



Building and Development Tribunals—Decision

Integrated Planning Act 1997

Appeal Number:	3—09—024
Applicant:	Jerry Altavilla
Assessment Manager:	Toowoomba Regional Council ('Council')
Concurrence Agency: (if applicable)	N/A
Site Address:	Gatton-Clifton Road, Pilton and described as Lot 40 on RP 29947 — the subject site

Appeal

Appeal under section 4.2.12A of the *Integrated Planning Act 1997* (IPA) against the decision of Council to refuse an application (deemed refusal) for a compliance permit under section 85 (10) of the *Plumbing and Drainage Act 2002* (PDA).

Date of hearing:	9.00am – Tuesday, 31 March 2009
Place of hearing:	Offices of the Department of Infrastructure and Planning, Brisbane
Tribunal:	Jim Graham – Chair
Present:	Neil Cahill – QPDB Pty Ltd Mark McKechnie – Assessment Manager, QPDB Pty Ltd David Krumins – Council representative Michael Lisie – Council representative Leo Blumkie – Observer, Tribunal Chair for Appeal No. 3-09-023 Steve Adams – Observer, General referee for Appeal No. 3-09-023

Decision:

The Tribunal, in accordance with section 4.2.34 (1) of the IPA orders Council to re-assess the application and issue a compliance permit, with or without conditions, to the Applicant within 20 business days.

Background

General background

The subject site is described as Lot 40 on RP29947 and is located along the Gatton Clifton Road. The subdivision contains 58 lots. The roads are not formed and access to the lots is by way of easement.

The subject site is approximately 25.0m in width and ranges from 49.0m to 59.0m in depth with a frontage of 27.0m. The area of the subject site is 1366m².

The land is zoned rural under the current Clifton District Planning Scheme.

A development approval was given by the Clifton Shire Council to construct a class 1 building on 4 October 1994. The development was not proceeded with in the required 12 month period, and the approval lapsed on 4 October 1995.

Plumbing matters

An information request was made on the 15 October 2008 to the owners agent under the PDA regarding planning issues:-

1. Section 4.11 – Onsite Services Car Parking Code – P.2 – where development for a house is 2,000m²
2. Section 4.13 – Residential Development Code – P.3 – minimum setback 15.0m required.
3. Section 4.14 – Residential Development Code – P.2 – development in a Bushfire Risk area.

A response to this information request was made on the 15 January 2009 in which it was pointed out that the information required was not relevant to the PDA and requested that the assessment of the plumbing and drainage application continue.

Combined hearing

Although this appeal relates to the PDA, the factual background described above gave rise to an appeal against a refusal by the assessment manager to approve a building development application for the same class 1 building. As a result, the Chairperson on the separately constituted Tribunal decided to hear the matters together at a combined hearing. Hence, the reference in the Chairperson and General Referee appointed to hear *Altavilla v Toowoomba Regional Council* [2009] Appeal No. 03-09-024. Additional factual background to this combined matter is contained within the above decision.

Material Considered

1. 'Form 10 – Appeal Notice', grounds for appeal and correspondence accompanying the appeal lodged with the Registrar on 18 March 2009.
2. Plumbing and Drainage Application, dated 3 September 2008, including:-
 - PDA forms 1 & 2.
 - Relevant Building and Site plans.
 - Onsite Sewerage Design Plan.
 - Engineering Investigation and Footing Design plans
3. Information Request, dated 15 October 2008, from Council to the applicant c/- the Applicant's agent, QPDB Pty Ltd.
4. Response by the applicant to Council's Information Request, dated 15 January 2009, sent by the Applicant's agent, QPDB Pty Ltd.
5. Verbal submission from the Council representatives at the hearing;

6. Verbal submission from QPDB Pty Ltd at the hearing on behalf of the Applicant;
7. The IPA.
8. The PDA.
9. The SPDR.
10. Queensland Plumbing and Wastewater Code (QPW Code).

Findings of Fact

The Tribunal makes the following findings of fact:

1. The application for compliance assessment was received by Council on 5 September 2008. Although, the application was dated 3 September 2008, the Tribunal received evidence that it was received and processed by Council on 5 September 2008.
2. A request for information was made by Council on 15 October 2008, entitled "Information Request – *Plumbing and Drainage Act 2002*" which did not relate to matters needed to assess the plan under the PDA.

Reasons for the Decision

On the 5 September 2008 Council received and processed an application for Compliance Assessment (PDA form 1) and Proposed Plumbing and Drainage & On-site Sewerage work (PDA form 2) from the Applicant, care of the Applicant's agent QPDB Pty Ltd, for the subject site.

On 15 October 2008, Council sent an information request to the Applicant stating that "*Council's Plumbing and drainage section requires further additional information to satisfactorily assess the application. Please provided the following additional information: -*

- *Planning application for code assessment is required to address the following issues –*
 1. *Section 4.11 – Onsite services Car Parking Code – P.2 – where development for a house is 2,000 m².*
 2. *Section 4.13 – Residential Development Code – P3 – minimum setback 15.0m required.*
 3. *Section 4.14 – Residential development Code – P.2 – development in a Bushfire Risk area."*

Section 85 (3) of the PDA provides that "*The local government may give the person making the request, a written notice (an information request), requesting further information needed to assess the plan*". In addition section 85 (4) of the PDA provides "An information request must be made within 10 business days after the plan is received.

In this case, the information request sent by Council was not given to the applicant within the 10 business day's period and the application should have been decided within 20 business days. The Tribunal was not presented with any evidence to show that the application has been decided by Council within the statutory time period.

Despite the above, the Tribunal considers that the information by Council was not relevant to the application. Section 85 (3) of the PDA provides that a request may be made where the information is needed to assess the plan. The Tribunal considers that the application was not necessary to decide the application. In fact, the request was not even relevant to the plumbing and drainage application; it merely asked that the applicant provide a planning application for code assessment.

The *Building Act 1975* (section 83) contains a provision that restricts the building certifier from issuing an approval where other approvals are required e.g. planning approval. However, this not the case for plumbing and drainage applications. The Tribunal considers that the information request was an invalid exercise of the Council's power and was not an information request for the purposes of the PDA. Therefore, the Council should have assessed and decided the application within 20 business days of the receipt of the application.

The Applicant's agent responded to the information request on 15 January 2009, within the 12 month period stated in the notice. Correctly, in the opinion of the Tribunal, the letter stated that:

"It is considered that the information requested is relevant to other development application types currently with Council for consideration and that this would not be required to allow assessment and decision under the requirements of applicable plumbing and drainage legislation".

Accordingly, the Applicant chose not to provide the information and requested that the Council proceed to assess and decide the application.

As a side issue the Tribunal was presented with evidence at the hearing from Council that purported to show that the Applicant had in fact withdrawn the application on 7 November 2008. This encompassed a screen printout of a Council database which is used to record critical dates and relevant application information. However, no written or verbal evidence was presented to the Tribunal attesting to this alleged fact that the Applicant or the agent had in fact requested that it be withdrawn e.g. a letter from the Applicant or a file note of a conversation with Council officers.

In carefully considering the information presented, the Tribunal considers that information supplied in the application documentation is sufficient to allow assessment of the application. For this reason, the Tribunal has decided that the Council re-assess the application and issue a compliance permit to the Applicant within 20 business days.

Jim Graham
Building and Development Tribunal Chair
Date: 9 April 2009

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
Building Codes Queensland
Department of Infrastructure and Planning
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CITY EAST QLD 4002
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