



Development Tribunal – Decision Notice

Planning Act 2016, section 255

Appeal Number:	45-18
Appellant:	Compass Consulting group Pty Ltd
Respondent (local government):	Toowoomba Regional Council
Site Address:	97-161 Hogg Street, Toowoomba and described as Lot 1 on SP 230923 and Lot 3 on SP 288579 - the subject site

Appeal

Appeal under section 229 and schedule 1, section 1, table 3, item 3 of the *Planning Act 2016* against a decision by Toowoomba Regional Council to issue a compliance permit under the *Plumbing and Drainage Act 2002*, containing a condition requiring the installation of backflow prevention devices to comply with AS/NZ3500.1 2015 and the *Standard Plumbing and Drainage Regulation 2003*.

Date and time of hearing:	Wednesday 13 February 2019 at 11am.
Place of hearing:	Development Tribunals offices, level 16, 41 George Street Brisbane.
Tribunal:	Mr Chris Harris - Chair Mr Kelvin Slade - Referee
Present:	Mr Colin Wheat - Appellant Mr Ray Smith - Toowoomba Regional Council Mr Geoff Tynan - Toowoomba Regional Council

Decision:

The Development Tribunal (Tribunal), in accordance with section 254 of the *Planning Act 2016* (PA) **confirms** the decision of the local government (Toowoomba Regional Council) to require, as a condition of the compliance permit, the installation of Backflow Prevention Devices that comply with AS/NZ3500.1 2015 and the *Standard Plumbing and Drainage Regulation 2003*.

Background

Toowoomba Regional Council issued a compliance permit under section 85(6) of the *Plumbing and Drainage Act 2002* to the applicant, Compass Consulting Group Pty Ltd, on the 15 October 2018. The permit related to plumbing and drainage work in conjunction with the construction of an

aged care facility at 97-161 Hogg Street, Cranley. The permit included stamped approved plans and a number of conditions relating to the work. In particular the stamped approved plans had a condition added to them which required the installation of Backflow Protection to the Pan Rooms as per AS/NZS 3500.1:2015. The Pan rooms, otherwise known as Dirty utility rooms, contain a hand basin, a sink and a pan macerator and in this instance a total of seven rooms were to be constructed.

Compass Consulting Pty Ltd lodged an appeal against the condition attached to the plans on the basis that the macerator product they were planning to use had a Watermark level 1 certification and it was their view that no further backflow prevention was required. The macerator model to be used is a Vernacare Vortex, which has an air gap as the backflow prevention method built within the appliance. (In Queensland appliances of this type and most fittings must have a Watermark certification to enable the product to be installed within a plumbing and drainage system).

Jurisdiction

As the compliance permit in this instance was given on conditions, section 86(10) in part 4 of the *Plumbing and Drainage Act 2002* (PDA) required that the Toowoomba Regional Council give an 'information notice' to the appellant. Jurisdiction for this appeal accordingly arises under section 229 and schedule 1, section 1, table 3, item 3 of the *Planning Act 2016*. This item (item 3) refers to a decision under the PDA part 4 or 5 'if an information notice about the decision was given or required to be given' under that Act. In this case an information notice under part 4 of the PDA was given to the appellant dated 15 October 2018.

Decision framework

It is noted that:

- the onus rests on the appellant to establish that the appeal should be upheld (s. 253(2) of the PA),
- the tribunal is required to hear and decide the appeal by way of a reconsideration of the evidence that was before the person who made the decision appealed against (s. 253(4) of the PA),
- the tribunal may nevertheless (but need not) consider other evidence presented by a party with leave of the tribunal or any information provided under s.246 of the PA (pursuant to which the registrar may require information for tribunal proceedings),
- the tribunal is required to decide the appeal in one of the ways mentioned in s.254(2) of the PA.

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 Tribunals Registrar on 5 November 2018.
2. Verbal representations at the hearing
3. *Planning Act 2016* (PA)
4. Standard Plumbing and Drainage Regulation 2003 (SPDR)
5. *Plumbing and Drainage Act 2002* (PDA)
6. AS/NZS 3500.1 2015 Water Services

7. National Construction Code Series, Plumbing Code of Australia, Volume 3, 2016 (PCA)
8. Vernacre Vortex Technical Manual

Findings of Fact

The Tribunal makes the following findings of fact:

1. A Watermark level 1 certification was issued in relation to the Vernacare Vortex model macerator and is considered a High Hazard appliance.
2. The Standard Plumbing and Drainage Regulation requires all water services to comply with the PCA
3. The PCA references AS/NZS 3500.1 as the complying Deemed to Satisfy document for the installation of water services.

Reasons for the Decision

In considering the appellant's position, the tribunal first considered the Watermark certification. The Watermark Certification Scheme is a testing method for plumbing and drainage products which, when tested and certified, will enable the product to be installed within a plumbing and drainage system in all States and Territories in Australia.

However the guide to the scheme also states that the installation of any product is subject to correct installation practices in accordance with AS/NZS 3500 and any local deviations.

The appellant claimed that under AS/NZS 3500.1 section 4 the macerator met the requirements for cross connection or backflow protection as the product to be used has an integral backflow prevention device in the form of an air gap.

Section 4.2.2 Protection against contaminants states that "No device or system that may cause contamination of a water supply shall be connected directly or indirectly to any part of a water service without the appropriate cross connection or backflow prevention control suitable for the degree of hazard" and Section 4.2.5 Integral backflow prevention, also states that where backflow prevention devices are provided as an integral part of an appliance and is appropriate to the cross connection hazard generated by the appliance then no additional backflow prevention is required.

The significant statement of section 4.2.2 is "**suitable for the degree of hazard**" and of 4.2.5 "**appropriate to the cross connection hazard generated by the appliance**".

It was agreed by all parties that the degree of hazard was considered "High" and this is also stated in the Watermark level 1 certification for appliances of this type.

Section 4.5 of AS/NZS 3500.1 refers to the "Suitability of Devices for Hazards" and provides a table 4.4.1, which lists devices suitable for each hazard rating. It also states "The type of device selected for each hazard rating shall comply with table 4.4.1."

Part (a) of the table provides for **high hazard** rated cross connections and lists the devices that are suitable. These devices are registered testable devices. Part (b) of the table provides for **low hazard** rated cross connections and also lists suitable devices. An Air gap, which is what the macerator has, is listed under part (b) as a **Low hazard rating**.

For the air gap in the macerator to be classified as a high hazard device it would be required to be classified as a registered break tank to comply with the deemed to satisfy provisions of AS/NZS 3500.1 clause 4.6.3.2 “Registered break tanks” and Clause 8.4.1 “Tank Design”.

It is the tribunal’s view that the rating of the macerator’s integral air gap is a low hazard backflow prevention device and does not meet the minimum requirements of AS/NZS 3500.1 Section 4 or Section 8.

Chris Harris
Development Tribunal Chair
Date: 27 March 2019

Appeal Rights

Schedule 1, Table 2 (1) of the *Planning Act 2016* provides that an appeal may be made against a decision of a Tribunal to the Planning and Environment Court, other than a decision under section 252, on the ground of -

- (a) an error or mistake in law on the part of the Tribunal; or
- (b) jurisdictional error.

The appeal must be started within 20 business days after the day notice of the Tribunal decision is given to the party.

The following link outlines the steps required to lodge an appeal with the Court.

<http://www.courts.qld.gov.au/courts/planning-and-environment-court/going-to-planning-and-environment-court/starting-proceedings-in-the-court>

Enquiries

All correspondence should be addressed to:

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