

PLANNING AND ENVIRONMENT COURT

JUDGE ROBIN QC

Application No 671 of 2005

SUZANNE CAROL MUIR AND ANOTHER

Applicants

and

LOGAN CITY COUNCIL AND OTHERS

Respondents

BRISBANE

..DATE 08/05/2008

ORDER

CATCHWORDS: Integrated Planning Act 1997 s 4.1.5A - whether with agreement of all concerned parties an order can be made circumventing the effect of a provision in the Act under which a development application has "lapsed" - whether such relief is available in an originating application made to the Court for the purpose, rather than in some wider proceeding - relief granted where a concerned agency was inadvertently not supplied with the responses prepared to an information request inspired by it - development application ordered to proceed by recommending the notification stages

HIS HONOUR: The Court has ordered that the applicants' development application proceed as from the beginning of the notification stage notwithstanding that it may have lapsed, the Court acting in reliance on section 4.1.5A of the Integrated Planning Act 1997.

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The usual occasion for acting under that provision is to permit some proceeding already in the court, typically an appeal, to be the vehicle for exercise of the ameliorating jurisdiction. In this case the "proceeding before the court" is the originating application in which the applicants seek such relief. That was the situation confronting the Court in National Properties Group -v- Toowoomba City Council [2007] QPEC 074. The circumstances were somewhat similar.

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I recently had occasion myself to consider circumstances similar to the present ones in Calvisi Holdings Pty Ltd -v- Brisbane City Council [2008] QPEC 19. There I referred to my personal misgivings about the availability of section 4.1.5A to revive a development application which has lapsed but deferred to the growing body of authority in this court that such a step is permissible. It is certainly attractive to take it in circumstances like the present where the consent of all interested entities is communicated to the court.

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In this case the Environmental Protection Authority was inadvertently excluded when the response to an information request inspired by the agency was provided. The applicants assembled the required information. Through inadvertence,

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although it was communicated to others, it was not  
communicated to the agency. It is represented by Mr Kwan  
today to indicate it is content with the court granting the  
relief sought. It is convenient to set out here the complete  
outline of argument prepared by Mr Quirk:

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#### **SUMMARY OF THE ARGUMENT**

1. This is an originating application seeking to regularise two non compliances with provisions of the Integrated Planning Act 1997 ("IPA").
2. The non compliances arise from the applicant's failure to provide the third respondent with a copy of its response to a referral coordination information request within the required period and the failure to commence public notification within the required period after the referral coordination information response was provided to the first respondent.
3. The orders sought are not opposed.

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#### **The two non compliances**

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4. Having received the Referral Coordination Information Request on 30 June 2006, the applicant was required to respond within 12 months (by 30 June 2007).
5. Although the applicant responded to the Referral Coordination Information Request on 23 November 2006, a copy was mistakenly not provided to the third respondent within the permitted time.
6. The provision of the Referral Coordination Information Response to the assessment manager triggered the requirement for the applicant to commence public notification of the development application within 20 business days from the date the response was provided (23 November 2006). The applicant failed to carry out public notification as required.
7. As neither non compliance was detected by any of the parties until earlier this year, the assessment process continued up to that point.

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#### **LIST OF MATERIAL TO BE READ AND THE FILING DATE OF THAT MATERIAL**

8.	The material to be read and the filing date of that material is:	1
	<b>Material</b>	<b>Filed</b>
	Affidavit of Timothy Quirk	21 April 2008
	Affidavit of Hugh Anthony Parker	22 April 2008
	Affidavit of Hugh Anthony Parker	6 May 2008
9.	The affidavit of Quirk proves compliance with the provisions of the IPA about the commencement of these proceedings.	10
10.	The first affidavit of Parker proves:	
	(a) The applicant's Referral Coordination Information Response (dated 23 November 2006) included responses to issues directly raised by the Third Respondent.	20
	(b) The applicant intended to provide a copy of its Referral Coordination Information Response to the Third Respondent as was noted at the footer of the applicant's letter.	
	(c) Through administrative error or postal error a copy of the applicant's Referral Coordination Information Response was either not sent to or not received by the Third Respondent.	30
	(d) Parker proceeded to progress the development application through the IDAS stages until being advised in February 2008 that the application had lapsed.	
11.	The second affidavit of Parker proves:	40
	(a) Public notification of the applicant's development was first carried out during August and September 2005, but the public notification period was short by 1 day.	
	(b) A second public notification of the applicant's development was carried out during September and October 2005.	50
	(c) In November 2005 the assessment manager determined that the development application was in error for failing to identify the Environmental Protection Agency as a referral agency and therefore a new acknowledgement notice would need to be issued and the application readvertised.	

- (d) The issue as to whether readvertising was required was disputed by the applicant's solicitors and correspondence concerning this point was exchanged between the assessment manager and the applicant's solicitors between November 2005 and January 2006. 1
  - (e) The assessment manager maintained that readvertising was required and issued a new acknowledgment notice.
  - (f) The assessment of the development application proceeded through the information and referral stage. 10
  - (g) Due to the confusion surrounding the first and second public notification, and the dispute as to whether public notification was again required, Parker overlooked the requirement to publicly notify the development application after responding to the Referral Coordination Information Response. 20
  - (h) If the applicant is provided with the relief it seeks from the Court, the development application will be revived to a point where public notification of the development would still need to be carried out. This would effectively be the third public notification of the development application.
  - (i) Parker believes that his failure to publicly notify the development application within the timeframes stipulated by the Integrated Planning Act, and his failure to provide the third respondent with a copy of the Referral Coordination Information Response, has not substantially restricted the opportunity for a person to exercise the rights conferred on the person by this or another Act 30
12. By way of submission, the balance of convenience weighs in favour of the Court exercising the discretion to excuse the non-compliance and extend the time for responding to the information request and carrying out public notification having regard to: 40
- (a) The relatively minor technical breaches of the lapsing provisions of the IPA
  - (b) The lack of any of the deleterious effects mentioned in s4.1.5A (1) (b), no party opposes the relief sought, no other person's rights will be prejudiced as public notification will be required to be carried out. 50

(c) The anticipated cost and delay to the applicant should it be required to make the development application again.

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The effect of what happens by the court's order is that the notification period will commence afresh, repeating steps that the applicants have already taken. There is no loss of rights that any person or entity might have to become involved in the assessment of the development application. Absolutely nothing would be gained by requiring the applicants to apply afresh. The EPA now has the information it needs and public notification can conveniently be commenced again now.

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This is another illustration of the inconvenience which provisions that might work an automatic lapse of an application which is clearly being pursued can produce. In my view, it would be preferable if the legislation required that some person with a proper interest take advantage of the lapsing provisions for them to come into effect.

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