

Workforce Accommodation and time limited approvals

By Craig Slarke

The provision of workforce accommodation for FIFO workers is a necessary part of the accommodation mix in many regional areas, however the incorporation of workforce accommodation into a community is a complex issue. Many regional local governments take the view that while the planning system needs to be flexible enough to respond to demand for workforce accommodation, that flexibility should not come at the expense of growing a sustainable permanent residential population. The primary planning lever used by local governments to ensure workforce accommodation does not become entrenched in a way which detracts from the growth and sustainability of a community is a local planning policy which provides for time limited approvals. That approach was recently tested in the State Administrative Tribunal (**SAT**) matter of **Goldfield Villages Pty Ltd and City of Kalgoorlie Boulder** [2023] WASAT 6.

Background

The applicant company was created with the objective of establishing a means to address the accommodation needs of workers for three other companies providing a range of services to the mining industry in and around Kalgoorlie. The land the subject of the application for workforce accommodation was zoned Service/Light Industry under the existing local planning scheme (**LPS1**) and was to be zoned Light Industry under a well advanced draft local planning scheme (**LPS2**).

LPS1 did not contain a definition of workforce accommodation, and the proposed use was dealt with as a use not listed. This gave rise to a question as to whether the proposed land use would be consistent with the objectives and purpose of the Service/Light Industry zone.

More or less contemporaneously with the assessment of the development application, the local government prepared and advertised a draft local planning policy for workforce accommodation. That policy provided for five-year time limited approvals. The draft workforce accommodation policy became operative a week prior to the final hearing.

Initially, the development was refused, but after the commencement of the SAT review the Council on reconsideration determined that the development may be consistent with the objectives and purposes of the Service/Light Industry zone, and granted development approval for a period of five years. The applicant challenged the condition which imposed the time limit.

Determination by the Tribunal

The Tribunal found that while the workforce accommodation use was broadly consistent with the zone objective of nurturing existing industries and encouraging new industries compatible with the amenity of the City, if the use was not time limited it may do the opposite of that objective by preventing the use of the land or other nearby land for industrial purposes. That

was because the Tribunal agreed with the local government that, as a general proposition, residential uses (including workforce accommodation) are not compatible with industrial uses or an industrial zone.

The Tribunal found that it was necessary to consider whether the land use may hinder the future development of both the land and its locality for light industrial purposes, and determined that it is reasonable to think there will be some uses which ought to be approved in the zone which would not be approved if located in proximity to the proposed workforce accommodation.

Therefore, the Tribunal concluded that the permanent approval of the application would be inconsistent with the objectives of the Service/Light Industry zone, and would also be inconsistent with orderly and proper planning given the proposed zoning of the land and most of the locality under the draft LPS2.

The Tribunal concluded further that, in any event, the same result was warranted on the basis of the workforce accommodation policy.

In that regard, the applicant argued that the local planning policy did not have a proper planning purpose in so far as it provided for a five-year temporary approval term. However, the Tribunal determined that it was:

'...entirely within the scope of the Respondent's policy tools to determine that time limited conditions should be placed on development approvals granted for workforce accommodation proposals ... That is because, in our view, the time limited condition can properly be said to be a tool available to drive a preference for workers to be permanent residents which is, in turn, a policy position reasonably open to the Respondent. It discourages, without preventing, employers from employing FIFO workers and encourages investment in more permanent forms of accommodation.'

The applicant provided evidence to the effect that there would be a need for additional workforce accommodation beyond five years, but the Tribunal held that it could not be relied upon as a basis upon which the Tribunal might depart from, or otherwise might not apply, the terms of the policy, and the Tribunal found there was no cogent reason to depart from the policy provision in the circumstances of the case

Conclusion

The decision to uphold the five-year time limited approval is encouraging for regional local governments that have to grapple with the sometimes difficult merits of workforce accommodation proposals in the context of similar policy provisions. Local governments that wish to impose time limited approvals for workforce accommodation should preferably ensure that an adopted planning policy provides a policy framework to support the imposition of such a condition.

The information contained in this article should not be relied upon without obtaining further detailed legal advice in the circumstances of each case. For further information on matters discussed in this Update, please contact Craig Slarke by email to cslarke@mcleods.com.au

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