



## Building and Development Dispute Resolution Committees—Decision

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### *Sustainable Planning Act 2009*

<b>Appeal Number:</b>	87 - 2011
<b>Applicant:</b>	Richard Lindner
<b>Assessment Manager:</b>	Brisbane City Council
<b>Concurrence Agency:</b>	Not Applicable
<b>Site Address:</b>	632 Old Cleveland Road, Camp Hill and described as Lot 41 on RP 13139 — the subject site

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### **Declaration**

Appeal under Section 533 of the *Sustainable Planning Act 2009* (SPA) in regards to an Enforcement Notice issued by Brisbane City Council. Council believes that a development offence has been committed, as an alternative method of stormwater disposal has not been approved by Council as required by condition 10 of the development approval.

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<b>Date of hearing:</b>	Tuesday 24 January 2011 at 10.00am
<b>Place of hearing:</b>	Building Codes Queensland, Level 5, 63 George St Brisbane
<b>Committee:</b>	Natalie Rayment – Chair Peter Ho – General Referee
<b>Present:</b>	Richard Lindner – Applicant Kevin McLeish – Brisbane City Council Glenn Davidson Beau Reichert

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### **Decision:**

The Committee, in accordance with section 564(1)(a) of the SPA, **confirms** the decision for Brisbane City Council to issue an Enforcement Notice in relation to non-compliance with condition 10 of Development Permit (Council Decision Number 4539/03, Reference Number DRS/USE/H03-846934).

For the condition to be met, a Compliance Permit for the alternative stormwater disposal proposal is required to be obtained from Brisbane City Council.

## Background

A Development Permit was obtained by Norris Clarke & O'Brien Pty Ltd for a Material Change of Use for an extension to a house on a small lot on the subject site. The approval was dated 28 March 2003, Council Decision Number 4539/03, Reference Number DRS/USE/H03-846934. The approval has been exercised following the issue of a Development Permit for the Building Work, construction of the house extension, and commencement of the use.

The current owners purchased the land in 2007, after the approval had been exercised. Prior to the purchase of the property a Final Inspection Certificate was issued by Brisbane City Council on 23 August 2007. Under section 6 of this Form, the certificate states "*I certify that on an inspection carried out in accordance with best industry practice, the building work for the above building or structure was inspected and complies with the building approval or certificates of inspection were accepted from competent persons at the following stages of the construction*". The listed inspection dates were:

- Foundation and Excavation stage – 05/11/2003 (Engineer)
- Slab stage – 12/12/2003 (Engineer)
- Frame stage – 09/02/2004
- Final stage – 14/08/2007.

It is also noted on the certificate that "*The original certifier was Brisbane Certification Group, Council engaged to complete the final inspection only*".

This Final Inspection Certificate relates to compliance with the building approval and not the Development Permit for Material Change of Use. A full Planning and Development Certificate obtained under section 740 of SPA would have included a statement about the fulfilment or non-fulfilment of each condition of development approvals in force over the property, however, a full Planning and Development Certificate was not obtained.

After carrying out an inspection of the premises Brisbane City Council issued a Show Cause Notice on 15 August 2011 regarding non-compliance within condition 10 of the Development Permit Decision Number 4539/03. The inspection was due to a complaint made in relation to stormwater runoff from the premises to a neighbouring property.

Condition 10 of the Development Permit for the Material Change of Use, Decision Number 4539/03, requires that:

*"Run off from roof and developed surface areas of the site are to be collected internally and piped in accordance with Council's "Subdivision and Development Guidelines" to a lawful point of discharge. Where the lawful point of discharge is other than the kerb and channel fronting the subject site, the applicant is to provide details of the lawful point of stormwater discharge for the proposed development. If it is intended to construct a gravity pipeline through adjacent downstream properties to convey runoff to a lawful point of discharge, written consent from the relevant property owners, and a plan of layout, need to be provided to Council. An alternative method of stormwater disposal within the subject site (designed and certified by a Registered Professional Engineer Queensland (RPEQ) to be in accordance with Council's "Subdivision and Development Guidelines" and all other relevant standards) must be approved by Council. Stormwater run off from adjacent sites shall also be handled in an appropriate manner in accordance with the Council's "Subdivision and Development Guidelines"*". The timeframe for compliance with this condition was stated as "*Prior to the commencement of the use*".

The Applicant engaged HCE Engineers in an attempt to resolve the matter with Brisbane City Council. HCE Engineers prepared a plan showing the alternative method of stormwater disposal that had been constructed on the subject site, which was submitted to Brisbane City Council for comment. However, the plan had not been applied for in any formal way i.e. through an application for Compliance Permit. No approval or permit has been issued by Brisbane City Council.

Brisbane City Council subsequently issued an Enforcement Notice on 26 September 2011.

### **Material Considered**

The material considered in arriving at this decision comprises:

1. 'Form 10 – Application for Appeal / Declaration', grounds for declaration and correspondence accompanying the declaration lodged with the Registrar on 26 October 2011.
2. Council submission in response to the issues under appeal dated 23 January 2012.
3. Additional information provided by the applicant on 23 January 2012, as requested prior to the hearing.
4. Third party submission from neighbouring property owner.
5. Verbal submissions from those in attendance at the hearing.
6. Development Permit for Material Change of Use for extension to house on a small lot on the subject site (Council Decision Number 4539/03, Reference Number DRS/USE/H03-846934).
7. Final Inspection Certificate issued by Brisbane City Council dated 27 August 2007.
8. Show Cause Notice issued by Brisbane City Council dated 15 August 2011.
9. Enforcement Notice issued by Brisbane City Council dated 26 September 2011.
10. The SPA 2009.

### **Findings of Fact**

The Committee makes the following findings of fact:

1. The subject site has an existing approval – a Development Permit for a Material Change of Use for an extension to a house on a small lot on the subject site (Decision Number 4539/03, obtained by Norris Clarke & O'Brien Pty Ltd).
2. The Development Permit (Decision Number 4539/03) has been exercised and remains in force over the land.
3. The Development Permit includes conditions which must be complied with. Condition 10 has not been met.
4. An alternative method of stormwater disposal within the subject site has been proposed, but has not been approved by Council. The alternative method of stormwater disposal is required to be designed and certified by a Registered Professional Engineer Queensland (RPEQ) and to be in accordance with Council's "Subdivision and Development Guidelines" and all other relevant standards.
5. The Enforcement Notice issued by Brisbane City Council is in relation to non-compliance with condition 10 of that Development Permit.

### **Reasons for the Decision**

The Committee agrees that condition 10 of the Development Permit (Decision Number 4539/03) has not been complied with as the alternative method of stormwater disposal has not been approved by Council.

While the condition was required to be complied with prior to the commencement of the use, it is unfortunate for the current owners that this did not occur at that time of approval.

Under section 245(1)(a) and (b) of the SPA, “*a development approval (a) attaches to the land the subject of the application to which the approval relates; and (b) binds the owner, the owner’s successors in title and any occupier of the land*”. Section 244 of the SPA clarifies that a development approval includes the conditions. Therefore, there remains a binding requirement on the current land owner to comply with all conditions.

The Committee is therefore of the opinion that the Enforcement Notice has been correctly issued.

For the condition to be met, a Compliance Permit for the alternative stormwater disposal proposal is required to be obtained from Brisbane City Council.

**Natalie Rayment**  
**Building and Development Committee Chair**  
**Date: 8 February 2012**

**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 Infrastructure and Planning  
PO Box 15009  
CITY EAST QLD 4002  
**Telephone (07) 3237 0403 Facsimile (07) 3237 1248**