



Building and Development Tribunals—Decision

Integrated Planning Act 1997

Appeal Number: 3—09—036

Appellant: Queensland Fire and Rescue Service (QFRS).

Assessment Manager / Respondent: GMA Certification Group (GMA)

Concurrence Agency: N/A
(if applicable)

Site Address: 19329 Bruce Highway Merinda and described as Lot 110 on HR1989 and Lot 111 on HR1821, Parish of Kelsey – Abbot Point Coal Terminal X50 Expansion Accommodation Village (the subject site).

Appeal

Appeal under section 4.2.10 of the *Integrated Planning Act 1997* (IPA) "appeal by advice agency", against the decision of the assessment manager (private building certifier) to issue a development approval without referral to QFRS as required under section 3.3.3 of IPA. The appellant also appeals against the classification of the accommodation village as a temporary building.

Date of hearing: 22 May, 2009

Place of hearing: Level 3, 63 George Street Brisbane.

Tribunal: Chair: Christopher Odgers
Member: David Kay

Present: Robert Hook: QFRS
David Dillon: QFRS
James Ryder: QFRS
Geoffrey Mitchell: GMA
Laif Jones: Ausco Modular
Bill Gillson: Ausco Modular

Decision:

The Tribunal, in accordance with IPA section 4.2.34 (2), **confirms** the decision of the assessment manager appealed against by QFRS.

Background

The subject site consists of 62 accommodation units, each with a floor area of 653m².

The units are arranged in groups of 2, 4, 6 and 8 combinations which face each other with a common roofed area between them. A plant room, administration building and 8 laundries are also located on the subject site. The accommodation village has the capacity to accommodate 500 staff and a further 500 in stage two of the development.

The appellant is of the opinion that the structures approved by the assessment manager, namely an amenities block, dining hall and other temporary buildings are not temporary buildings. The appellant considers that sections 64 and 67 of the *Building Act 1975 (BA)* apply in this case and the matter should have been referred to the QFRS for assessment to determine the requirements of special fire services.

The Tribunal considers that this appeal involves consideration of two important issues, as follows:

Issue 1. Status of the appellant as a referral agency

Is the appellant a referral agency under schedule 2, table 1, item 1 of the *Integrated Planning Regulation 1998 (IPR)* or sections 64 and 67 of the *Building Act 1975 (BA)*. The latter is dependent on the term temporary structure (QFRS heading in their appeal letter dated the 20 March 2009).

Schedule 2, table 1, item 1 of the IPR provides that the appellant is an advice agency for:

“A fire safety system for a building or structure, other than a temporary or special structure, if the building work -

- (a) requires special fire services mentioned in schedule 2A, part 1; or*
- (b) includes an alternative solution assessed against the performance requirements of the Building Code of Australia, Volume 1, or the Queensland Development Code, part 2.2, for the fire safety system.”*
(emphasis added).

In this instance, the Tribunal notes that an alternative solution has not been applied and that the use of the term “temporary or special structure” is causing confusion because these words are not preceded by “building”, only that “if building work complies” follows a comma in the relevant table of schedule 2.

Issue 2. Compliance with the IPR and the BA

The Tribunal also notes that sections 64 and 67 of the BA are relevant to these matters and provide, as follows:

“64 Required report before assessing application for temporary building or structure with special fire service

- (1) This section applies to a building development application for a temporary building or structure that is proposed to have a special fire service.*
- (2) Before carrying out building assessment work for the application, the building certifier must obtain from QFRS a report on the sustainability of the proposed service.*

67 Temporary buildings or structures

- (1) A building development approval for any temporary building or structure must include a condition that-*
 - (a) Limits the period during which the temporary building or structure may remain in place; and*
 - (b) Requires removal or demolition of the temporary building or structure at the end of the period.*
- (2) Subsection (3) applies to a building development application for a temporary building or*

structure if—

- (a) no building assessment provision is expressed to apply specifically to temporary buildings or structures generally or to temporary buildings or structures of the same type as the temporary building or structure; and*
 - (b) the building or structure, would not otherwise comply with the building assessment provisions.*
- (3) The assessment manager must not approve the application unless the building certifier has decided the temporary building or structure-*
- (a) is structurally sound and capable of withstanding the loadings likely to arise from its use; and*
 - (b) reasonably provides for all of the following-*
 - (i) the safety of persons to be accommodated in the building or structure if there is a fire (including, for example, means of egress);*
 - (ii) the prevention and suppression of fire;*
 - (iii) the prevention of fire spread;*
 - (iv) the health and amenity of persons to be accommodated in the building or structure.”.*

The Tribunal, as a preliminary point, considers that section 67(2) does not apply in this case.

Material Considered

The material considered in arriving at this decision comprises:

A submission by the appellant, including the following:

- QFRS letter 20 March, 2009 supporting the Form 10 application
- Form 10 – Building and Development Tribunals Appeal Notice dated 16 April, 2009.
- GMA Certification Group Decision Notice 20088577 dated 15 December, 2008
- QFRS letter dated 27 April, 2009 addressed to the Building and Development Tribunals.
- Form 11 Certificate/Interim Certificate of Classification dated 6 April, 2009 issued by GMA Certification Group.
- Email from GMA to James Ryder QFRS stating referral is not required.
- Email 16 April, 2009 from GMA to James Ryder QFRS stating the reasons for the issuing of the decision.
- Seventeen photographs of the subject site, including a photograph of a single external pillar fire hydrant.
- Section 108A of the Building Act submitted by QFRS after the hearing.

A submission by the assessment manager, including the following:

- Form 1 Part B Building work requiring assessment against the Building Act 1975 issued by Ausco Building systems to GMA.
- Letter from GMA dated 20 May, 2009 addressed to the Building Tribunal setting out the reasons for not referring the application to QFRS.
- Email 4 June, 2009 providing advice from the Town Planning Consultant and Ports Queensland.
- Photograph showing the fire hydrant removed and the upstand pipe capped.

The following drawings:

- Site Plan 10080-120 revision 1
- Floor plan 4056707 revision 1
- Site Plan 10080 -100 revision 1
- 4 room unit – SM20082_01 revision 0
- Ice machine room – SM20082_02 revision 0
- Laundry – SM 20082_04 revision 0

- Toilet Block – SM 20082_05 revision 0
- Office Complex – SM20082_03 revision 0
- Entertainment Centre – 4056369 – revision A
- Line Store – 4056369 revision A
- Server room – 10080-003 revision A

Findings of Fact

The Tribunal makes the following findings of fact:

1. The decision notice issued by Whitsunday Shire Council deems the buildings as temporary accommodation camp. In the opinion of the Tribunal these buildings and structures were never intended to be permanent.
2. The building certifier was informed on IDAS Form 1 Part B that the buildings are to be of a temporary nature to provide workers' facilities during the construction period.
3. The Tribunal is satisfied that the building certifier formed the opinion that the buildings are to be temporary in nature as a result of inspection by the building certifier.
4. The documents provided to the Tribunal indicate that there is no requirement for the provision of special fire services.

Reasons for the Decision

The Tribunal gives the following reasons for confirming the decision of the assessment manager (building certifier) in this matter, as follows:

Issue 1. Status of the appellant as a referral agency

On the first issue, the Tribunal notes that the IPR does not require referral to the Queensland Fire and Rescue Service where there isn't a requirement for special fire services. In addition, and as earlier stated, an alternative solution has not been applied in this case.

The use of the word "temporary" in legislation has no definition and this lack of definition has led to the issuing of this appeal.

The word "temporary" is defined in the Macquarie Dictionary as "lasting, serving, or effective for a short time only; a temporary need." The definition of "*permanent*" in the same is "lasting or intended to last for a very long time; remaining unchanged; not temporary; enduring; abiding." "Temporary" can therefore be further interpreted (combining the definitions) as not lasting or intended to last for a very long time; or not remaining unchanged or not abiding; to provide a temporary need. In support, for home construction, local laws commonly link a "temporary" home to the duration of the construction period of the permanent home.

The construction period for this project is for four years as evidenced in Ports Queensland email response dated the 4 June 2009 and is consistent with the decision notice issued by GMA Certification Group. The workers accommodation and facilities are provided to support this four year construction period and these facilities are proposed to be removed upon completion of the project as stated in the GMA decision notice.

In addition, although "building" does not precede "a temporary or special structure" in schedule 2 of the IPR, the Tribunal considers that this was still intended to include building work.

Therefore, the Tribunal is of the opinion that the buildings which are the subject of this appeal are "temporary" in nature and the QFRS does not have referral agency jurisdiction under the IPR.

Issue 2. Compliance with the IPR and the BA

Section 67 of the BA provides that a condition must be placed on a building development application which limits the period of a building or structure remaining in place together with its removal or demolition at the end of the period.

In addition, the Tribunal is of the opinion that the documents supplied to the Tribunal indicate that there is no requirement for the provision of special fire services. Section 67(3)(b) requires the building certifier to determine if the temporary building reasonably provides for the safety of persons if there is a fire, the prevention and suppression of fire and the prevention of the spread of fire. It is the decision of the certifier in assessing the criteria to determine if a special fire service is required to satisfy the criteria. In this matter the building certifier has determined that a special fire service is not required. Therefore, in the opinion of the Tribunal section 64 is not relevant to this matter.

In conclusion, the Tribunal considers the accommodation camp to be of a temporary nature, being subject to the provisions of section 67 of the BA, but not subject to the referral agency provisions of the IPA or section 64 of the BA as special fire services are not required.

Chris Odgers
Building and Development Tribunal Chair
Date: 31 July 2009

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:

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