



## Building and Development Tribunals – Decision

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### *Integrated Planning Act 1997*

<b>Appeal Number:</b>	<b>3–08–047</b>
<b>Applicant:</b>	<i>Withdrawn</i>
<b>Assessment Manager:</b>	Les Kirby for and on behalf of ACERT Building Certification P/L
<b>Concurrence Agency:</b> (if applicable)	N/A
<b>Site Address:</b>	<i>Withdrawn</i> –the subject site

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### **Appeal**

Appeal under section 4.2.12 (1) (a) of the *Integrated Planning Act 1997* (IPA) against the decision of the assessment manager to impose a condition on a building development approval for a dwelling addition. The condition imposed relates to the floor and wall junctions of a bathroom in the proposed dwelling.

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<b>Date of hearing:</b>	2pm – Friday 18 July 2008
<b>Place of hearing:</b>	Office of the Department of Infrastructure and Planning, Brisbane
<b>Tribunal:</b>	Phil Finnimore – Chair Greg Schonfelder – Member
<b>Present:</b>	<i>Withdrawn</i> – Applicant Mr Les Kirby – Assessment Manager

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### **Decision:**

The Tribunal, in accordance with section 4.2.34 (2) (a) of the IPA, **confirms** the decision appealed against and dismisses the appeal.

### **Background**

The applicant proposed to construct a semi enclosed shower area opening onto a ceramic tiled area with the balance of the bathroom to have a timber floor in conflict with the original conditions of the building development approval. The original conditions of the building development approval included the construction of the wet areas in the proposed bathroom complying with the deemed-to-satisfy provisions of the Building Code of Australia (BCA).

An application was lodged with the assessment manager on 3 June 2008 to change a condition on a building development approval.

The applicant requested the assessment manager consider an alternative solution to the deemed-to-satisfy provisions for the construction of the floor and wall junctions of the proposed bathroom.

The assessment manager issued a decision notice, dated 15 April 2008 relating to this request. The assessment manager in a letter dated 20 June 2008 advised the applicant that the alternative solution proposed did not meet the performance requirements P2.4.1 for wet areas. The result of this was the alternative solution would not be approved and form part of the changed conditions of the building development approval.

The applicant was dissatisfied with the decision of the assessment manager and appealed the decision to the Building and Development Tribunals on 2 July 2008.

### **Material Considered**

The material considered in arriving at this decision comprises:

- 'Form 10 – Notice of Appeal' lodged with the Registrar on 2 July 2008 including grounds for appeal and supporting information.
- Development application decision notice issued by the assessment manager, dated 15 April 2008.
- Letter from the assessment manager to the applicant, dated 20 June 2008.
- 'Form 15 – Compliance Certificate for Building Design or Specification', dated 2 April 2008.
- Verbal submission from the applicant at the hearing.
- Verbal submission from the assessment manager at the hearing.
- Email correspondence from the Applicant, received 17 August 2008.
- The IPA.
- The BCA.
- The *Building Act 1975*.

### **Findings of Fact**

The Tribunal makes the following findings of fact:

- The appeal has been lodged under the provisions of the IPA, specifically section 4.2.12(1)(a) where a person may appeal to the tribunal against a decision in a notice that relates to a request to change or cancel a condition of the development approval.
- The letter from the assessment manager to the applicant, dated 20 June 2008, is considered to be a 'decision notice' for the purposes of IPA and appealable under IPA section 4.2.12(1)(a).
- The hearing held on 18 July 2008 was adjourned with the consent of the parties to allow them the opportunity to discuss alternative proposals relating to the construction of the bathroom, the subject of the appeal.
- The Registrar of the Tribunal received an email on 17 August 2008 from the applicant relating to the appeal. In this email the applicant advised that after discussions with the builder and others their desire to have timber floors in the bathroom was unattainable. The applicant therefore stated they would not be proceeding with the idea of timber floors and confirmed they would not be seeking a decision from the Tribunal in the matter.
- The email of 17 August 2008 effectively served to formally withdraw the matter appealed.

## **Reasons for the Decision**

- The appeal was effectively withdrawn by the applicant prior to there being the opportunity for the Tribunal to hear all relevant facts and give the requisite consideration.
- In the absence of all available facts and the applicant's desire to prematurely withdraw from the appeal, the Tribunal is unable to make a decision other than to confirm the decision appealed against.

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**Phil Finnimore**  
**Building and Development Tribunal Chair**  
**Date: 8 December 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  
Building Codes Queensland  
Department of Infrastructure and Planning  
PO Box 15009  
CITY EAST QLD 4002  
**Telephone (07) 3237 0403 Facsimile (07) 3237 1248**