



Building and Development Tribunals — Decision

Integrated Planning Act 1997

Appeal Number:	3—08—086
Applicant:	Scott Ellis-Butler (DEB & Associates Pty Ltd)
Assessment Manager:	Brisbane City Council (Council)
Concurrence Agency: (if applicable)	N/A
Site Address:	6 Stanley Terrace, Taringa and described as Lot 2 on SP192351 — the subject site

Appeal

Appeal under section 4.2.12A of the *Integrated Planning Act 1997* (IPA) against the decision of Council to give an Information Notice for a compliance permit application related to a failure to provide further information required to assess hydraulic design plans for water services in a unit development located on the subject site.

Date of hearing:	9.30am – Thursday, 18 December 2008
Place of hearing:	Offices of the Department of Infrastructure and Planning, Brisbane
Tribunal:	Brad Hodgkinson – Chair
Present:	Eddie Denman – Representative of Council Scott Ellis-Butler – Applicant

Decision:

The Tribunal, in accordance with section 4.2.34 (1) and (2)(d) of the IPA, **sets aside** the decision of Council to issue an Information Notice, dated 20 November 2008, and **orders** that Council re-assess the application for compliance assessment, subject to the following condition:

The applicant is to provide Brisbane City Council with the following information to allow the hydraulic design plans for water services to be assessed for compliance with the *Plumbing and Drainage Act 2002* (PDA):

- (a) The water service layout drawing (ref: DEB and Associates, Drawing Title: Hydraulic Services Water and Gas Layouts, Project number 08026, Drawing number H03 of 3 (Rev B) is to be amended by notation or additional drawing detail to clearly identify the pipework layout for heated water and cold water services. The heated water and cold water design information must correlate and be consistent in connecting services at each floor level of the unit development.

- (b) Details of the specifications of each sub-meter.
- (c) A Diagrammatic drawing of heated water and cold water services for the basement, ground and first floor level of the unit development.

Background

On 20 November 2008, Council issued an Information Notice under the PDA which “deemed” the application for a compliance permit for the subject site to be “non-compliant under the Plumbing and Drainage Act 2002 and Plumbing and Drainage Regulations 2003”. The Notice stated that Council had issued a request for information on 24 October 2008 requesting the applicant to provide further information relating to plans for regulated work for a proposed unit development at the subject site. Council deems that further information is required to assess the water service plan component of the compliance request.

A preliminary assessment of plans and requests for further information for regulated work was undertaken and instructed by Council prior to the issue of Information Notice dated 20 November 2008. In summary, Council issued a fax dated 24 October 2008 and a letter dated 13 November 2008 to the applicant that in part requested that plans be altered and further information be provided.

For clarification the applicant submitted to Council the original issue of hydraulic plans on 19 September 2008 referencing drawings as revision A, described as original issue and dated 4 September 2008. Council also received revised hydraulic plans for the subject property referenced as revision B, dated 5 November 2008 that amended the legend and water layout drawings. The revised plans form part of the subject of Council Information Notice dated 20 November 2008.

Information Notice issued by Council on 20 November 2008 identified the following items as not documented on revised hydraulic services drawings:-

1. First floor hot, cold and rainwater water services.
2. Cold sub-water meter heights from floor level.
3. Hot, cold and rainwater water services require diagrammatic.

The applicant is appealing the decision of Council in issuing an Information Notice for not providing further information on the grounds that the submitted hydraulic drawings provide sufficient information to assess plans for compliance with the PDA.

The applicant is also aggrieved by Council's request for information to provide a water service diagrammatic design and has indicated to the Tribunal that this request is format related and does not form part of the legislative assessment requirements for Council to administer under the PDA.

On 1 July 2008, Council released a Hydraulic Services Plan Requirement document that outlines information to submit hydraulic services design plans for assessment with Council. It is noted that this document in part contains a section titled Drafting Requirements whereby diagrammatic design for cold water, hot water and tempered water supply shall be shown on the plan.

Material Considered

The material considered in arriving at this decision comprises:

1. Building and Development Tribunals 'Form 10 – Appeal Notice' lodged with the Registrar on 8 December 2008.
2. The PDA, specifically Section 85.
3. Standard Plumbing and Drainage Regulation 2003 (SPDR), specifically sections 14 and 14A .

4. Brisbane City Council Hydraulic Services Plan Requirement document.
5. Original Hydraulic Plan from DEB & Associates titled: Hydraulic Services Basement, Legend, Notes and Details, Project Number 08026, number H01 (Rev A) dated 04.09.08.
6. Original Hydraulic Plan from DEB & Associates titled: Hydraulic Services Water and Gas Layouts, Project Number 08026, number H03 (Rev A) dated 04.09.08.
7. Revised Hydraulic Plan from DEB & Associates titled: Hydraulic Services Basement, Legend, Notes and Details, Project Number 08026, number H01 (Rev B) legend modified 05.11.08.
8. Revised Hydraulic Plan from DEB & Associates titled: Hydraulic Services Water and Gas Layouts, Project Number 08026, number H03 (Rev B) water modified 05.11.08.
9. Fax from Brisbane City Council to DEB and Associates dated 24 October 2008, Ref: 6 Stanley Terrace Taringa, Plumbing reference number 0261435 (Items of preliminary assessment).
10. E-mail from (DEB & Associates) to Brisbane City Council dated 27 October 2008 (Response to items raised in BCC preliminary plan assessment).
11. Letter from DEB & Associates to Brisbane City Council dated 11 November 2008 (Response to items raised in BCC preliminary plan assessment).
12. Letter from Brisbane City Council to DEB & Associates dated 13 November 2008. (Proposed Development at 6 Stanley Terrace, Taringa – Hydraulic Services Plumbing Request for Further Information).
13. Information Notice issued under the PDA by Brisbane City Council dated 20 November 2008.
14. Verbal communication with the applicant at the hearing.
15. Verbal communication with Brisbane City Council representative at hearing.

Findings of Fact

The Tribunal makes the following findings of fact:

Application date

- The Council informed the Tribunal during the hearing that the application had been lodged on 19 September 2008, but the application fee not paid until 6 October 2008. This is normal practice for the Council who endeavours to make sure that all necessary information is supplied as part of its lodgement process.
- The Tribunal accepts that the application was made on 6 October 2008.

Information requests

- Section 85(3) of the PDA provides that a local government may give the person making a request for a compliance permit a written notice requesting further information needed to assess the plan. Subsection (4) provides that this must be made within 10 business days after the plan is received.
- The facsimile notice dated 24 October 2008 stated that “...plans for the above address have been defected by [Council officer] with no re-submission fee charged. Details of the required changes follow -
 1. Water detail – shows 4 units what about the HWU meter ?
 2. Show separate water lines to units risers not a single line as shown + water floor plan for level 1 is missing ? – diagrammatic required.
 Plans will need to be altered and re-submitted via e-mail to ...”

- The PDA does not specify how, or in what form, the information request must be given, only that it must be in writing. Despite containing no heading to indicate that this was an “information request” and referring only to the subject site and plumbing reference number in the section marked “Re” the Tribunal is satisfied that this was an information request.
- What follows in further correspondence between the applicant and the Council appears to be an attempt to clarify between the parties what information was requested and the nature of the information provided by the applicant.
- However, in this case the facsimile was sent to the applicant on 24 October 2008, being outside the 10 business days prescribed in section 85(4). Therefore, the information request was not made within time.

Information Notices

- Section 85(10) of the PDA provides that if local government refuses to give a compliance permit or gives a compliance permit on conditions, the local government must give the person who made the request an information notice about the decision.
- Although the notice dated 20 November 2008 might be construed as an information request, section 85(4) of the PDA prevents this, as the notice was clearly been issued more than 10 business days after the plans are received. The reference in the facsimile, dated 24 October 2008, indicates that the assessment of the plans occurred prior to this date.
- The notice is entitled “Information Notice – Compliance Permit with Conditions” but does not refer to any permit conditions. Further, the notice is designated into two sections; one entitled “Request” and the other “Decision”. This indicates that the Council intended more than just a request for information.
- The Tribunal considers that this notice was in fact a decision to refuse the application. This is despite the awkward nature of the notice, the incorrect use of headings, if an information request was preferred to lapsing of the period within which to request information, and the failure to comply with the requirements for information notices. The Schedule – Dictionary to the PDA defines “information notice” and provides that this must state the decision, reasons for the decision, appeal rights and how the person may appeal.

Deemed refusal

- As the information request (discussed above) was not made within time, section 85(5)(a) prevails and provides that the Council must decide the compliance request within 20 business days.
- In this case, the Information Notice was issued on 20 November 2008, which is clearly more than 20 business days after the application was lodged.
- Therefore, the Tribunal considers that the Council failed to decide the application within time and it was deemed to be refused.

Reasons for the Decision

The Tribunal considers that sufficient information was not provided on hydraulic plans to allow the Council to assess the proposed water layout.

In particular, the following items are identified:-

- a) Abbreviated text and single line arrows on the water layout drawings titled Basement and Ground (first similar) are not consistent in connecting the heated water and cold water services between the basement and the ground floor, hence first floor. Clarification is also required when reference is made to hot (H) and cold (C) that are rising (R) or dropping (D) and indicated with a single arrow to multiple points
- b) Section 14A clause (4) of the SPDR requires the plan to details the specification of each meter on the premises.
- c) The PDA and the SPDR does not provide any clear configuration of how hydraulic plans are to be presented to Council for assessment. In simplistic terms the plans are to show sufficient information to allow Council to assess the plans. The Tribunal considers that a diagrammatic drawing supports clarity and negates ambiguity in interpretation of the overall hydraulic design and is a fair and reasonable requirement of an industry practitioner to assist Council and the Plumbing Industry alike when interpreting a plan.

In Conclusion, the Tribunal acknowledges that Council did not administer their legislative responsibility under Section 85 of the PDA (Process for assessing plans). Importantly, Council is obligated to issue the appropriate written notices within legislative timeframes and clearly document the subject and intent of the correspondence in the written notice.

Bradley Hodgkinson
Building and Development Tribunal Chair
Date: 21 January 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
PO Box 15009
CITY EAST QLD 4002
Telephone (07) 3237 0403 Facsimile (07) 3237 1248