



Building and Development Tribunals – Decision

Integrated Planning Act 1997

Appeal Number:	3—09—006
Applicant:	Antonio Klobucar
Assessment Authority:	Redland City Council ('Council')
Concurrence Agency:	N/A
Site Address:	8 Laurel Street, Russell Island and described as Lot 39 on SP157335 – the subject site.

Appeal

Appeal under section 4.2.12A of the *Integrated Planning Act 1997* (IPA) against an Information Notice, dated 9 January 2009, issued by Council under the *Plumbing and Drainage Act 2002* (PDA) regarding the water "rough-in" inspection of a domestic dwelling on the subject site, namely the following:

1. That valves be relocated to conform with AS/NZS 3500.4: 2003, clauses 5.9.3 (a) & (b) as the cold water control valve is located in the ceiling, the second cold water control valve is located in the roof and the cold water expansion is located on the roof.
 2. That the hot water pipe on roof is to be provided with lagging extended through the roof penetration pursuant to AS/NZS 3500.4:2003, clause 8.2.1 - note 1.
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Date of hearing:	10.00am – Tuesday, 10 February 2009
Place of hearing:	Offices of the Department of Infrastructure and Planning, Brisbane
Tribunal:	Jim Graham – Chairperson
Present:	Antonio Klobucar – Applicant Peter Brereton – Redland City Council Representative Neil Morgan – Redland City Council Representative John Richardson – Observer

Decision:

The Tribunal **dismisses** the appeal as it does not have jurisdiction to hear the matter, for the following reasons:

- (a) The decision of the Council to issue an "Information Notice" was in-effect a "defect notice" issued under section 20(4) of the *Standard Plumbing and Drainage Regulation 2003* (SPDR) and cannot be appealed to the Tribunal.
- (b) Only an "Information Notice" or "Enforcement Notice" can be appealed to the Tribunal in accordance with sections 4.2.12A and 4.2.13 of IPA, respectively.

Background

This is an appeal from a decision by Council to issue an Information Notice after a “water rough-in” inspection was conducted at the subject site on 8 January 2009. The phrase “water rough-in” is used frequently in the plumbing industry to describe the stage of plumbing work occurring immediately prior to external cladding or lining being placed on the walls.

The applicant was issued with a notice entitled “Information Notice – Plumbing and Drainage” on 9 January 2009 which stated that Council had inspected the work (the subject of the compliance permit) and had failed it. The notice provided the following reasons for issuing the notice:

1.	Cold water control valve located in the ceiling and the second cold water control valve located on the roof. Cold water expansion located on the roof. Valves to be relocated to conform with AS/NZS 3500.4:2003. Section 5.9.3 (a) & (b). Tempering valve to be located in ceiling to be installed in a Readily accessible position from floor or ground level.
2.	Discharge from Hot water unit relief and cold water expansion valves to be discharged to storm water point. (see condition 10 of compliance permit PD 217145)
3.	Hot water pipe on roof to have lagging extended through the roof penetration (AS/NZS 3500.4:2003 Section 8.2.1 note 1)

The parties are in dispute regarding the first and third issues, with the second issue having been resolved prior to the hearing.

Issue 1 – Location of valves (Item 1 on the Information Notice)

In the first issue Council raises concerns about the location of the valves. Council quote clause 5.9.3(a) and (b) of AS/NZS 3500.4:2003 (Plumbing and drainage – Heated water services). This is an “applied provision” for the purposes of the PDA. Subject to section 12, section 9 of the SPDR requires that regulated work (which includes plumbing work) must comply with the applied provisions. The applied provisions are standards listed in schedule 5 of the SPDR.

Clauses 5.9.3 (a) and (b) of AS/NZS 3500.4:2003 provide that:-

“5.9.3 Installation of valves

The valves shall be installed in accordance with manufacturer’s instructions and in a manner appropriate to the type of water heater being installed (see figures 5.8 to 5.13 for typical installations). The installations shall:

- (a) have the isolating valve in a position readily accessible from floor or ground level;*
- (b) have the valves in the cold water supply in the sequence show in Figure 5.5 as either separate or as a combined unit.*
- (c)”.*

In addition to section 5 of AS/NZS 3500.4:2003 (Installation of water heaters– General requirements) section 6 of AS/NZS 3500.4:2003 (Installation of solar water heaters) provides specific requirements for the installation of solar water heaters. Specifically, clause 6.3.2 states that:-

“6.3.2 Solar water heater

Solar water heaters shall be installed in accordance with the manufacturer’s instructions and this Standard”.

The effect of the clause is that it requires the installer to comply with both documents and where there is a conflict the manufacturer’s requirements take precedent.

As a result, installers of solar hot water systems must have a copy of the manufacturer’s installation requirements for a particular brand of system to comply with the standard. This is important as different manufacturers have specific installation requirements.

Issue 2 - Lagging (insulation) on pipes (Item 3 on the Information Notice)

On the second issue, Council raises concerns about the lagging not extending through the roof for the hot water pipe. Once again AS/NZS 3500.4:2003 is raised and Council quotes clause 8.2.1, note 1. This provides that:-

“8.2.1 Piping associated with storage water heaters

Piping shall be thermally insulated to achieve a minimum R-value, as given in Table 8.1 for the climate regions identified in Figure 8.2 (Figures 8.2 (A) to 8.2 (G) show the climate regions for each state and territory) and Appendix L for Australia and Figure 8.3 and Appendix M for New Zealand, as follows:-

- (a) The inlet and outlet pipes, including valves, for a storage water heater, for at least the first 500mm or, where an external heat trap is fitted, to a point 150mm down the heat trap vertical leg closest to the water heater (see Note 4).*
- (b) All relief valves fitted directly to a storage water heater (see Note 4).*
- (c) The primary flow and return pipes, including valves, between an auxiliary heater and a storage water heater.*
- (d) All vent pipes to 300mm above the maximum operating water level of the heated water system.*
- (e) On multiple installations, the whole heated water manifold, including valves, to a point at least 500mm past the heated water outlet branch from the last water heater.*

The insulation installed in accordance with the above shall be installed so as not to impede the operation of the valves”.

NOTES:

1. *Care should be taken to ensure the continuity of insulation at wall and roof penetrations. Insulation should be carried through roof penetrations into the ceiling area”.*

Material considered

The material considered in arriving at this decision comprises:

1. ‘Form 10 – Notice of Appeal’ received by the Registrar on 20 January 2009, including grounds for appeal, photographs and accompanying information.
2. Redland City Council ‘Information Notice’, dated 9 January 2009.
3. The PDA.
4. The SPDR.
5. AS/NZS 3500.4:2003 (Plumbing and drainage – Heated water services).
6. Solarhart Owners Manual – Thermosyphon Systems (Revision D).
7. Verbal submissions from the parties at the hearing.
8. Briefing note provided to the parties by Redland City Council.

Findings of Fact

The Tribunal makes the following findings of fact:

1. *Information Notice and SPDR* – This was issued by Council on 9 January 2009 and states that the inspection was failed due to a number of non-complying issues (specifically it makes mention of section 20(4) of the SPDR) relating to the installation of a solar hot water system. Section 20(4) of the SPDR is commonly referred to as the provision enabling the issue of a “defect notice”.

2. *Location of valves (Item 1 on the Information Notice)* - The installation manual provided by the manufacturer (Solarhart) states that:

“COLD SUPPLY LINE VALVE LOCATION

All the valves in the inlet cold supply line (i.e. the TRIO valve and ECV) must be located at least 1 metre away from the water heater and within 1.8 metres from ground level to enable homeowner operation without the need for a ladder. The valves should not be located on the house roof and NOT IN THE CEILING SPACE.”.

The manufacturer’s requirements are very specific in relation to the location of the control valves and differ from the requirements of AS/NZS 3500.4:2003. The Tribunal considers that these requirements should be used for deciding what is “readily accessible”.

3. *Discharge point for valves (Item 2 on the Information Notice)* – The discharge point of the drain lines from the hot and cold expansion and temperature control valves was resolved to the satisfaction of both parties prior to the tribunal hearing.
4. *Lagging (insulation) on pipes (Item 3 on the Information Notice)* - The installation manual provided by the manufacturer (Solarhart) states that all installations shall comply with local plumbing codes (e.g. AS/NZS 3500.4) for the requirement for insulation of external pipework.

The current installation has lagging on the pipework through the metal roofing which does separate the dissimilar materials; however, the lagging used does not comply with the thermal insulation qualities set out in AS/NZS 3500.4 Section 8 Water and Energy Efficiency.

Reasons for the Decision

The Tribunal gives the following reasons for its decision:

The Tribunal considers that despite the notice issued by Council on 9 January 2009 purporting to be an “Information Notice” it is in effect a “defect notice” issued under section 20(4) of the SPDR. The Tribunal considers that the notice was issued as a result of an inspection of work by Council and not in circumstances where an Information Notice would ordinarily be issued.

In *Tacoma Plumbing and Drainage Pty Ltd v Noosa Shire Council* [2008] BDT 3-08-012 a Building and Development Tribunal constituted to hear a plumbing related matter made the following observations about appeals and defect notices. An extract is shown below:

“A defect notice cannot be appealed to the Tribunal. Section 4.2.7 of the IPA provides that the Tribunal may decide any matter that under the IPA or another Act may be appealed to it. Section 4.2.12A of the IPA provides for an appeal related to the issuing of an information notice and the footnote to the section recognises the two avenues of appeal being for Part 4 (compliance assessment) and Part 5 (chief executive approvals).

A defect notice has been issued in this case, not an information notice...”.

Information Notices can be issued under sections 85(10), 86(12) and 86A(8) of the PDA. Section 85(10) relates to assessment of plans, which is not appropriate in this case as the compliance permit has already been issued by Council. Section 86(12) relates to a refusal by Council to give a compliance certificate for a request for compliance assessment of work. Finally, section 86A relates to the assessment of certain regulated work or on-site sewerage work in a remote area. This is not a remote area as identified in Schedule 5 of the SPDR.

The request for a compliance certificate under section 86(12) is different from a request for inspection of a stage of work. The PDA creates a compliance assessment scheme which includes a requirement for work to be inspected at stages specified in the SPDR, specifically section 19. The notice issued by Council is for the “water rough-in” stage, a clear reference to section 19(1)(c) of the SPDR which provides for inspection of work at:-

“for plumbing installed in a building or other structure – before cladding or lining covering the plumbing is fixed”.

Section 20(4) of the SDPR then permits Council to issue a defect notice for which the person must comply and then make a request for assessment of the work. This must be done within 2 business days and carries a maximum penalty of 20 penalty units.

The Tribunal concludes that the use of the words “Information Notice” in the title of the notice was a mistake on the part of Council and it was intended to be a “defect notice”. Therefore, the conclusion reached by the Tribunal is that it does not have jurisdiction under section 4.2.12A of IPA to decide this matter. The applicant must therefore continue to complete the work at the remaining stages of the work required by the SPDR and have this work inspected by Council.

Despite the above conclusion, the Tribunal makes the following additional comments on the issues raised in the notice issued by Council, as follows:

1. Issue 1 – Location of valves (Item 1 on the Information Notice)

The location of the cold water controls does not comply with the requirements of the Solarhart owner’s manual page 10.

These definitions taken from AS/NZS 3500.0:2003 establish the line of control.

Water heater - *An appliance, designed to provide heated water.*

Solar water heater - *An appliance to heat water by the use of solar energy.*

The following clauses of AS/NZS 3500.4:2003 are designed to establish the relevance of and authority for the manufacturer’s installation requirements.

5.2 Water heaters

5.2.1 Water heaters

Water heaters shall be installed in accordance with the manufacturer’s instructions, and shall comply with the requirements of the relevant water heater Standard.

6.3 General

6.3.1 Performance

Environmental factors of solar radiation for the area, local considerations of dust, hail, frost, shade and wind, and the aspects of both the quality of water used and the consumer hot water usage habits will affect both the performance and the service life of the unit.

Systems rated in accordance with AS 2813, AS 2984, NZS 4613 or AS 4234 shall be installed strictly in accordance with the manufacturer’s instructions and with the relevant sections of this Standard in order to ensure that the rated performance is achieved...

6.3.2 Solar water heater

Solar water heaters shall be installed in accordance with the manufacturer’s instructions and this Standard.

As stated in the findings of fact, the manufacturer's requirements are very specific in relation to the location of the control valves and differ from the requirements of AS/NZS 3500.4:2003. The Tribunal considers that these requirements should be used, including for the purpose of deciding what is "readily accessible".

2. Issue 2 – Lagging (insulation) on pipes (Item 3 on the Information Notice)

Clause 8.2 of AS/NZS 3500.4:2003 provides that for a storage water heater at least 500mm of the pipework from the water heater shall be lagged; if the pipework penetrates a roof the lagging shall be extended through the roof into the ceiling area.

The issue of how pipework is installed needs to be considered in relation to the best performance of the system to provide a product. If a system is designed to heat or cool a product the plumber needs to consider what he / she needs to do to provide that product at the delivery point while maintaining the quality of the product.

AS/NZS 3500.4:2003, clause 8.2.1, note 1 states:-

"Care should be taken to ensure the continuity of insulation at wall and roof penetrations. Insulation should be carried through roof penetrations into the ceiling area".

If the installation of plumbing work is to be maintained at a professional standard to allow the system to perform at its design standard, then plumbing professionals should take the care to carry out an installation as it is intended.

Jim Graham
Building and Development Tribunal Chair
Date: 26 February 2009

Appeal Rights

Section 4.1.37 of the *Integrated Planning Act 1997* provides that a party to a proceeding decided by a Tribunal may appeal to the Planning and Environment Court against the Tribunal's decision, but only on the ground:

- (a) of error or mistake in law on the part of the Tribunal or
- (b) that the Tribunal 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 Tribunal's decision is given to the party.

Enquiries

All correspondence should be addressed to:

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