



Building and Development Dispute Resolution Committees—Decision

Sustainable Planning Act 2009

Appeal Number:	07 - 13
Applicant:	Booga Family Trust – contact person Dr. Peter Matthews
Assessment Manager:	Southern Downs Regional Council (Council)
Concurrence Agency: (if applicable)	N/A
Site Address:	1 Gemmel Road Glen Aplin Lot 1 on SP22222 – the subject site

Appeal

Appeal under section 533 of the *Sustainable Planning Act 2009* (SPA) by Dr. Peter Matthews against an Enforcement Notice dated 11 February 2013, issued by Southern Downs Regional Council (SDRC) under the *Plumbing and Drainage Act 2002* (PDA) regarding the failure with the operations of the “on site” septic system and receiving trenches at 1 Gemmel Road Glen Aplin described as lot 21 on SP 204065.

Date of hearing:	Appeal by written submissions – submissions received close of business Friday 1 st March 2013.
Place of hearing:	N/A - Appeal decided by written submission
Committee:	Ian Mac Donald – Chair William Watson - Referee
Submitters:	Dr. Peter Matthews – Applicant Southern Downs Regional Council - Respondent

Decision:

The Building and Development Dispute Resolution Committee (Committee), in accordance with section 564 of the SPA **confirms** the decision of Southern Downs Regional Council (SDRC) to issue the Enforcement Notice.

Background

The Council issued a Compliance Permit for regulated work associated with the construction of a new dwelling at lot 21 SP204065 Glen Aplin to the Applicant on 2 June 2008 and subsequently issued a Compliance Certificate for the work on 7 January 2009.

Council received complaints from residents of neighbouring properties in early 2011 regarding effluent

flowing onto the adjoining property. Remedial works in the form of a cut off drain were undertaken in association with Council by the Applicant. In mid January 2013, similar complaints to those received by Council in 2011 were once again made to Council as well as the Queensland Department of Health regarding effluent flowing into the adjoining property.

As a result of the recent complaints, Council inspected the site and issued the property owner with an Enforcement Notice under the PDA to remedy the commission of the offence on the land. The PDA allows an Enforcement Notice to be issued without a prior show cause notice when there is a condition that constitutes a danger or health risk to occupiers of the premises or the public. The effluent flowing into the adjoining property presents a health risk and loss of amenity to the neighbouring residents.

This appeal has been decided by written submission as the matter was considered urgent due to the apparent health risks; the neighbors' loss of amenity; the Applicant's ill health and his subsequent inability to attend a site hearing at a time before the relevant Council officer went on annual leave.

It is noted by the Committee that when the complaints were received by Council about the effluent flowing into the neighbouring property above average seasonal rainfall has been recorded in the district. Both the Applicant and Council were invited to have samples of the subject effluent analysed however the Applicant advised he was prohibited from entering the adjoining property therefore unable to collect samples. Council were able to collect samples of the subject effluent under observation by the Applicant from his property and the samples were subsequently couriered to Toowoomba Regional Council's laboratory for analysis.

The Committee conducted an inspection of the site on 6 March 2013 with the permission of the Applicant. This inspection allowed the Committee to familiarise themselves with the site and surrounding conditions before making a decision.

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 Committee Registrar on 15 February 2013.
2. The Queensland Plumbing and Wastewater Code 2008 and 2013 editions
3. The *Plumbing and Drainage Act 2002* Reprint No. 4 as in force at 1 November 2012 (PDA)
4. AS/NZS 15472000 On-site domestic–wastewater management
5. Relevant sections of written submissions from the Applicant dated between 15 February 2013 to 1 March 2013
6. Written submissions from Council dated between 25 February 2013 to 1 March 2013
7. Compliance Permit issued by SDRC for lot 1 SP 204065
8. Compliance Certificate issued by SDRC for lot 1SP204065
9. Instrument of Appointment as an Authorised Person & Inspector dated 25 October 2012
10. Toowoomba Regional Council laboratory services test report number 280213-0682-1

Findings of Fact

The Committee makes the following findings of fact:

- Council issued a compliance permit in accordance with the PDA for regulated work at the subject property on 2 June 2008.

- The Crecer Consulting site and soil report submitted as part of the plumbing request for compliance assessment indicates that the design for on-site effluent disposal considers the dwelling occupants to be six with a daily water usage of 480 litres per day requiring a combined land application area (LAA) of 115 m².
- Observations by the Committee at the site indicate the soil category appears consistent with the soil category nominated in the Crecer Consulting report. Additionally the soil over the entire site appeared saturated with reasonably clear water noted to be ponding in the table drain on both property frontages as well as a hole on the dividing property line on the Micale Lane frontage. There was also evidence of a seasonal perched water table flowing into the adjoining property.
- The number of occupants reported to live on the premises exceeds the design parameter of six persons and it was also noted that the level of stored water in the two rainwater tanks was below the overflow outlet. The quantity and condition of spider web found in the rainwater tank overflow outlets indicate that it is quite some time since the rainwater tanks have overflowed. Rainwater pipes do not appear to discharge to the table drain and it appears that the entire roof catchment is piped to the tanks. With the recent above average rain fall in the area the Committee believes the tanks should have filled to capacity and overflowed. The fact that this has not occurred appears to indicate that there is a high water usage of the stored rainwater particularly from the northwest rainwater tank. This high water usage would impact on the on-site sewerage facility LAA.
- The grassed area containing the LAA was grossly overgrown compared to other areas of the property at the time of the Committee's inspection which is indicative of high quantities of effluent which in turn also retard the evapo-transpiration process.
- A quantity of effluent consistent with the Crecer Consulting report dated 27 February 2013 was noted in the LAA trench through the inspection ports to the LAA.
- The Crecer Consulting report dated 27 February 2013 indicated that there was evidence of minor seepage at approximately 700mm deep in the hole excavated by the Applicant's consulting engineer inside the subject property. This is consistent with the second effluent sample taken adjacent to this hole in the adjoining property which confirms a low presence of E.Coli.
- The visible ground depression in the southwest part of the site was confirmed by the Applicant as the location of the "cut off" drain constructed in 2011. The location of the "cut off" drain is in close proximity to the LAA and is in line with the area in the adjoining property where the first effluent sample was taken.
- During the inspection by the Committee, black coloured effluent was observed to be freely percolating out of the ground in the vicinity of the area where Council indicated the first effluent sample was taken.
- The first effluent sample test result showed the presence of 28,800cfu/100ml of E.Coli which is consistent with primary treated effluent from a septic tank.
- The constructed LLA at the site is inconsistent with the Council approved plan for the installation however Council issued a compliance certificate for plumbing and drainage work on 7 January 2009.
- An endorsed "as constructed" detail of sanitary drainage and the LAA has not been provided by Council however a site and drainage plan SP-1 with inscribed "As Constructed" was provided by the Applicant and this appears to be reasonably consistent with the constructed on-site sewerage facility at the site.
- Performance criteria P1 of part 1 of the Queensland Plumbing and Wastewater Code (QPWC)

among other things prescribes that on-site wastewater management systems must be designed, constructed, installed and maintained in such a manner to protect public health by ensuring that risks associated with the dispersal of wastewater to a LLA are minimised and protect the environment by ensuring surface and ground water are not polluted. In addition, part 1 also prescribes that soil productivity is maintained or enhanced to minimise the impacts on and maintain and enhance amenity by ensuring that there is no adverse impact on the built environment or persons on and nearby the premises for the design life of the facility.

- Performance criteria P1 part 3 of the QPWC among other things prescribes that a LLA must be designed, constructed, installed and maintained in such a manner as to complete the treatment, uptake and absorption of the final effluent within the boundaries of the approved application area. In addition part 3 also prescribes among other things that a LAA should avoid the creation of unpleasant odours, the accumulation of offensive matter and avoid the likelihood of stormwater run-off entering the system for the design life of the facility.
- AS/NZS:2000 section 2.4 among other things requires any wastewater system to be capable of receiving, treating and absorbing the final effluent within the boundaries of the property.
- Council lawfully issued an Enforcement Notice to the Applicant on 11 February 2013 requesting that the Applicant:
 1. Alter, repair, replace or remove plumbing for drainage work or on-site sewerage work
 2. Redirect storm water tank overflow piping to a common discharge point (i.e street drainage system)
 3. Doing all things necessary to comply with the above mentioned requirements within 7 working days of the date of service of this Enforcement Notice.

Reasons for the Decision

1. Section 82 of the PDA prescribes that a person who carries out any plumbing or drainage work or on-site sewerage work must ensure the work complies with the Standard Plumbing and Drainage Regulation even if a compliance permit given by a local government is contrary to the Standard Plumbing and Drainage Regulation.
2. The PQWC and AS/NZS 1547: 2000 clearly indicates that effluent from an on-site sewerage facility must be contained within the boundaries of the property where the effluent is generated and must not affect the amenity of adjoining properties. In addition, any effluent generated on a property must not pollute ground or surface water.
3. Section 128 G the PDA prescribes that the owner of a premises must take all reasonable steps to ensure that all plumbing and drainage and any on-site sewerage facility on the premises is kept in good condition and operates properly.
4. The Committee believes that the effluent flowing into the adjoining property at 5 Micale Lane is generated from the subject site at 1 Gemmel Road and Council issued the Enforcement Notice in accordance with PDA..

Ian Mac Donald

Building and Development Committee Chair
Date: 12 March 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