



Development Tribunal – Decision Notice

Planning Act 2016, section 255

Appeal Number:	34 of 2018
Appellant:	Elgin Pacific Pty Ltd
Assessment Manager:	The Chief Executive, Department of Housing and Public Works

Appeal

Appeal under section 229 of the Planning Act 2016 (“PA”) against a refusal to grant Chief Executive Approval of an On-Site Wastewater Management System pursuant to section 95 of the *Plumbing and Drainage Act 2002* (“PDA”).

Date and time of hearing:

Place of hearing: Via Skype, Meeting Room, Level 1, 41 George Street Brisbane and Cairns, Queensland

Tribunal: C J Eylander – Chair
P Bates – Member
K Crase - Member

Present: James Clark – Appellant
Lindsay Walker – Department of Housing and Public Works
Simone Boughen – Department of Housing and Public Works

Decision:

The Development Tribunal (Tribunal), in accordance with section 254 of the PA confirms the decision of the Chief Executive.

Background

On 23 February 2018, the Appellant made an application for Chief Executive approval for a prefabricated element of an on-site sewerage treatment plant. The application included –

- (a) Form 10 Application;
- (b) Cover letter;
- (c) Eljen Corporation general description of the Eljen GSF System;
- (d) Eljen GSF System Schematics;
- (e) Eljen GSF System Images;
- (f) NSF International Report & Certification;
- (g) Warranty of Service Life;
- (h) Owner’s Manual;
- (i) Installation Manual;
- (j) Operation and Maintenance;
- (k) Certificate of Accreditation – Tasmanian Government

On 23 March 2018, the delegate for the Chief Executive wrote to the Appellant requesting further information to be provided to justify why the Chief Executive Approval should be made.

By way of correspondence dated 17 June 2018, the Appellant provided further submissions along with a report from George Heufelder, Co-Director of the Massachusetts Alternative Septic System Test Centre of the Barnstable County Department of Health and Environment.

On 7 August 2018, the Chief Executive provided an Information Notice pursuant to s 95 of the PDA. The decision was that the application for Chief Executive Approval was refused, for the reason-

“Testing data is required with the application to show compliance with the requirements of AS/NZS 1546.3 (on-site domestic wastewater treatment units – aerated wastewater treatment systems) or in accordance with Appendix 2 of the QPW code. This information is also necessary to prove that the plant design is capable of meeting the required standards.

The original information provided shows that the testing was conducted against NSF Standard 40 – Residential Wastewater Treatment Systems (NSF 40 Standard) which requires that the effluent analysed is against a five-day carbonaceous biochemical oxygen demand (CBOD5) test. I wrote to you on 23 March 2018, requesting further information to be provided to justify why the Chief Executive Approval should be made.

I have reviewed your additional testing results which also include a report of comparison of the BOD5 and CBOD5, using data collected concurrently during a recent NSF test. It is noted that while testing has been undertaken and approved under the NSF 40 Standard the results and additional test results do not provide sufficient effluent testing results to meet the requirements of AS/NZS 1546.3 or Appendix 2 of the QPW code.”

The Appellant lodged the appeal of the Information Notice on 3 September 2018

Jurisdiction

The Development Tribunal has jurisdiction to hear the appeal pursuant to Schedule 1 Table 3 item 3 of the PA.

The appeal was lodged within 20 business days pursuant to s229(3) of the PA.

Decision framework

The onus rests on the appellant to establish that the appeal should be upheld (s. 253(2) of the PA).

The tribunal is required to hear and decide the appeal by way of a reconsideration of the evidence that was before the person who made the decision appealed against (s. 253(4) of the PA).

The tribunal may nevertheless (but need not) consider other evidence presented by a party with leave of the tribunal or any information provided under s.246 of the PA.

The tribunal is required to decide the appeal in one of the ways mentioned in s.254(2) of the PA.

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 Tribunals Registrar on 3 September 2018.
2. Letter dated 17 June 2018 from Elgen Pacific Pty Ltd together with the report from George Heufelder, Co-Director of the Massachusetts Alternative Septic System Test Centre of the Barnstable County Department of Health and Environment
3. The Form 10 application for Chief Executive Approval dated 23 February 2018 together with the supporting material listed above.
4. Eljen Cover Letter.
5. Eljen Corporation general description of the Eljen GSF System.
6. Eljen GSF System Schematics.
7. Eljen GSF System Images.
8. NSF International Report & Certification.
9. Warranty of Service Life.
10. Owner's Manual.
11. Installation Manual.
12. Operation and Maintenance.
13. Certificate of Accreditation – Tasmanian Government.

Reasons for Decision

1. The appellant made an application for Chief Executive Approval. The application required evidence of compliance with AS/NZS 1546.3 (on-site domestic wastewater treatment units – aerated wastewater treatment systems) or in accordance with Appendix 2 of the QPW code. The application was deficient in that regard.
2. The application provided testing results pursuant to the National Sanitation Foundation International ("NSF")/ American National Standards Institute ("ANSI") Standard 40 being an assessment of the cBOD₅ (5 day carbon biological oxygen demand).
3. The AS/NZS 1546.3:2001 specifies that effluent must meet certain BOD₅. Appendix 1 of the QPW code – "Effluent Quality – Secondary" provides that secondary quality effluent must meet effluent compliance characteristics including at –

(a) 90% of the samples taken over the test period must have a BOD₅ less than or equal to 20 g/m³ with no sample greater than 30 g/m³.

4. The delegate for the Chief Executive wrote to the appellant on 23 March 2018 seeking further information.
5. The appellant provided a report from George Heufelder, who performed a comparative test of cBOD₅ and BOD₅ between 11 April 2018 and 29 May 2018. This test led the report writer to conclude "*[t]he correlation between the two values is overall weak ..., however the better correlation holds at the levels ,25mg/L BOD₅-day*".
6. This report demonstrated the effluent did not meet the AS/NZS 1546.3:2001 standards or Appendix 1 of the QPW, because on 3 occasions the effluent testing results indicated that the BOD₅ reading was greater than 30 g/m³, exceeding the maximum allowable limit.
7. The respondent provided an email from Greg Jackson of Queensland Health dated 7 November 2018, who performed a literature review of comparative testing and said "*My understanding of the literature is that even when a relationship is shown between BOD₅ and cBOD₅, this is likely to be a situation specific (depending on water temperature and effluent characteristics) and therefore cannot be relied upon to derive a more general*

relationship between the two parameters. The evidence provided by the proponent to the regulator does not, in my view, conclusively demonstrate equivalence. What this means in practice is that if cBOD5 were to be used for compliance, the actual compliance value could be different. For that reason, we cannot support use of the cBOD5 value in testing to demonstrate compliance with the BOD5 requirement in AS/NZS 1546.3:2001.”

8. There was no objection by the appellant to the tender of this email. The conclusions of Mr Jackson contained in the email goes no further than the conclusion of George Heufelder. That is, the correlation between cBOD₅ and BOD₅ is overall weak.
9. Accordingly, the Tribunal confirms the decision dated 7 August 2018 that the application for Chief Executive Approval has been refused.

The Development Tribunal, in accordance with section 254 of the PA confirms the decision of the Chief Executive.

John Eylander
Development Tribunal Chair
Date: 21 December 2018

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 Facsimile (07) 3237 1248

Email: registrar@hpw.qld.gov.au