



Development Tribunal – Decision Notice

Planning Act 2016, section 255

Appeal Number:	19 - 034
Appellant:	Gregory Thomas Hayes
Respondent (s):	Redland City Council – Local Government
Site Address:	17 Kennedy Avenue, Russell Island and described as Lot 141 on SP151837 – the subject site

Appeal

Appeal under section 229 and item 3(b) of table 3 of section 1 of schedule 1 of the *Planning Act 2016* against the decision of Redland City Council to refuse an application for a plumbing and drainage works compliance permit made under the *Plumbing and Drainage Act 2002* on the basis the appellant's request to install a composting toilet at the subject site is not capable of compliance with performance criteria 10 of On-site Wastewater Management Guideline GL-3032.

Date and time of hearing:	11 am, Friday 25 October 2019
Place of hearing:	Redland City Council Offices, Gana Room, Ground Level, Cnr Bloomfield & Middle Streets, Cleveland
Tribunal:	Anne Maccheroni – Chair Kelvin Slade – Member
Present:	Gregory Thomas Hayes – Appellant Linden Craig – Respondent Council Representative, Redland City Council Paul Toohey – Council Representative, Redland City Council Carl Huysing Council Representative, Redland City Council

Decision:

The Development Tribunal (Tribunal), in accordance with section 254 of the *Planning Act 2016* (PA) **confirms** the decision of the Redland City Council, namely, that application number PD236994 for a compliance permit for plumbing and drainage works related to the proposed development of a new dwelling on lot 141 SP151837 at 17 Kennedy Avenue Russell Island, be refused as per the Information Notice Refusal of Permit dated 9 July 2019 from Redland City Council to the appellant.

Background:

1. The subject site is a 1547m² property on Kennedy Avenue Russell Island on which the appellant is seeking to construct a residential dwelling. In order to do so, the appellant required a compliance permit for plumbing and drainage works under the *Plumbing and Drainage Act 2002*. It is this permit application by the appellant which is the subject of this appeal.
2. The appellant lodged application number PD236994 with the respondent council on 30 July 2018. By email of the same day, council advised the appellant that there were two council policies in place that would impact his application.
3. The first policy, POL 3033 would require submission of a wastewater design for the proposed dwelling by a council approved designer. The second policy POL 3032 would require installation of an advanced secondary treatment system at the site.
4. The council email provided electronic links to both council policies for the appellant's reference and attention and advised that a formal information request would follow.
5. On 1 August 2018 council issued a formal information request to the appellant requesting him to provide:
 - I. completed and signed application forms - Form 1 and *Onsite Domestic Sewerage Treatment Facility Form* including a WC and the CEA number of a proposed advanced secondary treatment system
 - II. a set of compliant drainage design plans showing all proposed drainage, identifying the location of each connection point to an onsite treatment system and the name and any required qualification details of the designer
 - III. AHD ground levels relevant to the connection points of the proposed treatment system
 - IV. A site and soil evaluation including details of soil and permeability test results, an onsite system designed by a council approved designer and compliance with council policy POL 3032; and
 - V. Payment of a further \$80 fee for the required WC.
6. By the time the appellant lodged this application for appeal, triggered by council having issued to him a 'Refusal of Permit' notice on 9 July 2019, some 11 months after he initially applied for the permit, communications between the council and the appellant had been numerous and varied. These communications included the appellant having made and received both an initial and a review response from council regarding an administrative action complaint. This complaint concerned the position council officers were maintaining on the requirement of the appellant to address the specific requirements of its formal information request – including the requirement to apply and pay for a conventional WC toilet fixture as part of the permit application.
7. By the time council issued its 'Refusal of Permit' notice to the appellant on 9 July 2019, council maintained the following information remained outstanding from its 1 August 2018 information request issued to the appellant:
 - I. An application form (Form 1) including a conventional WC toilet fixture and nomination details of an advanced secondary wastewater treatment system including a CEA number
 - II. A set of compliant wastewater design plans including the details of a council approved designer who prepared them
 - III. A site and soil evaluation including soil and permeability test results and a calculation sheet also signed by a council approved designer; and

IV. Outstanding fees of \$80 for the required conventional WC toilet fixture.

8. Both council and the appellant agreed there was sufficient elevation on the site to achieve gravity feed of a wastewater treatment system.
9. There was disagreement between the council and the appellant about both the council's ability to approve wastewater system designers generally and whether, if the appellant did produce to council a set of compliant wastewater design plans, council would consider whether to approve the appellant's chosen designer or not.
10. Council conceded during the hearing that it would consider whether to approve any applicant's chosen designer or not on receipt of a set of otherwise compliant plans, as its list of approved designers was based on past assessments of acceptability of submitted plans and it was therefore not a 'closed' list. However, as the appellant did not submit to council any otherwise compliant set of wastewater design plans or a site and soil evaluation then this issue is irrelevant to consider further in the tribunal's view.
11. After the hearing and by way of email to the Tribunal Registry of 25 November 2019, the appellant also contended that the council decision makers for his permit application were not registered plumbers. As the legislative decision-making powers of a duly authorised and delegated council officer relating to this development permit application do not rely on plumbing registration, this issue is also irrelevant to consider further in the tribunal's view.
12. The substance of this appeal relates to a single aspect of the appellant's compliance permit application – whether the permit can include permission for a composting toilet instead of a conventional water flushing (WC) toilet connected to the proposed onsite wastewater treatment system.
13. The contentious aspect of the request to install a composting toilet is that the existing council wastewater management policies and associated guidelines - as applicable to the specific site of the appellant's proposed dwelling - prohibit the grant of permits for installation of composting toilets. This has not always been the case. Council previously granted the appellant permission to install a composting toilet on the same site in 2009 when the appellant was previously intending to construct a residential dwelling. However, that previous permission has now lapsed and the council decision under this appeal has been made based on current applicable policies and guidelines.
14. Council explained during the hearing of this appeal that this change in policy between 2009 and 2018 was made based on a series of particular issues encountered on the Moreton Bay Islands with domestic sanitation and wastewater disposal and additionally:
 - I. The general sensitivity of the receiving environment on the Bay Islands being sandy soils and proximity to Moreton Bay; and
 - II. No practicable access to a point on any of the Bay Islands where council would agree to disposal of the contents of a composting toilet, such as a sewerage system or other public receptacle.
15. Council conceded that if it had services available on the Bay Islands whereby it could receive composted toilet waste then it would reconsider its position.

16. The appellant disputed the proposition that composted toilet waste was sewerage by definition once it had been composted.
17. Council stated it relies on its decision-making powers contained in s.128P of the *Plumbing and Drainage Act 2002* to refuse to allow disposal of the composted contents of a toilet onto private property on the Bay Islands.
18. The appellant remains of the view his proposal to dispose of the composted waste from a composting toilet on his property complies with the relevant performance outcomes of the council policies and has appealed this aspect of the decision to the Tribunal.
19. The appellant contends that the information he has presently made available to council is sufficient to warrant a relaxation of the policy prohibiting approval of composting toilets on Russell Island.

Jurisdiction:

20. This is an appeal under section 229 and item 3(b) of table 3 of section 1 of schedule 1 of the PA against the decision of Redland City Council (council) to refuse an application for a plumbing and drainage works compliance permit made under the *Plumbing and Drainage Act 2002*, prior to its repeal on 1 July 2019 and replacement by the *Plumbing and Drainage Act 2018* which is currently in force.
21. Item 3(b) is expressed to apply if an information notice about the decision was given or required to be given, which is the case in this instance.
22. In view of section 165 of the *Plumbing and Drainage Act 2018*, the PA schedule 1 is to be read 'as if' the *Plumbing and Drainage Act 2018* had not been enacted, meaning that the version of schedule 1 of the PA that applied immediately before 1 July 2019 is applicable for this appeal.

Decision Framework:

23. This appeal is being conducted in accordance with section 253 of the PA. The onus rests on the appellant to establish this appeal should be upheld.
24. The tribunal is required to hear and decide this appeal by way of a reconsideration of the evidence that was before council.
25. The Tribunal also may consider other evidence presented by both the appellant and the council, with leave of the Tribunal.
26. The Tribunal is required to decide the appeal in one of the ways mentioned in section 254(2) of the PA.

Material Considered:

The material considered in arriving at this decision comprises:

- I. 'Form 10 – Notice of Appeal, grounds for appeal and correspondence accompanying the appeal lodged with the Tribunal Registrar on 26 July 2019:

Attachment – Information Notice Refusal of Permit (*Plumbing and Drainage Regulation 2019 s.50*) dated 9 July 2019 from Mr Linden Craig, Plumbing and

Drainage Assessment Officer, Plumbing Services, Redland City Council to the appellant Mr Hayes 2 pages complete and 1 page attaching email included.

Attachment - Survey Plan sealed 1 July 2002 showing lot 141 – the subject site on Kennedy Avenue, Russell Island.

Attachment – 2 A4 photocopied pages of parts of a plumbing and drainage fixtures plan for lot 141 on SP 151837 plan number 223905 dated 10 June 2009 – ground and half upper floor showing

Attachment – Undated typed notes of the appellant detailing advice received from representative of composting toilets – Clivis Multrim, AHD information for the subject site and action taken to engage Mr John Anderson to draft a plumbing and drainage design for the subject site to include a composting toilet.

Attachment – email dated 26 July 2019 from appellant to Mr Linden Craig of council requesting copies of documents to be forwarded to the Tribunal.

Attachment – email from Mr Robert Newman of council to the appellant dated 1 July 2019 concerning appeal rights.

Attachment – email from the appellant to Mr Robert Newman of council dated 13 April 2019 re GC1468 – Decision

Attachment – letter dated 11 April 2019 to the appellant from Mr Robert Newman of Council – re GC1468 internal review complaint – Decision – First page and 1 further unnumbered page

Attachment – letter dated 7 March 2019 to the appellant from Mr Robert Newman of Council re GC 1468 internal review complaint – Acknowledgement – 2 pages (complete)

Attachment – letter dated 9 January 2019 to the appellant from Mr Alistair Michell of Council re administrative action complaint received by council on 18 December 2018 re concerns about the processing of plumbing application PD236994 – 2 pages (complete)

Attachment – email dated 19 November 2018 from Mr Carl Huysing of Council to the appellant requesting further outstanding information request items.

Attachment – email dated 31 August 2018 from Mr Carl Huysing of Council to the appellant providing information on enquiries – 1 page (complete)

Attachment – email dated 18 November 2018 from the appellant to Mr Carl Huysing of Council providing plumbing and drainage plan for the subject site including height contours.

Attachment – Information request from Mr Carl Huysing of Council to the appellant dated 1 August 2018 – 2 pages (complete)

Attachment – email dated 30 July 2018 from Mr Carl Huysing of Council to the appellant – providing initial assessment of the appellant's application and indicating a formal information request would issue

Attachment – Redland City Council Plumbing and Drainage Compliance Permit dated 25 June 2009 from Mr Gavin Dunn of Council to the appellant – outcome of previous plumbing and drainage permit application at the subject site – 6 pages (complete)

- II. Redland City Council Statutory Policies 3032 and 3033 – Onsite Wastewater Management
- III. Redland City Council Statutory Guidelines 3032 and 3033 – Onsite Wastewater Management
- IV. Australian and New Zealand Standard AS/NZS 1546.2
- V. *Plumbing and Drainage Act 2002*
- VI. *Explanatory Notes – Plumbing and Drainage Bill 2017*
- VII. *Plumbing and Drainage Act 2018*
- VIII. *Local Government Act 2009*
- IX. *Planning Act 2016*

Findings and Reasons for Decision:

The tribunal makes the following findings:

- 27. The appellant has failed to provide the council with sufficient information to enable it to make a decision to approve his application for a compliance permit. On this basis, the council decision to refuse the permit in these circumstances was correct.
- 28. An onsite wastewater treatment plant which operates by receiving, treating and then finally dispersing treated wastewater onto private property will only function properly in known specific parameters of the receiving environment. By failing to provide council with information about the subject site – which information council necessarily required to properly assess the suitability of the proposed wastewater treatment plant (including its consideration of whether a composting toilet at the site could be accommodated) – the appellant has placed council in a position whereby it had no means of satisfying itself that the proposed system was capable of satisfactory performance.
- 29. The council decision not to depart from its standard policy position to not allow installation of composting toilets on the Moreton Bay Islands in accordance with its Statutory Policy 3032 and Statutory Guideline 3033 was also reasonable in the circumstances that council does not presently have any option to offer a practicable method of disposal of the contents of a composting toilet to the appellant, and there was insufficient information provided by the appellant as to how this could be practicably managed on his site alone.
- 30. Council is entitled to rely on its statutory powers to make reasonable decisions based on general policies which it has in place to support decision making regarding those powers. Council's refusal to depart from its general policies in this case was justified and it provided the tribunal with the reasons for its decision – no practicable alternative disposal method to offer the appellant – which reason is accepted.

31. This is particularly the case given that any plumbing and drainage compliance permit the appellant could obtain for a new residential dwelling at the subject site – with or without permission to install a composting toilet – would require an advance secondary wastewater treatment system to be installed to receive greywater used at the residence. The addition of one conventional WC toilet to such a system would not require any significant increase in size, design or cost of such a system. While it is the appellant's prerogative whether he wishes to add expense to the construction costs of a new dwelling, council is also entitled to have policies and make decisions around the methods by which it can offer sewerage treatment and disposal services to residents and the economic viability of having alternative acceptable systems made available to residents.
32. While this decision is based on the provisions of the *Plumbing and Drainage Act 2002* which was in force at the relevant time, there has since been a review and enactment of the *Plumbing and Drainage Act 2018* which it is noted does not change the current position concerning the discretion of local governments to determine how the contents of an onsite sewerage facility is disposed.
33. In addition, the *Plumbing and Drainage Act 2018* also creates offences for owners who fail to properly operate and maintain plumbing and drainage facilities on premises. The explanatory notes which accompanied this new legislation state these offences have been created to ensure that the plumbing and drainage of a premises will not adversely affect public health or safety, or the environment. These same policy objectives – protection of public health and safety and reduction of potential for environmental harm – are the same policy reasons behind both the requirement to obtain a compliance permit for plumbing and drainage works for a premises and the general requirements of any such application to present to a decision maker sufficient information on which a reasoned decision based on the current state of knowledge can be made.
34. In the case of this appeal, the appellant has not discharged his obligation to the tribunal to present sufficient information to it to establish reasons to approve his compliance permit application.

Post Hearing Developments:

35. During the course finalising this appeal, the Tribunal sought further information from Council.
36. Council reiterated the above position in terms of its decision under its policies and guidelines, and provided further clarification of the underlying basis of its policies to set conditions around how waste is disposed of. Council advised its policies are based on Australian Standard 1546.2, specifically s4.2.4.2(c)
37. Council also clarified that the waste from a composting toilet is required to be buried and not spread across the top of the soil like garden waste compost.
38. However, Council also took this opportunity to reconsider whether in the specific circumstances of the appellant's property – the amount of land available to the appellant to bury composted toilet waste via a triple standard block size – and whether it could consider there was enough land available to the appellant to dispose (bury) composted toilet waste on his property.

39. Consequently, Council has made the appellant the following offer of a pathway to having a lawful dwelling approved at his property:

“- for this case – the council would be happy to assess an application for the desired composting toilet, in addition to the required grey water treatment, that entails a Site and Soil evaluation which:

- *Is written by a qualified person as per Guideline GL-3033-001*
- *Outlines how all the composting and greywater waste will be disposed of that complies with legislation*
- *Outlines how the excess urine is disposed of that complies with legislation*
- *Outlines how the sizing of the specified composting toilet suits the possible number of occupants on the property*
- *What greywater treatment facility will be installed and what the Treatment Plant Approval Number is.*
- *Includes soil test to a depth that allows council to ensure the required separation between a water table and disposal area is compliant*
- *Includes permeability test*
- *Plans compliant to Schedule 6 of the Plumbing and Drainage Regulation 2019 :*
 - *Which are designed by a pre-approved designer as per Guideline GL-3033-001*
 - *Set back distances that are compliant to Queensland Plumbing and Waste Water Code 2019*
 - *Calculations of land application area*
 - *Location and size of land applications area shown on a plan*
 - *How the effluent is to be applied to the land application area”*

40. On this basis, the Tribunal will leave this matter to Council and the appellant to work though together going forward, noting the appellant will still need to meet the Council’s specific site information requests for it to be able to lawfully approve the proposed waste disposal design for the new dwelling.

Anne Maccheroni

Development Tribunal Chair
Date: 21 February 2020

Appeal Rights:

Schedule 1, Table 2 (1) of the *Planning Act 2016* provides that an appeal may be made against a decision of a Tribunal to the Planning and Environment Court, other than a decision under section 252, on the ground of -

- (a) an error or mistake in law on the part of the Tribunal; or
- (b) jurisdictional error.

The appeal must be started within 20 business days after the day notice of the Tribunal decision is given to the party.

The following link outlines the steps required to lodge an appeal with the Court.

<http://www.courts.qld.gov.au/courts/planning-and-environment-court/going-to-planning-and-environment-court/starting-proceedings-in-the-court>

Enquiries:

All correspondence should be addressed to:

The Registrar of Development Tribunals
Department of Housing and Public Works
GPO Box 2457
Brisbane QLD 4001

Telephone (07) 1800 804 833

Email: registrar@hpw.qld.gov.au