



Building and Development Dispute Resolution Committees—Decision

Sustainable Planning Act 2009

Appeal Number: 12 - 12
Applicant: Queensland Fire & Rescue Service
Assessment Manager: Incert Innovative Certifiers Pty Ltd
Concurrence Agency: N/A
(if applicable)
Site Address: 12 Forge Court, Bohle and described as Lot 14 on CP 841937 – the subject site

Appeal

Appeal under section 532 of the *Sustainable Planning Act 2009 (SPA)* against the giving of an Information Notice by a building certifier under Section 40(2) (b) of the *Building Regulation 2006 (BR)*.

Date of hearing: 10:00am on Wednesday 13 June 2012
Place of hearing: Offices of Queensland Fire and Rescue
Level 1, 101 Sturt Street, Townsville
Committee: Geoffrey Mitchell – Chair
Present: Stephen Knight (QFRS) – Applicant
Steven McKee (QFRS) – Applicant
Bruce Shepherd – Assessment Manager

Decision:

The Committee, in accordance with section 564 of the SPA confirms the decision of the Assessment Manager to give the Information Notice.

Background

Based on the information available, the background to this appeal can be summarised as follows;

- On 23 August 2011 the QFRS gave a “complying” assessment advice to the Assessment Manager
- On 25 August 2011 the Assessment Manager gave a Development Application Decision Notice approving the subject building and including the advice from QFRS

- On 21 February 2012 the QFRS gave a "non-complying" inspection advice which identified two areas of non-compliance, namely
 - Fire Hydrants – primarily that a ring main was required under AS2419.1 s 8.5.4; and;
 - Smoke and Heat Venting Systems (Natural Smoke Venting)
 - The system was not installed as per Form 15
 - The system not installed as stated in the FER (Fire Engineering Report)
 - Form 16 not supplied
- On 22 February 2012 the Assessment Manager gave an Information Notice to the QFRS stating that he disagreed with the decision of QFRS, citing in relation to the fire hydrants;
 - *'QFRS failed to change its advice as allowed in s290 of the SPA.*
 - *QFRS failed to complete their inspection in accordance with the Building Regulation 2006 which requires the inspection to be undertaken to confirm aspects comply with the building approval.*
 - *This is not a large isolated building in accordance with specification C2.3 of the BCA as there is no Specification C2.3 in the BCA 2011.'*

and in relation to the smoke and heat venting;

- *'The Form 15 for the ventilation calculation has not made any reference to the mesh openings and was not relied on me as part of the assessment process and doesn't form part of the building approval. I undertook the assessment of this aspect personally and did not require assessment help.*
- *The fire engineer has confirmed the mesh is not required as part of the alternate solution*
- *No form 16 was required and I did not require inspection help.*
- *Part 5 of the Building Regulation 2006 allows for the Building Certifier to accept assessment and inspection help. This is available to the Building Certifier only and legislation doesn't allow for referral agencies to accept assessment and inspection help.*
- *The natural smoke venting complies with both BCA Table E2.2 and QFRS Guideline for the design of natural venting systems as these doors are sliding doors and not roller doors.'*
- On the 5 March 2012 the Assessment Manager issued a Form 11 – Certificate of Classification for the building which contained a number of conditions.
- On 21 March 2012 the QFRS lodged an appeal against the giving of the Information Notice on the basis that QFRS do not believe the reasons identified in the Information Notice are justified in not accepting the QFRS inspection advice, and in particular to each item (summarised);
 1. QFRS is not a concurrence agency for building work, s290 of the SPA 2009 relates to concurrence agencies.
 2. When the application for assessment was lodged a ring main was not included in the design submitted for assessment. QFRS assessed the plans submitted and did not identify that the design was insufficient in meeting the requirements of AS 2419.1 2006 section 8.5.4(a).
 - a. At the inspection it was noted that a ring main had not been installed.
 - b. A Form 16 submitted to QFRS dated 7 February 2011 identified that the design meets AS2419.1 and BCA 2011 requirements. This design does not meet AS2419.1 2005 section 8.5.4(a)

3. This statement in the inspection report is a direct copy from AS2419.1 2005 section 8.5.4(a).
 - a. The intent of AS2419.1 2005 Section 8.5.4(a) is that large isolated building as stated in BCA Part C2 – C2.3 is required to have a ring main installed. However this is not installed for this building.
4. The Form 15 dated 25 August 2011 refers to permanently open spaces at low level at side gates and at the rear of the warehouse.
5. The building description on page 10 of the FER gives a detail description of the opening for the Natural Smoke Venting.
 - a. The Special Fire Service's assessed by QFRS were Smoke and Heat Venting System (Natural Smoke Venting) as per BCA Part E2 Table E2.2a and plans which included drawing WD06.
6. QFRS assessment advice states that: *'Certification is required for each special fire service, this will be required prior to or at the time of inspection'*. This advice was accepted in the certifier's decision notice.
 - a. Form16 is the industry standard form that has been accepted and requested by QFRS since its inception.
7. Part 5 of the Building Regulation 2006 relates to competent persons. QFRS is a referral advice agency as per SPR 2009, Schedule 7, Table 1.
 - a. *'QFRS Assessment advice states that: Certification is required for each special fire service, this will be required prior to or at the time of inspection.'* This advice was accepted in the certifier's decision notice.
8. When conducting an assessment the intent of the QFRS guidelines/policies caters for sliding doors also to be readily openable.
 - a. Plans and the FER showed mesh being fitted in the doors and the Form 15 stated permanent openings.
 - b. The type of doors that are installed is irrelevant with the critical issue being whether the doors are readily openable.
 - c. At inspection of the 21 February 2012 it was noted that the design of the Natural Smoke Venting had changed from inspection that was conducted by QFRS on the 23 August 2011. No amended assessment has been submitted to QFRS to provide advice as required.

Material Considered

The material considered in arriving at this decision comprises:

1. 'Form 10 – Appeal Notice', grounds for appeal and correspondence accompanying the appeal lodged with the Registrar on 21 March 2012
2. Non complying inspection advice of QFRS dated 21 February 2012
3. Information Notice given by Bruce Shepherd dated 22 February 2012
4. Verbal submissions from the applicants representatives at the hearing
5. Verbal submissions from the Assessment Manager at the hearing
6. Material supplied to the committee at the hearing
7. The SPA
8. The Sustainable Planning Regulation 2009 (SPR)
9. The BR

10. The BA
11. The Acts Interpretation Act 1954 (AIA)
12. Volume 1 of the National Construction Code Series - Building Code of Australia 2011 (BCA)
13. The Guide to the BCA
14. Australian Standard AS 2419.1 2005 Fire Hydrant Installations – System design, installation and commissioning.(AS2419)

Findings of Fact

The subject building is a large warehouse and office structure with a floor area of 4233m² for the warehouse and 282m² for the office component. The building is constructed as Type C construction and has been considered a large isolated building in accordance with BCA clause C2.3.

There is an alternate solution that forms part of the building approval to address a deviation from the deemed to satisfy provisions with respect to an encroachment within the required 18m open space around the building.

Both the QFRS and the Assessment Manager missed the requirement for a ring main as required by AS2419 during the assessment process.

At the time of the hearing there was no ring main installed or an alternate solution approved.

The Assessment Manager confirmed at the hearing that he believed the Natural Smoke Venting complied with the BCA, without the inclusion of the open grills. (Note: the area calculations have not been conducted by the Committee)

The Assessment Manager, QFRS and the building owners are working to achieve compliance

Reasons for the Decision

Point 1 & 2 of the Information Notice

The Committee agrees with QFRS that s290 of SPA relates to a concurrence agency and not to an advice agency. The SPA is silent with respect to the power of an advice agency to change its advice, however the Committee is of the opinion that s24AA of the *Act Interpretations Act 1954 (AIA)* would give QFRS the power to amend or repeal its decision.

The intent of the items in the Information Notice was in relation to the jurisdiction of QFRS in conducting its inspection in accordance with s38 (2) BR which reads:

'The agency may inspect the building work or inspect or test the service to check the referral agency aspects comply with the building development approval.'

At the time the QFRS inspected the building, it generally complied with the building development approval albeit the approval was flawed.

Point 3 of the Information Notice

The Committee agrees with the Assessment Manager that the QFRS inspection report contains a reference to an incorrect clause in the BCA. The Committee also acknowledges that the QFRS has reproduced the words directly from AS2419. Clause 8.5.4(a) of AS2419 does contain an incorrect reference to "Specification" 2.3 of the BCA instead of the intended "Clause" C2.3. The inspection notice as it currently reads contains a reference to an element in the BCA which does not exist.

Point 4 - 5 & 8 of the Information Notice

The Committee has determined that Natural Smoke Venting is a "Fire Safety System" and is not a "Special Fire Service" as defined in the SPR and as there is no alternate solution to the "Fire Safety System" QFRS does not have jurisdiction.

In reaching this decision the Committee has looked at each of the elements that make up a "Special Fire Service" in Schedule 8 of the SPR. These are listed as;

Special fire services

1. air-handling systems used for smoke control
2. emergency lifts
3. emergency sound systems and intercom systems
4. fire control centres
5. fire detection and alarm systems (other than stand-alone smoke alarms not required to be interconnected or connected to a fire indicator panel)
6. fire hydrants
7. fire mains (other than fire mains that connect only fire hose reels)
8. services provided under conditions imposed under the Building Act, section 79
9. services required under the BCA, clause E1.10
10. smoke and heat venting systems
11. smoke exhaust systems
12. special automatic fire suppression systems (including foam, deluge and gas flooding systems)
13. sprinklers (including wall-wetting sprinklers)
14. stairwell pressurisation systems
15. vehicular access for large isolated buildings

The Committee has considered the jurisdiction of QFRS for each of the elements that are described in Part 2 Schedule 8 of the SPR. Each of the elements relates to a system or facility the QFRS is to "use", "control" or "adjust" when attending a fire event at a premise.

A fire safety system is defined in the BCA as:

Fire safety system means one or any combination of the methods used in a building to—
(a) warn people of an emergency; or
(b) provide for safe evacuation; or
(c) restrict the spread of fire; or
(d) extinguish a fire,
and includes both active and passive systems.

There are numerous elements in the BCA that are part of a "fire safety system" the likes of;

- Number of Exits
- Construction of Exits
- FRL of built elements
- Openings in fire rated elements
- Protection of openings
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All of which are part of the built fabric and are expected to be as described in the Deemed to Satisfy provisions. There is no requirement to refer any of these types of fire safety systems to QFRS under Schedule 7 of the SPR unless there is an alternate solution involving the fire safety system.

Specifically looking at natural smoke venting, Table E2.2a of the BCA lists a number of options to achieve compliance. These are

- (i) a sprinkler system complying with Specification E1.5, and provided with perimeter vehicular access complying with C2.4(b); or
- (ii) an automatic fire detection and alarm system complying with AS 1670.1 and monitored in accordance with Clause 7 of Specification E2.2a; or
- (iii) an automatic smoke exhaust system in accordance with Specification E2.2b; or
- (iv) automatic smoke-and-heat vents in accordance with Specification E2.2c; or
- (v) natural smoke venting, with ventilation openings distributed as evenly as practicable and comprising permanent openings at roof level with a free area not less than 1.5% of floor area and low level openings which may be permanent or readily openable with a free area not less than 1.5% of floor area.

It can be seen that each of the elements described in Items (i) to (iv) are mechanically operated systems or a facility that the QFRS can "control". Natural smoke venting stands alone in describing a physical attribute to the built fabric of the building.

Section 74 of the BA states that the QFRS may inspect and test the building work only about special fire services.

Point 6 & 7 of the Information Notice

The responsibility for compliance of a building development application falls to the building certifier under s45 and s102 of the BA. Part 5 of the BR prescribes the requirements for a building certifier in accepting design and inspection help from a competent person. S48 of the BR states that the certificate must be in the approved form. The current approved forms are Form 15 for design help and Form 16 for inspection help.

The jurisdiction of the QFRS in relation to special fire services is described in Schedule 8 of the SPR. It is accepted that the QFRS can provide advice to the building certifier that "certification" is required for each special fire service.

In accepting that advice the building certifier, as the responsible entity, can then decide how that certification will be achieved, i.e. by personal inspection and testing or accepting design and/or inspection help.

The jurisdiction of the QFRS in conducting its inspection is described in s38 (2) BR.

The collection of the "certification" is the responsibility of the building certifier and is not related to the inspection and testing of the special fire services by the QFRS.

Building and Development Committee Chair
Date: 09 July 2012

Appeal Rights

Section 479 of the *Sustainable Planning Act 2009* provides that a party to a proceeding decided by a Committee may appeal to the Planning and Environment Court against the Committee's decision, but only on the ground:

- (a) of error or mistake in law on the part of the Committee or
- (b) that the Committee 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 Committee's decision is given to the party.

Enquiries

All correspondence should be addressed to:

The Registrar of Building and Development Dispute Resolution Committees
Building Codes Queensland
Department of Infrastructure and Planning
PO Box 15009
CITY EAST QLD 4002
Telephone (07) 3237 0403 Facsimile (07) 3237 1248