



Building and Development Tribunals
Queensland Government

Department of Local Government, Planning,
Sport and Recreation

APPEAL
Integrated Planning Act 1997

File No. 3-05-041

BUILDING AND DEVELOPMENT TRIBUNAL - DECISION

Assessment Manager: Ipswich City Council

Site Address: *withheld* - "the subject site"

Applicant: *withheld*

Nature of Appeal

Appeal lodged under Section 4.2.12A of the Integrated Planning Act 1997 against the decision of Ipswich City Council to require the installation of a thermostatic mixing valve set at a temperature not to exceed 45°C for the delivery of hot water to personal hygiene fixtures in a bathroom that will be used by a person with a disability at a property situated at "the subject site".

Date and Place of Hearing: 10:00am Tuesday 9th August 2005
at the office of the Department of Local Government, Planning,
Sport and Recreation, Level 25, 41 George Street Brisbane

Tribunal: Brad Hodgkinson

Present: *withheld* (Applicant)
David Kay Ipswich City Council
Neville Kilpatrick Ipswich City Council

Decision

The decision of Ipswich City Council as contained in its written notice issued under Section 20(4) of the *Standard Plumbing and Drainage Regulation 2003* dated 4 July 2005, requesting

- (a) the installation of a thermostatic mixing valve and
- (b) for the hot water temperature not to exceed 45°C to bathrooms or where water is used primarily for personal hygiene purposes is **set aside**.

Councils notice issued under section 20(4) of the *Standard Plumbing and Drainage Regulation 2003* contains items that are not consistent with the applied provisions (Schedule1) of the Regulation.

Background

Ipswich City Council administrates a Home Assist Secure Program, which undertakes modification work on residence within the shire to assist the aged and people with disabilities in living at home. Bathroom renovation work has been approved under this program to provide modification work on a dwelling (Class 1a building) where a disabled person resides.

Council has refused the installation of a tempering valve after considering Australian/New Zealand Standard AS 3500.4.2.1997 and has provided a written notice under section 20(4) of the Standard Plumbing and Drainage Regulation 2003 to the responsible person (the appellant) to install a thermostatic mixing valve set at a temperature not to exceed 45° C for the delivery of hot water to personal hygiene fixtures located in the renovated bathroom.

Council acknowledges a duty of care responsibility to a disabled person through its involvement with the Home Assist Secure Program – Home Modification Service.

Material Considered

- ◆ Ipswich City Council Tribunal hearing appeal report
- ◆ Internal Ipswich City Council email from deputy city solicitor
Subject – Home Assist Secure – Home Modification Service.
- ◆ Cooper and Associates Hydraulic Consultants Pty Ltd Report
- ◆ Occupational Therapy Recommendations for “the subject site”
- ◆ Reliance Manufacturing Company email from Senior Research and Development Engineer
Subject – Safe Failure of tempering valves
- ◆ The Child Accident Prevention Foundation of Australia document
Subject –Controlling Domestic Hot Water Temperatures
- ◆ Brisbane City Council email from Principal Office Plumbing Services, Development and Regulatory Services Division
Subject – Tempering Valves
- ◆ Digital photographs of basin and shower installation at “the subject site”
- ◆ Bathroom floor plans for “the subject site”
- ◆ Plumbing and Drainage Act 2002
- ◆ Standard Plumbing and Drainage Regulation 2003
- ◆ AS/NZS 3500.4.2.1997 Hot Water Supply Systems Acceptable Solutions
- ◆ Amendment No 1 to AS/NZS 3500.4.2.1997 Part 4.2 Hot Water Supply Systems – Acceptable Solutions
- ◆ Building Code of Australia

Findings of Fact

Clause 7.2 Paragraph one of AS/NZS 3500.4.2.1997 states:

“Facilities for people with disabilities shall comply with the requirements of the Building Code of Australia and AS1428 for Australia and NZS 4121 or NZBC G1 for New Zealand and the relevant regulatory authority with regard to location and accessibility”

Part F2.4 of the Building Code of Australia references Facilities for People with Disabilities. This part only refers to the classes of building where a sanitary facility must be provided for people with disabilities and applies to Class 3,5,6,7,8,9 and 10a buildings

Section 12 Limited application of part 4.2 of the Standard Plumbing and Drainage Regulation 2003 states:

“For applying part 4.2 for regulated work, the reference in part 4.2, clause 1.6.2(b) to all other

buildings' is taken to be a reference only to buildings classified under Building Code of Australia as Class 1,2,3 or 4 buildings.

Reasons for the Decision

The National Plumbing and Drainage Code for Hot Water Supply Systems AS/NZS 3500.4.2.1997 Section 7.2 states that facilities for people with disabilities shall comply with the requirements of the Building Code of Australia.

The Building Code of Australia under Part F 2.4 makes reference to Classes 3,5,6,7,8,9 and 10 buildings where a sanitary facility must be provided for people with disabilities.

The building situated at "the subject site" has a building classification of class 1.

Therefore Section 7 of AS/NZS AS3500.4.2.1997 Hot Water Services for Disabled cannot be applied to Class 1 buildings under the legislation of the Building Code of Australia and the applied provision of the Standard Plumbing and Drainage Regulation 2003.

Section 12 of the Standard Plumbing and Drainage Regulation 2003 and clause 1.6.2.(b) of AS3500.4.2.1997 was also considered in this decision. The regulation applies the requirement for sanitary fixture delivery temperature not to exceed 50° C to the outlet of all sanitary fixtures used primarily for personal hygiene purposes in a Class 1 buildings.

In this decision it is concluded that the Building Regulation 1993, The Building Code of Australia and the applied provisions of the Standard Plumbing and Drainage Regulation 2003 does not provide a legal instrument to enforce compliance with the application of hot water services for the disabled (Section 7 AS/NZS 3500.4.2.1997) on a Class 1 building.

BRADLEY HODGKINSON

Building and Development

Tribunal Referee

Date: Thursday 25th August 2005

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
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