

QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL

CITATION: *Dixonbuild Pty Ltd t/as Dixon Homes v Queensland Building and Construction Commission & Anor* [2019] QCAT 110

PARTIES: **DIXONBUILD PTY LTD T/AS DIXON HOMES**
(applicant)
v
QUEENSLAND BUILDING AND CONSTRUCTION COMMISSION
and
RAM SARAN
(respondents)

APPLICATION NO/S: GAR206-17

MATTER TYPE: General administrative review matters

DELIVERED ON: 26 April 2019

HEARING DATE: 7 November 2018

HEARD AT: Brisbane

DECISION OF: Member Allen

ORDERS:

- 1. The following may attend any expert conclave in regard to this matter on behalf of Dixonbuild Pty Ltd t/as Dixon Homes:**
 - (a) Mr Eric Fox of Eric Fox Consulting Pty Ltd; and**
 - (b) Mr Stephane Rebibou of Booth Engineers and Associates.**
- 2. The parties are to bear their own costs in relation to the expert's preparation for and attendance at any conclave.**

CATCHWORDS: ADMINISTRATIVE LAW – ADMINISTRATIVE TRIBUNALS – QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL – procedure – where applicant seeks to have more than one expert attend an experts' conclave – where question of independence of expert – where question of costs of additional experts – whether discretion to allow additional experts should be exercised

Queensland Civil and Administrative Tribunal, *Practice Direction No 4 of 2009: Guide to Expert Conferences*, 11 November 2009

Queensland Civil and Administrative Tribunal Act 2009
(Qld), s 100

APPEARANCES &
REPRESENTATION:

Applicant: S Pyman, Principal, CDI Lawyers.

Respondent: Queensland Building and Construction Commission:
M D McNulty, in-house lawyer
Ram Saran: Self-represented.

REASONS FOR DECISION

- [1] Dixonbuild made an application to the Tribunal to review a direction to issue issued by the Commission in respect of installation of the under slab vapour barrier at 17 Kosciusko Street, Middle Park.
- [2] This hearing was in regard to a miscellaneous application to determine which of Dixonbuild's experts should attend an experts' conclave in respect of the application to review the direction of the Commission in regard to Building work at 17 Kosciusko Street, Middle Park.
- [3] Dixonbuild is proposing that the following experts attend any experts' conclave:
- (a) Mr Eric Fox of Eric Fox Consulting Pty Ltd;
 - (b) Mr Angelo Iancu of STA Consulting Group; and
 - (c) Mr Stephen Rebibou of Booth Engineers.
- [4] The Commission and Mr Saran have objected to Dixonbuild having three experts attend a conclave on the grounds of costs. In respect of Mr Iancu there is also an objection as to whether he is an expert as he was the engineer who certified the design of the footings and slab and so he may not be independent as is required in regard to an expert.
- [5] The parties note expert evidence at the Tribunal is subject to the Queensland Civil and Administrative Tribunal *Practice Direction No 4 of 2009*.¹ The Practice Direction mandates that a party may call evidence from one expert for each area of expertise and that all experts engaged for a hearing must attend a conclave. The Practice Direction also makes it clear that an expert owes a duty to the Tribunal which overrides any obligation to any party to the proceeding or any person who is liable for their fee or expenses. This is reinforced by making it mandatory that an expert's report must contain the confirmation set out in Rule 428 of the *Uniform Civil Procedure Rules 1999* (Qld), which includes that the expert understands his or her duty to the Tribunal, and has complied with the duty.

¹ Queensland Civil and Administrative Tribunal *Practice Direction No 4 of 2009: Guide to Expert Conferences*, 11 November 2009.

- [6] As noted, Dixonbuild are requesting that they be able to have three experts give evidence at the hearing and attend the experts' conclave. The respondents are particularly concerned that, as Dixonbuild has indicated that it will be seeking costs in the primary application, it be limited to only one expert. The Commission is proposing to call only one expert and Mr Saran will not be calling any expert evidence. Dixonbuild has agreed to each party bearing their own costs of the conclave in an attempt to deal with the issue in regard to costs. This is in accordance with the submissions by the respondents and is in accordance with s 100 of the *Queensland Civil and Administrative Tribunal Act 2009 (Qld)* and is agreed to by the respondents.
- [7] The application in regard to who should attend the experts' conclaves confirms at para [70] that Mr Iancu issued the certificates for the design and installation of the footings and slab for the property. The issues list for the experts' conclave includes questions in regards to the installation of the vapour barrier by the applicant, which is part of the footings and slab that was inspected by Mr Iancu.
- [8] It is noted on behalf of Dixonbuild that documents provided to the experts are to include certificates and reports authored by Mr Iancu and, as such, he should have the ability to attend the like the other experts conclave as otherwise he would not be able to speak to his reports. The respondents submit that while Mr Iancu is not in a position to participate as an expert, it is entirely appropriate for him to give evidence as a witness in this proceeding.
- [9] Mr Iancu is directly involved in this review as he designed the footings and slab and certified both the footings and slab. I therefore agree with the respondents that he does not fulfil the requirements of an expert in relation to this matter as he is not independent as is required by the Practice Direction. Mr Iancu therefore is not eligible to attend the experts' conclave
- [10] As Dixonbuild is to bear the costs of its experts at the conclave I am satisfied that it is appropriate for Mr Fox and Mr Rebibou to attend the experts' conclave on behalf of Dixonbuild. I will also as agreed order that parties are to bear their own costs in regard to the experts' conclave.