



Building and Development Dispute Resolution Committees—Decision

Sustainable Planning Act 2009

Appeal Number: 08-12

Applicant: Hongyu Su

Assessment Manager: Toowoomba Regional Council (Council)

Concurrence Agency: N/A
(if applicable)

Site Address: 10 Kimmins St. Rangeville (Toowoomba) and described as Lot 7 on RP 1111179 — the subject site

Appeal

Appeal under section 526 of the *Sustainable Planning Act 2009* (SPA) against an Enforcement Notice, dated 31 January 2012, issued by Council under the *Plumbing and Drainage Act 2002* (PDA), regarding the installation of a Solar Hot Water System, requiring the Applicant:

(1) To remove the non-compliant Solar Hot Water System (HWS) and replace same with an approved, Water Marked HWS.

(2) Notification to Council of the licensed person/s to install HWS and have same system inspected by Council Plumbing Inspector.

Date of hearing: 9.30 am – Tuesday 29 May 2012

Place of hearing: Toowoomba Regional Council
543 Ruthven St. Toowoomba

Committee: Max Hunter – Committee Chair

Present: Ms Hongyu Su – Applicant
Mr Grant Munro – Plumbing Inspector (Council)
Mr David Krumins – Council

Decision:

The Building and Development Dispute Resolution Committee (Committee), in accordance with section 564 of the SPA **confirms** the decision of Council to issue an Enforcement Notice in accordance with the PDA Section 116(1)

Background

Council issued a Show Cause notice to the Applicant under the PDA Section 115, on July 7 2011, advising

the installation of plumbing and drainage works carried out at the subject site, does not comply with the PDA. Council advised that the installed HWS was non-compliant. Council advised the applicant to remove the non-compliant HWS and replace with a compliant, Water Marked, HWS by an appropriately licensed person.

The Show Cause notice issued by Council required the Applicant to respond by August 4 2011.

- Council issued an Enforcement Notice under the PDA, Section 116(1) dated January 31 2012 to the Applicant, Ms Honyu Su. Requirements of the Enforcement Notice were:
 - (1) Remove the non-compliant HWS and replace with approved water marked HWS, to be installed by an appropriately licensed person.
 - (2) Notification to be submitted to Council of the licensed person, and to be inspected by a Council Inspector.

The Applicant's submission to the Committee was duly completed and signed in accordance with SPA section 536. Grounds for the appeal stated that "The Solar Hot Water System is not a danger to persons or a risk to public safety".

Material Considered

The material considered in arriving at this decision comprises:

- 'Form 10 – Appeal Notice', grounds for appeal and correspondence accompanying the appeal lodged with the Committee Registrar on 24 February 2012.
- Show Cause Notice – issued by Council- dated 7 July 2011
- Enforcement Notice – issued By Council – Dated 31 January 2012
- Photographic evidence of the mentioned HWS installation at the address nominated in the appeal application
- Plumbing Code of Australia
- *Plumbing and Drainage Act 2002* (PDA)
- Standard Plumbing and Drainage Regulation 2003 (SPDR)
- *Sustainable Planning Act 2009* (SPA)
- SPDR - Part 4 Sect. 30 Certified Items to be used - Clauses (1) and (2) apply.
- PDA – Part 6A General Offences, Sect.119 Offences by persons not holding appropriate license and Sect.120 Offence of directing or supervising unlicensed work, apply
- Plumbing and Drainage Regulation 2003 – Part 2 Sect 4 License required for performing regulated and minor work.
- PDA – 82 (1) Must ensure the work complies with Standard Plumbing and Drainage Regulation.
- AS/NZS3500.4 6.7.2 – Flow and return lines are to be copper (or not inferior to copper).

Findings of Fact

The Committee makes the following findings of fact:

- The Solar HWS, as installed at the site address, shows no verification as being compliant to Australian Standards and bears no identification or certification to resemble same.
- Photographic evidence, taken at the site address, indicates a need for concern with respect to the owner in the area of conformity and warranty guarantee of the product installed.
- The Applicant indicated limited knowledge of the process and ongoing operating procedures of the unit.
- The hearing also noted that the Applicant's knowledge and information with respect to the HWS was based on hearsay and price affordability.

Reasons for the Decision

The Applicant appealed to the Committee on the grounds that "The Solar Hot Water System is not a Danger to Persons or a Risk to Public Safety".

Documented failures of Solar HWS being installed incorrectly can and do, have the potential to cause danger

to persons and the public.

Reported defects have required the need for regulatory controls and application of standards.

Statutory requirements maintain consumer and public safety concerns for the installation of Solar HWS that have the potential to convey uncontrolled heat sources.

The obligation of local authorities (Council) to monitor standards and safety in plumbing and drainage operations, as defined by Acts and Regulations, is carried out in the interests of protecting the health and safety of the community. Council duly issued a:

- (1) Show Cause Notice
- (2) Enforcement Notice.

Issuing of the above included consideration by Council of the relevant facts and implications of all parties involved.

Max Hunter
Building and Development Committee Chair
Date: 28 June 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
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