4002
Telephone (07) 3237 0403: Facsimile (07) 32371248