PLANNING AND ENVIRONMENT COURT OF QUEENSLAND

CITATION:	***Daddow & Anor v Ipswich City Council & Ors*** **[2004] QPEC 087**
PARTIES:	**GRAEME STEPHEN GEORGE DADDOW** and **ALEXIA MARGARET STRONG** Appellants and **IPSWICH CITY COUNCIL** Respondent and **PETER JOHN ADAMS** and **MARIE REES** Co-respondents
FILE NO:	2245/2004
PROCEEDING:	Application
ORIGINATING COURT:	Planning and Environment Court, Brisbane
DELIVERED ON:	17 December 2004
DELIVERED AT:	Southport
HEARING DATE:	3 December 2004
JUDGE:	Newton DCJ
ORDER:	Appellants' Application filed 29 September 2004: Declarations that: (a) Development application 4891/03 was not a piecemeal application and the respondent's approval was not *ultra vires*; (b) Development application 4891/03 was a properly made application under s 3.2.1 of IPA; (c) Development application 4891/03 did conform to s 3.2.8 of IPA in relation to the provision of supporting material; (d) The notification stage for development application 4891/03 did conform to Part 4 Divisions 1 and 2 of IPA; (e) Whether development application 3900/03 in which the respondent approved the easements incidental to development application 4891/03 in a separate development application without notification should be set aside is not within the jurisdiction of this court to

determine in terms of the present application;

(f) Whether development application 3275/03, in which the respondent approved without notification a change to an existing approval so that a parking lot (a condition of an existing approval that was never met) could be relocated to the same location as the parking lot proposed in development application 4891/03, should be set aside is not within the jurisdiction of this court to determine in terms of the present application.

Co-respondents' Application filed 23 November 2004:
It is ordered that the disputed issues in the appeal be identified as, and limited to, the following grounds contained in the Notice of Appeal:

(a) paragraph 1;
(b) paragraph 4(a) limited to:
"*The change in the location of the parking lot and the additional parking spaces required in the Development Application Decision Notice that is the subject of this appeal, means that up to fifteen vehicles will utilise the current driveway at 9A Salisbury Road, which is a 650 square metre allotment with a 16.6 metre frontage. This will cause the appellants on the adjoining allotment significant loss of amenity and will interfere with their right to quiet enjoyment of their property.*";
(c) paragraph 6;
(d) paragraph 9;
(e) paragraph 10;
(f) paragraph 11;
(g) paragraph 13;
(h) paragraph 14.

CATCHWORDS: LOCAL GOVERNMENT – Town planning – statutes – interpretation – development application – material change of use – construction of two detached dwellings at rear of existing dwelling for use in student accommodation business – whether application piecemeal and whether respondent's approval was *ultra vires* – whether application was a properly made application under s 3.2.1 of *Integrated Planning Act* 1997 – whether application conformed to s 3.2.8 of *Integrated Planning Act* 1997 in relation to provision of supporting material – whether notification stage conformed to Part 4 Divisions 1 and 2 of *Integrated Planning Act* 1997 – whether Court has jurisdiction to order that development applications incidental to but separate from that the subject of the instant appeal should be set aside – identification and limitation of disputed issues.

Fair Trading Act (Queensland) 1989
Integrated Planning Act 1997
Town Planning Act 1964-1976
Trade Practices Act (Commonwealth) 1974

Cases cited:
Brisbane City Council v Cunningham & Anor
Chin & Chee v The Shire of Maroochy & Anor [1996] QPELR 190
Curran & Ors v Brisbane City Council [2001] QPEC 49
Eastern Suburbs Leagues Club Ltd v Cunningham & Anor [2001] QCA 294
Fox v Brisbane City Council [2002] QPELR 539
Jezreel Pty Ltd v Brisbane City Council & Anor [2001] QPELR 92
Oakden Investments Pty Ltd v Pine Rivers Shire Council [2002] QCA 470
Pioneer Concrete (Qld) Proprietary Limited v Brisbane City Council & Ors (1980) 145 CLR 485
Rathera Pty Ltd v Gold Coast City Council & Ors (2000) 115 LGERA 348
Stradbroke Island Organisation Inc v Redland Shire Council [2002] QPELR 121

COUNSEL:	Appellants in person Mr D J Pyle - respondent Mr B D Job – co-respondents
SOLICITORS:	Appellants in person Ipswich City Council – respondent Porter Hulett – co-respondents

[1] The appellants, by application filed on 29 September 2004, seek determination of the following points by way of preliminary hearing:

(a) Whether Development Application 4891/03 was a piecemeal application and the respondent's approval *ultra vires;*

(b) Whether Development Application 4891/03 was a properly made application under s 3.2.1 of the *Integrated Planning Act* 1997 (IPA);

(c) Whether Development Application 4891/03 conformed to s 3.2.8 of the *Integrated Planning Act* in relation to the supporting material;

(d) Whether the Notification Stage for Development Application 4891/03 conformed to Part 4 Divisions 1 and 2 of IPA;

(e) Whether Development Application 3900/03 in which the respondent approved the easements incidental to Development Application 4891/03 in a separate development application without notification should be set aside;

(f) Whether Development Application 3275/03, in which the respondent approved without notification a change to an existing approval so that a parking lot (a condition of an existing approval that was never met) could be relocated to the same location as the parking lot proposed in Development Application 4891/03, should be set aside.

[2] His Honour Judge McLauchlan QC, on 12 November 2004, ordered that *inter alia* the preliminary issues in the Appeal be identified as, and limited to, the issues identified in the appellant's application filed 29 September 2004.

The Facts

[3] The co-respondents conduct a student accommodation business from existing premises at 9A and 10 Salisbury Road, Ipswich (being Lots 6 and 7 on RP 55024 respectively). No. 10 is an L-shaped parcel of land which, as a consequence of its shape, has a common boundary with the eastern and northern boundaries of no. 9A. The co-respondents seek to extend the facility by the development of two additional accommodation buildings at the rear of no. 10. The premises at 10 Salisbury Road presently comprise a single building known as "Cumquat

House". That premises was approved by the respondent council for the use as student accommodation on 13 January 1999.

[4] On 3 July 1995 the co-respondents applied to the respondent council for a change to the approval for 10 Salisbury Road. The changes sought were:

(a) relocation of the existing car-parking area together with a proposed shared access arrangement with the premises at 9A Salisbury Road; and

(b) the removal of an outbuilding and its replacement with a smaller structure.

The shared access arrangement was the subject of a separate application for reconfiguration. The respondent council approved the application for change of conditions on 1 September 2003.

[5] In August 2000 the co-respondents purchased 9A Salisbury Road. In 2001 they applied to the respondent council for a development approval to use the existing dwelling at 9A Salisbury Road for student accommodation purposes. That application was approved on 8 May 2001. An appeal by the appellants against that approval was subsequently resolved by way of a consent order dated 12 December 2003.

[6] The respondent council, on 8 September 2003, approved an application for reconfiguration to facilitate the registration of a reciprocal easement for the adjacent driveways which ran down the common boundary of 9A and 10 Salisbury Road.

[7] The application, the subject of this appeal, is for an approval of a material change of use to enable the construction of two detached dwellings at the rear of the existing dwelling at 10 Salisbury Road for use in the student accommodation business.

Whether the Application was Piecemeal

[8] The appellants, in ground 1 of their application, contend that development application 4891/03 was a piecemeal application as the easements that were to provide access were severed from the application and the location of the parking lot was determined in a separate development application. In support of this contention the appellants submit that the application, the subject of this appeal, represented not only an application to expand existing operations onto adjoining land, but also necessitated a parking lot and an easement that were not already on the land, and that are presently still not visible on the land. The application became piecemeal, it is submitted, when instead of making one application for the two accommodation buildings and the parking lot and easement which are incidental to the accommodation buildings, the co-respondents applied in "bits" by making separate applications for the parking lot and easement.

[9] The appellants submit that the parking lot was a condition of a previous development application but never built. They complain that although this represented an infringement under s 4.3.3 of IPA and that approval would have lapsed under s 3.5.31(2) of IPA, the respondent approved an application (3275/03) to relocate the non-existing parking lot to the same location as the parking lot

proposed in application 4891/03 as a "*minor change*" to an existing approval under s 3.5.33 of IPA, thus avoiding public notification.

[10] The appellants further submit that although the easement is incidental to development subject to impact assessment, it was not subject to public notification and was approved in application 3900/03. The relocation of the parking lot (3275/03) was approved on 1 September 2003, the easement (3900/03) on 8 September 2003 and on 9 September 2003 the co-respondents lodged application 4891/03 for two additional student accommodation buildings. The appellants contend that as the two additional student accommodation buildings in application 4891/03 cannot function without the easement approved in 3900/03 and the parking lot relocated in application 3275/03, the application 4891/03 represents the final "bit" in a piecemeal application.

[11] The appellants submit that, unlike the two student accommodation buildings proposed in application 4891/03, the existing student accommodation facilities at 10 Salisbury Road approved in application 2447/98 and at 9A Salisbury Road approved in application 394/01, were self-contained and have always operated without the parking lot approved in application 3275/03 and the easement approved in application 3900/03.

[12] The appellants complain that by applying piecemeal, the co-respondents obtained approval without notification of an easement and the parking lot that are incidental to development that was subject to impact assessment. Further, it is said, by approving the application piecemeal, the respondent council prejudged any

concerns that the appellants may have had regarding the two student accommodation buildings utilising the pre-approved but not existing easements and parking lot.

[13] The appellants rely upon the decision of the High Court in *Pioneer Concrete (Qld) Proprietary Limited v Brisbane City Council & Ors* (1980) 145 CLR 485 in support of their contention that the application 4891/03 is a piecemeal application. In that case an application was made to the Brisbane City Council, as the planning authority under the City of Brisbane *Town Planning Act* 1964-1976 for permission to use certain land which was part of a larger area of land owned by a company associated with the applicant for the purpose of the extraction, crushing and screening of rock and stone. The application did not show the means by which the extracted rock would be removed from the land and the plan attached to it did not extend to show a formed road that it was intended to use for that purpose. Notice of the application was given to the applicant's associated company as the owner of the allotments within which the land lay but not to the owners of land abutting the boundaries of the larger area. The majority (Stephen, Murphy and Wilson JJ) held that an applicant under the Act, and the ordinances made under it, for consent to use land for a particular purpose must apply at the outset for the entire proposed use. Where a change of use is contemplated, the proposed use must be stated in appropriate detail in one application and all the land involved in the use must be the subject of the application. Hence the application was defective in failing to include the route of a proposed access road: it did not include all the land to which it related or applied within the meaning of the section which set out particulars required of an advertisement of the application.

[14] In his judgment Stephen J at p 500 said:

> "*Underlying the rival contentions argued on this appeal is a question of quite general importance in the field of town planning: it is whether an applicant for consent to use land for a particular purpose may make application piecemeal, or must he, on the contrary, apply at the outset for the entirety of the use in question and, consequently, in respect of the whole of the land devoted to that use.*
>
> *The terms in which I have posed this question, my reference to 'the entirety of the use' and to the 'land devoted to that use', necessarily lack precision. It will be from the resolution of some at least of that imprecision that an answer to the question will emerge. I may, at this stage, foreshadow the answer to which I have come: it is that where, as here, the use proposed is a single use, no piecemeal series of applications is permissible, at least under the City of Brisbane's town planning measures; instead, that use must be stated in appropriate detail in one application and all the land involved in the use must be the subject of the application. When applied to the facts of the present appeal this means that the applicant ought to have applied, in the one application, for consent not only to extract and process quarry products but also to construct and use the access road along which those products were to be carried from the processing site to a public highway. It follows that the area of land the subject of the application should have included the route of that access road.*"

[15] By this decision the High Court established that an applicant for consent to use land for a particular purpose must apply at the outset for the entire proposed use, and that a piecemeal series of applications is impermissible. The use must be stated in appropriate detail in one application and all the land involved in the use must be the subject of the application. The appellants place particular emphasis upon that part of the judgment of Stephen J (at p 504) where his Honour stated:

"*To sever an application in this fashion is likely to impede its proper consideration. Only if it is presented as a whole and at the one time is there likely to be full opportunity for the tribunal and for objectors properly to assess it in all its aspects.*"

[16] Any consideration of the decision of the High Court in *Pioneer* must recognise that the principle identified above:

"*...places no obstacle in the way of applications where consent becomes necessary for the extension of an existing use to adjoining land or where an applicant for consent to a proposed use contemplates that there will later be an extension of that use. It is only where land is proposed to be used for the one purpose at the one time that consent for its use must be applied for in the one application.*" (Stephen J at p 505)

[17] This explanation was reflected in the judgment of Thomas JA in *Brisbane City Council v Cunningham & Anor; Eastern Suburbs Leagues Club Ltd v Cunningham & Anor* [2001] QCA 294 at para 11 where his Honour stated:

"*The essential requirement of the decision in* ***Pioneer Concrete*** *is that the proposed use 'must be stated in appropriate detail in one application and all the land involved in the use must be the subject of the application'. There is no rule prohibiting the making of more than one application in respect of the one piece of land or part of a parcel of land. The* ***Pioneer*** *principle required that each application for a use for a particular purpose be for the whole of the use (including incidental and necessarily associated uses) and for the whole of the land devoted to that use. It did not require that two separate and distinct uses be combined in one application.*"

[18] In the present case when considering whether the easements were "severed" from the application it should be noted that they were validly created pursuant to a previous approval, and their proposed use for access and parking purposes was clearly identified in the development application. In my view, any interested

member of the public making a sensible appraisal of the application including the supporting material, could not have been misled as to the identity of the land intended for use by the proposal (see *Chin & Chee v The Shire of Maroochy & Anor* [1996] QPELR 190). Nor can it be suggested that the respondent council was impeded in its decision-making in any way.

[19] It is also relevant that the application 4891/03 included all of the land involved in the development application being Lots 9A and 10 Salisbury Road, Ipswich. That land is described as "*Lot 7 on RP 55024 and Lot 6 on RP 55024*". This is all of the land comprising Lots 9A and 10 Salisbury Road, Ipswich. There are no further applications relevant to application 4891/03 remaining to be dealt with on the merits. Development application 3275/03 ("*the parking lot application*") and development application 3900/03 ("*the easement application*") were self-contained and referred to all of the land, the subject of those applications. The decision in *Pioneer Concrete* does not prohibit a staged development. I am unable to conclude that application 4891/03 is a piecemeal application such as to attract the censure of the court as reflected in the judgment of Stephen J in *Pioneer Concrete*.

[20] This being so, it becomes unnecessary to consider the effect of s 3.2.1(8) of IPA which provides as follows:

> "*(8) If the assessment manager receives, and after consideration accepts, an application that is not a properly made application, the application is taken to be a properly made application.*"

In the present case the assessment manager received, and after consideration accepted, the application. Such acceptance would seem to override any objection which could be based on the *Pioneer* case.

[21] In any event, it should be noted that the court has the power to cure any defect based upon the decision in *Pioneer*: see *Stradbroke Island Organisation Inc v Redland Shire Council* [2002] QPELR 121 at para 12; *Fox v Brisbane City Council* [2002] QPELR 539 at 542; *Oakden Investments Pty Ltd v Pine Rivers Shire Council* [2002] QCA 470. S 4.1.5A is the predecessor to 4.1.53 and there would seem to be no sound reason not to apply the same rationale in *Stradbroke* and *Fox* to the earlier provision. The present case is one where, I am satisfied, it would be appropriate that the court should waive any non-compliance based upon the *Pioneer* case. It is not suggested that the submitters have been denied any rights by the alleged non-compliance.

Whether Development Application 4891/03 was a Properly Made Application under s 3.2.1 of IPA

[22] The appellants complain that the Form 1 Development Application failed to identify 9A Salisbury Road, Ipswich by its postal address while the public notification excluded 9A Salisbury Road altogether. It is submitted that this omission was significant in that "9A Salisbury Road was the land that was to provide access to the two student accommodation buildings in application 4891/03 and during the notification stage the access easement on 9A Salisbury Road that was approved in application 3900/03 was registered on the title, there was a

transfer of title and the Bank of Queensland placed a $300,000 mortgage on the premises".

[23] S 3.2.1(6) IPA provides that an application is a "properly made application" if it complies with subsections (1), (2), (3)(a), (4), (5) and (5)(a) of s 3.2.1. The appellants' complaint is in relation to s 3.2.1(3)(a) which provides:

"*The approved form –*

(a) must contain a mandatory requirements part including a requirement for -

(i) an accurate description of the land, the subject of the application; and

(ii) the written consent of the owner of the land to the making of the application; and

(b) may contain a supporting information part."

The appellants submit that by excluding 9A Salisbury Road from the public notification, application 4891/03 fell short of the standard outlined in *Curran & Ors v Brisbane City Council* [2001] QPEC 49 where Skoien SJDC stated that:

"*The legislative scheme is clear IPA requires a shorthand description of the proposed development, sufficient to alert a person who has an interest in that land in particular or the area in general, as to the overall nature of the development and a description of the land on which it is to occur.*"

The submission of the appellants is that the legislative requirement in s 2.3.1(3)(a)(i) of IPA can be met only if all the land the subject of the application is included in the public notification.

[24] It is not in dispute that application 4891/03 did not refer to 9A Salisbury Road. However, the real property descriptions contained in the application constitute an accurate description of the land the subject of the application. Furthermore, the

only involvement of 9A Salisbury Road is in respect of easement access and this involvement is made clear by the supporting documentation (in particular the Proposal Report). In *Rathera Pty Ltd v Gold Coast City Council & Ors* (2000) 115 LGERA 348 at 354, 345 Jones J, in considering whether an application to establish a neighbourhood tavern on part of the subject land and contained in two identified tenancies shown on the plan had been made in the approved form that included an accurate description of the land the subject of the application, stated that:

> "*29 It seems to me that the precise area of the proposal to which the liquor licence would attach is simply a matter of detail of the proposed use. Such detail is in fact set out in the accompanying documents as indeed are such other matters relevant to planning issues such as carparking spaces. It is not envisaged that every detail of the proposal would be included in the application form. Were this to be so then the application would have to include every detail relating to the other tenancies, every detail relating to carparking and to access and internal vehicular movement. That does not seem to me to be the purpose of mandatory requirement to provide a description of the land. Further, the construction of the subsection must satisfy all situations and not be dependent on inter-relationships with other legislation.*
>
> *30 In this connection the remarks of Stephen J in* ***Pioneer Concrete (Qld) Pty Ltd v Brisbane City Council*** *are pertinent, his Honour said:*
>
> > 'In any such scheme for the control of land use the two critical integers, land and use, each involves a question of definition, what land and what use? The intending user of land will, in his application for consent, have to specify these two integers but it will be one of them, the integer of use, that will dictate the precise identity and extent of the other integer, the land the subject of the application. This is a necessary consequence of the fact that the consent being sought is consent to use for a

particular purpose. The land is merely the passive object which is being used; the active integer, use, will determine its extent.'

31 It would not be expected that an objector to the proposal would frame a submission based on the information contained in the public advertising, nor indeed in what is set out in the application form. It is the accompanying maps, sketches, site plans and development details which one expects would be relevant to any intending objector."

[25] When one has regard to the application form, the Proposal Report and to supporting material, it seems to me that the land the subject of the development application has been accurately identified for the purposes of s 3.2.1(3)(a)(i) of IPA. It follows, then, that development application 4891/03 was a properly made application under s 3.2.1 of IPA.

Whether Development Application 4891/03 Conformed to S 3.2.8 of IPA in relation to the Provision of Supporting Material

[26] The appellants submit that the respondent failed to ensure that the material available for inspection and purchase from the moment the application was received was current. They claim that although the access easements were approved in application 3900/03 on 8 September 2003, all material available for inspection during the public notification that started on 18 November 2003 inferred that the easements were still proposals awaiting approval. The material available, it is submitted, should have been current and should have shown that the easements were already approved even although not yet registered on the title deed. The appellants submit that the respondent knew that the premises at 9A Salisbury Road were for sale and under the circumstances it is reasonable to expect that the supporting material available under s 3.2.8 of IPA should have

been commensurate with that required under s 40A of the *Fair Trading Act (Queensland)* 1989 and s 53A of the *Trade Practices Act (Commonwealth)* 1974.

[27] S 3.2.8 of IPA is in the following terms:

"***3.2.8 Public scrutiny of applications***

(1) *The assessment manager must keep each application and any supporting material available for inspection and purchase from the time the assessment manager receives the application until-*

(aa) if the application if not a properly made application – the assessment manager decides not to accept the application; or

(a) the application is withdrawn or lapses; or

(b) if paragraphs (aa) and (a) do not apply – the end of the last period during which an appeal may be made against a decision on the application.

(2) *Subsection (1) does not apply to supporting material to the extent the assessment manager is satisfied the material contains-*

(a) sensitive security information; or

(b) other information not reasonably necessary for a third party to access for the purpose of evaluating or considering the effects of the development.

(2A) *Also, the assessment manager may remove the name, address and signature of each person who made a submission before making the submission available for inspection and purchase.*

(3) *In this section-*

'supporting material' *means-*

(a) the acknowledgment notice; and

(b) any information request for the application; and

> *(c) any material (including site plans, elevations and supporting reports) about the aspect of the application assessable against or having regard to the planning scheme that-*
>
> *(i) is in the assessment manager's possession when a request to inspect and purchase is made; and*
>
> *(ii) has been given to the assessment manager at any time before a decision is made on the application.*"

[28] It is claimed by the appellants that material that should have been available for inspection and purchase under s 3.2.8 of IPA was not available. In particular, it is said that the documentation available for inspection and purchase at the respondent council did not include an acknowledgement notice, information request or information response.

[29] In an affidavit filed on 29 November 2004, Brendan John Nelson states that he has been employed by the respondent as the Development Manager since 26 August 2002 and as such is responsible for the processing and approval of development applications received by the respondent. Mr Nelson deposes to being aware of the requirements of s 3.2.8 of IPA and in particular, to his knowledge of the system maintained by the respondent which operates upon receipt of a development application. He states that:

> "*In this regard, I am aware from my own experience that the respondent maintains a system whereby, upon receipt of a development application, a file is opened and maintained in respect of each such application which is available for public inspection and purchase ('the public scrutiny file'). All documents received or created by the respondent in respect of such application (excepting sensitive security information or other information not*

reasonably necessary for a third party to access for the purposes of evaluating or considering the effects of the development) are placed upon such file as soon as possible but within a reasonable period of their receipt or despatch ('the system'). In my experience documents received by the respondent would appear on the public scrutiny file within 24 hours of receipt by the respondent and copies of documents dispatched by the respondent would appear on the file immediately. In particular, my review of the file confirms that the acknowledgement notice dated 16 September 2003, and the information request dated 9 October 2003 and 'amended' plan 23M-07350 dated 13 October 2003 which formed part of the response to the information request received on 11 November 2003, appear in the file and would, in accordance with the system, have appeared in it on 21 November 2003."

[30] Mr Nelson's evidence in respect of the system maintained by the respondent is supported by evidence of James Frederick Fjeldsoe, a Development Planner employed by the respondent and by Michael Thomas Ellery, who is a Senior Development Planner employed by the respondent. Both Mr Fjeldsoe and Mr Ellery depose in their respondent affidavits which were filed by leave on 3 December 2004, to being familiar with the file maintained by the respondent in respect of application 4891/03.

[31] In cross-examination on 3 December 2004, the female appellant admitted that p 4 of the appellants' submission in respect of development application 4891/03 was a copy of a document obtained from the respondent council when Ms Strong inspected the documents at the respondent's office. In these circumstances I am prepared to accept that such a document was an enclosure to the co-respondents' response to the respondent's information request.

[32] The evidence given by Ms Strong in relation to supporting material not being available for inspection pursuant to s 3.2.8 of IPA should be assessed in the context of the evidence of Mr Nelson that the respondent's usual practice is to place all of the material required by the section on the relevant file on the day it is received. I certainly accept that Ms Strong is an honest witness, however, the issue was so briefly agitated in evidence before me that it is not really possible to form any firm conclusion as to the accuracy of her claims in this regard. I suspect, from something said by Ms Strong from the Bar Table, that the problem may have arisen in relation to the photocopying of material which was subsequently provided to the appellants rather than in relation to the material actually placed on the file.

[33] Even if there has not been compliance with s 3.2.8 of IPA, I am satisfied that there has been no significant omission and that any such omission should be excused. The position in this case bears some resemblance to that in *Jezreel Pty Ltd v Brisbane City Council & Anor* [2001] QPELR 92 at 94 where Quirk DCJ was considering an allegation involving some "missing material". His Honour could think of no plausible reason for any deliberate attempt by anyone to frustrate the legislative intention of s 3.2.8 of IPA and accordingly was not prepared to hold that the "public scrutiny" procedures had miscarried in a way that would render the council's decision void. I find myself similarly unable to explain how the material identified by Ms Strong was not provided or revealed to her but in circumstances where no prejudice has been suffered by the appellants who lodged their submission on 8 December 2003 and who commenced their appeal within time, I am not prepared to conclude that there has been a material non-compliance

with the provisions of s 3.2.8 of IPA which would invalidate the respondent's decision. Furthermore, I am unable to see how the provisions of the *Fair Trading Act* and the *Trade Practices Act* to which the appellants have referred can affect the statutory obligations on the respondent council which are set out in s 3.2.8 of IPA. Moreover, the proposal in respect of the easement and its registration is not relevant to the assessment of the development application by the respondent or by the public.

Whether the Notification Stage for Development Application 4891/03 conformed to Part 4 Divisions 1 and 2 of IPA

[34] The appellants submit that notification of the development application 4891/03 was defective on the basis that:

(a) the notices did not include land that was to provide access;

(b) a notice was not erected on the road frontage of 9A Salisbury Road;

(c) the material available for inspection during notification included "dated and inaccurate information" and other material was unavailable; and

(d) "there is nothing to indicate that the co-respondents met s 3.4.3(3)" of IPA before commencing notification.

[35] The complaint made by the appellants in respect of (a) above should be assessed in the context that although the notices of the development application referred only to the land at no. 10 Salisbury Road, the inclusion of the reciprocal access was clearly identified in the supporting material. I have already referred to the decision of the Court of Appeal in *Rathera Pty Ltd v Gold Coast City Council &*

Ors (2000) 115 LGERA 347 where the court indicated that an objector to a development proposal would be expected to frame a submission not based upon information contained in the public advertising or what is set out in the application form, but rather, what is contained within the accompanying maps, sketches, site plans and development details. The court pointed out at p 353, the place at which precise details of the proposed development is to be obtained is the local authority office and not newspaper advertisement or noticeboard. In my view, the fact that the notices of the application referred only to the land at no. 10 Salisbury Road is of little moment when one has regard to the supporting material which clearly identifies the inclusion of the reciprocal access.

[36] The submissions of the appellants regarding (b) above involve a brief consideration of the provisions of regulation 11 in *Integrated Planning Regulation* 1998 which provide as follows:

> "***11 Requirements for placing public notices on land – Act, s 3.4.4***
>
> ***(1)*** *This section prescribes, for section 3.4.4(1)(b) of the Act, requirements for the placing of a notice on land.*
>
> ***(2)*** *The notice must be-*
>
> *(a) placed on, or within 1.5m of, the road frontage for the land; and*
>
> *(b) mounted at least 300mm above ground level; and*
>
> *(c) positioned so that it is visible from the road; and*
>
> *(d) made of weatherproof material; and*
>
> *(e) not less than 1200mm x 900mm.*

(3) *The lettering on the notice must be-*

(a) for lettering in the heading, as indicated on the approved form of the notice – at least 50mm in height and in a bold style; or

(b) for lettering in the subheadings, as indicated on the approved form of the notice – at least 25mm in height and in a bold style; or

(c) for lettering not mentioned in paragraphs (a) and (b) – at least 25mm in height, of regular weight and in sentence case.

(4) *Each sentence in the notice must start on a new line.*

(5) *If the land has more than 1 road frontage, a notice must be placed on each road frontage for the land.*

(6) *The applicant must maintain the notice from the day it is placed on the land until the end of the notification period.*

(7) *In this section-*

'road frontage' *for land means-*

(a) the boundary between the land and any road adjoining the land; or

(b) if the only access to the land is across other land – the boundary between the other land and any road adjoining the other land at the point of access."

[37] The submissions of the appellants appear to suggest that a second sign should have been erected on the land at 9A Salisbury Road in close proximity to that which was placed at no. 10 in order to comply with regulation 11(2)(a). However, I accept that the references to the term "land" in regulation 11(2)(a) and in the definition of the term "road frontage" in regulation 11(7) should be construed as referring to the frontage of the land, the subject of the application, and not to each

allotment comprising the land. This construction would, in my opinion, fulfil the purpose of the legislation of ensuring that passers-by are made aware of the existence of the application. The erection of separate signs, as suggested by the appellants, would be quite unwarranted.

[38] The submissions of the appellants in relation to (c) above are without foundation in the light of the previous discussion commencing at para [26] of this judgment in relation to the provision of supporting material.

[39] The appellants submit that there is nothing to indicate that the co-respondents have met the requirements of s 3.4.3(3) of IPA which provides that:

> "*(3) If an information request has been made during the information request period, the applicant may start the notification period as soon as the applicant gives –*
>
> *(a) all information request responses to all information requests made; and*
>
> *(b) copies of the responses to the assessment manager.*"

[40] These provisions, in my view, simply confirm that the notification stage for a development application may commence once an information request has been responded to and, on the material before me, it seems that that is what has occurred in this case. I am unable to discern any omission in complying with this provision.

Applications 3900/03 and 3275/03

[41] The complaints raised by the appellants regarding the validity of the approval granted by the respondent council in September 2003 for the reconfiguration of

9A and 10 Salisbury Road to facilitate the reciprocal easement, and also the question of compliance with conditions imposed upon the respondent council's approval of a request to amend condition 2 of the existing approval for student accommodation at no. 10 Salisbury Road, do not raise matters within this court's jurisdiction in terms of the present application.

Conclusions

[42] For the reasons expressed above I make the following determinations:

(g) Development application 4891/03 was not a piecemeal application and the respondent's approval was not *ultra vires*;

(h) Development application 4891/03 was a properly made application under s 3.2.1 of IPA;

(i) Development application 4891/03 did conform to s 3.2.8 of IPA in relation to the provision of supporting material;

(j) The notification stage for development application 4891/03 did conform to Part 4 Divisions 1 and 2 of IPA;

(k) Whether development application 3900/03 in which the respondent approved the easements incidental to development application 4891/03 in a separate development application without notification should be set aside is not within the jurisdiction of this court to determine in terms of the present application;

(l) Whether development application 3275/03, in which the respondent approved without notification a change to an existing approval so that a parking lot (a condition of an existing approval that was never met) could be relocated to the same location as the parking lot proposed in

development application 4891/03, should be set aside is not within the jurisdiction of this court to determine in terms of the present application.

Co-respondents' Application regarding Merits Issues

[43] Counsel for the co-respondents in his written submissions of 10 December 2004, has stated that, despite indications given by the appellants at the hearing on 3 December 2004, by facsimile to the co-respondents' solicitors dated 7 December 2004, the appellants have advised:

> "*In view of instructions given to us on 3 December 2004 we will not be agreeing to any changes to the Notice of Appeal*".

[44] I have, in the light of that intimation, been requested to make an order in terms of that sought in para 1 of the co-respondents' application filed on 23 November 2004. It is, in my opinion, appropriate to make the order sought and I therefore order that the disputed issues in the appeal be identified as, and limited to, the following grounds contained in the Notice of Appeal:

(a) paragraph 1;

(b) paragraph 4(a) limited to:

i. "*The change in the location of the parking lot and the additional parking spaces required in the Development Application Decision Notice that is the subject of this appeal, means that up to fifteen vehicles will utilise the current driveway at 9A Salisbury Road, which is a 650 square metre allotment with a 16.6 metre frontage. This will cause the appellants on the adjoining allotment significant loss of amenity and will interfere with their right to quiet enjoyment of their property.*";

(c) paragraph 6;

(d) paragraph 9;

(e) paragraph 10;

(f) paragraph 11;

(g) paragraph 13;

(h) paragraph 14.

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