



Development Tribunal – Decision Notice

Planning Act 2016, section 255

Appeal Number:	21-020
Appellant:	Chris Taylor, Taylor Environmental (Australia) Pty Ltd
Assessment Manager, And Respondent:	Redland City Council
Property Owner:	Canaipa Developments Pty Ltd
Site Address:	29 – 39 High Street, Russell Island, Qld 4184, Lot 100 SP204183 – the subject site

Appeal

Appeal under section 229 of the *Planning Act 2016* (PA) against the Decision Notice of Redland City Council (**Respondent**), to refuse a proposed development described as “replace existing Wastewater Treatment Plant with Performance solution”.

The reasons for the refusal outlined in the respondent’s decision notice dated 9 April 2021, and the appellant’s grounds of appeal as outlined in its amended grounds of appeal dated 28 April 2021, can be summarised as follows:

1. Requirements for lodging a performance solution.

The respondent noted a failure to comply with schedule 6, section 6 of the *Plumbing and Drainage Regulation 2019*. It identified a lack of documentation demonstrating how the proposed performance solution satisfied the performance requirements, including no evidence of performance with respect to AS/NZS 1546.1, AS/NZS 1547:2012 or the Queensland Plumbing and Wastewater Code (QPWC) setback distances. It also noted that whilst the application included an approval of the components of the AES system, it did not show how the design met the performance requirements at the property in question.

The appellant asserted that the approval by Chankar Environmental did in fact involve an assessment of the system for the commercial application at the property, the suitability of the system and all other aspects. The appellant also asserted that the two national standards referenced did not apply on the basis they were for domestic purposes, and further that compliance with the deemed-to-satisfy setback distances did not apply to the performance solution.

2. Confirmation that the proposed development is Permit Work under the *Plumbing and Drainage Act 2018*.

The respondent stated that the proposed onsite wastewater disposal system triggered an Environmentally Relevant Activity 63 (ERA) under the provisions of the *Environmental Protection Regulation 2019* and was therefore not permit work.

The respondent’s decision notice provided details supporting its assertion that the water consumption on the site peaks above a design capacity of 21 equivalent people and the treatment inflows exceed an average of 4,200 L/day.

The appellant disputed that the volume of water entering the wastewater system water meets the

ERA threshold and disagreed with the way this had been measured.

3. Suitability of the Advanced Enviro-Septic (AES) and re-purposing of existing tanks.

Suitability of AES

The respondent provided specific examples of the perceived failings in the information provided by the applicant to support the performance solution for the AES system. The respondent also raised concerns that if the pump-out tank alarm was triggered, the AES system would be flooded, resulting in a deemed failure requiring rejuvenation as per the AES recommendations. The respondent also identified missing particulars about the load bearing walls to be built to support the AES system.

The appellant asserted that this requirement was satisfied by the approval by Chankar Environment, disagreed with the assertion that the alarm would automatically lead to flooding, and asserted that the system would not rest against the concrete walls.

Repurposing of tanks

The respondent's decision notice identified that the application did not address in any detail how the existing tanks (NovaClear) were to be repurposed. It also challenged the statement in the application that the repurposing of the tanks had already been completed under the previous application. It noted that the tanks were inspected by Council officers on 15 December 2019 as part of a search warrant and the tanks had not been repurposed and appeared to have been disused for a significant period of time.

The appellant asserted that this work had in fact been undertaken by a licensed plumber under the previous approval and the documentation had previously been supplied to council.

4. Land Application Area (LAA).

The respondent rejected the statement in the application, that the existing LAA was operating under the existing design volume with no evidence of failure. The respondent noted that on 6 November 2020 and 1 January 2021 Council became aware the LAA had failed and subsequently advised the property owner of these failures. The respondent also noted that the water usage at these times was significantly less than the proposed performance solutions.

The appellant challenged this, including by asserting that previous occasions of failure had been due to rain events rather than effluent, and asserting that the deemed-to-satisfy solutions did not apply to this performance solution.

5. Site and Soil Evaluation.

The respondent was not satisfied with site and soil evaluations reports dating from 2004 and 2007.

The respondent noted that Section 44(1)(b)(i) of the Plumbing and Drainage Regulation 2019 requires the application to be accompanied by the documentation required in Schedule 6. Section 5 (3)(c) of Schedule 6 requires delivery of a site and soil evaluation report for the premises.

The respondent also identified further issues with the existing LAA including previous failures of the LAA causing water to leave the site and the fact the existing LAA is below a carpark and is 16 years old and would require repurposing.

The appellant disputed that the LAA had failed.

6. Installation and Maintenance Requirements.

Installation

The respondent considered the application lacked sufficient information about the installation process for the performance solution. In addition, the drawings and the performance solution did not provide the necessary details such as relative levels, dimensions, volumes, pump specification, flow rates or alarm system to enable the respondent to assess the design.

The appellant asserted that the installation requirements are set by the manufacturer.

Maintenance

The respondent considered that the application failed to provide an adequate maintenance procedure to enable Council to assess the performance solution design. Council also raised concerns regarding the frequency of daily physical inspection due to the confined space location of the onsite sewage treatment facility.

The appellant asserted the maintenance and contingency procedures for the design do provide the information requested by council, and further, regarding specific components, asserted that the performance solution recognises the manufacturer's maintenance procedures were to be followed.

7. Drawings

Council identified a range of deficiencies in the drawings including insufficient detail to allow adequate assessment of the performance solution.

The appellant asserted that the drawings provide the necessary detail. It referred to various matters to support this including that an installation manual would be supplied by the manufacturer and that the drawings were to be read in conjunction with the performance solution.

Date and time of hearing:	N/A
Place of hearing:	N/A
Tribunal:	Richard Prout – Chair Melanie Prentice – Member Wendy Evans – Member
Present:	N/A

Decision:

This Development Tribunal (**Tribunal**) is satisfied that because an information notice was given, Schedule 1, Table 3, Item 3 of the PA offers a right of appeal.

However, where the operational and technical parameters for the sewerage and wastewater arrangements for the subject site have already been litigated by various parties, including the two parties now the subject of this dispute, and decided and been subject to Final Order of the Planning and Environment Court, the Tribunal is of the opinion that estoppel applies here – such that this Tribunal is unable to hear the matter.

Background

1. The subject site is a 5,950 m² allotment located at 29-39 High Street, Russell Island and is zoned Local Centre under the Redland City Plan 2018. The allotment has a battle axe shape with a 1,968 m² shopping centre located at the northern end of the allotment consisting of an IGA supermarket and deli and six (6) separate specialty shops. The remainder of the allotment provides off street parking and driveway access for the shopping centre.
2. The Respondent issued a development approval for a material change of use for mixed-use (shop, commercial office and refreshment establishment), originally approved on 5 November 2007, and a change approval issued on 4 March 2010 (**MC010476**).

3. A development approval for building work was issued on 1 March 2008 for the shopping centres with the building work being completed in October 2008.
4. Russell Island is not serviced by a reticulated sewerage network. As part of the change approval MC010476 the property owners were required to install an onsite wastewater disposal system to service the shopping centre. The system approved by the Respondent consisted of two NovaClear AWTS systems operating in parallel to treat the wastewater and sewerage and deliver treated wastewater to a land application area underneath the southern car park area in accordance with AS3500 standards.
5. On 5 September 2014, the Respondent issued a plumbing and drainage work approval under the Plumbing and Drainage Act 2002, allowing the modification of the onsite wastewater system. It is understood that this approval lapsed on the basis that the property owners failed to substantially commence work within the currency period of two years.
6. The Tribunal is informed that the company manufacturing the NovaClear AWTS ceased trading in 2017, which in turn affected the property owner's ability to maintain the existing system. The property owners applied to the Respondent in 2017 to replace the existing onsite disposal system.
7. A Council plumbing inspector inspected the onsite wastewater system on 17 December 2019 and found the system to be fundamentally deficient and allowing wastewater to leave the site.
8. On 20 December 2019 the Respondent filed an Originating Application in the Planning and Environment Court, concerning alleged contraventions of conditions in MC010476 (**OA4703/19**).
9. In the context of OA4703/19, on 28 February 2020, Canaipa Developments Pty Ltd (the property owner) consented to orders issued by the Planning and Environment Court, which directed (in amongst other things) the provision of no less than three portable toilets on the subject site, for use by shopping centre employees, and the permanent locking of existing permanent toilets, until OA4703/19 was finally determined (or by alternative order of the Court).
10. On 23 November 2020 the Appellant lodged a plumbing application for permit work under the Plumbing and Drainage Act 2018 to replace the existing onsite wastewater treatment plant with a new system. The application incorporated an alternative design solution against the performance solutions of the code. This application was given reference number PD241326.
11. On 4 December 2020, the Respondent issued an information request to the Appellant seeking further information in relation to PD241326.
12. On 15 December 2020, OA4703/19 was the subject of final orders made by the Planning & Environment Court. Paragraph 3 of that Order states the following -
 3. Pursuant to s 505(5) of the Environmental Protection Act 1994, and subject to further order of the court, within a period of 9 months from the date of this order, the First and Second Respondents are to:
 - (a) cease all operation of the existing Sewerage Treatment Plant and the existing land application area underneath the car park on the Property; and
 - (b) either
 - (i) remove and lawfully dispose of all wastewater produced on site by vacuum truck or other similar means; or
 - (ii) replace the existing Sewerage Treatment Plant and land application area with a new on-site wastewater treatment plant and land application area system authorised by an Environmental Authority for Environmentally Relevant Activity 63.
13. On 16 February 2021, the Appellant provided a response to the Respondent's information request of 4 December 2020.

14. On 3 March 2021, the Respondent issued an advisory letter seeking further information in relation to the proposed performance solution associated with PD241326. On 24 March 2021 the Appellant provided a response to the Respondent’s advisory letter.
15. On 9 April 2021, the Respondent issued an “Information Notice Refusal of Permit” for the application given a reference number PD241326, being described as ‘replace existing Wastewater Treatment Plant with Performance solution’. Rather than summarise the terms of that “Information Notice Refusal of Permit”, it is attached to this decision of the Tribunal, as **Annexure A**.
16. On 13 April 2021, the Appellant lodged a Form 10 (Notice of Appeal/ Application for Declaration) with the Tribunals Registrar, with respect to the “Information Notice Refusal of Permit” for PD241326.

Jurisdiction

17. The Appellant lodged the Appeal with the Tribunal under section 229 of the PA, against the Respondent’s decision to refuse their application for an onsite wastewater treatment plant.

18. Schedule 1 (Appeals) of the *Planning Act 2016 (PA)* states the follows:

1 Appeal rights and parties to appeals

(1) Table 1 states the matters that may be appealed to—

- (a) the P&E court; or*
- (b) a tribunal.*

(2) However, table 1 applies to a tribunal only if the matter involves— a matter listed under 2 (a) – 2(h).

(3) Also, table 1 does not apply to a tribunal if the matter involves— a matter listed under 3(a) - 3(b).

(5) Table 3 states the matters that may be appealed only to the tribunal.

19. In assessing the issue of jurisdiction, the Tribunal notes the following:

1. Does this appeal fall within the matters referred to in Table 1 (Appeals to the P&E Court and, for certain matters, to a tribunal) or Table 3 (Appeals to a tribunal only) of the PA:

Where the application the subject of this dispute is a ‘plumbing and drainage’ application, it is not a matter addressed under Schedule 1, sections 1(2) or (3) of the PA. Accordingly, any appeal right to this Tribunal must arise under Table 3 of Schedule 1.

Of the four appeal instances listed in Table 3 of Schedule 1, only two concern matters under the *Plumbing and Drainage Act 2018*, namely – items 3 and 5.

- Schedule 1, Table 3, Item 3 of the PA offers a right of appeal against.....*(b) a decision under the Plumbing and Drainage Act 2018, other than a decision made by the Queensland Building and Construction Commission, if an information notice about the decision was given or required to be given under that Act.*

An information notice was given under the *Plumbing and Drainage Act 2018* – more specifically, pursuant to section 50 of its Regulation. The Tribunal does not consider it necessary to determine whether or not the information was ‘required to be given’ under the *Plumbing and Drainage Act 2018*, because Schedule 1, Table 3, Item 3 of the PA also caters for instances where ‘an information notice about the decision was given’ (which it was here).

The entity who received the information notice, was Taylor Environmental (Australia) Pty Ltd. That entity, being the appellant here, is the proper appellant to this appeal – which is authorised pursuant to Schedule 1, Table 3, Item 3 of the PA.

- Schedule 1, Table 3, Item 5 of the PA offers a right of appeal against “*a failure to make a decision under the Plumbing and Drainage Act 2018, other than a failure by the Queensland*

Building and Construction Commission to make a decision, within the period required under that Act, if an information notice about the decision was required to be given under that Act”.

There has been no failure to make a decision, so this right of appeal is not applicable here.

2. Is there a reason at law why the Tribunal should not hear this appeal?

The Tribunal understands that the operational and technical parameters for the sewerage and wastewater arrangements for the subject site have already been litigated by various parties, and directed by Final Order of the Planning and Environment Court, including the two now the subject of this dispute.

In the above circumstances, the Tribunal is of the opinion that the Appellant here is estopped from re-litigating the same issues the subject of Planning and Environment Court (final) orders, such that this Tribunal is unable to hear the matter.

Conclusion regarding jurisdiction

20. The Tribunal is satisfied that because an information notice was given, Schedule 1, Table 3, Item 3 of the PA offers a right of appeal.

21. However, where the operational and technical parameters for the sewerage and wastewater arrangements for the subject site have already been litigated and directed by Final Order of the Planning and Environment Court, by various parties, including the two parties now the subject of this dispute, the Tribunal is of the opinion that estoppel applies here – such that this Tribunal is unable to hear the matter.

Decision framework

22. The Tribunal notes:

- 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). However the tribunal may, but need not, consider other evidence presented by a party to the appeal with leave of the tribunal (s.253(5) of the PA);
- The Tribunal may decide that the tribunal has no jurisdiction for tribunal proceedings, at any time before the proceedings are decided, on the Tribunal’s initiative or on the application of the parties s.252(1) of the PA.
- If the Tribunal decides that the Tribunal has no jurisdiction, the Tribunal must give a decision notice about the decision to all parties to the proceedings s.252(2) of the PA.
- Any period for starting proceedings in the P&E Court, for the matter that is the subject of the tribunal proceedings, starts again when the tribunal gives the decision notice to the party who started the proceedings s.252(3) of the PA.

Material Considered

23. 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 13 April 2021;
2. Letter dated 3 March 2022, from Appellant, (Response for Tribunal regarding the Planning and Environment Court Orders);
3. Form 1 - Permit work application for plumbing, drainage and on-site sewerage work, applicant Chris Taylor, Taylor Environmental (Australia) Pty Ltd, dated 23 November 2020;
4. Information Request dated 4 December 2020, from Respondent to Appellant, reference number PD241326;
5. Report dated 16 February 2021, reference number TE201077, (On-site wastewater and effluent disposal system alternative design solution, 29 High Street, Russell Island), author Taylor Environmental (Australia) Pty Ltd;

6. Letter dated 3 March 2021, from the Respondent to Appellant, reference number PD241326;
7. Information request response, dated 24 March 2021, from Appellant to Respondent;
8. Appellant's Information Notice Refusal of Permit, reference PD241326, dated 9 April 2021;
9. Letter/report dated 23 November 2021 from Gilbert Sutherland to Respondent (Classification of proposed on-site sewerage facility, 29 High Street, Russel Island, Queensland);
10. Letter dated 25 November 2021, from Respondent to the Tribunal;
11. Letter dated 2 December 2021 from Appellant to the Development Tribunal (Response to expert witness report (Prepared by Gilbert Sutherland for Respondent));
12. Letter dated 15 January 2020 from Respondent to the property owner notifying lapsed plumbing and drainage currency period for plumbing permit PD230950;
13. Drawing from Appellant (Onsite wastewater treatment and effluent disposal system site plan) dated 24 February 2020, drawing number TE201077, issue A, Sheet number SL1;
14. Curriculum Vitae for Taylor Environmental (Australia) Pty Ltd;
15. Planning and Environment Court order dated 28 February 2020, File No 4703 of 2019;
16. Information Request (Permit work application for plumbing, drainage and onsite sewerage work) issued by Respondent, dated 11 March 2020, reference number PD 240558;
17. Application for an onsite wastewater and effluent disposal system assessment, ERA63(a)(i) lodged with Queensland Department of Environment and Science, on 17 April 2020 by Appellant;
18. Information Request (Environmental authority application), issued on 12 June 2020, by the Queensland Department of Environment and Science to the property owner;
19. Report dated 17 November 2020, reference number TE201077, (On-site wastewater and effluent disposal system alternative design solution, 29 High Street, Russell Island), author Taylor Environmental (Australia) Pty Ltd;
20. Letter dated 6 November 2020 from Ian Larkman to Respondent;
21. Planning and Environment Court order dated 15 December 2020, File No 4703 of 2019;
22. Report dated 14 December 2020, Advanced Enviro-Septic, On-Site Wastewater Management Systems, author Steve Dennis;
23. Information Request dated 4 December 2020 from Respondent to Appellant;
24. Letter/submission dated 11 January 2019 from the Appellant to the Tribunal detailing the grounds for the Appeal;
25. Respondent's, file note, environmental health, timeline for directive/requirements issued by the Respondent for the property at 29-39 High Street, Russell Island between 11 February 2009 until 11 April 2019;
26. Infringement notice issued by Respondent to the property owner under section 440ZGC *Environmental Protection Act 1994*, dated 9 April 2019;
27. Interim relief order issued under section 506(2) of the *Environmental Protection Act 1994*, issued by the Planning and Environment Court, reference number 4703 of 2019;
28. Decision Notice compliance permit, issued by Respondent dated 5 September 2014, for an onsite wastewater treatment plant system replacement, reference number PD230950;
29. Decision Notice dated 7 March 2010 (Request to Change Development Approval – Section 369 SPA) issued by Respondent;
30. Request to change or cancel a condition – Section 3.5.33, issued by Respondent dated 7 January 2008;
31. Development Approval dated 5 February 2008 by Respondent for civil works – mixed use commercial, reference number DW000807;
32. Report dated 5 August 2008 (Addendum 2 to Sustainable On-Site Wastewater Management Plan for 29 High Street, Russell Island, August 2007), Job Number SSI8003, author Sustainable Solutions International Pty Ltd;
33. Decision Notice request to change or cancel a condition, issued by Respondent, dated 9 October 2008;
34. Development Approval for Building Work issued by Bartley Burns (Building Certifiers and Town Planners) dated 1 March 2007, for a shopping centre and retail development;
35. Letter dated 20 August 2007 from the Queensland Environmental Protection Agency to the property owners regarding the sewerage treatment activity for shopping centre development Russell Island;
36. Negotiated Decision Notice dated 5 November 2007 issued by Respondent for Mixed Use – Shop, Commercial and Refreshment Establishment;

37. Information Request response letter dated 12 December 2007, from Sustainable Solutions International Pty Ltd to the Respondent, regarding the proposed shopping centre complex (Reference PD221365);
38. Plumbing and Drainage Compliance Permit issued 19 December 2007 by Respondent for a Commercial Development at 35 High Street Russell Island, Council reference PD221365;
39. Department of Energy and Water Supply, Planning Guideline for Water Supply and Sewerage, April 2010, Chapter 6 amendment March 2014;
40. City of Gold Coast, water and sewage demand table;
41. SEQ Water and Sewerage Planning Guideline, Version 1.0;
42. Queensland Urban Utilities, Technical specification for national broadband network – incorporating optic fibres into water and sewerage systems, date May 2009;
43. The *Planning Act 2016*;
44. The *Plumbing and Drainage Act 2018*;
45. The *Plumbing and Drainage Regulation 2019*;
46. The *Environmental Protection Act 1994*.

Information requested by the Tribunal from parties to the Appeal:

24. On 19 January 2022 the Tribunal requested the Appellant to respond to the following questions which relate to the Planning and Environment Court order dated 15 December 2020, File No 4703 of 2019, namely:

*To understand how the appellant says this Tribunal has jurisdiction to hear this appeal, the Tribunal **directs** the appellant (under section 250 of the Planning Act 2016) to provide written submissions addressing the following:*

1. Under what part of Schedule 1 to the Planning Act 2016, the appellant says the Tribunal has jurisdiction to hear this appeal? In answering this question, the appellant is encouraged to provide a legal view going to the written submissions made by the Council (particularly in so far as the Council says the proposed works are not 'permit works').

2. How the appellant has complied with paragraph 3 of the Court Orders. In particular, if the appellant has replaced the existing Sewerage Treatment Plant and land application area with a new on-site wastewater treatment plant and land application area system authorised by the Environmental Authority (EA) for an Environmentally Relevant Activity 63 (ERA 63). Where compliance with that limb of paragraph 3(b) in the Court Orders is alleged, the Tribunal is also interested in receiving submissions going to the relationship between the application the subject of this appeal, and the EA approval for the ERA 63. (The Tribunal also requests that the Appellant provide a copy of that ERA 63 approval).

3. If compliance as mentioned in paragraph 2 above is not relied upon (for example, an alternative limb or limbs of the Court Orders is/are relied upon), the extent to which the appellant says MCU010476 (being, as the Tribunal understands it, the use approval which this Plumbing and Drainage Works application relates to and relies upon) is presently being acted upon.

25. On 3 March 2022 the Appellant provided a response to the Tribunal;

26. On 13 April 2022 the Tribunal requested Respondent to provide the following information:

- *A list of the planning, building, operational works and plumbing applications logged over the site including the application lodgement date and decision date; and*
- *Details on the enforcement action taken by Council i.e. including copies of any relevant show cause and enforcement notices and the date Council referred the matter to the Planning and Environment Court.*

27. On 5 May 2022, the Respondent provide a response to the Tribunal detailing the requested additional information.

Verbal submissions at the Hearing

28. No hearing was conducted.

Findings of Fact

1. The subject site is a 5,950 m² allotment located at 29-39 High Street, Russell Island and is zoned Local Centre under the Redland City Plan 2018.
2. The allotment has a battle axe shape with a 1,968 m² shopping centre located at the northern end of the allotment consisting of an IGA supermarket and deli and six (6) separate specialty shops.
3. The existing onsite wastewater treatment plant has failed.
4. Redland City Council has assessed the following development applications over the site:
 - (a) On 17 October 2007 a decision notice issued for a Material Change of Use for a mixed-use shop, commercial office and refreshment establishment. Council reference number MC010476.
 - (b) On 29 October 2007 a plumbing permit issued for a mixed-use shop, commercial office and refreshment establishment. Council reference number PD221365.
 - (c) On 5 November 2007 a negotiated decision notice issued for Material Change of Use for a mixed-use shop, commercial office and refreshment establishment. Council reference number MC010476.
 - (d) On 5 February 2008 operation works decision issued for mixed use commercial. Council reference number DW000807.
 - (e) On 1 March 2008 a development approval for building work issued for a shopping centre and mixed-use shops. Building work was completed in October 2008. Council's reference was BD143919.
 - (f) On 29 September 2008 a change decision notice issued for Material Change of Use for a mixed-use shop, commercial office and refreshment establishment. Council reference number MC010476.
 - (g) On 23 January 2009 a change decision notice issued for Material Change of Use for a mixed-use shop, commercial office and refreshment establishment. Council reference number MC010476.
 - (h) On 4 March 2010 a change decision notice issued for Material Change of Use for a mixed-use shop, commercial office and refreshment establishment. Council reference number MC010476.
 - (i) On 10 March 2011 a change decision notice issued for Material Change of Use for a mixed-use shop, commercial office and refreshment establishment. Council reference number MC010476.
 - (j) On 5 September 2014 Council issued a plumbing permit for the replacement of existing onsite wastewater treatment plant with Advanced Enviro-Septic System. Permit lapsed on 5 September 2016. Council reference number PD230950.
 - (k) On 27 February 2020 Council received a plumbing application for replacement of existing onsite wastewater treatment plant. The application lapsed due to the applicant's failure to respond to the Council request for further information. Council reference number PD230950.
 - (l) On 23 November 2020 Council received a plumbing application to replace the existing wastewater treatment plant using a performance solution. Permit refused 7 April 2021, Council reference number PD241326. Refusal subject of this appeal.
5. In the Planning & Environment Court of Queensland decision *Redland City Council v Canaipa Developments Pty Ltd & Ors* [2020] QPEC 65 dated 15 December 2020, the Court found, among other things, that 'For the [...] shopping centre a replacement system should have the design capacity to accommodate inflows greater than 4,200 L/day,³² such that an EA for ERA 63 is required'.
6. Order number 3 of the decision stated -
 3. Pursuant to s 505(5) of the *Environmental Protection Act 1994*, and subject to further order of the court, within a period of 9 months from the date of this order, the First and Second Respondents are to:
 - (c) cease all operation of the existing Sewerage Treatment Plant and the existing land application area underneath the car park on the Property; and
 - (d) either

- (iii) *remove and lawfully dispose of all wastewater produced on site by vacuum truck or other similar means; or*
- (iv) *replace the existing Sewerage Treatment Plant and land application area with a new on-site wastewater treatment plant and land application area system authorised by an Environmental Authority for Environmentally Relevant Activity 63.*

Application Process

1. Form 1 - Permit work application for plumbing, drainage and on-site sewerage work, Applicant Chris Taylor, Taylor Environmental (Australia) Pty Ltd, dated 23 November 2020;
2. Information Request dated 4 December 2020, from Respondent to Appellant, reference number PD241326. The information the Respondent was seeking related to the following headings -
 - Confirm what type of application is being lodged, and against which benchmarks;
 - Requirements for lodging a Performance Solution;
 - Confirmation that the proposed development is Permit Work under the P&D Act;
 - Suitability of the Advanced Enviro-Septic for commercial uses;
 - Supporting documentation for the use of certain products and the competent person(s);
 - Suitability of re-use of existing tank and Nova Clear systems as septic and transfer tanks;
 - Absence of control systems and alarms;
 - Requirement for additional site and soil evaluation report;
 - Suitability of Land Application Area;
 - Efficacy of Maintenance Conditions.
3. Information request response, dated 16 February 2021, from Appellant to Respondent;
4. Letter dated 3 March 2021 from Redland City Council to Taylor Environmental (Australia) Pty Ltd, reference number PD241326. Advising that there are a number of items in the Council Information Request of 4 December 2020 that have not been addressed by the Applicant;
5. Information request response, dated 24 March 2021, from Appellant to Respondent;
6. On 9 April 2021 the Respondent issued an Information Notice Refusal of Permit, to the Appellant reference PD241326, dated 9 April 2021;
7. On 13 April 2021 the Development Tribunal received an application for appeal Form 10 from the Appellant.

Reasons for the Decision

The Tribunal is satisfied that because an information notice was given, Schedule 1, Table 3, Item 3 of the PA offers a right of appeal.

However, where the operational and technical parameters for the sewerage and wastewater arrangements for the subject site have already been litigated, by various parties, including the two parties now the subject of this dispute, and directed by Final Order of the Planning and Environment Court the Tribunal is of the opinion that estoppel applies here – such this Tribunal is unable to hear the matter.

Richard Prout
Development Tribunal Chair

Date: 13 September 2022

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:

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