



Building and Development Dispute Resolution Committees—Decision

Sustainable Planning Act 2009

Appeal Number:	32 - 11
Applicant:	Colin Wheat on behalf of RSL Qld War Veterans Homes Ltd
Assessment Manager:	Sunshine Coast Regional Council (the Council)
Concurrence Agency: (if applicable)	N/A
Site Address:	96 Tantula Road, Alexandra Headlands and described as Lot 18 on SP165175 – the subject site

Appeal

Appeal under section 533 of the *Sustainable Planning Act 2009* (SPA) against an Enforcement Notice dated 11 March 2011, issued by Sunshine Coast Regional Council under section 117 of the *Plumbing and Drainage Act 2002* (PDA) regarding the installation of backflow prevention devices at the subject property:

1. Reduced pressure zone devices to be installed on cold water supply to the kitchen dishwashers in Cassowary, Tallowood, Taramin, Pademelon and main kitchen.
2. Reduced pressure zone devices to be installed on hot and cold water supply to pan santiziers in dirty utility rooms situated in Cassowary, Tallowood, Taramin, and Pademelon.
3. Reduced pressure zone devices to be installed on hot and cold water supply to detergent injection system over hand wash sink in main kitchen, level 1 cleaner's room sink and cleaner's room sink in Cassowary.
4. Single fire detector check valve to be installed on fire service at property boundary.
5. Reduced pressure zone device to be installed at property boundary after water meter.
6. Reduce pressure zone devices to be installed on hot and cold water supply to spa bath in assisted bathroom.

By 13 September 2011 (the Enforcement Notice).

Date of hearing:	10.00am Friday 12 August 2011
Place of hearing:	Department of Local Government and Planning, Level 5; 63 George Street Brisbane
Committee:	Mr. Michael McGuinness – Committee Chairperson
Present:	Mr Graeme Twine – Sunshine Coast Regional Council Mr. Allan Hazell – Sunshine Coast Regional Council Mr. Colin Wheat - Applicant

Decision:

The Building and Development Dispute Resolution Committee (the Committee), in accordance with section 564 of the SPA **sets aside** the decision appealed against and directs that the Enforcement Notice be set aside and replaced with the following directions:

1. Reduced pressure zone devices (RPZD) to be installed on hot and cold water supply to pan sanitizers in dirty utility rooms situated in Cassowary, Tallowood, Taramin, and Pademelon.
2. The shower hose on the hot and cold water supply to the spa bath is to be removed.
3. RPZD to be installed at immediately upstream from the fire suppression booster.

Background

An authorised Council plumbing inspector (Graeme Twine) performed an inspection on the subject property on 8 March 2011 in accordance with Council's audit program on commercial and industrial properties for appropriate backflow prevention devices.

During this audit Mr Twine identified a number of installations that potentially could provide a risk of contamination or pollution to the water supply to the premises, or the network utility water supply.

The Committee noted that the original compliance certificate for the work was issued some time in 2004 by the former Maroochy Shire Council with no additional requirements for backflow prevention devices.

Council maintains that despite this approval, a new audit requirement has since been introduced and that the subject site should be brought into compliance due to the significant risk and potential for cross contamination pollution from:

- Dishwashers,
- Pan Sanitizers,
- Detergent injection systems,
- Fire services,
- Containment, and
- Spa Bath.

This assessment was based on potential risk to public health and safety which was determined by Council.

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 11 April 2011.
2. *Plumbing and Drainage Act 2002 (PDA)*
3. *Standard Plumbing and Drainage Regulation 2003 (SPDR)*
4. AS/NZS3500 Part 1
5. Newsflash 227 – Backflow Prevention Devices 6 April 2006
6. Sunshine Coast Regional Council website material 12 August 2011
7. Written submission from the Applicant
8. Verbal submissions from the Applicant
9. Verbal submissions from the Sunshine Coast Regional Council

10. Enforcement Notice dated 11 March 2011

Findings of Fact

The Committee makes the following findings of fact:

1. The Enforcement Notice was validly issued by Council.
2. Council could not demonstrate the process of undertaking a risk assessment on the level of hazard which determined the type of backflow prevention device.
3. The current appliances installed were WaterMark compliant except the pan sanitizers installed in dirty utility rooms situated in Cassowary, Tallowood, Taramin, and Pademelon.
4. The risk assessment undertaken by the applicant was appropriate and relevant to the level of hazard and therefore the level of backflow prevention device(s) installed.

Reasons for the Decision

1. Enforcement Notice and grounds for appeal

Section 117 of the PDA provides that Council may give written notice (an Enforcement Notice) for backflow prevention devices if a local government reasonably believes pollution of the water supply in premises or the water service provider's water service to premises has been, or could be, caused by the plumbing on the premises. For example, a local government may give written notice to the owner or occupier of the premises to install a backflow prevention device; register a backflow prevention device that is required to be registered under the Standard Plumbing and Drainage Regulation; or have a backflow prevention device inspected, tested and if necessary repaired or replaced by a licensee licensed to do the work.

However, the Enforcement Notice, when issued, provided no request for additional information on the equipment, and Council did not seek to pursue any relevant information approval documentation pertaining to the equipment. Council admitted that the Enforcement Notice issued was onerous on the owner of the subject land, and that through Council's admission that the matter would have been better dealt with through the issuing of an Information Notice.

2. Application of the Applied Provisions

Section 82 of the PDA requires that work must comply with the Standard Plumbing and Drainage Regulation 2003 (SPDR). The SPDR contains applied provisions. Section 5 specifies that the 'applied provisions' are listed in Schedule 1. For this appeal, the applied provisions are the Plumbing Code of Australia and AS/NZS3500.1 2003. The Committee also considered the application of Section 9 of the SPDR where it states that all work must comply with the applied provisions. This means that where an appendix refers to informative, this becomes obsolete and must be read as normative, as the licensee must comply with the applied provisions.

Section 4 of AS/NZS3500.1 (the Standard) deals with cross-connection control and backflow prevention. Specifically clause:

- 4.2.3 deals with protection of contaminants.
- 4.2.6 states that where a backflow device has been provided as an integral part of an authorised fixture, appliance or apparatus, and are appropriate for the level of hazard, then no additional backflow prevention is required upstream of the point of connection to the water supply system.
- 4.3 deals with the degree of hazard rating.

A risk assessment is undertaken to determine the degree of hazard and then Appendix E is used to identify the potential for a cross connection (satisfying Clause 4.2.3) and Appendix F is used to determine the type of backflow prevention device required against the identified hazard. Council maintained that the subject sight was a high hazard (where death can occur due to a cross connection) however was unable to demonstrate the reasoning behind this statement. The Committee was satisfied with the documentation provided by the

applicant demonstrating consideration of risk management of the hazard against the required level of backflow device.

3. WaterMark Approval

The items listed by the Council requiring reduced pressure zone devices (RDZD) to be installed were:

1. Five dishwashers
2. Four pan sanitizers
3. Three detergent injection systems for both hot and cold water
4. Hot and cold water supply to the spa bath
5. Main water supply to the property boundary
6. Fire services at the property boundary

On documentation and submissions made, it was concluded that:

- The dishwashers all had WaterMark Approval and thereby satisfied Clause 4.2.6 of the Standard. The Committee noted that the dishwashers all had internal back flow prevention devices as an integral part of the authorised product. Further that the level of backflow prevention was suitable for the level of hazard identified at the point of installation.
- The pan sanitizers did not have WaterMark approval however all parties agreed that RPZD would be installed as the appropriate level of backflow prevention.
- The chemical injection systems have WaterMark approval and contain an air gap which provides an appropriate level of backflow prevention for the identified hazard. This also satisfies Clause 4.2.6 of the Standard.
- The applicant agreed for the shower hose to be removed from the hot and cold water supply of the spa bath. In this instance, all parties agreed that no additional backflow prevention is required.
- Council contended that as a water meter has been installed, no additional backflow prevention device was required.
- All parties agreed that an RPZD would be installed upstream from the fire water system.

Michael McGuinness
Building and Development Committee Chair
Date: 11 November 2011

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 Local Government and Planning
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