



DISCUSSION PAPER

‘DEEMED APPROVALS’ the effect of *Dorset Council v Resource Management and Planning Appeal Tribunal* [2014] TASSC 34

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1. INTRODUCTION

- 1.1. Section 59 of the *Land Use Planning and Approvals Act 1993* (Tas) (the ‘Act’) provides that:
- (a) if a planning authority fails to determine an application for planning approval before the expiration of specific statutory timeframes, such failure amounts to a ‘deemed approval’ on conditions to be determined by the Resource Management and Planning Appeal Tribunal (‘RMPAT’);¹ and
 - (b) the person or entity who applied for the relevant approval may make application to the RMPAT for an order determining the conditions on which the ‘deemed approval’ is granted.²

2. *DORSET COUNCIL v RESOURCE MANAGEMENT & PLANNING APPEAL TRIBUNAL* [2014] TASSC 34

- 2.1. The decision of the Supreme Court of Tasmania in *Dorset Council v Resource Management and Planning Appeal Tribunal* [2014] TASSC 34 (*Dorset’s case*) clarifies the circumstances in which deemed approval arise.
- 2.2. This decision is instructive as it resolves an issue which commonly arises in practice but is not specifically addressed by the Act.
- 2.3. The background to *Dorset’s case* can be summarised as follows:
- (a) On 13 December 2013 application was made to the Dorset Council (‘Council’) for discretionary planning approval to use a shed for motor vehicle/machine repair (the ‘Application’).
 - (b) Council gave notice of the Application in the usual ways and, so it thought, in accordance with s57(3) of the Act.
 - (c) When the Application came before Council for a final determination, a motion to approve the Application was lost but, curiously, the Council did not resolve to actually refuse the application.
 - (d) The matter then came before the RMPAT via proceedings lodged by the applicant.³ In those proceedings, the Council:

¹ *Land Use Planning and Approvals Act 1993* (Tas), s59(1)

² Note 1 at s59(3)

³ *J Champion v Dorset Council* [2014] TASSRMPAT 13



- i. conceded that, due to the effects of s.57(5AA) of the Act, Council's notices had specified the wrong closing date for the making of public representations; and
 - ii. submitted that the incorrect notices deprived the RMPAT of jurisdiction to further hear and determine the matter on a merits basis and prevented the applicant from making application to the RMPAT under s.59(3) of the Act because a deemed approval could not exist under the circumstances.
- (e) The RMPAT accepted that Council's notice had been deficient and that, as a result, the RMPAT was precluded from entertaining a merits based appeal. However, the RMPAT did not accept the argument that the deficient advertising precluded the existence of a deemed approval.
- (f) Ultimately, the RMPAT held that the applicant had standing under s.59 of the Act (i.e. a 'deemed approval' existed) and remitted the matter to the Council to be readvertised and determined in accordance with the Act. This determination was appealed by the Council.

3. SUMMARY

- 3.1. In Dorset's case Blow CJ held that, on a proper interpretation of the Act, no 'deemed approval' can exist where an application has not been properly advertised and notified in the first place in accordance with s.57(3) of the Act.
- 3.2. In summary, the 'clock' does not start running against Council for the purposes of establishing a 'deemed approval' under s.59 of the Act unless the relevant application has been correctly advertised by the planning authority to begin with.
- 3.3. The result is that the RMPAT erred in its conclusion that a 'deemed approval' existed under the circumstances.
- 3.4. If a planning authority is faced with a situation where advertising has not been conducted in accordance with s.57(3) of the Act, we suggest that the best course of action is to request the lodgement of a fresh application

For further information in relation to the issues discussed in this paper, please contact Roger Curtis.

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