

Author: J McKee
Phone: 40641125
Ref: s78B(2) - Privacy



19 August 2014

CTPI 49-Sch4

Dear CTPI 49-Sch4

s78B(2) - Privacy Department of Natural Resources and Mines officers Jennifer McKee and Stephen Bertocchis78B(2) - Privacy property (Lot 4 on Plan RP886341) on 15 August 2014, and specifically to the crossing that has been constructed in McPaul Creek within the last two years.

As you are aware the purpose of the inspection was to investigate a complaint received by the department about the crossing, and the possibility that its location and design has caused erosion to s78B(2) - Privacy property.

s78B(2) - Privacy

Prior to taking this matter any further, the department invites you to 'show cause' why a compliance notice under the *Water Act 2000* should not be given, by allowing you to provide a written submission by a suitably qualified person (such as a Registered Professional Engineer of Queensland) with a statement that supports your opinion that s78B(2) - Privacy has not caused erosion to McPaul Creek.

Please find attached a show cause notice, issued under section 779 of the *Water Act 2000*. You will note that a submission is required by 10 September 2014.

If you have any questions, please do not hesitate to contact Jennifer McKee, A/Senior Project Officer, of the department's South Johnstone office, on 4064 1125 or Jennifer.mckee@dnrm.qld.gov.au.

Kind Regards

CTPI 49-Sch4 - Signature

Jennifer McKee
A/Senior Project Officer
Water Management and Use
North Region

SHOW CAUSE NOTICE

WATER ACT 2000 – s779

1. Citation

This notice may be cited as the notice to show cause why a Compliance Notice under section 780 of the *Water Act 2000* should not be given to CTPI 49-Sch4 for damage caused to McPaul Creek by excavating and placing fill without a permit within Lot 4 on Plan RP886341.

2. Power to give notice

2.1 This notice is given under section 779 of the *Water Act 2000* (Qld) (the 'Act').

3. Reference to Location

3.1 A reference to Location in this notice is a reference to:

- (i) Crossing – in McPaul Creek, within Lot 4 on Plan RP886341 (17°16'04.51"S 145°55'57.11"E).
- (ii) Erosion - right bank of McPaul Creek, within Lot 5 on Plan SP140619 (17°16'04.81"S 145°55'56.97"E)

4. Reference to person

4.1 A reference to a person in this notice is a reference to the person/s specified in section 5 of this notice.

5. Persons to whom this notice is given

5.1 This notice is given to:

CTPI 49-Sch4

6. Proposed action

6.1 The chief executive proposes to give the person a Compliance Notice under section 780 of the Act for contravening a provision of the Act.

6.2 The Compliance Notice will include the reasonable steps the person must take to rectify the matter.

7. Grounds for the proposed action

7.1 The person is the owner of Lot 4 on Plan RP886341.

7.2 The person has constructed the crossing within McPaul Creek.

8. The facts and circumstances forming the basis of the grounds

- 8.1 The person does not hold a Riverine Protection Permit under section 266 of the Act.
- 8.2 Erosion has occurred upstream of the crossing in McPaul Creek within Lot 5 on Plan SP140619.
- 8.3 The design and position of the crossing may have contributed to the erosion of McPaul Creek.

9. Submission may be made about the show cause notice

- 9.1 The person may make a submission about this show cause notice.
- 9.2 The submission must include a statement by a suitably qualified person that the crossing has or has not contributed to the erosion in McPaul Creek.

10. How the submission may be made

The submission must be made in writing.

11. Where the submission may be made or sent

The submission must be sent to:

Department of Natural Resources and Mines
 Attn: Jennifer McKee
 PO Box 20
 SOUTH JOHNSTONE QLD 4859

12. The day and time within which the submission must be made

The submission must be received at the above address by close of business on Wednesday 10 September 2014.

Signed:

CTPI 49-Sch4 - Signature

Jennifer McKee
 A/Senior Project Officer, Water Management – North Region
 Delegate of the chief executive

Dated at South Johnstone this 19 August 2014.

RTI DL RELEASE - DNRM

Notice

Water Act 2000

Compliance notice

This compliance notice is issued by the administering authority pursuant to section 780 of the Water Act 2000.

10 October 2014

CTPI 49-Sch4

Our reference:

Re: Excavating or placing fill without a permit in McPaul Creek

TAKE NOTICE that under the *Water Act 2000* (the Act) a compliance notice is issued to you by the administering authority. The administering authority is the Chief Executive of the Department of Natural Resources and Mines (referred to below as the Department).

This compliance notice is issued in respect to the activities of at land described as McPaul Creek within Lot 4 on Plan RP886341, (the "said premises").

A. Grounds

The compliance notice is issued under section 780 of the Act on the following grounds:

- The Department has a reasonable belief that you have contravened a provision of the Act.
 - Namely, you are in breach of section 814 of the Act, which states
 - (1) A person must not do any of the following activities unless the person has a permit under section 269 to carry out the activity—
 - (a) excavate in a watercourse, lake or spring;
 - (b) place fill in a watercourse, lake or spring.
- Maximum penalty – 1665 penalty units (or \$183 150)

The facts and circumstances forming the basis for these grounds are:

- The Department received information advising that a crossing had been constructed in McPaul Creek at the said premises and it had allegedly caused erosion to the banks of the creek within Lot 5 on Plan SP140619.
- There is no existing Riverine Protection Permit issued under section 266 of the Act for this activity.
- Departmental officers carried out two site inspections (08 August 2014 and 15 August 2014) of the said premises, and gathered anecdotal evidence from both the owner of Lot 5 on Plan SP140619 and [CTPI 49-Sch4].
- The Department issued a show cause notice, dated 19 August 2014, under section 779 of the Act stating that the chief executive proposed to give [CTPI 49-Sch4] a Compliance Notice under section 780 of the Act, unless it could be demonstrated by a suitably qualified person that the crossing had not caused the erosion in McPaul Creek.
- The Department received a response from [CTPI 49-Sch4] (RPEQ) of McIlveen Associates Pty Ltd, dated 8 September 2014, to the show cause notice. [CTPI 49-Sch4] listed a number of statements (similar to the anecdotal evidence provided by [CTPI 49-Sch4] during the site inspection) and concluded that the Minimum Requirements of the Riverine Protection Permit Exemption Requirements document had been met.
- The Department received unsolicited submissions from the owner of Lot 5 on Plan SP140619, including:
 - Hydraulic calculations from [CTPI 49-Sch4] (RPEQ) of James Cook University [CTPI 49-Sch4] [CTPI 49-Sch4] concluded that the capacity of the crossing culvert is less than the original channel.
 - Hydraulic report from [CTPI 49-Sch4] (RPEQ) of the Cairns River Improvement Trust [CTPI 49-Sch4] [CTPI 49-Sch4] concluded that the crossing is inadequate to carry regular flood flows as the insufficient culvert had increased the flow velocity three times. The report also concluded that the erosion upstream of the crossing can be attributed to the insufficient culvert size.
- From the evidence collected as part of the assessment of this compliance matter, the Department has determined that the minimum requirements of the Riverine Protection Permit Exemption Requirements document have not been met by [CTPI 49-Sch4] therefore the activity is considered an offence under the Act.
- It is believed that the matter relating to the contravention is reasonably capable of being rectified.

B. Requirements

You are required to do the following:

Requirement	Time frame
For the purposes of this notice, a 'suitably qualified person' means a Registered Professional Engineer of Queensland with experience in hydrology, water engineering or similar. <ul style="list-style-type: none"> • Rehabilitate the eroded areas in the bed and banks of 	Within sixty (60) business days

<p>McPaul Creek upstream of the crossing (within Lot 5 on Plan SP140619) to their previous profile, as directed by a suitably qualified person; AND</p> <ul style="list-style-type: none"> Remove the existing crossing and rehabilitate the bed and banks of McPaul Creek to their previous profile, as directed by a suitably qualified person; OR Increase the culvert capacity to ensure adequate flows in line with original channel dimensions and instate suitable erosion protection measures upstream and downstream of the crossing, as directed by a suitably qualified person; OR Replace the existing crossing with a bed level crossing with suitable erosion protection measures upstream and downstream of the crossing, as directed by a suitably qualified person. 	
<ul style="list-style-type: none"> Maintain all rehabilitation to achieve bed and bank stability. 	<p>Until self-sustaining</p>

TAKE NOTICE that

- The requirements of the compliance notice take effect immediately upon service of the notice.
- This notice remains in force until further notice from the administering authority.
- The person issued this notice must comply with this compliance notice, unless the person has a reasonable excuse. Failure to comply with this notice may result in further statutory action, for which the maximum penalty is 1665 penalty units (or \$183 150).
- If the person issued this notice contravenes the compliance notice by not doing something, the chief executive may do the thing. All expenses incurred in the doing the thing will be recovered by the chief executive as a debt due to it by the person (including interest at the rate stated in the *Water Regulation 2002*).

Please note – The person issued this notice must obtain land owners consent for any activity required to fulfil the requirements of this notice.

C. Appeal rights

You may apply for an internal review of the decision to give a notice to you, within 30 business days after the day the compliance notice is Or I'll just save it to edgiven to you. Further information detailing the process of an internal review is enclosed with this notice.

This information regarding review and appeal under the Act is intended as a guide only. You may have other legal rights and obligations and should seek and be guided by your own legal advice.

Should you have any queries in relation to this notice, please contact Jennifer McKee, Project Officer of the Department on telephone number 4064 1125.

Signature:

CTPI 49-Sch4 - Signature

Date: 10/10/2014

Kerry Sultana

A/Senior Project Officer

Authorised Officer under the *Water Act 2000*

Water Services, North Region

Enquiries:

Phone: 4447 9141

Facsimile: 4447 9195

Email: RiversNorth@dnrm.qld.gov.au

RTI DL RELEASE - DNRM