



## Development Tribunal – Decision Notice

---

### **Planning Act 2016 Section 255**

<b>Appeal number:</b>	23-011
<b>Appellant:</b>	Tony Raymond Marshall
<b>Respondent:</b>	Toowoomba Regional Council
<b>Site address:</b>	510 Glencoe Yalangur Road, Lilyvale Qld 4352 and described as Lot 127 on AG4286 – <b>the subject site</b>

---

### **Appeal**

Appeal under section 229 and item 3(b) of table 3 of Schedule 1 of the *Planning Act 2016* ('PA') against the decision of Toowoomba Regional Council ('Respondent') to issue an Action Notice dated 17 March 2023, reference PDRUS/2021/3071/A relating to a plumbing application for the subject site.

---

<b>Date and time of hearing:</b>	18 July 2023, 10.40am
<b>Place of hearing:</b>	The subject site.
<b>Tribunal:</b>	Samuel le Noble – Chair Ken Crase – Member
<b>Present:</b>	Tony Raymond Marshall – Appellant Geoff Tynan – Respondent (Toowoomba Regional Council) Dan Eastwell – Respondent (Toowoomba Regional Council)

---

### **Decision**

The Development Tribunal (Tribunal), in accordance with section 254(2)(c) of the PA upholds the Appeal and replaces the decision of the Respondent, namely, that the relevant works subject of this appeal are compliant and a final inspection certificate may be issued pursuant to section 84 of the *Plumbing and Drainage Regulation 2019*.

### **Background**

1. On 17 March 2023, a representative of Toowoomba Regional Council (the 'Respondent') attended the subject site to conduct an inspection of completed plumbing and drainage works.
2. On or after 17 March 2023, the Respondent issued an Action Notice ('Action Notice') to the appellant, Tony Marshall, advising the appellant of outstanding items to be completed and requesting that he advise the Respondent when the items, subject of the notice, had been completed.

3. The specific items to be completed were set out in the notice and related to:
  - *Trapping of bath to comply with AS3500.2:2018.*
  - *Installation of WC in ensuite to comply with AS3500.2:2018 13.27.1.*
  - *Onsite sewerage land application area requires bonding to prevent surface water entering: AS1547; As per approved plan.*
4. Between 17 and 23 March 2023, both the appellant and respondent attempted to resolve the issues via email and phone communication.
5. On 27 March 2023, the appellant commenced an appeal against the notice of decision, namely, the action notice, by lodging a Form 10 - Notice of Appeal with the Registrar.

### **Summary of issues before the Tribunal**

6. The matters came before the Tribunal by way of the appeal filed with the registrar on 27 March 2023.
7. The respondent, in the action notice dated 17 March 2023 issued to the appellant, deemed a bath trap non-compliant with Australian/New Zealand Standard ('AS/NZS') 3500.2:2018. This is the first issue to be decided by this Tribunal.
8. On the hearing of the appeal, the respondent conceded the first issue by reason that the bath can be accessed from underneath the house within a void space, and therefore complies with AS/NZS 3500.2:2018. Accordingly, this issue is not addressed further by the Tribunal by way of the respondent conceding to its merits at the hearing.
9. The second issue is the alleged non-compliant installation of a water closet ('WC'), or more commonly known as a toilet, at the subject site. The respondent advised in the action notice the WC is required to comply with clause 13.27.1 of AS/NZS 3500.2:2018, namely, the fixing of the WC using silicone does not comply with 13.27.1.
10. Upon review of the action notice, and taking into consideration the oral and written submissions of the parties, it would appear clear that an error has been made in the reference to clause 13.27.1 of AS/NZS 3500.2:2018.
11. In the Tribunal's view, the reference to clause 13.27.1 in the action notice, and subsequent reference in the Form 10 – Notice of Appeal, appears to be in error. Clause 13.27.1 details technical requirements relating to the connection of a WC to soil stacks and sanitary drains.
12. The issue contended by the parties at the hearing and subsequent written submissions speaks only to the fixing of the WC, and not the connection of the WC to soil stacks or sanitary drains.
13. Deciding the appeal upon clause 13.27.1, in the Tribunal's view, would produce a decision inconsistent with the submissions put forward by the parties.
14. Accordingly, only the second issue subject of this appeal is put to the Tribunal, with reference to clause 13.27.2 of AS/NZS 3500.2:2018.
15. For ease of understanding clause 13.27.2 from AS/NZS3500.2:2018 is reproduced below.

#### *13.27.2 Installation*

*Water closet pans shall be securely fixed by –*

- (a) Bedding not thicker than 20mm;*
- (b) Brackets; or*
- (c) Corrosion-resistant fasteners.*

## The focus of debate

16. During the hearing the competing contentions of the parties demonstrated a fundamental difference in perspective on the interpretation of AS/NZS 3500.2:2018 clause 13.27.2.
17. Firstly, the appellant at the hearing and in written submissions contended that compliance with clause 13.27.2(c) was not possible as a fastener would penetrate the waterproofing membrane, voiding the warranty supplied by Total Waterproofing Supplies Pty Ltd.
18. The appellant then submitted that the silicone sealant used to install the water closet pan to the tiled floor complied with clause 13.27.2(a).
19. The respondent submitted that silicone sealant did not meet the definition of 'bedding', and the interpretation put forward by the respondent was bedding comprises a mixture of sand and water only.
20. The appellant accepted that a mixture of sand and water met the definition of bedding, but also contended that bedding is not defined in AS/NZS3500.2 and is therefore open to further interpretation.
21. At the hearing it was agreed by both parties that the term 'bedding' is not defined in AS/NZS3500.2:2018 and attention was drawn to the definitions provided in AS/NZS3500.0:2003 – Glossary of Terms.
22. AS/NZS3500.2:2003 is referenced by AS/NZS3500.2 by way of clause 1.4, and defines bedding as the following;
  - Bedding – material placed beneath a pipe to provide support for the pipe.
23. It is clear that this definition only applies to material placed beneath a pipe, and not a WC.
24. Therefore, AS/NZS3500.2 lacks a definition for bedding in the context of clause AS/NZS3500.2:2018 clause 13.27.
25. The question then becomes one of degree. The Macquarie Dictionary defines it, in the context of building trades, as a *foundation or bottom layer of any kind*.
26. This invites the question, is silicone sealant suitable as a foundation or bottom layer for securely fixing the water closet?
27. The Tribunal requested an interpretation from Standards Australia, the organisation responsible for developing and publishing both AS/NZS 3500.2:2018 and 3500.0:2003. This request was declined.
28. The Tribunal also sought an opinion from the (then) Department of Energy and Public Works's ('DEPW') Building Policy unit as to the question put before this Tribunal.
29. The opinion offered by the DEPW Building Policy unit was as follows.
  - That the term 'bedding' is defined in AS/NZS3500.0:2003 but only in relation to pipework.
  - With regard to AS/NZS3500.2:2018 clause 13.27.2 for the installation of a water closet, methods (a) or (b) or (c) can be used.
  - If the bedding was cement mortar, then the pan would not be able to be removed for maintenance without it being broken. The removal may be required for attention to the pan collar and other matters.
  - The common practice is that the pan is bedded on a silicone/chalking bead and then secured to the floor or wall with brackets or corrosion-resistant fasteners.

- Following the manufacturer's installation specification should allow the pan to comply with the installation requirements of the Australian Standard.
- If brackets or fasteners were not also employed, then the suitability of the silicone/chalking as a bedding and securing method would need to be verified to ensure that the material proposed to be used can securely fix the pan to the floor surface.

### **Jurisdiction**

30. Schedule 1 of the PA states the matters that may be appealed to the Tribunal.
31. Section 1(5) of schedule 1 of the PA provides that table 3 states the matters that may be appealed only to a tribunal.
32. Under table 3, item 3(b) of schedule 1 of the PA, an appeal may be made against a decision under the Plumbing and Drainage Act 2018 (P&D Act), if an information notice about the decision was given or required to be given under the P&D Act. Under column 1 of item 3, the appellant for such an appeal is identified as a person who received, or was entitled to receive, an information notice about the decision.
33. Accordingly, the Tribunal decides it has jurisdiction to decide this appeal.

### **Materials considered**

The material considered in arriving at this decision comprises:

34. Form 10 – Appeal Notice', grounds for appeal and correspondence accompanying the appeal received by the Tribunals Registrar on 13 March 2023.
35. Action Notice issued to the appellant by the respondent for an inspection carried out on 17 March 2023, reference PDRUS/2021/3071/A.
36. Technical data sheet for Soudal Trade Bathroom and Kitchen Silicone, revision 16 March 2019.
37. Email correspondence between the appellant and respondent.
38. Email correspondence from the Queensland Building and Construction Commission to the respondent.
39. Email correspondence from the WC distributor Reece to the appellant.
40. Email correspondence from Down's Waterproofing to the appellant.
41. Email correspondence from DEPW Building Policy unit to the Registrar.
42. Email correspondence from Total Waterproofing Supplies Pty Ltd to the appellant.
43. Specification Sheet for Posh Solus Close Couple Toilet Suite dated 5 July 2021.

## Findings of fact

The Tribunal makes the following findings of fact:

44. AS/NZS3500.2:2018 is the applicable standard for plumbing and drainage works, namely, for the installation of WC pans.
45. AS/NZS3500.0:2003 is referenced by way of AS/NZS3500.2:2003 clause 1.4 for definitions of select terms.
46. Only one of the methods listed at clause 13.27.2 of AS/NZS3500.2:2018 is required to be adopted when securely fixing a WC to the floor.
47. Both AS/NZS 3500.2:2003 and 3500.0:2003 lack applicable definitions for the term 'bedding' in the context of clause 13.27.2 of AS/NZS3500.2:2018.
48. Silicone sealant was used by the appellant to bed and fix WCs to the floor at the subject site. Specifically, Soudal brand sealant was used.

## Decision framework

49. The onus rests on the appellant to establish that the appeal should be upheld (section 253(2) of the PA).
50. 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, which in this case was the respondent.
51. The Tribunal may nevertheless (but need not), consider other evidence presented by a party to the appeal with leave of the Tribunal or any information provided under section 246 of the PA.
52. The Tribunal is required to decide the appeal in one of the following ways set out in section 254(2) of the PA:
  - (a) *confirming the decision; or*
  - (b) *changing the decision; or*
  - (c) *replacing the decision with another decision; or*
  - (d) *setting the decision aside and ordering the person who made the decision to remake the decision by a stated time; or*
  - (e) *for a deemed refusal of an application:*
    - (i) *ordering the entity responsible for deciding the application to decide the application by a stated time and, if the entity does not comply with the order, deciding the application; or*
    - (ii) *deciding the application.*

## Reasons for the decision

53. The focus of attention is the definition of bedding. The question put before this Tribunal was 'would silicone sealant constitute sufficient bedding for the purposes of complying with AS/NZS3500.2:2018?'.  
54. This standard provides no applicable definition of 'bedding', and the referenced glossary of terms that is in AS/NZS3500.0:2003 is also absent of an applicable definition.

55. AS/NZS3500.2:2018 requires at least one of the methods listed in clause 13.27.2 to securely fix the WC to the floor. The method described at sub-clause (a) comprises only of bedding.
56. Both parties were, at the hearing and afterwards via written submissions, provided opportunity to submit their interpretation of the question they put before this Tribunal.
57. The appellant strongly contended the silicone sealant was used to securely fix the toilet as it is more versatile than that of screws, no fixings penetrate the waterproofing membrane, and allows for the disconnection of the WC without damage to the waterproofing membrane or WC.
58. The appellant further contended, via written submission, the silicone sealant has inherent structural adhesive properties that make it suitable as an adhesive.
59. The respondent submitted at the hearing the definition of bedding extended only to a sand and water mix, and did not include the method of silicone sealant. The respondent did not challenge the appellant's written submission detailing the application of the silicone sealant.
60. The opinion offered by the Queensland Building and Construction Commission's Plumbing and Investigation Unit to the respondent rejected the use of silicon as a sole means of fixing the WC as it is not a method described in clause 13.27.2. No further reasoning was provided.
61. In the opinion of this Tribunal the term bedding is capable of ready and reasonable interpretation in the building trades context. It flows from the words 'bottom layer of any kind' as referring to a material that is placed between the waterproofing membrane and WC which securely fixes it to the surface.
62. Restricting the interpretation to a sand and mortar mix only is not consistent with the Macquarie Dictionary's definition, which can be readily and easily interpreted to include other materials.
63. Advice from the WC distributor opined that silicone sealant applied to the foot of the pan is sufficient to secure the pan down once it has set.
64. The Development Tribunal (Tribunal), in accordance with section 254(2)(c) of the PA upholds the Appeal and replaces the decision of the Respondent, namely, that the relevant works subject of this appeal are compliant and a final inspection certificate may be issued pursuant to section 84 of the *Plumbing and Drainage Regulation 2019*.

---

**Samuel le Noble**

Development Tribunal Chair  
Date: 21 December 2023

## **Appeal rights**

Schedule 1, Table 2, item 1 of the PA 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, Local Government, Planning and Public Works  
GPO Box 2457  
Brisbane QLD 4001

Telephone 1800 804 833

Email: [registrar@epw.qld.gov.au](mailto:registrar@epw.qld.gov.au)