



**Building and Development Tribunals**

**Queensland** Government

Department of **Local Government and Planning**

**APPEAL**

**File No. 3/05/063**

*Integrated Planning Act 1997*

## **BUILDING AND DEVELOPMENT TRIBUNAL - DECISION**

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**Assessment Manager:** Gatton Shire Council

**Site Address:** *withheld* – “the subject site”

**Applicant:** *withheld*

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### **Nature of Appeal**

The appeal is against the decision of the Gatton Shire in respect of a deemed refusal to a Development Application on land described as Lot *withheld* and located at “the subject site”.

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**Date and Place of Hearing:** 9.30am Monday 23 January 2006.  
Gatton Shire Council Chambers  
26 Railway Street, Gatton.

**Tribunal:** Mr L F Blumkie Tribunal

**Present:** *withheld* Applicant  
Mr G Shum Gatton Shire Council Representative  
Mr L Blumkie Tribunal

### **Decision**

The Tribunal, in accordance with Section 4.2.34 (2) (a) of the Integrated Planning Act, confirms the decision appealed against.

### **Background**

The owner erected several of the structures in around 2003 without a development approval. Gatton Shire Council became aware of the existing structures and advised the owner on the 18 August 2003 that - “*you require building approval only for the proposed greenhouses*”.

The applicant advised that the property is operated as a family business, and the use under the Town plan is “agriculture” and the current crops being produced are cucumbers and tomatoes for wholesale elsewhere.

The agricultural business involves the planting, watering, weeding, harvesting etc of the crop (by the owners family), which is then packaged in a separate building on the site and then transported for sale.

The applicant, after discussion with the owner, had a survey done on the location of the existing structures, and the results are documented on the Contour & Feature Survey submitted with the appeal.

The subject structures consist of 6 separate structures ranging from 2356m<sup>2</sup> to 4235m<sup>2</sup> in area with a total area of approximately 20,000m<sup>2</sup>. The total site cover for all buildings is approximately 53% of the 4.05 ha site.

The structures are located within the 6m of the Road boundary.

*withheld* Road is an unformed road.

The structures consist of a steel frame approximately 3m high, which is roofed with a plastic fabric type material and has walls of a similar type material, which can be raised and lowered.

After consultation with a private certifier, it was determined that the structures are class 10a buildings. As such (because they are within 6m of the road boundary), a Council variation would be required to allow the reduced setback and also to exceed the maximum site cover.

A siting variation application was made to Council on 24 May 2004.

On the 9 September 2005 the variation application was returned, as Council considered that a siting variation was not required.

An appeal was lodged with the Registrar on the 20 October 2005.

### **Material Considered**

In coming to a decision, consideration was given to the following material: -

1. Gatton Shire Council correspondence dated 18 August 2003 advising that a Building Approval is required;
2. Application to the Gatton Shire Council dated 24 May 2004 for a siting variation;
3. Response from Gatton Shire Council dated 19 September 2005;
4. Copy of Building Newsflash Issue 069-18.08.00;
5. Copy of extracts from the Gatton Shire Council Planning scheme;
6. Appeal documents dated 18 October 2005;
7. Further correspondence from Council dated 14 November 2005;
8. The Building Act 1975;
9. The Building Code of Australia;
10. The Standard Building Regulation 1993 (SBR);
11. The Integrated Planning Act 1997;

## **Findings of Fact**

A building is defined in the Building Act 1975 as “.....a fixed structure that is wholly or partly enclosed by walls and is roofed, and includes a floating building and any part of a building”.

The subject structures are roofed (with a plastic fabric type material) and have walls with a similar type material.

The Building Code of Australia classifies buildings into 10 different types.

Building Newsflash issue: 069-18.08.00 published by Building Codes Queensland gives guidance on the classification of farm buildings and draws attention to The BCA Guide, page 2454, which states:-

*“a classification of 10a for farm buildings should only apply where a classification of 7 or 8 is not more appropriate. However when determining the classification a building certifier should consider the size, purpose, operations and the extent to which people are employed in the building”.*

The buildings are large i.e. up to 4235m<sup>2</sup> each – 20,000m<sup>2</sup> in total.

The purpose is currently for farming cucumbers/tomatoes.

Up to 6 family members (and possibly others) work at various times on producing the crop.

A class 8 building is defined as:-

*“a laboratory, or a building in which a handicraft or process for the production, assembling, altering, repairing, packing, finishing, or cleaning of goods or produce is carried on for trade, sale, or gain”.*

The Standard Building Regulation 1993 refers to special structures under :-

### ***“Special structures***

*70. A development application for a special structure must not be approved, unless the special structure –*

- (a) complies with this regulation; and*
- (b) will reasonably provide for -*
  - (i) the safety of persons using the structure if there is a fire (including means of egress); and*
  - (ii) the prevention of fire; and*
  - (iii) the suppression of fire; and*
  - (iv) the prevention of the spread of fire; and*
  - (v) the health and amenity of persons using the structure.”*

## Reasons for the Decision

Applying the definitions for “building” in the Building Act 1975, the subject structures are buildings.

In consideration of the classes of buildings as outlined in the BCA and the use thereof, they are either a class 10a or Class 8 building.

Class 10a – a non-habitable building being a private garage, carport, shed or the like.

The Building Newsflash referred to above, needs to be considered as follows:-

- the buildings are large (up to 4235m<sup>2</sup> each – 20,000m<sup>2</sup> in total);
- the purpose is currently for farming cucumbers/tomatoes;
- up to 6 family members (and possible others) work at various times on producing the crop;
- producing the crop includes planting, watering, weeding, harvesting, and preparing for the next crop.

Hence, applying the recommendations in the Newsflash, in my opinion, the buildings are **not** class 10a classification.

In considering whether they are class 8 buildings, it is clear that the growing of produce in the building is carried out for gain. However, the **process** for the production of produce is, in my opinion, **not** carried out in these building.

I have come to this conclusion because the definition of process is defined as “.....*a series of actions or operations designed to achieve an end.....*”.

This process (actions or operations on the produce) does not occur in the building under appeal.

Once the produce/crop is gathered, it is transported to another building on the site where it is cleaned and packed for transportation to the sale venue. This existing building (not the subject of this appeal), where the cleaning and packing of the produce/crop **does** occur, is clearly a class 8.

Hence, in my opinion, under the definition of “special structure” in the Standard Building Regulations 1993, the buildings do **not** clearly satisfy any of the 10 classifications in Clause A3 the BCA and therefore should be considered as special structures.

This interpretation, when applied to such a large structure principally used for agricultural purposes, requires the approving authority to at least consider the fire and safety issues without going into the detailed safety requirements of a large Class 8 building.

If they were class 10a buildings, no consideration would need to be given to the fire and safety issues, other than proximity to the boundary. This would, in my opinion, seem **unreasonable** for such a large building.

In my opinion, for this type of special structure, if the approving authority considers Clause 70 “Special structures” in the SBR and prepares a detailed report, which confirms all the issues are satisfactorily addressed and the report is attached to the approved documents, the building can be approved.

Siting variations under the SBR are not applicable for Class 8 buildings or special structures.

Hence the Tribunal, in accordance with Section 4.2.34 (2) (a) of the Integrated Planning Act, confirms the decision appealed against.

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**Leo F Blumkie**  
**Building and Development**  
**Tribunal**  
**Date: 30 January 2006**





## **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 Local Government and Planning  
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