



Development Tribunal – Decision Notice

Planning Act 2016, section 255

Appeal number: 25-001

Appellant: Ryan J McArthur

Respondent: Sunshine Coast Regional Council

Site address: Ocean Views Resort, 115 Bulcock Street, Caloundra Qld 4551 and described as SP 213063 – the subject site

Appeal

Appeal under s 229(1)(a)(ii) and Schedule 1, Section 1(5), Table 3, s 3(b) of the *Planning Act 2016* (PA) against the decision of the Respondent to issue an action notice with respect to alleged non-compliant notifiable work (Ref NW4388535) being the failure to lodge a Form 9 relating to the replacement of a testable backflow prevention device (serial number 2706493) as required by s 103 of the *Plumbing and Drainage Regulation 2019* (PDR).

Date and time of hearing: Not Held

Place of hearing: Submissions

Tribunal: Mr Simon James - Chair
Mr Kelvin Slade - Referee

Decision:

The Development Tribunal (Tribunal), in accordance with section 254(2)(c) of the PA, replaces the decision of the Respondent, that the failure of the Appellant to provide a Form 9 to the Respondent and the owner of the premises in relation to the removal/replacement of backflow prevention device (serial number 2706493) constituted non-code compliant notifiable work, with a decision that the notifiable work is code compliant.

Background

1. On 4 February 2025, Mr Ryan J McArthur, who is the Appellant in this appeal, signed and submitted a *Form 9 – Registration and report on inspection and testing of testable backflow prevention devices* (Form 9), an approved form required to be submitted pursuant to s 103(3) of the PDR in relation to the installation and testing of a backflow prevention device. The relevant device being a Valvcheq 25mm DC03 Serial Number 190834485-03 (the Valvcheq device).

2. The Form 9 and notifiable works were undertaken at a premises, the Ocean Views Resort, at 115 Bullock Street, Caloundra in Queensland (the premises). The work was undertaken and tested on 30 January 2025.
3. Section 10 of the Form 9 states that as part of the notifiable works, a Wilkins DCV 350 backflow prevention device serial number 2706493 - 25 mm (the Wilkins device) was removed.
4. On 4 February 2025, the Appellant lodged a *Form 4 – Notifiable work - NW4388535* (Form 4) with the Commissioner, Queensland Building and Construction Commission (QBCC) as required by s 83(1) of the *Plumbing and Drainage Act 2018* (the PDA), reference number NW4388535 refers.
5. On 18 February 2025, an *Action Notice – Notifiable Works* (Action Notice) was issued pursuant to s 96 of the PDR. The Action Notice was accompanied by an Information Notice issued pursuant to s 97 of the PDR. The Action Notice was issued by the Principal Plumbing Inspector, Plumbing Services, Sunshine Coast Council, who is the Respondent in this appeal.
6. The Action Notice stated that a Form 9 had not been received by the Respondent or the owner of the premises for the Wilkins device, and as a consequence, the Appellant had not complied with s 103 of the PDR. The Respondent, by way of the Action Notice required the Appellant to give to the Respondent and the owner of the premises a (further) Form 9 for the removal of the Wilkins device. The Information Notice which reflects the Action Notice, stated under its reasons for decision, that following inspection, the ‘inspector’ was not satisfied the work was compliant.
7. Relevantly, the Action Notice states that it is an offence for a responsible person to comply with the notice, punishable by a penalty of 20 penalty units.
8. On 18 February 2025, the Appellant filed a Form 10 – Notice of Appeal under the PA.

Jurisdiction

9. Section 229 and Schedule 1, s 1(5), Table 3, s 3(b) of the PA provides for an appeal against a decision made under the PDA, where an *information notice* about the decision was given or required to be given, under the PDA.
10. Section 150 of the PDA provides a head of power to establish a regulatory scheme for a local government or inspector to give an action notice to a responsible person to take action in relation to plumbing or drainage work, of the type prescribed by regulation. This scheme is established in Part 6, Division 7 of the PDR, with s 97 of the PDR providing for the form and content of action notices.
11. Relevantly, s 97(3) of the PDR requires action notices to be accompanied by, or include, an *information notice* about the decision to give the action notice. This is also evident in the drafting note to s 97 of the PDR which references appeals under Schedule 1, Table 3, s 3(b) of the PA.
12. The Tribunal is satisfied that it has jurisdiction to determine the appeal.

Appeal Period, Form and Standing

13. Section 229(2) of the PA allows an appeal to be commenced within the appeal period. An appeal with respect to a decision of a local government or an Inspector to give an action notice under the PDA must be filed within 5 business days after the notice was given¹.
14. The relevant action notice is issued/dated 18 February 2025. There is no indication in the material as to the date and method of service of the action notice, however, the Form 10, Notice of Appeal is dated 18 February 2025, which indicates the action notice was served the same day.
15. The Form 10, Notice of Appeal was lodged on 18 February 2024, with the relevant appeal application fee paid the same day.
16. The Tribunal is satisfied that the appeal has been filed within time.

Decision framework

17. The onus rests on the Appellant to establish that the appeal should be upheld, unless the matter relates to the issuing of an enforcement notice². This appeal relates to the issuing of an Action Notice pursuant to s 97 of the PDR, and therefore, the onus of establishing that the appeal should be upheld remains on the Appellant.
18. 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 against³.
19. The Tribunal may nevertheless, but need not, consider other evidence presented by a party with leave of the Tribunal, or any information provided pursuant to s 246 of the PA in relation to which the Registrar may require information for tribunal proceedings.
20. The Tribunal is required to decide the appeal in one of the ways mentioned in section 254(2) of the PA. If the decision is to substitute another decision, the Tribunal can replace the decision with another decision under s 254(2)(c) of the PA⁴.
21. The Tribunal, after considering the material provided by the parties, has determined the appeal is one which is suitable for determination 'on the papers' (submissions) pursuant to s 249(2) of the PA.
22. In cases where appeals are conducted on the papers, s 249(3) of the PA requires that notice be sent to all parties asking for submissions to be made to the Tribunal.
23. On 26 March 2025, the parties were advised of the Tribunal's intention to conduct the appeal on the papers and invited to provide further submissions for consideration by the Tribunal.

¹ See s 229(3)(f)(ii) of the PA

² See sections 253(2) and (3) of the PA

³ See s 253(4) of the PA

⁴ Consistent with the principles in *Capuano v QComp* [2004] QSC 333.

24. Submissions by the Appellant were received on 26 March 2025, and by the Respondent on 28 March 2025.

Material considered

25. The material considered by the Tribunal in arriving at its decision are:
- (a) Form 10 Notice of appeal, including grounds for appeal and correspondence accompanying the appeal lodged with the Development Tribunals Registrar on 18 February 2025;
 - (b) Action Notice – Notifiable Works including Information Notice dated 18 February 2025;
 - (c) Form 9 Registration and report on inspection and testing of testable backflow prevention devices dated 4 February 2025;
 - (d) Form 4 – Notifiable Work NW4388535 submitted 4 February 2025;
 - (e) Email correspondence between the Appellant and the Development Tribunals Registrar in relation to the grounds and lodgement of the appeal;
 - (f) Receipt No. 6363447 – Appeal Application Fee;
 - (g) Submissions of the Appellant dated 26 March 2025; and
 - (h) Submissions of the Respondent dated 28 March 2025.

Findings of Fact/Law

Notifiable Work

26. The Action Notice is issued under s 96 of the PDR for non-compliant *notifiable work*.
27. *Notifiable work* is defined in s 6(1)(b) and (3) of the PDA and includes plumbing and draining work prescribed by regulation as notifiable work. Section 5 of the PDR defines *notifiable work* for the purposes of s 6(3) of the PDA in so far as plumbing work is concerned, as plumbing work of the type stated in schedule 1, part 2 of the PDR.
28. Schedule 1, part 2, section 7 of the PDR defines *notifiable work* to include:

7 *Backflow prevention devices*

work necessary for installing, replacing or removing a testable backflow prevention device or a dual check valve with atmospheric port, if the work is for

- an existing building; or*
- an extension to an existing class 1 building; or*
- a structure for an existing class 1 building*

29. The appeal relates to work undertaken with respect to s 103 of the PDR and testable backflow prevention devices.
30. Schedule 10 of the PDR defines testable backflow prevention device to mean any of the following backflow prevention devices:
- (a) *a double check valve;*
 - (b) *a pressure type vacuum breaker;*
 - (c) *a reduced pressure zone device;*
 - (d) *a registered air gap;*
 - (e) *a registered break tank;*
 - (f) *a testable single check valve.*
31. The Form 9, signed and issued by the Appellant, indicates the work undertaken related to a 'double check valve', which falls within the definition of a testable backflow prevention device in Schedule 10. Ocean Views Resort is also an existing or Class 1 building.
32. The work undertaken by the Appellant to install the Valvcheq device is therefore, notifiable work.

Non-compliant Work

33. The reasons for the decision of the Respondent state the notifiable work is non-complaint for the following reasons:

The audit identified the removal of a previously registered backflow prevention device (serial number 2706493) which was replaced by the installation of a new backflow prevention device (serial number 10834485-03).

The Plumbing and Drainage Regulation 2019 (PDR) section 103 prescribes two types of relevant work;

- (i) *installing a testable backflow prevention device at a premises (whether for the first time or to replace a previously installed device); and*
- (ii) *removing a testable backflow prevention device from a premises.*

It requires the licensee to give notice of the relevant work in the approved form (Form 9) to the local government and the owner of the premises within 10 business days after carrying out the relevant work.

34. The Action Notice and Information Notice do not outline the basis upon which the Respondent undertook the audit and inspection. However, s 95(2) of the PDR allows an Inspector, with the consent of the occupier, to inspect notifiable work to check if the work is 'code' compliant.
35. The term *compliant* in so far as *plumbing and drainage work* is concerned is defined in s 69(2) of the PDA. The work undertaken in relation to the testable backflow prevention

device was *plumbing and drainage work*⁵. Section 69(2) of the PDA provides that *plumbing and drainage work* is compliant, if it complies with the matters prescribed by Regulation. The regulation for the purposes of s 69(2) of the PDA, would be one which is made under the head of power in s 157 of the PDA, and relevantly, subsection (f) in the relation to the inspection of notifiable work and the giving of action notices.

36. The PDR, including Part 6, Division 6 and Part 7, is subordinate legislation, or a regulation made under the PDA and contains the scheme for the inspection of notifiable work and the giving of action notices. This includes s 103, which is contained in Part 7 of the PDR, in relation to the obligations of a licensee that carries out relevant work relating to a testable backflow prevention device.
37. Notifiable work which does not comply with the provisions of s 103 of the PDR, is in effect non-compliant for the purposes of s 69(2) of the PDA.
38. The Action Notice (and Information Notice) issued by the Respondent dated 18 February 2025, asserts that the notifiable work undertaken by the Appellant is not compliant on the basis that an audit identified the removal of a previously registered Wilkins device which was replaced by the installation of the new Valvcheq device.
39. The Respondent's position is that both the removal of the Wilkins device and the installation/replacement with the new Valvcheq device, are separate and distinct notifiable work activities under s 103 of the PDR, which required the Appellant to give to the Respondent and the owner of the premises, two (separate) Form 9's. That is, a Form 9 with respect to the removal of the previously registered Wilkins device⁶ and a separate Form 9 in relation to the installation of the Valvcheq device⁷.
40. The failure of the Appellant to give a Form 9 to the Respondent and the owner of the premises relating to the removal of the previously registered Wilkins device, in the view of the Respondent, constituted non-compliant notifiable work.
41. The Appellant's position, as outlined in the Notice of Appeal dated 18 February 2025 and subsequent submissions to the Tribunal, is that the installation of a testable backflow prevention device in s 103(1)(a) of the PDR includes the replacement of a previously installed device. Therefore, only one Form 9 is required to be given for the notifiable work⁸.
42. On this basis, the Appellant argues the work undertaken to replace the Wilkins device with the Valvcheq device, in effect represents one activity under s 103(1)(a) of the PDR, and therefore, the notifiable work is compliant.
43. In considering the material provided on appeal, the Tribunal considers that the factual circumstances relating to the installation of the Valvcheq device and removal of the Wilkins device by the Appellant are not in dispute.

⁵ See paras 27-32 above

⁶ See s 103(1)(b) of the PDR

⁷ See s 103(1)(a) of the PDR

⁸ see Form 9 Notice dated 4 February 2025 and Form 4 – Notifiable Work submitted to the Queensland Building and Construction Commission on 4 February 2024

44. The fundamental issue which remains in dispute, and the question which requires resolution in this appeal, is whether there are any legal consequences for the Appellant under s 103 of the PDR, in relation to his not providing a Form 9 to the Respondent and the owner of the premises following the removal of the Wilkins device.
45. This question can only resolved through the proper statutory interpretation of s 103 of the PDR, and in particular, whether the installation and replacement of a testable backflow prevention device under s 103(1)(a) of the PDR is considered a distinct or different activity to the removal of a testable backflow prevention device under s 103(1)(b) of the PDR.

Reasons for decision

46. Section 103 of the PDR provides:

103 Testable backflow prevention device—obligation of licensee

- (1) *This section applies if a licensee carries out the following work (the **relevant work**)—*
 - (a) *installing a testable backflow prevention device at premises, whether for the first time or to replace a device previously installed;*
 - (b) *removing a testable backflow prevention device from premises.*
- (2) *This section also applies if the owner of premises where a testable backflow prevention device is installed arranges for a backflow prevention licensee to maintain and test the device (also the **relevant work**), whether to comply with [section 102\(4\)](#) or an enforcement notice.*
- (3) *The licensee must, within 10 business days after carrying out the relevant work, give notice of the relevant work in the approved form to—*
 - (a) *the local government; and*
 - (b) *the owner of the premises.*

Maximum penalty—20 penalty units.

47. The terms *replace* and *remove(ing)* are not specifically defined in the PDR, the PDA or the *Acts Interpretation Act 1954* (AIA).
48. In the absence of a statutory definition, the AIA allows the use of extrinsic materials as an aid to interpreting the ordinary meaning of a provision, such as explanatory notes or memorandums to Bills or similar documents⁹.
49. The explanatory notes to the current PDR¹⁰ which consolidated and repealed the former *Plumbing and Drainage Regulation 2003* and *Standard Plumbing and Drainage Regulation 2003*, do not assist in interpreting the provisions of s 103 of the PDR and the definitions of *replace* and *remove(ing)*.

⁹ See s 14A(1)(c) of the AIA.

¹⁰ See Subordinate Legislation 2019 No. 42.

50. In circumstances such as these where there is an absence of a statutory definition, reference can be had to the ordinary meaning of a word as defined in an appropriate dictionary¹¹.
51. The on-line Cambridge Dictionary defines *replace* as:
- *to take the place of something, or to put something or someone in the place of something or someone else.*
 - *If you replace something broken, damaged, or lost, you provide a new one.*
 - *to take the place of something or put in the place of something or someone else*¹².
52. The on-line Cambridge Dictionary defines *remove* as:
- *to take something or someone away from somewhere, or off something.*
 - *to take something away from an object, group, or place*¹³.
53. The ordinary definition of *replace* suggests the substitution of one thing (or item) for another, with an emphasis on continuity, that is, the introduction of a new item that serves a similar function or ongoing capability.
54. The ordinary definition of *remove* has a different meaning and suggests the taking away of a thing with some permanency, without necessarily providing a substitute (replacement). It is a single action which is focused on the elimination or reduction of an item, with no ongoing capability.
55. In applying the ordinary dictionary meaning of the word *replace* for the purposes of s 103(1)(a) of the PDR, the Tribunal considers that the legislators intended 103(1)(a) of the PDR be applied to circumstances where an existing testable backflow prevention device was being replaced or exchanged, such that an ongoing capability remained.
56. In applying the ordinary dictionary meaning of the word *remove* for the purposes of s 103(1)(b) of the PDR, the Tribunal considers that the legislators intended 103(1)(b) of the PDR be applied in circumstances of finality, that is, where there has been a permanent removal of a testable backflow prevention device with no ongoing capability (device) in place to protect water supplies from contamination or pollution due to backflow.
57. The Tribunal considers that the requirement for a licensee to issue a Form 9 under s 103(1)(b) of the PDR applies in circumstances where a testable backflow prevention device is permanently removed from a property and where no ongoing capability is left in place to protect the water supply from contamination due to backflow.
58. The Appellant installed the new Valvcheq device. This was a replacement of the existing Wilkins device and was not undertaken in the context of the permanent removal of capability to protect the water supplies from contamination or pollution due to backflow.

¹¹ *Brutus v Cozens* [1973] AC 854: House of Lords.

¹² <http://dictionary.cambridge.org> - replace

¹³ <http://dictionary.cambridge.org> - remove

59. The Appellant provided a Form 9 to the Respondent and the owner of the premises in relation to the installation of the Valvcheq device and replacement of the Wilkins device as required under s 103(1)(a) of the PDR. The Appellant complied with his statutory responsibilities under s 103(1)(a) of the PDR and therefore, the notifiable work was compliant.
60. There was no requirement under s 103(1)(b) of the PDR for the Appellant to give a further (separate) Form 9 to the Respondent and the owner of the premises relating specifically to the replacement of the Wikins device, as it was not a removal of the device for the purposes of s 103(1)(b) of the PDR.
61. The Tribunal has also considered the additional material contained in the Respondent's submissions dated 28 March 2025, and in particular that the position of the Respondent is informed by its responsibility for the establishment and ongoing maintenance of a registration program for testable backflow prevention devices, and its corporate plan and commitment to the community.
62. The Tribunal's decision does not increase risk to public health and safety and the environment as a testable backflow protection capability remains in place.
63. The Tribunal's decision also does not prevent the Respondent from meeting its statutory responsibilities with respect to its program for registering and monitoring the maintenance and testing of testable backflow prevention devices as required under s 101 of the PDR. The Respondent will continue to receive timely notice of a testable backflow prevention device having been installed, replaced, or that a previously installed device has been permanently removed.

Simon James
Development Tribunal Chair
Date: 10 April 2025

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

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Email: registrar@epw.qld.gov.au