



## Building and Development Tribunals—Decision

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### *Integrated Planning Act 1997*

**Appeal Number:** 3—08—034

**Applicant:** *withheld*

**Assessment Manager:** Gold Coast City Council

**Concurrence Agency:** n/a  
(if applicable)

**Site Address:** *withheld*—the subject site

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### **Appeal**

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

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**Date of hearing:** 10:00 am Friday 6 June 2008

**Place of hearing:** Offices of the Department of Infrastructure and Planning, Brisbane

**Tribunal:** Jim Graham—Chair  
Janet Conrad—Member

**Present:** Keith Farrelly— Representative, Gold Coast City Council  
Brian Wright— Representative, Gold Coast City Council  
Paul Mackie—Certifier, Certis Building Certification  
Tony Grimmond—Certifier, Certis Building Certification  
Applicant  
Applicant's representatives

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### **Decision:**

In accordance with 4.2.34(2) of the IPA, the Tribunal orders:

- a) Council to assess the application against the legislation (PDA) in place in December 2007;
- b) the applicant provide additional information (including amended plans) from its hydraulic consultant to the Council to assist in the application process; and
- c) Council to issue a compliance permit to the applicant within 20 business days.

## Background

The applicant, on behalf of Grocon Constructions Pty Ltd made application to Council for a request (a compliance request) for compliance assessment of the site under section 85 of the PDA. The applicant appeals to the Tribunal on the ground that the application was not decided by Council within the 20 business days as provided in section 85(5) of the PDA. The applicant further submits that under section 85(9) of the PDA the request was not decided within this period and the compliance request is taken to be refused.

On 1 January 2008, the State Government introduced new legislative requirements requiring submeters to be installed in community title schemes and sole occupancy units in selected classes of buildings. This is designed to assist property owners/occupiers to calculate the water consumption within the premises. The applicant raised this matter at the hearing and advised that a Building and Plumbing Newsflash had been issued by the Department on December 2007 suggesting that this requirement applied only to new building development approval applications. The Council noted that a further Newsflash had been issued in May 2008 advising that the new requirements applied irrespective of the building development application.

## Material Considered

1. Form 1 – Application for Compliance Assessment lodged with Council on 23 April 2008.
2. Form 2 – Proposed Plumbing and Drainage and on-site Sewerage Work (undated) lodged with Council.
3. Completed set of Hydraulic Drawings for the proposed development.
4. Supplementary form to Forms 1 & 2 Plumbing, Draining and On Site Sewerage Facility Work Only form.
5. 'Form 10 – Notice of Appeal' lodged with the registrar on 26 May 2008.
6. Decision notice from Council to approve the Development Application dated 6 September 2006.
7. Tax Invoice receipt of \$623 for Plumbing Assessment Application Fee, dated 23 April 2008.
8. Verbal submissions from the applicant at the hearing.
9. Verbal submissions from Council's representative at the hearing.
10. Building and Plumbing Newsflash 298, issued 13 December 2007.
11. Plumbing Newsflash 311, issued 8 April 2008.
12. Building and Plumbing Newsflash 314, issued 2 May 2008.
13. Definitions from the *Building Act 1975*, particularly sections 6 to 10.
14. *Plumbing and Drainage Act 2002*.
15. *Standard Plumbing and Drainage Regulation 2003*.
16. The *Integrated Planning Act 1997*.
17. Copy of Building Approval (Certis BA No.165).
18. Water and Other Legislation Amendment Bill (Explanatory Notes).

## Findings of Fact

The Tribunal makes the following findings of fact:

- The application for compliance assessment was received by Council on 23 April 2008 and with no information request made to Council the application, pursuant to section 85(9) of the PDA, was taken to be refused on 22 May 2008.
- Although an information notice was not issued by Council under section 85(10) of the PDA, the applicant may appeal to the Building and Development Tribunals against this decision under section 4.2.12A of IPA because it was entitled to be given an information notice.

- Building and Plumbing Newsflash 298, issued 13 December 2007 contains the following statement -

Interpretation: Submetering of all new multi-unit residential and non residential premises commencing Statewide on 1 January 2008. Any building development applications lodged for new premises drawing water from a water service provider will be required to include individual submeters for separate lots in any type of building under a community title scheme and sole occupancy units in new buildings under a single title. The provision of submeters will allow for the delivery of personalised information on water use to households and businesses in new multi-unit developments.

- Building and Plumbing Newsflash 314 Issued 2 May 2008 contains the following statement -

Interpretation: Irrespective of the date of lodgment of the development application or the building development application (building application/BA) any plumbing assessment application lodged on or after 1 January 2008 for new premises within a reticulated water supply area will require a submeter for each separate lot and common property in a community title scheme (CTS) or for each sole occupancy unit in the building.

- The Tribunal was told at the hearing that a meeting between *withheld* and Council's plumbing inspector, Mr Brian Wright, was held on Thursday 21 February 2008 where the lodgment of the hydraulic plans for the project was discussed and it was agreed that due to:
  - the information contained in the Department's Newsflash No. 314; and
  - the building development approval being issued on 9/10/2007

that the obligation to have submeters installed would not required due to the information supplied in the Newsflash.

The meeting of 21 February 2008 and the discussion was confirmed by Mr Wright at the Tribunal hearing.

### **Reasons for the Decision**

The application for compliance assessment of the information supplied to Council for the subject site was received on 23 April 2008 and should have been assessed within 20 business days. No evidence was presented by either party to show that an information request was issued by Council and therefore Council should have decided to either approve or refuse the application within the time period. The Tribunal is satisfied that no information request was issued and the Council should have also issued an information notice of its decision to refuse the application even though it was in effect a deemed refusal. On the information submitted at the hearing the Tribunal is also satisfied that Council should issue a compliance permit.

The applicant also raised the issue of submeters at the hearing and the Tribunal considers that it was appropriate to deal with this issue in its decision as this matter would normally be considered at the time the plans of the development were assessed for a compliance permit. The Tribunal considers that the applicant and the Council were supplied with incorrect information in the form of a Newsflash issued by the Department.

The situation has arisen as a result of an inclusion of an item in a Building and Plumbing Newsflash which was:

- not included in the "purpose" of the Newsflash;
- was incorrect; and
- was not corrected until May 2008 (approximately 5 months later).

Council confirmed to the applicant that the Newsflash was correct and the submetering requirement had been met with the building application approval given by Certis prior to 1 January 2007.

The Newsflash process has been in place for many years and has been used to give direction or make clarification of policies and legislation, and provide support and inform stakeholders within the plumbing and drainage industry. It has been viewed by all stakeholders as a valuable and reliable tool. In this case it is unfortunate the information supplied in the newsflash was misleading and incorrect.

The Tribunal is tasked with making decisions in line with legislation and at the same time take into consideration fairness and equity in their decisions. The Tribunal considers that the orders are appropriate in the circumstances of this case.

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**Jim Graham**  
**Building and Development Tribunal Chair**  
**Date: 7 July 2008**

## **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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