



Development Tribunal – Decision Notice

Planning Act 2016, section 255

Appeal Number:	22-020
Appellant:	Queensland Fire and Emergency Service
Respondent (assessment manager):	Blagojce (Bill) Romanovski
Co-respondent (applicant)	TJX Australia Pty Ltd
Site Address:	Tenancy 32 TK Maxx, 32 Hervey Range Road, Thuringowa Central and described as Lot 2 on SP 226267 – the subject site

Appeal

Appeal under s229(1)(a)(ii) of the *Planning Act 2016* (“PA”) and Schedule 1 Table 3 item 1 of the PA by the building advisory agency against a development approval for building work for proposed alterations to an existing tenancy.

Date and time of hearing:

Place of hearing: The subject site

Tribunal: Michael Moran – Chair
David Job – Member
John Eylander – Member

Present: Ryan Alloway (QFES) – Appellant
Jamie Ryder (QFES) – Appellant
Gavin Casey (Checkpoint Building Surveyors) – representing the Respondent
Scott Daniel (Checkpoint Building Surveyors) – representing the Respondent
Chris Sheeran – Fire Engineer
Ryan Wheelhouse – Nexus (Centre Management)
Nathan Evennett – Phoenix (Builder)

Decision:

The Development Tribunal (Tribunal), in accordance with section 254(2)(d) of the *Planning Act 2016* (PA) decides the appeal by setting the decision aside and ordering the assessment manager to remake the decision within 60 days after the date of this appeal decision.

Background

On 9 December 2021, the assessment manager gave a development approval for building work for proposed alterations to an existing tenancy at “Tenancy 32”, 13 Hervey Range Road, Thuringowa Central in Townsville. The approved documents included “Fire Engineering Report Revision 1” prepared by Fire Engineers Australia dated 11 October 2021.

Sections 63(1)(b) of the PA require the assessment manager to give a decision notice to the appellant as a referral agency. Under section 63(2)(e), the decision notice was to include each condition imposed by the referral agency.

Provisions of the *Building Act* 1975 (see sections 101(1)(e), 102(1)(b) and (c), and 107(1)(a) and 107(2)) and the *Building Regulation* 2021 (s64) require the assessment manager and referral agency to do certain things within certain timeframes.

The appellant was invited to assess the building work on 8 March 2022.

On 10 March 2022, the appellant wrote to the assessment manager for the purpose of assessing the development application per the referral provisions under the PA. The appellant advised that the proposed performance solution was assessed as not suitable.

The assessment manager submitted a revised Fire Engineering Report Revision 4 dated 21 March 2022 to the appellant.

By letter to the assessment manager dated 24 March 2022, the appellant advised that it had assessed the performance recommendations as not suitable.

On 20 April 2022, the assessment manager issued an amended decision notice, the subject of this appeal.

On 27 April 2022, the assessment manager issued the Certificate of Occupancy.

On 28 April 2022, the assessment manager gave the amended decision notice to the appellant.

On 12 May 2022, the QFES filed the notice of appeal, being within the 10 business day appeal period of the provision of the decision notice to the appellant on 28 April 2022.

The grounds of appeal included that the amended decision notice failed to comply with the applicable legislation including in that it:

- referenced a further revised Fire Engineering Report (Revision 5 dated 31 March 2022), which had not been assessed by the appellant,
- failed to identify the appellant as referral agency,
- failed to specify referral agency conditions.

The hearing was conducted on site on 22 November 2022 with a viewing followed by oral submissions at the centre manager’s boardroom.

Jurisdiction

The Tribunal has jurisdiction to determine the appeal pursuant to s229(1)(a)(ii) of the *Planning Act* 2016 (“PA”) and Schedule 1 Table 3 Item 1 of the PA.

Decision framework

1. The onus rests on the appellant to establish that the appeal should be upheld (s. 253(2) of the PA).

2. 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 (s. 253(4) of the PA
3. The tribunal may nevertheless (but need not) consider other evidence presented by a party.
4. The tribunal is required to decide the appeal in one of the ways mentioned in s.254(2) of the PA.

Material considered

The material considered in arriving at this decision comprises:

1. 'Form 10 – Appeal Notice', grounds for appeal and correspondence accompanying the appeal lodged with the Tribunals Registrar dated 12 May 2022.
2. Application for Appeal attached to the Form 10.
3. Development Application Decision Notice dated 09/12/2021
4. Amended Development Decision Notice dated 20/04/2022
5. Letter from Jamie Ryder (QFES) to Checkpoint Building Surveyors dated 10/03/2022 together with Performance Solution/Assessment/Building Approval
6. Letter from Jamie Ryder (QFES) to Checkpoint Building Surveyors dated 24/03/2022 together with Performance Solution/Assessment/Building Approval
7. Certificate of Occupancy dated 27/04/2022
8. Fire Engineering Report by Chris Sheeran (Fire Engineers Australia) dated 21/03/2022
9. Fire Engineering Report by Chris Sheeran (Parsons Brinckerhoff) dated 23/08/2016
10. Check Point Building Surveyors letter to Development Tribunal Registry dated 08/11/2022

Findings of fact

The assessment manager conceded the appeal. In particular, The Tribunal accepts the assessment manager's statement that when he realised the oversight, the amended decision notice was given to appellant. This is what led to the appeal.

The referral agency response to the development application was a properly made submission.

Reasons for the decision

In light of the findings of fact above, the Tribunal accepts the submission of the appellant that the decision notice ought to be set aside.

Accordingly, the Tribunal considers that the appellant has satisfied the onus of establishing that the appeal should be upheld.

Michael Moran
Development Tribunal Chair
Date: 23 May 2023

Appeal rights

Schedule 1, Table 2 (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:

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