



Building and Development Tribunals

Queensland Government

Department of **Local Government and Planning**

APPEAL

Integrated Planning Act 1997

File No. 3-06-089

BUILDING AND DEVELOPMENT TRIBUNAL - DECISION

Building Certifier: S. Bartley of Bartley Burns

Site Address: *Withheld* – “the subject site”

Applicant: Queensland Fire and Rescue Service

Local Government: Brisbane City Council

Local Authority: Port of Brisbane Authority

Nature of Appeal

Appeal against the decision of S. Bartley of Bartley Burns to approve an application for a building that in accordance with Condition 9 of the development approval for carrying out building work dated 4 October 2006 does not contain an atrium contrary to the Queensland Fire and Rescue Service (QFRS) referral advice dated 25 September that the building is considered to contain an atrium and should comply with Part G3 of the Building Code of Australia (BCA).

Date and Place of Hearing: 3:00pm on Monday 6 November 2006
at Level 25 Mineral House, 41 George Street Brisbane.
Hearing concluded at 4:20pm.

Tribunal: David Kay - Tribunal Chairperson

Present:

Stephen Bartley	- Bartley Burns
Mark Curtis	- Port of Brisbane
Steven Burton	- Ferm Engineering
Keith Walton	- Ferm Engineering
Kevin Connolly	- QFRS
Arthur Torrance	- QFRS
Graham Hanlon	- QFRS
Aaron Harper -Giles	- Matrix Group Pty Ltd

Decision

The building is considered to contain an atrium and accordingly the decision of S. Bartley, building certifier, of Bartley Burns dated 4 October 2006 to approve the application is **changed** by amending condition 9 of the decision as follows:-

“9. This approval is subject to the assessment by QFRS for special fire services required under Schedule 2A (*Integrated Planning Regulation 1998*).The requirements of the QFRS assessment dated 25 September form part of the decision and, for clarification purposes, the building is required to comply with Part G3 of the Building Code of Australia.”

Background

Building certifier's submissions to the tribunal

S. Bartley advised that in July 2006 a pre lodgement meeting was held with the owners, the builder, the building certifier, the architect, QFRS and Ferm Engineering to discuss whether the building contained an atrium. It was indicated by the QFRS representative that the part of the building would be considered as a covered courtyard and not an atrium subject to certain design changes.

The formal referral agency advice request was submitted to QFRS on 25 July 2006 and on 21 August 2006 the QFRS response advised that the building was considered to contain an atrium.

Subsequent to this discussions were held with a representative of Building Codes Queensland and initial advice was given that the building did not contain an atrium but this advice was later changed to advise that the building did contain an atrium.

The building certifier, acting as assessment manager, is the authority required to make the decision as to whether the building contains an atrium. The building certifier in making this determination relied on a report prepared by Ferm Engineering as evidence of suitability that the building did not contain an atrium.

The building certifier can decide on matters where the BCA allows a discretionary decision such as “suitable” and the QFRS response as a referral agency to consider that the building contains an atrium is not within the limits of its jurisdiction.

S. Burton advised that the Ferm Engineering gave advice on “recipes” or methodology to follow to consider that the building did not contain an atrium based on airflow.

S. Bartley further advised that the roof design does not cause smoke logging and performs better than an atrium.

A. Harper–Giles from Matrix also advised that the courtyard was not proposed to be air conditioned. A documented written submission was provided.

S. Bartley also submitted an extract from a Queensland government Building Circular relating to Part C1 of the BCA 1990 to support the submission that the louvre section should be considered as part of the roof.

QFRS submission to the tribunal

Arthur Torrance of the QFRS advised that in appealing the decision the applicant's proposal to consider the building to not contain an atrium offered up or provided for a smoke detection and alarm system as an additional feature that was not "required".

The QFRS considered that the building contained an atrium and as such there were components of the special fire services "missing" from the building and that the smoke detection and alarm system were part of the mandatory systems required for an atrium.

The existence of the open balcony area could aid or hinder air movement in the design of the building and raised the question as to whether this deck could reasonably be considered as not substantially enclosing the void.

The QFRS also needs to look at the performance of the building for fire brigade intervention purposes.

There QFRS are seeking clarification as to what constitutes an atrium as this issue is not the only case that QFRS have been requested to consider.

Material Considered

- Building and Development Tribunals Appeal Notice – Form 10;
- Building certifier's written submission (Attachment 1);
- QFRS written submission (Attachment 2);
- Drawings provided by QFRS (Attachment 3);
- The *Integrated Planning Act 1997*;
- The *Building Act 1975*;
- The *Standard Building Regulation 1993*;
- The *Building Regulation 2006*; and
- The Building Code of Australia 2006 – Volume 1.

Findings of Fact

- The BCA definition of an "Atrium" is:-

A space within a building that connects 2 or more storeys, and

(a) is wholly or substantially enclosed at the top by a floor or roof (including a glazed roof structure) and;

(b) includes any adjacent part of the building not separated by an appropriate barriers to fire; but

(c) does not include a stair well, rampwell or the space within a shaft.

- The *Building Act 1975* definition of a "Building" is:-

A fixed structure that is wholly or partly enclosed by walls and is roofed, and includes a floating building and any part of a building.

- The QFRS is a referral advice agency.
- A building application for a preliminary decision was made on the 7 July 2006.
- A building application for a development permit to allow building work to commence was made on 7 July 2006, a preliminary approval was given on the 25 July 2006 and the development permit to allow work to commence was given on 4 October 2006.

Reasons for the Decision

- An atrium is a space within a building that connects 2 or more storeys.
- The space under consideration connects a ground level storey containing a carpark and retail area, a first floor level storey containing office accommodation and a second floor level storey also containing office accommodation. The space connects 3 storeys.
- Any structure wholly or partly enclosed by walls and that is roofed is a building. This structure is wholly or partly enclosed and is covered by a roof and therefore it is a building.
- The area or space under discussion is within a building as the definition of a building includes both cases of full enclosure or partial enclosure.
- The length of the “opening” along the throat of each deck on the first level and second level is approximately 7.0m of a total perimeter of approximately 100m on each of 2 levels and when combined with the ground level constitutes less than 5% of the perimeter of all 3 levels. This only reinforces the view that it is a space within a building.
- The next part of determining if the space is an atrium is to decide whether it is wholly or substantially enclosed at the top by a roof. When viewed from above the roof covers the total area of the space below. The Ferm Engineering report indicates that the louvre grilles would have a free area of 50% or more. The total clear area of the roof could range from approximately 12.5% to a maximum of 25% of the total area of the vertical sides and horizontal roof area combined.
- If a saw tooth roof construction with a pitch of 45 degrees was proposed for a building with louvres on the vertical face and roof cladding on the angle face the area of the louvre openings would equal the plan area of the roof covering. It does not follow to say, that in this example, the building is not substantially roofed as there is 100% of the floor area covered by roof, but equally there would be 100% of the floor area ventilated to the sky.
- The argument put forward by the certifier and his consultant to consider the louvre areas as causing the building to not be substantially enclosed by a roof on the basis of the area of ventilation provided is not accepted. Another example of this would be to say that if a series of roof fans were installed in the roof to extract air from the space and the rate of air exchange was equal to or more than that of an unroofed area then the area is not substantially roofed. This is clearly a space that is enclosed by a roof.

- The certifiers and consultants proposal that this space is not substantially roofed where the roof covering covers the total floor area is not a supportable proposition. The fact that the roof covers the entire floor area below and is intended to provide an area protected from exposure to the weather and rain reinforces the view that the space is substantially enclosed.
- The extraction of air through the louvres in the sided of the roof structure become a matter for an alternate solution to determine if the smoke control would be equivalent to that required by Specification G3.8.3 Smoke Control of the BCA.
- Despite any agreement at pre lodgement meetings as to whether the building did or did not contain an atrium the building must comply with the applicable building legislation and the BCA which forms part of the regulation.
- The building certifier quotes Section 56 of the *Building Act 1975* (applicable from 1 September 2006) as the Section allowing the building certifier discretion. Dependant upon the date of the application this could in fact be Section 12 of the *Standard Building Regulation 1993* (applicable before 1 September 2006), however, the effect of each part of the legislation is the same, irrespective of the date of the application.
- The QFRS has jurisdiction as a referral agency for special fire services where the building and subsequent building work requires special fire services or where an alternative solution involving a fire safety system is to be assessed against the performance requirements of the BCA Volume 1.
- A building certifier can not, for example, determine a building that is in effect an open deck carpark to be a carport and then say that as a carport is a Class 10 building the building is not required to be provided with special fire services. The incorrect classification of a building by a certifier should not be a reason to exclude the building from being provided with the mandatory special fire services and subsequently exclude the QFRS from assessing special fire services that would be required. For this reason it is my view that the QFRS have jurisdiction and have at least the opportunity to challenge such a decision in a building and development tribunal.
- The proposal submitted by the building certifier and Ferm Engineering and the reasons for considering the building to not contain an atrium are considered to be the reasons for an alternative solution to not provide special fire services within the atrium, not as reasons to consider the building to not contain an atrium.

David Kay
Chairperson
Building and Development Tribunal
Date: 28 November 2006

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:

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