



Building and Development Dispute Resolution Committees—Decision

Sustainable Planning Act 2009

Appeal Number:	16- 12
Applicant:	Frank Packer
Assessment Manager:	Fraser Coast Regional Council
Concurrence Agency: (if applicable)	NA
Site Address:	18 Sunline Court Wondunna and described as Lot 3 on SP 160940 – the subject site

Appeal

Appeal under section 533 of the *Sustainable Planning Act 2009* (SPA) against an Enforcement Notice dated 21 March 2012, issued by Fraser Coast Regional Council under the *Plumbing and Drainage Act 2002* (PDA) regarding

- (a) Replacing the sand filter installed on the premises with a Chief Executive (CE) approved treatment plant that produces secondary grade quality effluent in accordance with the CE approval; and
 - (b) Obtaining the Council's approval to install the treatment plant referred to item (a) above; and
 - (c) Carry out all work necessary to the land application area to ensure that any effluent generated by the treatment plant remains in the land application area; and
 - (d) Submit a report to the Council detailing the work carried out at the premises;
By 23 April 2012
-

Date of hearing:	11:00am on 24 July 2012 - by written submissions
Place of hearing:	Office of Building Codes Queensland, Level 5/63 George Street, Brisbane
Committee:	Chair - Ian Mac Donald Committee Member - Chris Harris
Submitters:	Frank Packer – Applicant Fraser Coast Regional council–Respondent

Decision:

The Committee, in accordance with section 564 of the SPA **changes** the Enforcement Notice given by Fraser Coast Regional Council (FCRC) on 21 March 2012 by amending the section '*Requirements to Comply with this Notice*' with the following alternatives:

1. Rectify the existing installation to comply with the original approved Compliance Permit no. 056639 and conditions A - G and arrange with Council to inspect the rectification work prior to covering or backfilling. All work is to comply with the relevant legislation in force at the time of the approval.

Or

2. Make an application to Council to install an appropriate on-site sewerage facility in compliance with the *Plumbing and Drainage Act 2002* and the Queensland Plumbing and Wastewater Code.

Within 60 days from the date of this decision

Background

In October 2001 Hervey Bay City Council issued approval to Leddy Sergiacomi and Associates Pty Ltd for a Packer Wastewater System – Biological Sand Filter.

The relevant legislation at the time the above approval was issued was the *Sewerage and Water Supply Act 1949*, Standard Sewerage Law and the interim Code of Practice for On-Site Sewerage Facilities.

Hervey Bay City Council made the decision in 2001 to approve the above biological sand filter after corresponding with the Queensland Department of Natural Resources.

A plumbing application was lodged with Council on or about the 9 June 2005 for a new dwelling on the subject site by the property owners Andrew & Wendy Rivera. The application Form 2 nominates the on-site sewerage facility as a septic system. The approved plan includes details for a 3000 lt all purpose septic tank with a sand filter with sub-surface effluent disposal to be constructed on the subject site. However the application details do not nominate a particular brand/type of sand filter other than to state that “*sandfilter installed to manufacturers specification*”.

Compliance Permit 056639 with conditions A-G relative to the sand filter was issued to Andrew & Wendy Rivera on 21 July 2005 approving the lodged plans. An Inspection Certificate for plumbing and drainage work was subsequently issued to the applicants on 14 March 2006.

Early in 2010 problems with the functioning of the biological sand filter were detected and brought to the attention of Council and Mr. Frank Packer by the owners.

On 22 December 2010 Council issued a Show Cause Notice for the failed biological sand filter to Frank Packer.

On 8 February 2011 an Enforcement Notice was issued to Frank Packer.

On 7 March 2011 a Form 10 – Appeal Notice grounds for appeal and correspondence accompanying the appeal lodged with the Registrar from Frank Packer

On 4 July 2011 in accordance with section 564 of the SPA the Committee found the Enforcement Notice to have no force or effect.

On 17 October 2011 Council issued a Show Cause Notice for the failed biological sand filter to Frank Packer.

On 21 March 2012 an Enforcement Notice was issued to Frank Packer.

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 Registrar on 10 April 2012.
2. Written submissions of the applicant dated 4 April 2011 presented at hearing 17-11
3. Written submissions of Council '*Submissions of the Respondent*' presented at hearing 17-11
4. Verbal submissions from the Applicant (Mr. Frank Packer) at hearing 17-11 on 21 June 2011
5. Verbal submissions from Council (Mr. David James) at hearing 17-11 on 21 June 2011
6. Application for a Compliance Permit for plumbing and drainage at the subject site
7. Hervey Bay City Council Compliance Certificate for Plumbing/Drainage Work (Permit number: 056639)
8. Hervey Bay City Council's plumbing application file for the subject site
9. Written submission of the Applicant dated 5 July 2012
10. Written submission of Council dated 6 & 10 July 2012
11. Show Cause Notice dated 17 October 2011
12. Enforcement Notice dated 21 March 2012
13. Instrument of Sub-Delegation dated 27 October 2011
14. *Sewerage and Water Supply Act 1949* (SWSA), Standard Sewerage Law (SSL)
15. The Interim Code of Practice For On-Site Sewerage Facilities
16. *Plumbing and Drainage Act 2002* Reprint No. 1A revised edition (PDA 1A rv)
17. *Plumbing and Drainage Act 2002* Reprint No. 3C (PDA 3C)
18. On-Site Sewerage Code (July 2002)
19. AS/NZS 1547:2000 - On-site domestic-wastewater management

Findings of Fact

The Committee makes the following findings of fact:

- In 2001, Queensland plumbing and drainage was administered in accordance with the SSL under the SWSA.
- In accordance with the SSL type specification approval for a particular type of built item was given by the Chief Executive of the Department of Natural Resources.
- In accordance with the SSL a Chief Executive type specification approval was for 5 years, however a time period for approval given by a local government for a biological sand filter is not defined.
- The Packer Wastewater System does not have Chief Executive type specification approval.
- The SWSA and SSL was repealed in 2003 and replaced by the *Plumbing and Drainage Act 2002* (PDA)

- A compliance request for a compliance permit/certificate at the subject site was lodged with Council on 9 June 2005 and approved with conditions A-G for a domestic sand filter system on 21 July 2005.
- The approved plan includes condition that “*sand filter installed to manufacturers specification*” however a specific manufacturer was not nominated on the approved plan
- In 2005, Queensland plumbing and drainage was administered by the PDA and the On-Site Sewerage Code (July 2002)
- Section 96 (3) of PDA 1A rv permits a Local Government to give an approval on conditions for an on-site sewerage facility about building, installing, operating, servicing or maintaining the facility or about effluent disposal however the local government must give an Information Notice about the decision.
- Section 96 **Approval for on-site sewerage facilities** (2) (e) of the PDA 1A rv states –
 “ *The local government may give the approval only if-*
 (e) *if the facility includes an on-site sewage treatment plant (other than an on-site sewage treatment plant consisting only of a septic tank)-*
 . (ii) *to the extent the plant consists of a built item – the plant conforms with a type specification approval*”
- Section 101 **Codes and Standards for building, installing or operating on-site sewerage facilities** (4) of the PDA 1A rv states-
 “*To the extent an on-site sewerage facility consists of a built item (other than an on-site sewage treatment plant consisting only of a septic tank), a person must not build, install or operate the facility unless-*
 (a) *at the time the item was built, it had a current type specification approval; and*
 (b) *it is operated as required by the conditions of the approval*”
- PDA 1A rv Schedule Dictionary - “*built item means- (b) an element of an on-site sewage treatment plant, if the element is wholly built on the premises where the plant is, or is to be, used*”
- The On-Site Sewerage Code (July 2002) Section 6.9 requires sand filters of all types to be designed with a size appropriate to their intended application and installed/constructed, operated and maintained in accordance with the designer’s and/or manufacturers instruction et.al.
- The On-Site Sewerage Code (July 2002) Section 11.2 (b) allows a built item to be constructed without type specification provided it is designed in accordance with AS/NZS 1547:2000 and the effluent is discharged to a sub-soil (trench type) land application area.
- The On-Site Sewerage Code (July 2002) Section 7.9 references AS/NZS 1547:2000. Section 4.5.7 which permits construction and installation of non-standard wastewater treatment units and primary or secondary effluent treatment systems to be accepted provided they meet the performance requirements of AS/NZS 1547:2000.
- The On-Site Sewerage Code (July 2002) Section 5 Design-Land Application Facilities sets out the performance requirements, performance criteria and the requirements for design, siting and sizing of a land application facility. The deemed to satisfy requirements include Appendix 4.2A which sets out the requirements for disposal of the various types of effluent quality
- Council accepted an endorsed commissioning report from Frank Packer installer of the domestic biological sand filter treatment system, stating the system has been installed as per engineered drawings, the system has been tested and is fully operational

- Council accepted a designers certification statement from Clifford Searle of Water Wise Design Pty Ltd certifying the wastewater treatment unit and land application system is in conformity with the requirements of A.S 1547-2000. The statement also certifies that the designer inspected the on-site sewerage facility installation at the appropriate stages
- The Packer Wastewater System Biological Sand Filter was not constructed in accordance with the Leddy Sergiacomi and Associates Pty Ltd Packer Wastewater System – Biological Sand Filter approved by Council in 2001 and conditions A-G of the compliance permit have not been implemented or maintained.
- The sand filter has failed and gives off offensive odours

Reasons for the Decision

1. The Applicant is the installer of the on-site sewerage facility at the subject site and Section 116 (2) of the PDA 3C allows a Local Government to issue an Enforcement Notice to the person who performed the on-site sewerage work if the local government reasonably believes the work does not comply with the PDA and section 116 (3) of the PDA 3C indicates the Notice may among other things require the person to alter or repair the on-site sewerage work.
2. Section 82 of the PDA 1A rv states: '*(1) A person who carries out any plumbing or drainage work must ensure the work complies with the Standard Plumbing and Drainage Regulation and (2) Subsection (1) applies even if a compliance permit given by a local government or public sector entity is contrary to the Standard Plumbing and Drainage Regulation*'.
3. The Committee agrees that since the adoption of the PDA in 2003 a Local Government may approve a sand filter that is part of a septic system to enhance the effluent quality without Chief Executive approval provided, the effluent is discharged to a compliant subsurface land application area.
4. The Committee established that the sand filter has not been constructed in accordance with the approved plans, the septic tank sand filter has failed and it appears that the conditions of the compliance permit have not been complied with.

Ian MacDonald
Building and Development Committee Chair
Date: 03 August 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 Housing and Public Works
PO Box 15009
CITY EAST QLD 4002
Telephone (07) 3237 0403 Facsimile (07) 3237 1248