



## Development Tribunal – Decision Notice

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### **Planning Act 2016, section 255**

<b>Appeal number:</b>	23-057
<b>Appellant:</b>	Burchills Engineering Solutions
<b>Respondent:</b>	Logan City Council (Council)
<b>Site address:</b>	916–944 Greenbank Road, North Maclean, Qld 4280 described as Lot 2 on SP267252—the subject site

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### **Appeal**

Appeal under section 229, and section 1(5) and item 5 of table 3 of schedule 1 of the *Planning Act 2016* where Council did not decide an application within 10 days after receipt of a response to a request for information, resulting in a deemed refusal. The appeal is against that deemed refusal.

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<b>Date and time of hearing:</b>	10am 24 January 2024
<b>Place of hearing:</b>	Logan City Council, 150 Wembley Road, Logan Central Qld 4114
<b>Tribunal:</b>	James Dunstan—Chair Ken Crase—Member
<b>Present:</b>	Lucas Faulkner—Appellant Alex Winkler (Maclean Bridge Pty Ltd)—Land owner Phillip Denman (Principal Plumbing Specialist / Development Assessment Branch)—Logan City Council representative Mark Dawson—Logan City Council representative

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### **Decision:**

The Development Tribunal (Tribunal), under section 254(2)(f)(ii) of the *Planning Act 2016* (PA), decides the appeal by refusing the application.

### **Background**

1. On 22 June 2023, the Appellant made a properly made commercial plumbing application to the Logan City Council for an onsite sewerage facility for new Industrial Units under the Plumbing and Drainage Act (PDCOM/1928/2023) located at the subject site.

2. On 6 July 2023, Logan City Council issued a detailed information request with 24 items to be responded to.
3. On the 9 August 2023, the Appellant issued a response in a letter with items addressing each point.
4. On 22 August 2023, the Appellant provided further information to Council by email.
5. Following this submission, no response was provided by Council within 10 business days and subsequently the Appellant lodged an appeal on the basis of the application being deemed refused.

### **Jurisdiction**

6. Section 1(5) of schedule 1 of the PA provides that table 3 states the matters that may be appealed only to a tribunal.
7. The appeal is against the failure to decide an application or other matter under the *Plumbing and Drainage Act 2018* (PDA).
8. The Tribunal has jurisdiction to hear the appeal under section 229(1)(a)(ii) and section 1(5) and item 5 of table 3 of schedule 1 of the PA.
9. The Tribunal is therefore satisfied that it has jurisdiction to decide the appeal.

### **Decision framework**

10. The onus rests on the appellant to establish that the appeal should be upheld (section 253(2) of the PA)
11. The tribunal is required to hear and decide the appeal by way of a reconsideration of the evidence that was before the person who made the decision appealed against (section 253(4) of the PA)
12. The tribunal may nevertheless (but need not) consider other evidence presented by a party with leave of the tribunal or any information provided under section 246 of the PA (pursuant to which the registrar may require information for tribunal proceedings).
13. The Tribunal may decide that the Tribunal has no jurisdiction to decide the tribunal proceedings.<sup>1</sup>
14. Otherwise, the Tribunal is required to decide the appeal in one of the following ways set out in section 254(2) of the PA:
  - (f) *for a deemed refusal of an application:*
    - (i) *ordering the entity responsible for deciding the application to decide the application by a stated time and, if the entity does not comply with the order, deciding the application; or*
    - (ii) *deciding the application.*
15. Section 44 of the *Plumbing and Drainage Regulation 2019* (PDR) provides that an application for permit work must be accompanied by the documents required under section 6 of the PDR.
16. Section 45 of the PDR provides that the local government, where it considers that it requires further information to decide the application, may give the applicant an

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<sup>1</sup> Section 252(1) of the PA.

information request, and need not deal with the application until the applicant complies with the notice.

17. Relevantly, under section 49 of the PDR, if the local government does not decide the application within 10 business days after the applicant has complied with an information request, the local government is taken to have decided to refuse the application.

### **Material considered**

18. The material considered in arriving at this decision was:
  - (a) Form 10 Notice of appeal, grounds for appeal and correspondence accompanying the appeal lodged with the Tribunals registrar on 23 October 2023.
  - (b) the PDA.
  - (c) the PDR.
  - (d) Application made to the Logan City Council by the Appellant for a permit for permit work (Commercial – Proposed Industrial Units) under the Plumbing and Drainage Act (PDCOM/1928/2023) for 916-944 Greenbank Road, North Maclean, Qld 4280.
  - (e) Request for Information issued to the Appellant by Council on the 6 July 2023 in reference to *Plumbing and Drainage Regulation 2019*, section 45(2)(c).
  - (f) Appellant response to the request for information on 9 August 2023.
  - (g) Logan City Council review of Information Response for PDCOM/1928/2023 schedule 'Table 1 – Response to RFI' dated 2 September 2024.
  - (h) Additional correspondence and submissions received from the parties after the hearing.

### **Findings of fact**

19. The Tribunal makes the following findings of fact:
  - (a) A Notice of a Properly Made Application for Plumbing and Drainage Commercial (Commercial – Proposed Industrial Units) was given by Council to the Appellant on the 22 June 2023 for PDCOM/1928/2023.
  - (b) Logan City Council issued a request for information (RFI) to the Appellant in relation to the plumbing and drainage application PDCOM/1928/2023 on 6 July 2023. The RFI requested 24 items of information. Items numbered 7 to 18, 20 to 22 and 24 were requests for revised hydraulic plans.
  - (c) The Appellant responded to the Logan City Council RFI on 9 August 2023. The Appellant's response to items 7 to 22 and 24 of the RFI was advice that hydraulic plans were to be submitted as part of the building approval process.
  - (d) On 22 August 2023, the Appellant provided further information to Council.
  - (e) On 30 October 2023, the Appellant lodged this appeal.
  - (f) On 24 January 2024, the Tribunal conducted the hearing.
  - (g) On 24 January 2024, after the hearing, Council provided a document that had been requested at the hearing. The document listed the 24 items of the RFI and identified that in Council's view the Appellant had not complied with items 4, 6 to 22 and 24 of the request. For each item, Council provided a reason for its assessment that the item had not been complied with.

- (h) On 25 January 2024, the parties copied the Registrar in to emails where the Appellant sought and the Council supported an extension to the information request period to 1 July 2024.
- (i) On 12 February 2024, the Appellant sent an email to all parties that included a list of 'Actions' for the Appellant and Council.
- (j) On 14 February 2024, the Tribunal directed the Appellant to provide a progress report by 5 July 2024.
- (k) On 12 August 2024, the Appellant advised the Registrar by email as follows:

*We note that Logan Water has not provided the material agreed from the tribunal hearing (last **two dot points** highlighted in the email trail below).*

**[emphasis added]**

*It is considered that the application has been a properly made and accepted application with applicable fees paid. We maintain that there are no reasonable grounds for refusal and expect a decision notice to be issued on the application material.*

*The scope of the application and would be triggered in future building applications. There is no risk to Logan Water regarding the capacity of the on-site system, as future building approval applications will be and can be limited by the building certifier at that time.*

The 'dot points' referred to by the Appellant in the extract above are as follows:-

- *Council to provide example details for the Stage 1 building P&D amendments – PENDING (once the example details are provided, we will facilitate a teams meeting to discuss required amendments to the current drawings)*
- *Council to advise indicative approval conditions to link the Stage 1 building P&D application and Establishment of On-Site Wastewater Treatment Facility as separate approvals - PENDING*
- (l) On 22 August 2024, Council advised by email to the Registrar that it did not agree that it had agreed to provide the material that the Appellant claimed was outstanding.
- (m) On 27 August 2024 the Tribunal directed Council to provide the following:
  1. *Example details for the Stage 1 building P&D amendments; and*
  2. *Advise indicative approval conditions to link the Stage 1 building P&D application and Establishment of On-Site Wastewater Treatment Facility as separate approvals.*
- (n) On 2 September 2024, in response to the Tribunal's direction, Council issued:
  - (i) An updated version of the list of the items in the RFI, that Council provided on the day of the hearing. In the updated list, Council indicated that items numbered 4 to 22 and 24 had not been complied with. In relation to each of those items, Council provided new information under the heading 'Details required to meet the deemed to satisfied [sic] provisions, properly made application'.
  - (ii) The following submission—

*Regarding the establishment of an On-Site Wastewater Treatment Facility as a separate approval, we offer the following response:*

- *While providing design advice is not within the local government's purview, we are committed to assisting in resolving this matter by offering examples that may be considered by the designer. These examples are intended solely as guidance and should not be construed as mandatory directions. Further details can be found in the attached document.*
- *The application must include sufficient detail to enable the local government to thoroughly assess the work described in the plans.*
- *Plumbing and drainage plans must be submitted as part of the plumbing application and are not part of the building assessment and approvals process.*
- *The plumbing application must comply with Schedule 6 of the Plumbing and Drainage Regulation 2019 (PDR) and all referenced standards.*

*In accordance with these requirements, the local government is required to assess applications that meet the PDR criteria. Without the necessary information as outlined in the PDR, it is not feasible to issue a permit for any portion of the development without a comprehensive understanding of the entire project. As such, the request to approve a stand-alone treatment facility without the necessary supporting information about the overall development cannot be supported.*

*Additionally, it is important to note that, as agreed during the tribunal hearing, the Council granted the applicant a six-month extension for the Information Request Period, which expired on 1 July 2024.*

20. On 30 October 2024, the Tribunal invited the Appellant to provide a status update by 29 November 2024.
21. On 30 October 2024, Council advised the Tribunal that no additional correspondence had been received from the Appellant since the Council provided its summary of outstanding items from the original information request.
22. On 30 October 2024, in response to Council's response on 2 September 2024, the Appellant advised as follows:

*We request that a decision be made based on the information provided regarding the application for the On-Site Sewerage Treatment Facility Assessment. We maintain that the application has been properly made, meeting the necessary criteria for assessment.*

*The additional information that council has requested falls outside the scope of the properly made application assessment criteria. Furthermore, the details council seeks are clearly outlined within the application itself, as well as within the parent development approval and P&D application for Stage 1 under PDCOM/762/2019*
23. On 20 December 2024, the Tribunal ordered Council to decide the application by 28 January 2025.

24. On 23 December 2024, by email to the Registrar, Council queried the wording of the Tribunal's order. Council advised that it had not altered its stance that the application should be refused. Council also stated:

*However, we note that the applicant has submitted an amended planning application with significant changes in the design and intended use of the property. These changes result in a substantial reduction in the hydraulic loading of the property. In light of this, we would expect the applicant to submit a new or amended application that accurately reflects these updates.*

25. On 13 January 2025 the Tribunal withdrew its order and directed the Appellant to specify any change sought to the application, and whether any such change was a minor change, and any submissions in support.

26. On 15 January 2025, the Appellant responded as follows:

*There is a new MCU application lodged over the subject site by RPS c/o Nerang Pastoral Company Pty Ltd. The new application is not a minor change to the existing approval.*

*There can be multiple applications and approvals over a property without them prejudicing each other.*

*The Plumbing and Drainage (P&D) application relates to the existing MCU approval. If the application is a deemed refusal, I refer to the grounds of appeal from the Notice of Appeal which is still in contention and request the Tribunal's decision on the matter:*

*On 22 June 2023 the Appellant made a properly made application (the Application) to Logan City Council (Council) for a permit for permit work (Commercial - Proposed Industrial Units) under the Plumbing & Drainage Act (PDCOM/L928/20231for 9L6-944 Greenbank Rd, North Maclean.*

*On 6 July 2023, Council gave the Appellant an Information Request about the Application pursuant to s.45(2)(c) of the Plumbing and Drainage Regulation 2019.*

*On 9 August 2023, the Appellant gave Council a response to the information request.*

*Section 49 of the Plumbing and Drainage Regulation 2019 required Council to decide the application within 10 business days of receipt of the information request response. Council has failed to make any decision and, as a consequence of section 9(2), is taken to have decided to refuse the application. The Appellant appeals against that deemed refusal.*

27. On 16 January 2025, the Tribunal issued the following directions:

*The Tribunal directs Council - by email to the Registrar copying in all parties by close of business on Friday 25 January 2025 - to respond to the Appellant's email below, and in particular to advise:*

- 1. The nature of the change MCU application that has been lodged;*
- 2. Whether, in Council's opinion as the assessment manager for the plumbing application currently lodged, whether the change application impacts on Council being able to assess the current application; and*

3. *Any other information Council considers appurtenant for the committee to review regarding the change application and the current application to proceed with making a decision.*

28. On 20 January 2025, Council responded as follows:

*Thank you for your continued correspondence regarding the submission of your plumbing and drainage application.*

*After reviewing your request and the circumstances surrounding the application, we wish to clarify several key points:*

1. *Minimum Submission Requirements:*

*The submitted plans did not meet the minimum requirements for plumbing and drainage applications outlined in Appendix 6 of the Plumbing and Drainage Regulation. Despite Council's original information request, the response provided was incomplete, with no substantive details to address the required hydraulic loads or associated specifics. Referring solely to future building approval does not satisfy these requirements.*

2. *Permit Issuance Constraints:*

*As per legislative requirements, Council cannot issue a permit when critical details, such as hydraulic loads, are either unknown or lack sufficient detail. The law does not allow for incomplete applications or for missing information to be supplied retrospectively.*

3. *Deemed Refusal Appeal:*

*The assertion that Council failed to respond within the specified timeframe is incorrect. Council has adhered to all procedural requirements. Furthermore, Council has offered to meet with the applicant on multiple occasions to discuss the outstanding matters set out in the information notice. These offers have not been taken up, including during the tribunal hearing where it was agreed that they would arrange a suitable meeting time with Council.*

4. *Tribunal Clarification:*

*The core issue is not whether Council failed to undertake an assessment but rather that the application, as submitted, lacks the minimum required information for Council to perform an assessment. Without this information, the application is non-compliant, and no permit can be issued.*

5. *The New MCU application: Council has not received a new plumbing application for the stated MCU are therefore cannot provide any details on whether the hydraulic loading would have an impact on the proposed onsite sewerage facility.*

*Conclusion:*

*Council considers this matter concluded under the deemed refusal provisions. However, to ensure compliance and facilitate resolution, Council remains willing to meet with the applicant to discuss and address the outstanding requirements outlined in the information notice. Please note that the site's status under the Priority Development Area (PDA) framework does not exempt it from meeting the legislative requirements of the Plumbing and Drainage Act.*

*We encourage the applicant to contact Council to arrange a meeting at their earliest convenience so that we can work together to resolve this matter.*

29. No additional information has been provided to the Tribunal by the Appellant.

**Reasons for the decision**

30. Council issued a RFI to the Appellant in relation to the plumbing and drainage application PDCOM/1928/2023 on 6 July 2024.

31. The Appellant responded to the RFI on 9 August 2023. The Appellant provided further information on 22 August 2023.

32. A hearing was held regarding the matters of the deemed refusal, including outstanding documentation. During the hearing, it was discussed and an opportunity was afforded to the Appellant after the hearing to provide the documents outstanding in response to Council's detailed document of what was still outstanding.

33. In response to the Tribunal's request, Council issued a detailed schedule with information Council considered was necessary to allow assessment of the application.

34. No additional information has been provided by the Appellant in response to that schedule.

35. The Tribunal considers that the information that Council has identified as outstanding, is necessary for the application to be assessed.

36. Consequently, the Appellant has not satisfied its onus of showing that the appeal should be upheld.

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**James Dunstan**  
**Development Tribunal Chair**  
**Date: 7 October 2025**



## **Appeal rights**

Schedule 1, table 2, item 1 of the *Planning Act 2016* provides that an appeal may be made against a decision of a tribunal to the Planning and Environment Court, other than a decision under section 252, on the ground of -

- (a) an error or mistake in law on the part of the Tribunal; or
- (b) jurisdictional error.

The appeal must be started within 20 business days after the day notice of the tribunal decision is given to the party.

The following link outlines the steps required to lodge an appeal with the Court.

<http://www.courts.qld.gov.au/courts/planning-and-environment-court/going-to-planning-and-environment-court/starting-proceedings-in-the-court>

## **Enquiries**

All correspondence should be addressed to:

The Registrar of Development Tribunals  
Department of Housing and Public Works  
GPO Box 2457  
Brisbane Qld 4001

Telephone 1800 804 833

Email: [registrar@epw.qld.gov.au](mailto:registrar@epw.qld.gov.au)