Building and Development Tribunals
Queensland Government
Department of Local Government and Planning

APPEAL **File No. 3/06/091**
Integrated Planning Act 1997

BUILDING AND DEVELOPMENT TRIBUNAL - DECISION

Assessment Manager: Miriam Vale Shire Council

Site Address: Withheld – "the subject site"

Applicant: Peter Hay – Queensland Fire & Rescue Service

Nature of Appeal

Appeal under Section 4.2.10 of the *Integrated Planning Act 1997* against the decision of Miriam Vale Shire Council and its consultant building certifier to issue a development approval for building work that had not been referred to the Queensland Fire and Rescue Service for advice on what special fire services were needed for the development.

Date and Place of Hearing: 12.30pm Monday 6 November,2006
at "the subject site"

Tribunal: Geoff Cornish

Present: Peter Hay – Queensland Fire & Rescue Service
Ray Davidson – Queensland Fire & Rescue Service
Phyllip Bray – CQ Building Certification
Gary Perfect – Miriam Shire Council

Decision

The Building and Development Tribunal does not have the jurisdiction to decide this appeal on the basis that, under section 4.2.10 of the *Integrated Planning Act 1997* a decision notice relating to development approval for the carrying out of building work was not given to the advice agency.

Background

The matter concerns whether the applicant for the development permit for building works should have submitted the building plans to the Queensland Fire & Rescue Service (QFRS), as an Advice Agency, for their assessment of Special Fire Service requirements prior to the granting of a development permit for the construction of these buildings.

This issue came to the notice of the QFRS during the course of their inspection of another development in the area. By that time construction of the buildings in question had been completed and a Certificate of Classification had been issued enabling them to be occupied. QFRS are of the view that the buildings do not comply with the requirements of the BCA in respect of fire safety.

Material Considered

1. Form 10 – Building and Development Tribunals Appeal Notice, with attachments, lodged by the Queensland Fire & Rescue Service regarding no application having been made for an assessment of special fire services for these buildings and setting out the grounds of the appeal.

2. Verbal submissions made by Peter Hay and Ray Davidson of the Queensland Fire & Rescue Service on 6 November 2006 setting out why they believed the appeal should be allowed.

3. Verbal submission made by Phyllip Bray on 6 November 2006 setting out how the buildings had been assessed and why he believed the appeal should be dismissed.

4. The *Building Act 1975*;

5. The *Standard Building Regulation 1993* (SBR);

6. The *Integrated Planning Act 1997*;

7. The *Building Code of Australia* (BCA); and

8. The *Guide to the Building Code of Australia*.

Findings of Fact

I made the following findings of fact:

1. In July 2005 Miriam Vale Shire Council issued a development approval for building work for the development in question.

2. Prior to the issuing of the above approval, no application was made to QFRS for their assessment of the special fire services required for these buildings with their current floor plans.

3. The buildings were completed and a Certificate of Classification issued in respect of them before the current appeal was lodged.

4. The buildings comprising the development consist of two blocks of three stories, each containing four two bedroom units in each story, and a third block of four storeys containing a basement carpark with three storeys of units above, each story of units containing four two bedroom units.

Reasons for the Decision

After assessing the facts and the submissions of both parties, I have reached the following conclusions:

1. The buildings were assessed by the certifier as not requiring assessment by the QFRS for special fire services prior to the issuing of a development approval for building work.

2. The certifier considered that each block of twelve units was comprised of four buildings grouped in pairs each side of a central walkway.

3. The certifier considered each building in a pair to be separated from the adjoining building in that pair by a fire wall that continued unbroken from ground level to the underside of the roof sheeting, in accordance with the requirements of Clause C2.7(b) of the BCA.

4. The certifier had calculated that the floor area of each such building was less than 500 square metres. That being the case, the certifier concluded that referral to the Queensland Fire and Rescue Service for their assessment of special fire services was not required prior to the issuing of a decision notice for the building work involved.

5. The QFRS was of the view that the provisions of Clause C2.7(b) of the BCA required the separating fire wall to be constructed unbroken through each of the floors, with the floor at each level stopped off at each side of the fire wall. This detail is consistent with that shown in The Guide to the BCA at Figure C2.7(1).

6. The buildings have been designed and constructed with the fire walls consisting of reinforced core filled blockwork with the reinforcing passing through, and tied into, each of the floors. Each floor has then been poured over the fire wall below it in accordance with standard construction practice. The certifier was of the view that this construction detail complied with the requirements of Clause C2.7 of the BCA.

7. I am of the view that the certifier is correct on this issue and that the Guide to the BCA does not set out all possible means of compliance with the requirements of Clause C2.7 of the Code. In my view the difference in understanding between the certifier and the Fire Service on this detail indicates a matter that should be examined by Building Codes Queensland in respect of the consistency of training being given to both certifiers and QFRS personnel.

8. In the case of Block 3, where there is a basement level carpark beneath the units above, the separating wall does not continue to ground level. In this instance the units clearly do not comply with the criteria set out in BCA Clause C2.7(b) and the buildings cannot be considered to be separate as assumed by the certifier. On this basis Block 3 should have been submitted to the Fire Service for assessment.

9. In the case of Blocks 1 and 2, while the fire walls do continue from ground level to the underside of the roof sheeting, the walls do not meet the separation requirements of Clause C2.7(b)(i) in that they do not continue to the outer edges of the floor at each level within the building, ie the balconies of adjoining units are not totally fire separated from each other by the wall. This being the case, adjoining units at any particular level cannot be considered to be situated in separate buildings.

10. As each of Blocks 1 and 2, therefore, only contains two separate buildings of six units, each building has a floor area exceeding 500 square metres. The total development, therefore, should have been submitted to the Fire Service for assessment prior to the issuing of the DA for building work.

11. However, while I agree that the development plans should have been submitted to the Fire Service for their assessment prior to the issuing of a DA for building work on this site, I am of the view that the legislation, **as currently written**, does not provide for an Advice Agency to appeal a matter that has not, for whatever reason, been submitted to them for their advice at the information and referral stage in accordance with the provisions of Section 3.3.3 of IPA. I have concluded that the Advice Agency appeal provisions set out in Section 4.2.10 of IPA only apply if the Advice Agency, having given its advice and/or recommendations to the assessment manager and to the applicant in accordance with the provisions of Sections 3.3.16(2) and Section 3.3.19 of IPA, is dissatisfied with the decision that has then been made by the Assessment Manager.

12. Section 3.5.15 of IPA requires the assessment manager to give written advice of his decision to the relevant advice agency within 5 business days of making his decision, this is the **only** trigger for an advice agency to appeal any decision with which it is dissatisfied.

13. Section 4.2.34 of IPA, when read in conjunction with the previously referred sections of IPA, does not enable a meaningful decision to be made on an appeal relating to a completed building in such a situation. This reinforces my view that any advice agency appeal can only be triggered under IPA at the decision stage and not subsequent to construction of the development.

14. Having reached the above conclusion, I am of the view that the appeal is out of time.

15. I have therefore concluded that the Tribunal does not have jurisdiction to determine this appeal.

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G.S.Cornish
Building and Development
Tribunal Referee
Date: 24 November 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:

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