



Building and Development Dispute Resolution Committees—Decision

Sustainable Planning Act 2009

Appeal Number:	17-17
Applicant:	Guglielmo Mattiazzo
Assessment Manager:	Southern Downs Regional Council (Council)
Concurrence Agency: (if applicable)	N/A
Site Address:	Corner of New England Highway and Amiens Road Thulimbah described as Lot 1 on RP 177731 – the subject site

Appeal

Appeal under section 532 of the *Sustainable Planning Act 2009* (SPA) about Council giving an Information Notice under the Plumbing and Drainage Act 2002 (PDA) refusing to issue a Compliance Permit.

Date and time of hearing:	30 th May 2017 at 12:45 pm
Place of hearing:	Board Room Level 2 Arcadia Building 157 High Street Stanthorpe
Committee:	Bradley Hodgkinson – Chair Ian Mac Donald - Member Liam Pinese- Applicant's Representative
Present:	Paul Wood – Applicant's Representative Ken Harris - Council Representative Annette Doherty - Council Representative Glen Reid – Council Representative Wayne Nielsen - Council Representative

Decision:

The Building and Development Dispute Resolution Committee (Committee), in accordance with section 564 of the SPA **sets aside** the decision of Council on 23 March 2017 to issue an information notice and refusing to issue a Compliance Permit for on-site sewerage work and **changes** the information notice to an information request to be reissued by Council to the Applicant requesting the following items in addition to the Future-plus Environmental On-site Sewerage Evaluation Report dated 16 March 2017 be provided to Council for compliance assessment:

- *A detail of the method to evenly distribute a maximum daily inflow of 2,000 litre to each on-site sewerage treatment plant*
- *A Performance Solution that addresses-*
 1. *the land application areas (LAA) not being located wholly within the property boundaries of the subject property*
 2. *the set-back distances for LAA not complying with Tables T4 and T 7 of the Queensland Plumbing and Wastewater Code.*
 3. *the road corridor permit currency period until 31-12-2026*

Background

The appeal is in relation to an Information Notice issued under the Plumbing and Drainage Act 2002 (PDA) by Council to refuse an application for on-site sewerage work at the subject site.

The subject site is a 1,880 m² allotment that contains a café and delicatessen with a floor area of approximately 1,000m² and a sealed circulation roadway to internal car parks. A remaining small area of land between the circulation road and the northern end of the building is being used for the distribution of a portion of treated effluent generated at the subject site. The on-site sewerage treatment plant is located adjacent this area in the north-west portion of the property.

The effluent generated at the site is disposed of into approximately 733m² of landscaped areas in the carpark within the property and in the road corridor outside the property boundary. A permit (830/18) was issued by the Department of Transport and Main Roads (TMR) for the original LAA and consequently reissued a conditional Road Corridor Permit (RCP) RCP-TWBA1998 for landscaping and effluent disposal in the road corridor on 4 January 2017 effective until 31 December 2026.

The former Stanthorpe Shire Council '*Decision Notice Approval*' Condition 6 required treated effluent disposal in the state-controlled road reserve to occur only in the landscaping area to the extent shown on site plan. The condition also required the developer to

- *'be responsible for obtaining any necessary licenses, should peak design capacity trigger Environmental Protection Act (1994)*
- *Be responsible for testing treatment output to ensure effluent is treated to a secondary level, and also for reporting bacteriological output results to Main Roads Border (Warwick) District, on a quarterly basis. In the event that secondary treatment fails, treated effluent is not to be irrigated in the state-controlled road reserve, until it has undergone adequate treatment.*
- *Erect and maintain warning signs to ensure limited access and contact with the treated effluent irrigation area, and to inform people of the use of treated effluent within the irrigation area.*
- *Not undertake aerosol spraying in the state-controlled road reserve, in order to limit bacteria from becoming airborne. Main Roads requires the developer to use drop sprays for disposal of the treated effluent. Drop spraying is to occur only at night time (to limit human contact) when there is low wind velocity, and also where the ambient day time temperature is above 5^D during all of the following 12 hours (day time) period*
- *Ensure that the irrigation effluent does not become a nuisance*
- *Ensure that disposal of grey water occurs in accordance with Stanthorpe Shire Council local laws and the Sewerage Supply and Water Supply Act (1949).*

Council issued an Enforcement Notice to the property owners on 2 June 2016 in relation to failure and defects with the on-site sewerage facility.

As a consequence of the Enforcement Notice Project Urban lodged an application with Council for on-site sewerage work on 16 September 2016.

Council issued an Information Request to Project Urban for a completed Form 1 using the current version, request for the on-site sewerage plant to have Chief Executive Approval (CEA) and a request for the siting of the LAA to comply with the AS/NZS 1547:2000 and the Queensland Plumbing and Wastewater Code (QPWC).

Future-Plus Environmental (F-PE) responded to the Information Request with a revised On-site Sewerage Evaluation Report (Report) dated 16 March 2017 which indicated that the on-site sewerage plant is to be replaced with a CEA plant. The response from F-PE to the siting of the LAA indicated that the LAA has been previously approved by the former Stanthorpe Shire Council and is suitable for the site.

On 23 March 2017 Council made a decision to refuse to issue a Compliance Permit for the subject on-site sewerage work and issued an Information Notice stating the following reasons for the decision:

1. *'there is insufficient area for the Onsite Sewerage Treatment System to complete the treatment, uptake and absorption of the final effluent within the boundaries of the land as per AS/NZS 1547:2000 2.4.1 Performance Requirements.*
2. *The plans and information submitted to Council failed to demonstrate that all plumbing and drainage complies with the Standard Plumbing and Drainage Regulation (see Plumbing and Drainage Act 2002 s 82)'*

On 24 April the Applicant lodged an appeal with the Registrar of the Building and Development Disputes Resolution Committees stating the following grounds for appeal:

1. *'Disposal of treated effluent into the road reserve should be allowed to occur in accordance with the original DTMR permit (830/18) and the recently extended DTMR permit (500974 E76497)*
2. *The effluent treatment system and irrigation area was approved by Southern Downs Regional Council in 2003, with a clearance certificate provided in 2004. This system successfully functioned until 2016. Poor maintenance by a tenant resulted in issues with the system which triggered Council's enforcement notice. These issues related to ongoing maintenance requirements and some minor rectification works*
3. *The maintenance and rectification works proposed within the compliance assessment application and detailed in the Future Plus Report dated 6 September 2016 should be approved as they will achieve a viable solution in accordance with the system that successfully operated onsite between 2004-2016*
4. *Council issued an Information Request in relation to the Compliance Assessment application (copy of Council request attached). To address the concerns raised by Council, a response was prepared by Future Plus which included a proposal to convert the existing system into two (2) OzziKleen RP10's (see 14 March 2017 Future plus response).*
5. *The upgrade to the existing system (as detailed in the 14 March 2017 Future Plus response) was considered over and above the requirements of the 2003 approval and was proposed to appease the concerns on Council raised in the information request.*
6. *The applicant believes the maintenance and rectification works proposed in the original Compliance Assessment application were sufficient to achieve compliance with the original 2003 approval. On this basis we seek approval of the works detailed in the future Plus Environmental Report dated 6 September 2016.*
7. *Further works as detailed in the 14 March 2017 Future plus response may be further considered in discussion within the tribunal.*

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 Committees Registrar on 24 April 2017.
2. Written submissions provided by the Applicant's representative Liam Pinese
3. Written submissions provided by Council
4. The *Sustainable Planning Act 2009 (SPA)*

5. The Queensland Plumbing and Wastewater Code (QPWC)
6. The *Plumbing and Drainage Act 2002*(PDA)
7. The Standard Plumbing and Drainage Regulation 2003 (SPDR)
8. AS/NZS 1547:2000 On-site domestic-wastewater management
9. Verbal submission from the on-site Designer Paul Wood at the hearing
10. Verbal submission from the Applicant's representative Liam Pinese at the hearing
11. Verbal submissions from Council representatives at the hearing
12. Observations made during the site inspection
13. Ozzi Kleen Waste Water systems on-line product documentation.

Findings of Fact

The Committee makes the following findings of fact:

1. During the hearing Council advised they would agree to a proposal for on-site sewage disposal that was legal and workable.
2. Council advised that the existing conditions in the Decision Notice Approval could be amended to suite changes to the on-site sewerage facility.
3. The Road Corridor Permit TWBA 1998 (RCP) issued by the Department of Transport and Main Roads on 4 January 2017 includes subsurface irrigation of effluent in the subject landscape area.
4. The existing LAA appeared to be working adequately to disperse the effluent generated on the property with no evidence of ponding or overflowing of effluent to the surrounding environment at the time of the site inspection.
5. The Committee found that there is insufficient land available within the subject property to disperse the volume of effluent generated on the property as cited in item 1 of Council's Information Notice.
6. The Committee found that the response from F-PE to item (b) of Council's Information Request did not address the setback distances required by the QPWC.
7. The existing LAA irrigation lines are currently exposed on the surface of most of the landscape garden beds and the F-PE Report recommends that the LAA irrigation lines be installed a minimum of 150mm below the surface of the landscaping garden beds.
8. The existing on-site sewerage facility has effect under an approval given by the former Stanthorpe Shire Council. However the replacement of the existing on-site sewerage treatment plant and the installation of the LAA irrigation lines below surface level triggers the requirement to lodge an application for on-site sewerage work.

Reasons for the Decision

The existing treatment plant does not have CEA and is proposed to be upgraded with two treatment plants. Therefore the inflow to the treatment plants must be evenly distributed between each treatment plant unit. The Committee finds that the existing previously approved LAA appears to be working efficiently and an RCP has been renewed by TMR. The applicant

should be given natural justice by way of a performance solution and reassessment of the application.

The proposed maintenance and rectification works contained in the FTE Report dated 14 March address the requirements for a CEA sewerage treatment plant required in Council Information Request.

Bradley Hodgkinson

Building and Development Committee Chair

Date: 23 June 2017

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) 1800 804 833 Facsimile (07) 3237 1248