



APPEAL
Integrated Planning Act 1997

File No. 03-07-070

BUILDING AND DEVELOPMENT TRIBUNAL - DECISION

Assessment Manager: Gold Coast City Council
Site Address: *withheld*-“the subject site”
Applicant: *withheld*

Nature of Appeal

Appeal under section 4.2.12A of the *Integrated Planning Act 1997* and the *Plumbing & Drainage Act 2002* against the decision of Gold Coast City Council to impose Condition 10 on a ‘Compliance Permit’, dated 16th October 2007, which states:-
Condition 10 - ‘*Drainage is to be run externally where possible (not under slab). If this is not possible arrange for a site inspection for consultation with an area inspector*’.

Date and Place of Hearing: 9:00 am on Tuesday 20th November 2007
On Level 10 Forestry House, 160 Mary Street, Brisbane.

Tribunal: Mr Paul Funnell - Chairperson;
Mr Bradley Hodgkinson - General Referee

Present: Applicant’s Representative;
Mr Stuart Smith - Gold Coast City Council Representative;
Mr Brian Wright - Gold Coast City Council Representative.

Decision

The decision of Gold Coast City Council to impose Condition 10 on a Compliance Permit, dated 16th October 2007, is **confirmed** and the **appeal is dismissed**.

However, Condition 10 of the Gold Coast City Council Compliance Permit, dated 16th October 2007, is amended to read as follows:-

Condition 10 - ‘*Drainage is to be run externally (not under slab). If this is not possible arrange for a site inspection for consultation with an area inspector*’.

Background

Applicant's submission to the tribunal

The grounds of appeal submitted by the Applicant are summarised as follows:-

- Precedence by the Gold Coast City Council in plumbing approvals on small allotments.
- That AS/NZS 3500 2.2003 Section 3.2 Location of Drains:-
'Drains should be located external to the building wherever practical'

It was submitted by Brett Holt (Plumbing Contractor) that the word '*should*' was a recommendation only and did not restrict the contractor from running the pipes completely under the slab.

- That under this condition the Gold Coast City Council did not have the authority to make it mandatory to run drainage pipes external to a building.
- By having a site meeting with the Gold Coast City Council Inspector each time his company wanted to run pipes under the building, would be inconvenient, time consuming and expensive.
- Running drainage pipes external to the building can create additional expense, particularly where expansive soil is experienced.
- The additional cost would be a cost to the community and add unreasonable financial burden on the head builder as contracts for homes were set in place many months in advance.

Gold Coast City Council submission to the tribunal

- That AS/NZS 3500 2.2003 Location of Drains, allows the Gold Coast City Council to require drainage pipes to be run externally to the building.
- That the Gold Coast City Council had provided adequate notice to trade contractors, advising that they were going to enforce this rule from 1st October 2007.
- The Gold Coast City Council believed they had been fair and reasonable by:-
 - a) Stipulating this in Condition 10 of the Compliance Permit.
 - b) In making provision for the trade contractor to meet with their inspector on site to consult on whether there was reasonable grounds for the pipes to be run completely under the building.
- The Gold Coast City Council submitted that after the project was completed it became the council's responsibility to address complaints from home owners regarding the location and accessibility of drains on their property.
- That the number of problems being reported to the Gold Coast City Council were on the increase and were largely those with drainage completely under the buildings.

Material Considered

1. "Form 10 – Notice of Appeal", supporting plans and documentations;
2. 'Compliance Permit – Dwelling', dated 16th October 2007;
3. Statement of Opinion from *withheld* on behalf of Applicant;
4. A letter of support from *withheld*;

5. Explanation letter from *withheld* – Plumbing Contractor;
6. Verbal submission from *withheld* at the hearing;
7. Verbal submission from Gold Coast City Council representatives at the hearing;
8. The *Integrated Planning Act 1997*;
9. The *Plumbing and Drainage Act 2002*;
10. AS/NZS 3500 2.2003, National Plumbing and Drainage - Section 3, Drainage Design.

Findings of Fact

- That AS/NZS 3500 2.2003, Section 3 – Drainage Design:-
 - 3.2 Location of Drains –
'Any drain located under or inside a building shall only serve fixtures within that building'.
Note: Drains should be located external to the building wherever practical.

Reasons for the Decision

The above condition as stated in 'Findings of Fact' is clear in its intent that all drains should be located external to the building wherever practical.

- It is understood and appreciated that there can be circumstances where this is not practical or even possible.
- The words 'where permitted', indicated on Gold Coast City Council Compliance Permit, indicates that permission must be obtained before drainage work can commence.
- The tribunal is satisfied that the Gold Coast City Council met their obligation by:-
 - a) Highlighting the requirement within Condition 10 of the Compliance Permit.
 - b) Offered the opportunity to meet and consult on site with the trade contractor as required.
- No evidence was offered by the applicant, that on this building site, it would not be possible to comply with the Council's condition, which was found to be reasonable and relevant.
 - a) There was no suggestion that a site meeting was requested by the applicant or Council refused the request to attend the site.

Paul Funnell
Building and Development Tribunal Chairperson
Date: 27 November 2007

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:

The Registrar of Building and Development Tribunals
Building Codes Queensland
Department of Local Government, Planning, Sport and Recreation
PO Box 15031
CITY EAST QLD 4002
Telephone (07) 3237 0403 Facsimile (07) 3237 1248