



Building and Development Tribunals – Decision

Integrated Planning Act 1997

Appeal Number: 03–08–072

Applicant: Steve Paul and Partners

Assessment Manager: Gold Coast City Council

Concurrence Agency: N/A
(if applicable)

Site Address: 22-24 Ben Lexcen Place, Robina and described as Lot 1 RP 890009—the subject site

Appeal

Appeal under section 4.2.12A of the *Integrated Planning Act 1997* (IPA) against the decision of Gold Coast City Council to impose conditions on a compliance permit relating to the sub-meter component of the Plumbing and Drainage application for proposed development.

Date of hearing: 10:30 am on Thursday, 23 October 2008

Place of hearing: Offices of the Department of Infrastructure and Planning, Brisbane

Tribunal: Jim Graham – Chair

Present: Keith Farrelly – Gold Coast City Council Representative
Phillip Greer – Gold Coast City Council Representative
Paul Webb – Steve Paul and Partners Representative
Gordon M'Alister – Project Manager
John Richardson – Observer
Steve Rich – Builder
Dean Boskovic – Developer

Decision:

The Tribunal, in accordance with section 4.2.34 (2)(a), **confirms** the decision of Gold Coast City Council to impose conditions on a compliance permit under section 85(7) of the *Plumbing and Drainage Act 2002* (PDA) **and makes the following direction:-**

The applicant is required to comply with part 4 of the Queensland Plumbing and Wastewater Code (Water meters for new premises) and condition of the compliance permit for plumbing and drainage work issued by Gold Coast City Council on 28 August 2008 for the sub-meter component of the application.

Background

On 1 January 2008, new legislation commenced throughout Queensland requiring the installation of sub-meters (individual water meters) in community title schemes and sole occupancy units in class 2, 4, 5, 6, 7 or 8 buildings in a water service provider's area. Part 4 of the Queensland Plumbing and Wastewater Code provides the details on requirements for sub-metering in new premises. The purpose of sub-metering multi-unit complexes is to allow for the delivery of personalised information on water use to households and businesses.

An application for compliance assessment of plumbing and drainage work was lodged with Gold Coast City Council (Council) on 5 February 2008, to be installed on the subject site. On 26 February 2008, Council issued an information request to the applicant. In part, the information request required the applicant to seek approval from Gold Coast Water (WSP) for the type of sub-meter to be used and the approved location for each sub-meter within the subject site. The applicant responded to the information request on 20 August 2008. On 28 August 2008, Council issued a compliance permit for plumbing and drainage work.

The grounds of this appeal relates to the decision of Council to impose a condition in a compliance permit relating to the sub-meter component of the plumbing and drainage application.

The applicant is appealing the decision of Council because of information provided from the Department of Infrastructure and Planning (DIP) regarding the commencement date for the mandatory installation of sub-meters.

The DIP issued a Building and Plumbing Newsflash, No. 298 on 13 December 2007 that gave an interpretation on how to apply the commencement date for installing sub-meters throughout Queensland. This newsflash advised that a building and development application lodged on or after 1 January 2008 would trigger the requirement to install sub-meters.

On 2 May 2008 the DIP issued a Building and Plumbing Newsflash, No 314, that stated incorrect advice was provided in newsflash No 298 and irrespective to the date of lodgement of the development application or the building development application (building application/BA) any plumbing assessment application lodged on or after 1 January 2008, for new premises within a reticulated water supply area will require a sub-meter.

The Tribunal acknowledges the subject property has a development application decision notice (building approval for all structural works up to podium level only) dated 5 December 2007. In addition, the decision notice for the Material Change of Use (impact assessment) issued by Gold Coast City Council is dated 16 September 2005.

Material Considered

The material considered in arriving at this decision comprises:

1. Form 10 – Building and Development Tribunals Appeal Notice.
2. Tax Invoices, Gold Coast City Council, plumbing assessment for building application dated 29 October 2007 and 5 February 2008.
3. Letter from Gold Coast City Council to University Project Management, dated 6 January 2005, relating to Council meeting regarding subject development.
4. Information request to applicant made under the PDA, Gold Coast City Council, dated 26 February 2008.
5. Compliance Permit for plumbing and drainage work, Gold Coast City Council, dated 28 August 2008.
6. Gold Coast Water sub-metering policy, 1 January 2008.
7. Building and Plumbing Newsflash, No. 298, issued 13 December 2007.
8. Plumbing Newsflash, No. 311, issued 8 April 2008.

9. Building and Plumbing Newsflash, No 314, issued 2 May 2008.
10. The Queensland Plumbing and Wastewater code, published 23 November 2007.
11. The IPA.
12. The *Building Act 1975*.
13. The PDA.
14. The Standard Plumbing and Drainage Regulation 2003 (SPDR).
15. Plumbing and Drainage and other Legislation Amendment Regulation No. 1 2007.
16. Water and other Legislation Amendment Bill 2007, Explanatory Notes.
17. The *Water and other Legislation Act 2007*.
18. Verbal communication from applicant at the hearing.
19. Verbal communication from Council representatives at the hearing.
20. Verbal communication from the project manager at the hearing.
21. Minutes of a meeting held on 17 April 2008 between representatives of Steve Paul and Partners and representatives of the DIP and records of subsequent telephone conversations with DIP staff.

Findings of Fact

The Tribunal makes the following findings of fact:

- Amendment to the SPDR commenced on 1 January 2008. Amendments relating to water meters include—
 - s14A (Additional requirements for plans for regulated work)
 - s23A (Additional requirements for plans for assessed regulated work)
 - s54A (Notice to water service provider about installation of meters)
 Importantly 54A (1) states in part:-
 ‘This section applies if plumbing work involving the installation of water meters is performed—
 (b) after 1 January 2008 in relation to a compliance request made after 31 December 2007.’
 - Schedule 1A References to parts of QPW code.
 - Amendment to sch 6 (Dictionary).
- Amendments to the PDA that commenced on 1 January 2008 relating to water meters included—
 - s85 (Process for assessing plans).
 - s86 (General process for assessing regulated work and on-site sewerage work).
 - 128JA – Water Meter.
 - Amendment to schedule (Dictionary)
 ‘apparatus
 Water meter
 Water service provider’.
- Section 81 of the PDA (Regulated work and on-site sewerage work must be assessed for compliance) is relevant.
- Building and Plumbing Newsflash No. 298 issued by DIP on 13 December 2007 contained the following interpretation—
 ‘Commencing state-wide on 1 January 2008 any building development applications lodged for new premises drawing a water supply from a water service provider will be required to include sub-meters for separate lots in any type of building under a community title scheme and sole occupancy units in new

buildings under a single title. The provision of sub-meters will allow for the delivery of personalised information on water use to households and businesses in new multi-unit developments’.

- Plumbing Newsflash No 311 issued by DIP on 8 April 2008 contained the following interpretation—
‘From 1 January 2008 plumbing assessment applications lodged for new premises within a reticulated water supply area will require a sub-meter for each separate lot and common property in a community title scheme (CTS) or for each sole occupancy unit in the building.’
- Building and Plumbing Newsflash No 314 issued by DIP on 2 May 2008 contained the following interpretation—
‘Irrespective of the date of lodgement of the development application or the building development application (building application/BA) any plumbing assessment applications lodged on or after 1 January 2008 for new premises within a reticulated water supply area will require a sub-meter for each separate lot and common property in a community title scheme (CTS) or for each sole occupancy unit in the building’.
- Disclaimer at bottom section of DIP Building and Plumbing Newsflash contains the following statement:
‘The information contained in this Newsflash is provided by the State of Queensland in good faith. The material is general in nature and before relying on the material in any important matter, users should carefully evaluate its accuracy, currency, completeness, and relevance for their purpose. It is not intended as a substitute for consulting the relevant legislation or for obtaining appropriate professional advice relevant to your particular circumstances. The State of Queensland cannot accept responsibility or liability for any loss, damage, cost, or expense you might incur as a result of the use of or reliance on information contained in this Newsflash. It is not intended to be, and should not be relied upon as the ultimate and/or complete source of information.’
- Summary of Events:
 - 6 January 2005 – Material Change of Use (Impact Assessment) for Apartment Buildings – the subject site.
 - 13 December 2007 – Building and Plumbing Newsflash No 298, New water savings measures and amendments to the Queensland Development Code (QDC).
 - 8 April 2008 – Plumbing Newsflash No 311, to clarify water supply sub-meter requirements in community titles and buildings with community bulk hot water services.
 - 9 April 2008 – Application lodged for Compliance Assessment of plumbing and drainage work.
 - 2 May 2008 – Building and Plumbing Newsflash No 314, Clarification on the commencement dates and application of mandatory requirements for sub-metering and QDC parts MP 4.1, MP 4.2 and MP 4.3.
 - 26 February 2008 – Information Request by council issued to applicant.
 - 18 August 2008 – Response by applicant to Information Request from council.
 - 28 August 2008 – Compliance permit issued by council.
 - 26 September 2008 – Form 10, Building and Development Tribunals Appeal Notice.

Reasons for the Decision

Gold Coast City Council must administer their legislative responsibility under the PDA. Part 4 of the Queensland Plumbing and Wastewater code (water meters for new premises) commenced on 1 January 2008 under the Plumbing and Drainage and Other Legislation Amendment Regulation (No. 1) 2007.

This regulation legislates the commencement date for a compliance request for plumbing and drainage work involving the installation of water meters. The application for compliance assessment (compliance request) of plumbing and drainage work lodged with Gold Coast City Council on and the subject application of this appeal must therefore comply with Part 4 of the Queensland Plumbing and Wastewater code.

The fact that the Department of Infrastructure and Planning gave incorrect interpretation in a Building and Plumbing Newsflash dated 13 December 2007 does not negate the responsibility of the Tribunal to make a

decision in line with legislation as proclaimed by Queensland Parliament enforced at any particular time.

Participants within the plumbing industry have a responsibility to ensure all decisions are made to meet the requirements set down in the legislative head of power, *"Plumbing and Drainage Act 2002"*.

The Tribunal has also considered other similar decisions of the Building and Development Tribunals on this matter and concurs with the reasoning of the Tribunal in decision 3-08-059, as delivered by Brad Hodgkinson (Building and Development Tribunal Chairperson) on 19 September 2008.

Jim Graham
Building and Development Tribunal Chair
Date: 29 October 2008

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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