



**Building and Development Tribunals**

**Queensland Government**

Department of **Local Government and Planning**

**APPEAL**

*Integrated Planning Act 1997*

**File No. 03-07-014**

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**BUILDING AND DEVELOPMENT TRIBUNAL - DECISION**

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**Assessment Manager:** Suncert Building Consultants

**Site Address:** *withheld- "the subject site"*

**Applicant:** *withheld*

**Nature of Appeal**

The appeal is made pursuant to section 4.2.9 of the *Integrated Planning Act 1997* and is against the decision of Suncert Building Consultants to require:

1. Door and window openings in a class 8 building to be protected in accordance with C3.4 of the Building Code of Australia (BCA); and
2. Tactile ground surface indicators to be placed outside the principal entrance to all buildings.

The requirements have been imposed as a condition of approval of development permit 60445 issued on 5 February 2007.

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**Date and Place of Hearing:** The hearing was held at the offices of the Department of Local Government, Planning, Sport and Recreation - level 14 Mineral House - at 10:00am on Friday 30 March 2007

**Tribunal:** Mr Peter Rourke

**Present:** Mr Scott Rushton – building certifier for the project.  
*withheld* - authorized agent for the appealant

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**Decision:**

Condition 4(c) of Suncert Building Consultants written Decision Notice dated 5 February 2007 requiring openings in tenancies 2 and 3 to be protected in accordance with C3.4 of the BCA is **set aside** and **replaced with following:**

*Any openings in the northern external wall of tenancy 3 within 1 metre of the external wall of tenancy 2, are prohibited under the deemed-to-satisfy provisions of the BCA and must be relocated at least 1 metre from the wall. Openings in those walls must comply with C3.2 (b) and (c) of the BCA and be protected in accordance with C3.4 where required.*

*Any openings in the eastern external wall of tenancy 2 within 1 metre of the external wall of tenancy 1, are prohibited under the deemed-to-satisfy provisions of the BCA and must be relocated at least 1 metre from tenancy 1 wall. Openings in those walls must comply with C3.2 (b) and (c) of the BCA and be protected in accordance with C3.4 where required.*

The condition of approval marked on drawing 01 of 07 (edition E dated 05.06.03) to provide tactile ground surface indicators at the principal entrance to each building is **confirmed**.

### **Material Considered**

The material considered in arriving at this decision comprises:

- The application and supporting plans and documentation;
- Discussions with the parties to the appeal at the hearing of 30 March 2007;
- The written submission of Suncert Building Consultants dated 27 March 2007;
- The written submission of *withheld* – authorized agent for the appellant – dated 25 March 2007;
- Suncert Building Consultant’s Decision Notice dated 5 February 2007;
- The Guide to the BCA2006 published by the Australian Building Codes Board;
- The written submission of *withheld* - authorized agent for the appellant – dated 3 April 2007;
- The Building Code of Australia Volume 1 (BCA);
- The *Integrated Planning Act 1997*; and
- Discussions with the Australian Building Codes Board on 4 April 2007.

### **Findings of Fact**

I make the following findings of fact:

With regard to the protection of external walls and openings under C3 of the BCA:

- The subject building is a Class 8 industrial building to be constructed on “the subject site”.
- The building is 1199.9 m<sup>2</sup> in area. If it is proposed that fire walls be used to separate the building into 3 small buildings less than 500 m<sup>2</sup> in accordance with C2.7 (b) of the BCA, each building would be treated separately for the purposes of Parts C, D and E of the BCA. In its written submission of 27 March 2007, Suncert Building Consultants indicated that the building has been assessed on the basis that it has been divided up into smaller buildings resulting in fire hose reels and fire hydrants not being required.
- The application was not referred to the Queensland Fire and Rescue Service as a referral agency on the basis that there are no special fire services involved.
- A subsequent submission by *withheld* dated 3 April 2007, indicated it was proposed to divide the building into small fire compartments. External fire hydrants would be provided but hose reels would not because each fire compartment would be less than 500m<sup>2</sup>.
- Suncert Building Consultants were given the opportunity to comment on the further submission supplied by *withheld*. No further response was received.

With regard to the requirement to provide tactile ground surface indicators:

- The building is required to be accessible under D3.2 of the BCA.
- D3.8 – Tactile Indicators - applies to the buildings.

### **General discussion**

There was general discussion about the application of the BCA if the building was separated into separate fire compartments as opposed to separate buildings. If that was the case, it is my opinion that:

- The building would be treated as one building 1199.9m<sup>2</sup> in area.
- Fire hydrants and fire hose reels would be required.
- The application would need to be referred to the Queensland Fire and Rescue Service as a referral agency (advice).
- The external walls of fire compartments are not fire source features to each other. Protection of those walls and openings in them are addressed in C3.3 of the BCA.
- The deemed-to-satisfy provisions of C3.3 apply to the external walls of each fire compartment. There is nothing in the deemed to satisfy provisions of the BCA that prevents window openings from abutting the external wall of another fire compartment. There are also no other provisions in the BCA (other than C3.3) that requires the external wall of a fire compartment to have an FRL unless exposed to a fire source feature. There would be no exposure to a fire source feature of the subject walls in this case.
- C3.3 requires the external wall and the opening in a separate fire compartment to be protected if either is within the specified distances detailed in Table C3.3. If this was not the case, a protected window could be placed in an external wall that does not have an FRL.
- Even though the openings in tenancies 2 and 3 abut the external fire rated wall of the adjacent fire compartment and are 3 metres from the opening in that wall, they are still required to be protected in accordance with C3.4. This is because the openings are less than the specified distance from the external wall than that nominated in Table C3.3. This view is supported by the Guide to BCA96 – for example diagram (a) of figure C3.3.
- Walls required to have an FRL and which separate different fire compartments would need to have a FRL in both directions. This is because the fire rated walls are intended to contain a fire, which may commence in either compartment, for the specified duration.

### **Reasons for the Decision**

With regard to the protection of openings, the openings must be protected in accordance with C3.2 of the BCA because:

- The submission of *withheld* dated 3 April 2007 indicates that it was her clients intention that the building be separated into separate fire compartments each less than 500m<sup>2</sup>. However, I am satisfied that the building certifier for the project has assessed the application on the basis that the building will be separated into 3 smaller buildings each being less than 500m<sup>2</sup>. I have formed this opinion for the following reason:
  - None of the submissions indicates that an alternative solution has been approved to allow for the deletion of the fire hose reels and fire hydrants. The application therefore must have been assessed against the deemed-to-satisfy provisions of E1.3 and E1.4 of the BCA;
  - No fire hydrants are proposed. This can only occur under the deemed-to-satisfy provisions of E1.3 of the BCA in buildings less than 500m<sup>2</sup>.
  - No fire hose reels are to be provided. This can only occur under the deemed-to-satisfy provisions of E1.4 of the BCA in fire compartments less than 500m<sup>2</sup>.
  - No referral agency advice has been obtained. This can only occur where there are no special fire services (for example hose reels and hydrants) proposed in a building.
- Buildings separated in accordance with C2.7(b) (as separate buildings) become fire source features to each other. External walls and openings in them should be protected in accordance with C3.2 and not C3.3. Openings in an external wall that is required to have an FRL are not permitted to be less than 1 metre from a fire source feature to which it is exposed.

With regard to the provision of tactile ground surface indicators:

- D3.8 of the BCA requires tactile ground surface indicators to be provided, in the absence of a suitable barrier, if a person with vision impairment approaches a path of travel meeting a vehicular way adjacent to a principal public entrance of a building.
- It is reasonable to assume the building will be accessible by the public.
- There is no kerb or kerb ramp and no other suitable barrier has been provided.

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**Peter Rourke**  
**Building and Development Tribunal General Referee**  
**Date: 12 April 2007**

## **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:

The Registrar of Building and Development Tribunals  
Building Codes Queensland  
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