



Building and Development Dispute Resolution Committees—Decision

Sustainable Planning Act 2009

Appeal Number:	10- 13
Applicant:	The Baptist Union of Queensland – contact person Mr. Nathan Harris
Assessment Manager:	Brisbane City Council (Council)
Concurrence Agency: (if applicable)	N/A
Site Address:	379, 383 and 387 (also known as 310 Graham Road Bridgeman Downs) Albany Creek Road Bridgeman Downs and described as Lot 1 on RP868570 and Lots 1 & 2 on SP 115607 the subject site

Appeal

Appeal under section 532 of the *Sustainable Planning Act 2009* (SPA) by The Baptist Union of Queensland against Brisbane City Council issuing a Deemed to be Refused Notice for a compliance request for plumbing, drainage and on-site sewerage work.

Date of hearing:	10:00 am Tuesday 9 April 2013
Place of hearing:	Office of Building Codes Queensland level 7, 41 George Street Brisbane
Committee:	Ian Mac Donald– Chair Patrick Robertson- Referee
Present:	Robert Wilcox – Applicant’s representative Russell Sweetman – Applicant’s representative Eddie Denman – Council representative

Decision:

The Building and Disputes Resolution Committee (Committee), in accordance with section 564 of the SPA **confirms** the decision of Council to issue the ‘*Deemed to be Refused Notice*’ for a compliance request for plumbing, drainage and on-site sewerage work.

Background

A compliance request for plumbing, drainage and on-site sewerage work associated with a building extension at 310 Graham Road within the subject site was lodged electronically by Chilton Woodward and Associates (CWA) on behalf of the Applicant on 29 November 2012. The current collection, treatment and dispersal of sewage at 310 Graham Road is contained within the lot. The CWA application to Council consists of Council’s on line services equivalent of the Form 1 and CWA drawings 12352 H1 and H2 issue A.

On 10 December 2012 the prescribed fees were paid to Council making the compliance request complete.

On 14 January 2013 Council issued an information request to CWA and the Applicant.

On 5 February 2013 CWA provided information to Council in response to the information request.

On 14 February 2013 Council issued a second information request to CWA and the Applicant.

On 22 February 2013 CWA provided information to Council in response to the second information request.

On 8 March 2013 Council issued a third information request to CWA and the Applicant

On 8 March 2013 CWA discussed aspects of the third information request and the compliance request with Council by phone.

On 13 March 2013 the Applicant's representative Mr. Russel Sweetman wrote to Council advising the Applicant's intention not to provide a response to or comply with either option provided in the third information request and the Applicant's intention to lodge an appeal.

On 14 March 2013 Council issued a Deemed to be Refused notice to the Applicant.

On 19 March 2013 the Applicant lodged a Form 10 – Appeal Notice with the Registrar, Building and Development Dispute Resolution Committees.

The Applicant believes the exceptional time taken by Council to assess and decide the compliance request for the plumbing work has caused an unnecessary lengthy delay to the entire project. The Committee considers the time taken to decide the application could have been reduced by the following:

- CWA are hydraulic consultants and should be aware that section 14 D of the SPDR required a site and soil report to be provided with the compliance request. A comprehensive site and soil report was available from the Applicant therefore CWA must not be aware of section 14 D of the SPDR.
- Council should have had earlier contact with the Applicant to discuss the issues surrounding the requirements to amalgamate the lots.
- Council has a duty to follow due process thereby complying with the time periods for assessing plans as required in the PDA.

Council has indicated the lots have to amalgamated before a subsequent compliance request can be lodged which the Committees considers unreasonable. If the Applicant is to proceed with the proposed work another compliance request for the work is required further extending their costs and time delays.

During the appeal hearing Council confirmed that when the lots are amalgamated and the requested information is provided, a compliance permit could be issued. Any subsequent compliance request for the work would only duplicate the previous compliance request and Council could consider withdrawing the "Deemed to be Refused Notice" and issue a compliance permit on the following conditions:

1. The applicant amends the location of the land application areas (LAA) to comply with the setback distances required in Table T4 and T7 of the Queensland Plumbing and Wastewater Code and provide the revised plan to Council for agreement prior to commencing the work.
2. The LAA area size is to be consistent with section 4.3 *Land Application Requirements* of the 'Cardno Bridgeman Downs Community Church Additional Property-310 Grahams Road Water and Sewerage Assessment' dated 21 July 2012.
3. The Applicant is to commence the amalgamation of the three subject lots and provide documentary evidence to Council that the amalgamation of the lots is underway prior to commencing the work.
4. A Compliance Certificate for the work must not be issued by Council until the survey plan for the amalgamated lots is sealed.

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 Registrar on 19 March 2013.
2. The Queensland Plumbing and Wastewater Code (QPWC)
3. The *Plumbing and Drainage Act 2002* Reprint No. 4 as in force at 1 November 2012 (PDA)
4. The Standard Plumbing and Drainage Regulation 2003 (SPDR)
5. *Acts Interpretation Act 1954* current as at 27 June 2012 (AIA)
6. AS/NZS 1547:2000 On-site domestic–wastewater management
7. Verbal submission from the Applicant at the hearing
8. Verbal submissions from Council at the hearing
9. Delegation of Powers to the Chief Executive Officer of Council
10. Appointment of Inspectors for Council
11. Written submissions provided by the Applicant
12. Written submissions provided by Council

Findings of Fact

The Committee makes the following findings of fact:

- The subject site contains three separate lots with each lot containing a variety of buildings used for living, education and church uses with existing on-site sewerage facilities on the lots. The on-site sewerage component of the compliance request proposes to collect, treat and pump the primary quality effluent generated on 310 Graham Road through the adjoining lots to an existing larger on-site sewerage facility.
- The Committee confirms the compliance request from the Applicant for plumbing, drainage and on-site sewerage work complied with section 85(2) of the PDA on 10 December 2012.
- Reference to the relevant parts of Section 85 of the PDA – '**Process for assessing plans**' states-
 - (1) *'This section applies, subject to sections 85B to 85E, to a request (a **compliance request**) for compliance assessment of a plan for compliance assessable work or on-site sewerage work.*
 - (2) *A compliance request must be —*
 - (a) *in the approved form; and*
 - (b) *made to the local government; and*
 - (c) *accompanied by the fee fixed by resolution of the local government; and....'*
- The Cardno '*Bridgeman Baptist Community Church Additional Property-310 Grahams Road Water and Sewerage Assessment* dated 21 July 2012 is a comprehensive site and soil report for the subject site that satisfies section 14D of the SPDR 2003 was not provided to Council by CWA as part of the compliance request. The Applicant lodged the report to Council as part of the documentation for their Development Application for a Material Change of Use however approval for on-site sewerage is not given under SPA.
- Reference to the relevant parts of section 14 D of the SPDR '**Additional requirements for plans for on-site sewerage facilities**' state –
 - (1) *This section applies, as well as section 14, to a compliance request for on-site sewerage work.*

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

(a) the location of the following—

(i) proposed or existing buildings or structures on the premises;

(ii) the proposed on-site sewage treatment plant;

(iii) the proposed on-site sewerage application area, including the layout of

(b) the distances from the proposed on-site sewerage application area to the following—

(i) the boundary of the premises;

(ii) proposed or existing buildings or structures on the premises;

(iii) any impervious surfaces on the premises, including, for example, paths for pedestrians and paved areas;

(iv) each body of water mentioned in paragraph (d);

(c) the ground levels, referenced to AHD or appropriately reduced levels, to indicate whether sanitary drains can gravity feed to the connection point for the proposed on-site sewage treatment plant;

(d) the location of each body of water that may be affected by the effluent from the proposed on-site sewerage facility;

(e) details of the water supply to the premises;

Examples of details of the water supply—

- for compliance assessable work in the SEQ region—information to show the supply of water to the premises by a distributor-retailer is adequate*
- information about the availability of water from on-site water tanks'*

- Council issued an information request to the Applicant on 14 February 2013 which was more than the 10 business days prescribed by the PDA under section 85(4).
- Section 85(4) of the PDA '**Process for assessing plans**' states-
'(4) An information request must be made within 10 business days after the plan is received'.
- The Committee confirms that the information provided by the Applicant to Council on 5 February 2013 did not satisfy the information requested.
- The PDA prescribes that the local government must decide a compliance request within 20 business days if an information request is not made after receiving the compliance request.
- Council advised at the appeal hearing that their offices were closed on four business days during the December 2012 and January 2013 Christmas - New Year period therefore the compliance request should have been decided by Council on or before 11 January 2013.
- The PDA prescribes in section 85(9) that a compliance request is taken to have been refused if a local government does not decide a compliance request within the time stated in section 85 (5).
- Section 85(9) of the PDA '**Process for assessing plans**' states-
'(9) If the local government does not decide the compliance request within the time stated in subsection (5), the request is taken to have been refused'.
- Section 85(5) of the PDA '**Process for assessing plans**' states-
'(5) The compliance request must be decided within 20 business days—

- (a) if an information request is not made—after receiving the compliance request; or
- (b) if an information request is made—after receiving the information requested’.

- The Committee confirms that more than one information request may be given however any subsequent information requests must comply with section 85 4) of the PDA.
- Subsequent second and third information requests were issued to the Applicant on 14 February 2013 and 8 March 2013 respectively. Each information request required further information about a new item as well as referring to section 14 of the SPDR in the ‘*Factors involved in the Design Technical Defects*’
- Reference to the relevant part of the SPDR section ‘**14 General requirements for plans the subject of a compliance request**’ states –
 - ‘(3) Without limiting subsection (2), the plan must include, or be accompanied by, the documents or information mentioned in—
 - (a) any of the following—
 - (iv) for on-site sewerage work—section 14D; and.....’
- Reference on the information requests to ‘*Compliance Permit on Condition*’ does not apply to an information request and ‘*Standard Plumbing & Drainage Regulation 2003 Division 3 Section 23* . ‘does not apply to the assessment of a plan that is part of a compliance request.’
- Reference on the Council information requests to ‘*The Registrar Plumbing Industry Council*’ is incorrect.
- Council did not offer any explanation why each subsequent further information request did not request information that was not satisfied in the previous information requests.
- Council provided a flood map of the subject site requested by the Committee during the appeal hearing. This map confirms the information requested in the second information request on 14 February 2013 in relation to the set back distances in Table T7 of the QPWC are relevant.
- Table T7 of the QPWC requires the separation distances for on-site sewerage facilities and greywater use facilities from the top of bank of an intermittent water course to be 10m for advanced secondary effluent; 30m for secondary effluent; and 50m for primary effluent.
- During an inspection of the site, the Committee determined that sections of the proposed LAA in the landscaped areas near property boundaries do not comply with set back distances in Table T4 of the QPWC.
- Table T4 of the QPWC requires separation distances from the edge of a subsurface LAA for a greywater treatment plant or an on-site sewage treatment plant to be a minimum of 2 m up slope, 4 m down slope and 2 m on a level surface.
- The Committee confirms the information requested in option 1 in the third information request about the effluent produced in 310 Graham Road to be contained and treated in 310 Graham Road is relevant.
- The PDA does not prescribe a time for the local government to issue a refusal for a compliance request.
- Council decided the compliance request by giving a ‘*Deemed to be Refused Notice*’ stating the reason for refusal is non compliance with the requirements of the QPWC
- The ‘*Deemed to be Refused Notice*’ does not specifically refer to an information notice as prescribed in the PDA schedule however the ‘*Deemed to be Refused Notice*’ does contain a decision; the reason for the decision; and advice about appealing against the decision to the

Building and Development Dispute Resolution Committee pursuant to the PDA schedule.

- The PDA and its subordinate legislation require any components of plumbing, drainage or on-site sewerage to be contained within a premises.
- The Committee is of the view that the relevant information requested in the three information requests, together with information mentioned in section 14 D of the SPDR about a site and soil report, should have been included in a compliant first information request.

Reasons for the Decision

1. Council's information request dated 14 January 2013 is invalid because it was issued more than 10 business days after receiving the compliance request.
2. The subsequent information requests are also invalid because the assessment period concluded on 11 January 2013.
3. The PDA does not prescribe a time limit for giving a refusal for a compliance request.
4. The reason provided by Council in the '*Deemed to be Refused Notice*' for refusing the compliance request is valid
5. To comply with the requirements stated in the '*Deemed to be Refused Notice*' the subject lots should be amalgamated or the plumbing, drainage and on-site sewerage for 310 Graham Road is contained within the lot.

Ian MacDonald
Building and Development Committee Chair

Date: 16 April 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.

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) 3237 0403 Facsimile (07) 3237 1248