



Development Tribunal – Decision Notice

Planning Act 2016, section 255

Appeal number:	24-002
Appellant:	Michael Hillard
Respondent:	Moreton Bay Regional Council
Site address:	59 Walsham Street, Bray Park Qld 4500 and described as Lot 103 on SP 309551 – the subject site

Appeal

This is an appeal made under the *Planning Act 2016* (Qld) (PA) schedule 1, section 1(5), table 3 and item 3(b) against the Council's decision to issue an action notice under section 78 of the *Plumbing and Draining Regulation 2019* (Qld) (PDR). The Appellant appeals against the validity of the action notice, which sets out the following as matters of non-compliance and required action:

- a. Completing a testing and commissioning report (Form 5) required under sections 76 and 77 of the PDR.
 - b. Conforming with sub metering requirements under the utility operator's guidelines, specifically the implementation of a sub-meter as required by Unitywater OP8131 – Sub-Metering Policy.
 - c. The Overflow Relief Gully (ORG) must conform with AS/NZS 3500.2.2018 Section 4.6.6.7 and be a minimum of 75mm above the finished surface level.
 - d. Ensuring that any drain located under or inside a building shall only serve fixtures within that building.
-

Date and time of hearing:	28 June 2024
Place of hearing:	The subject site
Tribunal:	Amelia Prokuda—Chair Bill Watson—Member
Present:	Michael Hillard—Appellant Greg Moore—Respondent's representative Kelvin Mason—Respondent's representative

Decision:

The Development Tribunal (Tribunal), in accordance with section 254(2)(c) of the *Planning Act 2016* (PA) decides to replace the decision of the assessment manager to issue the action notice issued on or about 17 January 2024 (Action Notice) with a decision to issue an action notice imposing the following requirements:

- i. The Overflow Relief Gully (ORG) must conform with AS/NZS 3500.2.2018 Section 4.6.6.7 and be a minimum of 75mm above the finished surface level.
- ii. Ensuring that any drain located under or inside a building shall only serve fixtures within that building.
- iii. Unless the Appellant has a reasonable excuse, it must comply with the action notice the subject of this decision within 20 business days.

Background

2. The subject site is improved by a single dwelling facing the Walsham Street frontage and a secondary unit (containing a kitchenette and small bathroom) at the rear of the block. The buildings are not connected. The Appellant submitted that the owners of the subject site had constructed the secondary dwelling to accommodate a family member who is terminally ill.
3. On or about 10 October 2023, the Appellant lodged a permit work application for plumbing, drainage and on-site sewerage work (Form 1). The application was for work to be carried out on a secondary building at the premises under a fast-track application assessment.
4. On or about 12 October 2023, Council issued the permit (PL/2023/2765).
5. On or about 10 January 2024, Council issued an inspection report confirming that a satisfactory drainage inspection had been carried out. The report also stated that the work inspected could not be used until an Inspection or Final Inspection Certificate had been issued by the assessment manager.
6. On or about 17 January 2024, Council issued the Action Notice to the Appellant. In summary, the Action Notice:
 - (a) advised that an unsatisfactory domestic plumbing final inspection for the secondary dwelling had been carried out at the subject site;
 - (b) stated that the Council reasonably believed that the work inspected did not comply with the PDR Part 2 Codes and code requirements because:
 - i. a testing and commissioning report (Form 5) was required under sections 76 and 77 of the PDR (Requirement 1);
 - ii. sub-metering requirements were required to conform with the utility operator's guidelines – sub-meter required as per the Unitywater OP8131 – Sub-metering Policy (Requirement 2);
 - iii. the ORG was required to conform with AS/NZS 3500.2.2018 Section 4.6.6.7 and be a minimum of 75mm above the finished surface level (Requirement 3);
 - iv. any drain located under or inside a building must only serve fixtures within that building and drainage from the secondary dwelling cannot pass under the primary dwelling (Requirement 4).

7. On 22 January 2025, the Appellant filed a Notice of Appeal against the decision to issue the Action Notice.

Appellant's grounds for appeal

8. At the hearing of the appeal, the Appellant relied on the following grounds:
 - (a) there was no sub-meter required because the subject site was a single title, not a strata title (and the Appellant had obtained advice from Unitywater to that effect);
 - (b) on 10 January 2024, Council issued a satisfactory drainage inspection report; and
 - (c) as the secondary building is on the same title as the primary dwelling and the owners have no intention of 'renting out' the secondary building, and the drainage is exactly the same drainage as that which would exist if the buildings were connected by an extension, the work complied with the Plumbing Code of Australia (PCA) requirements.

Council's grounds in support of the decision to issue the Action Notice

9. Prior to the hearing, Council provided relevant documents to the Tribunal, including a site inspection report containing photographs and notes regarding the alleged unacceptable drainage work and reasons why.
10. At the hearing of the appeal, Council relied on the following grounds:
 - (a) a sub-meter was required for a number of reasons, including that the building approval for the demountable building classified it as class 1a – New demountable dwelling house – one storey;
 - (b) even though the Council issued a satisfactory drainage inspection report, the issues the subject of the Action Notice only came to Council's attention after the satisfactory report was issued; and
 - (c) the drainage works are required to comply with the performance requirements of the PCA, in which the deemed-to-satisfy provisions require the design, construction, installation, replacement, repair, alteration and maintenance of a sanitary drainage system must be in accordance with AS/NZS 3500.2. The AS/NZS 3500.2, section 3.2 requires any drain located under or inside a building shall only serve fixtures within that building.
11. During the hearing, Council raised other issues about the plumbing and drainage works carried out on the subject site that came to Council's attention after the Action Notice was issued. However, the Tribunal has not considered those issues in deciding the appeal as they did not relate to the decision the subject of the appeal, namely the decision to issue the Action Notice. The Tribunal has confined its consideration to the matters stated in the Action Notice.

Steps taken by the parties following the hearing

12. At the conclusion of the hearing, the Tribunal made directions intended to narrow the issues in dispute.
13. On or about 18 July 2024, the Appellant's private certifier issued a Corrected Amended Decision Notice for the building approval for the secondary building, classifying it as class 1a New Detached Dwelling Addition.

Jurisdiction

14. The Tribunal has jurisdiction under schedule 1, section 1(5), table 3 and item 3(b) of the PA.
15. The Tribunal is satisfied that the decision the subject of the appeal is a decision under the PDA, for which an information notice was given.

Decision framework

16. The onus rests on the Appellant to establish that the appeal should be upheld (section 253(2) of the PA).
17. 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 (section 253(4) of the PA).
18. The Tribunal may nevertheless (but need not) consider other evidence presented by a party with leave of the tribunal or any information provided under section 246 of the PA (pursuant to which the registrar may require information for Tribunal proceedings)
19. The Tribunal is required to decide the appeal in one of the ways mentioned in section 254(2) of the PA.
20. Under section 251(2)(a), the Tribunal must decide the appeal based on the laws in effect when the application was properly made. However, under section 251(3) of the PA, the Tribunal may give weight that it considers appropriate in the circumstances to any new laws.
21. The Appellant lodged the application on or about 10 October 2023 and the permit was issued on 12 October 2023.
22. The 2022 version of the Plumbing Code of Australia came into effect on 1 May 2023 and remains current. Consequently, the Tribunal must decide the appeal based on the 2022 version of the Plumbing Code of Australia.

Material considered

23. The material considered in arriving at this decision was:
 - (a) Form 10 - Notice of appeal, grounds for appeal and correspondence accompanying the appeal filed 22 January 2024.
 - (b) Form 1 - Permit work application for plumbing, drainage and on-site sewerage work.
 - (c) Form 17 - Permit for plumbing, drainage and on-site sewerage work.
 - (d) Form 7 - Notification of responsible person.
 - (e) Inspection Report for PL/2023/2765.
 - (f) Action Notice for PL/2023/2765.
 - (g) Decision Notice – Approval – BA2302.
 - (h) Application Review Findings (Reference PL/2023/2765) (undated).
 - (i) Site Inspection Report dated 17 May 2024.
 - (j) Moreton Bay Regional Council General Meeting – 521 – Minutes – Item 4.6.

- (k) Pr8132 - Specification for Sub-Metering.
- (l) OP8131 - Sub-Metering Policy.
- (m) Active Building Approvals Plans BA2302 and Decision Notice – Approval issued by Active Building Approvals dated 13 October 2023.
- (n) Various photographs of the subject site and works on the subject site.
- (o) Corrected Amended Decision Notice – Approval – BA2302 issued by Active Building Approvals dated 18 July 2024.
- (p) Email from Council to the Appellant and Tribunal dated 5 November 2024.
- (q) Email to Ms A Trueman to Council dated 6 November 2024.

Findings of fact

24. The Tribunal makes the following findings of fact:

- (a) Under section 150 of the PDA, a regulation may provide for the giving by a local government or an inspector of a notice (an action notice) to the responsible person for plumbing and drainage work to take action of the type prescribed by regulation in relation to the work.
- (b) Under section 78 of the PDR, an inspector may give an action notice to the responsible person for the work carried out under a permit issued by a local government if:
 - i. the inspector has inspected the relevant work and is not satisfied that the work is compliant; or
 - ii. the inspector has required the responsible person to ensure a competent person tests or commissions plumbing or drainage resulting from, or affected by, the relevant work and either of the following applies:
 - (1) the inspector considers the responsible person has contravened section 77(4) of the PDR, which sets out the requirements for a testing or commissioning report;
 - (2) the testing and commissioning report prepared by the competent person states that the work, or part of the work, does not comply with the code requirements for the work
(among other triggers).
- (c) 'Compliant' means that the work complies with the matters prescribed by regulation (section 69(2) of the PDA), specifically:
 - i. the code requirements for the work; and
 - ii. each thing installed as part of the work is a thing to which any of section 65(1)(a) to (f) of the PDA applies; and
 - iii. for work carried out under a permit, the work –
 - A. complies with the permit and any conditions of the permit; and
 - B. is consistent with the approved plans for the work (section 61 of the PDR).

- (d) For plumbing and drainage work, the code requirements are the requirements about plumbing and drainage work under:
 - i. the Queensland Plumbing and Wastewater Code; and
 - ii. a provision of the PCA prescribed by regulation; and
 - iii. a part of the Queensland Development Code prescribed by regulation; and
 - iv. the local laws of a local government relating to plumbing or drainage that are not inconsistent with the PDA (section 9(1) of the PDA).
- (e) In this case, the parties agree that inspections were carried out (on 10 and 17 January 2024). It is clear from the evidence that the inspector was not satisfied that the work complied with the code requirements (in particular, the requirements of Queensland Plumbing and Wastewater Code and section C of the PCA) for the reasons relied on by Council in paragraph 10 above.
- (f) Under section 79 of the PDR, if the inspector decides to give an action notice, the inspector must give the notice within two business days after carrying out the inspection. The Tribunal is satisfied that the Action Notice was issued in time (namely, on the same day as the inspection on 17 January 2024).
- (g) The action notice may require the responsible person to take stated action. In this case, the action notice required the Appellant to provide a testing and commissioning report (form 5) and carry out (alleged) rectification works.

Requirement 1 - Testing and commissioning report (Form 5)

- (h) Under section 76(1) of the PDR, an inspector may require the responsible person for the work to test or commission plumbing and drainage resulting from, or affected by, the work in the inspector's presence.
- (i) Section 78 of the PDR only authorises an inspector to issue an action notice in relation to a testing and commissioning report in the circumstances specified in paragraph i above.

Requirement 2 - Sub-meter

- (j) The Queensland Plumbing and Wastewater Code imposes requirements with respect to the installation of water meters.
- (k) Unitywater OP8131 Sub-Metering Policy requires that Class 1 secondary dwellings establish a sub-meter network in accordance with the policy. A 'secondary dwelling' will occur where there are two dwellings under one property title. Unitywater will not read or bill from any sub-meters. It will only charge for the consumption measured by the master meter at the property. As at the date of the Action Notice, no sub-meter network was installed for PL/2023/2765.
- (l) In light of the Corrected Amended Decision Notice dated 18 July 2024 (which had the effect of changing the class of the building from a 'Class 1a New Secondary Demountable Dwelling House' to a 'Class 1a New Detached Dwelling Addition – 1 storeys', Council accepted that there was no longer a dispute about the sub-metering requirement (Email from Council to the Appellant and Tribunal dated 5 November 2024).
- (m) Council advised that the only outstanding issue for the Tribunal to consider is whether the sanitary drainage complies with the performance requirements of the PCA, in which the deemed-to-satisfy provisions require the design, construction,

installation, replacement, repair, alteration and maintenance of a sanitary drainage system must be in accordance with AS/NZS 3500.2. The AS/NZS 3500.2, section 3.2 requires any drain located under or inside a building shall only serve fixtures within that building.

Requirements 3 and 4 - Sanitary drainage

- (n) The purpose of the *Plumbing and Drainage Act 2018* (PDA) is to regulate the carrying out of plumbing and drainage work in a way that reduces risks to public health, safety and the environment. This purpose is to be achieved by way of requiring plumbing or drainage work to be carried out in compliance with code requirements.
- (o) Relevantly for this appeal, section 9 of the PDR prescribes sections A and C of the PCA.
- (p) Subsection (1) of subpart A2G1 (Compliance) of part A2 (Compliance with the NCC) of part A (Governing Requirements) of the PCA provides that compliance with the PCA is achieved by compliance with the Governing Requirements and the Performance Requirements. The Governing Requirements contain requirements about how the Performance Requirements must be met.
- (q) Subsection (2) of subpart A2G1 (Compliance) provides that the Performance Requirements are satisfied by one of:
 - (a) *Performance Solution*
 - (b) *Deemed-to-Satisfy Solution*
 - (c) *A combination of (a) and (b)*
- (r) Subpart A2G2(2) provides that if a Performance Solution is used it must be shown to comply through one or a combination of the following Assessment Methods:
 - (a) *Evidence of suitability in accordance with Part A5 that shows the use of a material, product, plumbing and drainage product, form of construction or design meets the relevant Performance Requirements.*
 - (b) *A Verification Method including the following:*
 - (i) *The Verification Methods provided in the NCC.*
 - (ii) *Other Verification Methods, accepted by the appropriate authority that show compliance with the relevant Performance Requirements.*
 - (c) *Expert Judgement.*
 - (d) *Comparison with the Deemed-to-Satisfy Provisions.*
- (s) Part C2 (Sanitary drainage systems) of the PCA provides:

Introduction to this Part

This Part sets out the requirements for any part of a sanitary drainage system of a property including from sanitary fixtures, appliances and sanitary plumbing systems from the point of connection to an approved disposal system.
- (t) The Performance Requirements for Part C2 are C2P1 to C2P7.
- (u) Subsection (1) of C2D1 (Deemed-to-Satisfy Provisions) of part C provides:

Where a Deemed-to-Satisfy Solution is proposed, Performance Requirements C2P1 to C2P7 are satisfied by complying with C2D2 to C2D5.

- (v) Of those Deemed-to-Satisfy requirements, only C2D4 (General Requirements) is at issue in 'Requirements 3 and 4' of the action notice under appeal.
- (w) Deemed-to-Satisfy provision C2D4 provides—

A sanitary drainage system must be in accordance with AS/NZS 3500.2.
- (x) Schedule 2 (Referenced documents) of the PCA provides that AS/NZS 3500 Part 2 of 2021 (Plumbing and drainage: Sanitary plumbing and drainage) is referenced for C2D4.
- (y) Section 4.6.6.7 (Height above surrounding ground) of AS/NZS 3500.2.2021 requires overflow relief gullies to be a minimum of 75mm above finished surface level.
- (z) Section 3.2 of AS/NZS 3500.2.2021 requires that any drain located under or inside a building shall only serve fixtures within that building.

3.2 Location of drains

Any drain located under or inside a building shall only serve fixtures within that building.

NOTE 1 Drains should be located external to the building wherever practicable.

NOTE 2 The sanitary drainage system should accommodate the range of differential soil movement in accordance with the soil movement classified on each individual site.

- (aa) Pursuant to subsection (2) of subpart A2G1 of the PCA, compliance with the Deemed-to-Satisfy Solution is not the only way to comply with the Performance Requirements Compliance can also be demonstrated through a Performance Solution or a combination of a Performance Solution and a Deemed-to-Satisfy Solution. A Performance Solution must be shown to comply through one or a combination of the Assessment Methods (see paragraph 24(r) above).
- (bb) The Appellant has not adduced any evidence of satisfaction of any of the Assessment Methods.
- (cc) Having considered all of the evidence including photographs attached to the Site Inspection Report and submissions of the parties, and with the benefit of the view (site inspection) to contextualise the evidence, the Tribunal is of the view that the sanitary drainage system in fact does not comply with AS/NZS 3500.2.2021. In particular, the Tribunal finds that:
 - i. The ORG as constructed is less than 75mm above finished surface level
 - ii. Drainage from the addition passes under the primary dwelling, with the result that those parts of the sanitary drainage serve fixtures other than fixtures within the primary dwelling, which does not comply with section 3.2 of the standard.

Reasons for the decision

- 25. The Tribunal is not satisfied that the decision to issue the Action Notice in respect of Requirement 1 (Testing or Commissioning Report) complies with section 78 of the PDR. There is no evidence of Council previously requiring a testing and commissioning report to be completed. The Tribunal acknowledges that there is a power to require the report under section 76 of the PDR. However, the initial requirement to complete the report cannot form

part of an action notice. The power to require the testing and commissioning report under section 76 is a separate power from the power to issue an action notice under section 78.

26. For the reasons set out in paragraph 24(l) above, the Tribunal is not required to determine whether the decision to issue the Action Notice in respect of Requirement 2 (Sub-meter) is valid.
27. For the reasons set out in paragraph 24(bb) above, the Tribunal is of the view that the decision to issue the Action Notice in respect of Requirements 3 and 4 is valid. While it is unfortunate, there is nothing in the legislation that precludes Council from issuing an action notice after issuing a satisfactory drainage inspection report.
28. Based on the evidence about the site supported by the Tribunal's site inspection and the absence of evidence of completion of one of the Assessment Methods specified in the PCA demonstrating compliance with the PCA Performance Requirements for sanitary drainage, the Tribunal is of the view that the sanitary drainage system in fact does not comply with those requirements.
29. The Tribunal makes the following orders:
 - (a) the decision to issue the Action Notice is replaced by a decision to issue an action notice imposing the following requirements:
 - i. The Overflow Relief Gully (ORG) must conform with AS/NZS 3500.2.2021 Section 4.6.6.7 and be a minimum of 75mm above the finished surface level.
 - ii. Ensuring that any drain located under or inside a building shall only serve fixtures within that building.
 - iii. Unless the Appellant has a reasonable excuse, it must comply with action notice the subject of this decision within 20 business days.

Amelia Prokuda
Development Tribunal Chair

Date: 31 October 2025

Appeal rights

Schedule 1, Table 2, item 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 1800 804 833

Email: registrar@epw.qld.gov.au