



## Building and Development Tribunals – Decision

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### *Integrated Planning Act 1997*

**Appeal Number:** 3–08–042

**Applicant:** Queensland Fire & Rescue Service (QFRS) – Toowoomba Region

**Assessment Manager:** Toowoomba Regional Council (formerly Jondaryan Shire Council)

**Concurrence Agency:** n/a  
(if applicable)

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

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### Appeal

Appeal under section 4.2.10 of the *Integrated Planning Act 1997* (IPA) against the decision of Toowoomba Regional Council (formerly Jondaryan Shire Council) to approve a scope of work described in a fire engineering report without due process being fully applied.

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**Date of hearing:** Monday, 21 July 2008 at 10am

**Place of hearing:** Office of the Department of Infrastructure and Planning

**Tribunal:** Christopher Odgers - Chair  
Allan Williams - Member

**Present:** Mr Russell Springall – Toowoomba Regional Council  
Mr Graham Pointing – QFRS Representative  
Mr Ross Williams – QFRS Representative  
Mr Steven McKee – QFRS Representative  
Mr Athol Knox – QFRS Representative

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### Decision:

The Tribunal, in accordance with section 4.2.34(2)(a) of the IPA, **confirms** the QFRS appeal against the issue of the Development Application Decision Notice dated 14 March 2008 by Jondaryan Shire Council (*now Toowoomba Regional Council*).

The Tribunal, in accordance with section 4.2.34 (1) and 4.2.35A, **directs** stakeholders to complete due process that is necessary to close off outstanding fire safety matters raised in the appeal by the QFRS.

## Background

The subject building has received a previous approval to approve work of a fire engineering nature. An extension to the building is now proposed. The fire engineering report prepared for the new work is confusing and appears to reference the previous work as if it were new work.

QFRS requested information and advice from the fire engineer numerous times. This required information and advice was not forthcoming.

The Assessment Manager, in order not to delay the approval of the works any further, and not having received advice from QFRS, issued the decision notice with a condition that QFRS must assess the plans and certifications before work commences.

## Material Considered

The material considered in arriving at this decision comprises-

- Form 10 – Notice of Appeal received by Registrar, Building and Development Tribunals on 18 June 2008;
- QFRS application letter dated 11 June 2008 and received by the Registrar on 23 June 2008;
- Development Application Decision Notice dated 14 March 2008 issued by Jondaryan Shire Council (*now Toowoomba Regional Council*);
- Fire Safety Engineering Report – Oakey Arcade and Mall Extension for George Florentzos prepared by Ferm Engineering – Reference F5002 Part B – Revision 1 dated 30 September 2005;
- Email submission from Toowoomba Regional Council's representative dated 21 July 2008 providing an overview of the alternative building solution and the sequence of events in consultation with QFRS;
- Files notes prepared by QFRS representative – File 11400174 detailing the sequence of events with Council and Ferm Engineering in obtaining information to assist with their assessment which was received by the Registrar on 22 July 2008.

## Findings of Fact

The Tribunal makes the following findings of fact-

The Development Approval Decision Notice 14-03-2008 references only Part C3.2 and C3.4 of the Building Code of Australia [quote] "*to allow an opening in an external wall to be protected by a sprinkler system in accordance with the requirements of the fire safety engineering design report F5002 Part B by Ferm Engineering dated 30 September 2005*". The Ferm Engineering Report refers to more than one part of the BCA that is affected by the alternative solution (*refer to Page 4*), viz:

Fire Separation,  
Egress Assessment,  
Smoke Management.

Whilst the decision notice affords QFRS the opportunity of assessing the plans and certifications, the decision notice assumes the scope of work described in the fire engineering report is acceptable.

The Assessment Manager, in keeping with section 3.3.16 (3), has issued the decision notice because no formal response from QFRS was received.

A full and proper communication process, to keep the Assessment Manager informed, has not been followed by QFRS.

There is no evidence that stakeholders have agreed the alternative solutions. This is obvious on page 28 of the Ferm report where signatures of all stakeholders are not included.

## **Reasons for the Decision**

The Tribunal supports QFRS' appeal because the Development Application Decision Notice, on page 1, last paragraph, approves the scope of work set out in the Alternative Building Solution prepared by Ferm Engineering dated 30 September 2005 – Reference F5002 Part B, without full consultation and closure with QFRS.

Due process, and the referral process outlined in the IPA for referral agency advice, has not been followed by both parties. This is evidenced in files notes received from both parties and their acknowledgement during the hearing.

All parties agreed at the hearing that communications had been less than desirable due to a range of circumstances and that the QFRS was right to reject the application and appeal the decision notice.

The Ferm Report addresses a number of other issues, as well as the IGA side of the opening, which are not included in the decision notice. This was agreed by both parties at the hearing, which means the Ferm Report, in its present form, is irrelevant.

It appears that an additional fire wall has been built by IGA that is not shown on plans submitted. An escape route from the Campbell Street side of the fire wall into an existing alleyway, termed '*external easement*' is provided but is not addressed in the Ferm report.

Although both parties have erred in terms of less than adequate communication during the referral process, an agreed outcome, in relation to fire engineering matters, must be reached in order to deliver an acceptable level of fire safety.

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**Chris Odgers**  
**Building and Development Tribunal Chair**  
**Date: 6 August 2008**

## **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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