



Development Tribunal – Decision Notice

Planning Act 2016, section 255

Appeal number:	24-033
Appellant:	MDA Consulting Engineers Pty Ltd
Respondent:	Council of the City of Gold Coast
Site address:	3496 Main Beach Parade, Main Beach Qld 4217 and described as Lot 1 on SP 260788 – the subject site

Appeal

Appeal under section 229 and schedule 1, section 1(5) and table 3 item 3(b), of the *Planning Act 2016* ('the PA') against the respondent's decision to refuse an Amended Application PCS/2021/3139/B for 'changes to hot water location'

Place of hearing:	N/A (appeal decided on submissions)
Tribunal:	Kelvin Slade—Chair Bill Watson—Member
Submissions provided by	Maurice Duffill (the Appellant) Tony Innis (the Respondent)

Decision:

The Development Tribunal (Tribunal), in accordance with section 254(2)(a) of the *Planning Act 2016* (PA) confirms the decision of the respondent.

The proposed location of the water heater does not comply with the deemed to satisfy provision of AS/NZS 3500.4:2021 clause 5.3.2 (b) and (e).

Background

1. AS/NZS 3500.4:2021 clause 5.3.2 Accessibility and clearances, provides, relevantly as follows:
 - (b) *Unobstructed access shall be available to the burner, heating units, controls, cold water storage tanks and other apparatus requiring maintenance.*
 - (...)
 - (e) *The heater shall be subsequently removable without major structural alteration to the building or major alteration to the piping.*

2. AS/NZS 3500.0:2021 Glossary of terms, Terms of definition clause 3A.11 defines 'accessible' as:

Capable of being reached for the purposes of inspection, maintenance, repair or replacement, but may first require removal of an access panel, cover, door or similar.
3. The *Plumbing and Drainage Act 2018* ('the PDA') section 64 (Complying with code requirements for plumbing and drainage work) provides as follows:
 - (1) *A person who carries out plumbing or drainage work must ensure the work complies with the code requirements for the work. (...)*
 - (2) *A person who prepares a plan for plumbing or drainage work must ensure the plan complies with the code requirements for the work. (...)*
 - (3) *It is irrelevant for an offence against subsection (1) or (2) whether a permit was issued for the plumbing or drainage work....*
4. Section 9 (Code requirements) of the PDA provides as follows:
 - (1) *The code requirements, for plumbing or drainage work, are the requirements about the plumbing or drainage work under—*
 - (a) *the Queensland Plumbing and Wastewater Code; and*
 - (b) *a provision of the Plumbing Code of Australia prescribed by regulation; and*
 - (c) *a part of the Queensland Development Code prescribed by regulation; and*
 - (d) *the local laws of a local government relating to plumbing or drainage that are not inconsistent with this Act.*
 - (2) *If the Queensland Plumbing and Wastewater Code is inconsistent with a provision of the Plumbing Code of Australia or a part of the Queensland Development Code prescribed under subsection (1), the Queensland Plumbing and Wastewater Code prevails to the extent of the inconsistency.*
 - (3) *If a provision of the Plumbing Code of Australia is inconsistent with a part of the Queensland Development Code prescribed under subsection (1), the part prevails to the extent of the inconsistency.*
 - (4) *A regulation may prescribe how plumbing or drainage work, or a plan for plumbing or drainage work, can comply with the code requirements for the work.*
5. The Queensland Plumbing & Wastewater Code (QPW Code) relevantly provides as follows:

A1.1 Introduction

Purpose of the Queensland Plumbing and Wastewater Code

The Queensland Plumbing and Wastewater Code (QPW Code) sets out Queensland specific plumbing and drainage standards.

The QPW Code:

 - (a) *adopts standards in relation to matters not covered by the Plumbing Code of Australia (PCA) (National Construction Code, Volume 3) or*

(b) imposes higher standards over and above the requirements of the PCA or

(c) replaces requirements of the PCA.

(..)

A2 Application

The QPW Code has been designed to provide performance solutions to meet the statutory requirements of the Plumbing and Drainage Act 2018 (the Act)

(...)

A4 Referenced standards

AS/NZS 3500 2021 Part 4: Heated Water

(...)

B2 Heated water services

(...)

Objective

BO2 The objective of this part is to:

(a) safeguard people from illness, injury, or loss (including loss of amenity) due to the failure of a

heated water installation; and

(b) ensure that a heated water installation (including an installation provided for use by people with a

disability) is suitable; and

(c) conserve water; and

(d) safeguard the environment; and

(e) reduce greenhouse gas emissions; and

(f) safeguard public and private infrastructure; and

(g) ensure that a heated water installation is designed and is capable of being maintained so that throughout its serviceable life it will continue to satisfy objectives (a) to (f)

6. The National Construction Code Vol 3 – Plumbing Code of Australia provides relevantly as follows:

Part B2 Heated Water services

B2D9 General requirements

A heated water service must be in accordance with AS/NZS 3500.4

Jurisdiction

7. Schedule 1 of the PA states the matters that may be appealed to a Tribunal.
8. Schedule 1, table 3 item 3(b), lists a decision under the *Plumbing and Drainage Act 2018*, other than a decision made by the Queensland Building and Construction Commission, if an information notice about the decision was given or required to be given under that Act.

Decision framework

9. The onus rests on the appellant to establish that the appeal should be upheld (section 253(2) of the PA).
10. 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 (section 253(4) of the PA).
11. The tribunal may nevertheless (but need not) consider other evidence presented by a party with leave of the tribunal or any information provided under section 246 of the PA (pursuant to which the registrar may require information for tribunal proceedings).
12. The tribunal is required to decide the appeal in one of the ways mentioned in section 254(2) of the PA.

Material considered

13. The material considered in arriving at this decision was:
 - (a) Form 10 Notice of appeal, grounds for appeal and correspondence accompanying the appeal lodged with the Tribunals registrar on 26/6/2024
 - (b) Refused Application issued by City of Gold Coast dated 21/6/24
 - (c) Letter or response from Stiebel Eltron dated 7/6/24
 - (d) Hydraulic Services Plans H2117 rev C3
 - (e) Hydraulic Service Detail Sheet H4000 rev C1
 - (f) Form 2 Application to amend permit for Permit number PDS/2021/3139 dated 10/5/24
 - (g) Hydraulic Services drawings H2114 – H2148
 - (h) Photo of mock installation
 - (i) Action notice issued relating to Application number PCS2021/3139 by City of Gold Coast dated 18/3/24
 - (j) Information request relating to Property description Lot 1 SP260788 issued by City of Gold Coast dated 28/5/24
 - (k) Refused application notice Amended Application Changes to hot water system position in Amended Application PCS/2021/3139B issued by City of Gold Coast dated 19/6/24
 - (l) Refused application notice Amended Application Changes to hot water system location PCS/2021/3139B issued by City of Gold Coast dated 21/6/24
 - (m) Hydraulic Service Detail Sheet H4000 rev D1
 - (n) Hydraulic Service Detail Sheet H4000 rev E1
 - (o) Everhard Industries Laundry Collection specification sheet
 - (p) Everhard Industries Classic stainless steel laundry unit door removal and reversal instructions
 - (q) Stiebel Eltron DEL Plus Technical datasheet
 - (r) Council's submissions dated 25 October 2024, provided pursuant to the Tribunal's direction dated 10 October 2024, directing Council to respond to the matters raised

in the letter from Stiebel Eltron (paragraph 13(c) above) and any other submission that Council wished to make.

Findings of fact

14. The tribunal makes the following findings of fact:
 - (a) The proposed location of the Stiebel Eltron DEL 27 water heater, inside the Everhard Industries Classic 30L laundry unit, does not comply with the deemed to satisfy provision of AS/NZS 3500.4:2021 Clause 5.3.2
 - (b) The proposed location of the Stiebel Eltron DEL 27 water heater, inside the Everhard Industries Classic 30L laundry unit, is not reasonably accessible when considering the definition of 'accessible' as defined in AS/NZS 3500.0:2021
 - (c) The proposed location of the Stiebel Eltron DEL 27 water heater, inside the Everhard Industries Classic 30L laundry unit, would not satisfy the performance criteria Section B Objective BO2(g) of the QPW Code.

Reasons for the decision

15. The Appellant's Form 10 Notice of Appeal reasoning has been considered against the Deemed to Satisfy provision of AS/NZS 3500.4:2021 clause 5.3.2 to determine whether compliance with this clause is established.
16. The Appellant's claim that the restricted space does not void the manufacturer's warranty is irrelevant to the accessibility requirements of AS/NZS 3500.4 clause 5.3.2 for future maintenance.
17. The AS/NZS 3500.0 Glossary of terms was referenced to define 'accessible' in determining the intent of AS/NZS 3500.4 clause 5.3.2.
18. Hydraulic Service Detail Sheet H4000 shows other service controls and fittings are located within the available space inside the laundry cabinet.
19. The picture of the installation mock up shows the laundry tub waste trap is located in front of and restricting access to the water heater.
20. The picture of the installation mock up shows a tundish located at the left front of the laundry cabinet, immediately beside and restricting access to the water heater for future maintenance.
21. Review of the laundry cabinet dimensions, the clear height space between the floor of the cabinet and the underside of the laundry tub shows that only restricted space is available for the installation of the Stiebel Eltron Del 27 water heater.

Kelvin Slade
Development Tribunal Chairperson
Date: 20 November 2024

Appeal rights

Schedule 1, table 2, item 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:

The Registrar of Development Tribunals
Department of Housing and Public Works
GPO Box 2457
Brisbane QLD 4001

Telephone 1800 804 833

Email: registrar@epw.qld.gov.au