



APPEAL
Integrated Planning Act 1997

File No. 03-02-045

BUILDING AND DEVELOPMENT TRIBUNAL - DECISION

Private Certifier: Mr Derek Ballard/Mr Terry Moran (Brisbane Certification Group)

Site Address: 96 Westgate Street, WACOL

Appellant: Mr Lindsay Hackett (Queensland Fire and Rescue Service, Brisbane South Region)

Nature of Appeal

The appeal made by the Queensland Fire and Rescue Service (QFRS) pursuant to s89, *Building referral agency may appeal against advice* of the Standard Building Regulation 1993 regarding the application of Building Code of Australia E1.5, *Sprinklers* and in particular, *BCA Table E1.5 Requirements for Sprinklers* Note: 3(b) for the fit out for the warehouse area of the building. The premises are occupied by VMR Truck Parts Pty Ltd.

The tenancy fit out development application included the erection of a proprietary brand, heavy duty racking system to a height of approximately 6m and used for the storage of a range of truck parts. The central issue for this Tribunal is the application of BCA E1.5 and whether the storage can be considered as an *excessive hazard*.

Date and Place of Hearing: 2:00pm, Wednesday 11 December, 2002 at Level 25, Mineral House, 41 George Street, Brisbane. (At the request of Mr Moran, the meeting was adjourned to a date and time to be arranged by the Registrar. Mr Moran requested the adjournment as he had indicated his intention to call Mr Ron de Veer of Building Codes Queensland (BCQ) as a witness. Mr de Veer was not present due to illness.) The Tribunal was reconvened at 9:30am on Wednesday 18 December, 2002 at the same venue. Messrs Hackett and Torrance of QFRS, Mr Derek Ballard, of BCG and Mr Ron de Veer of BCQ were in attendance.

Tribunal: *Mr Russell Bergman*

Present: *Mr Lindsay Hackett*, Community Safety Manager, QFRS as applicant on Form 10 Building and Development Tribunals Appeal Notice; *Mr Neil Reid*, QFRS and *Mr Arthur Torrance*, QFRS

Mr Terry Moran, Commercial Manager, Brisbane Certification Group acting for Mr Derek Ballard (BCG) as private certifier.

Mr Richard Singer, Manager, VMR Truck Parts as provider/author of the fire engineering report.

Mr Tom Conlon, Project Manager, Volvo Mack Integration Project Volvo Truck Australia.

Decision:

The appeal by the QFRS is upheld.

The applicant for the tenancy fit out development application, Mr Richard Singer, of VMR Truck Parts Pty Ltd, shall take all necessary steps to immediately reduce storage to a height below 4m. The QFRS shall liaise and continue its work with the applicant to ensure safe practices commensurate with the inspectorial duties of the Service under the Fire and Rescue Service Act 1990.

Background:

In their application, the QFRS appealed on the basis of the application of BCA E1.5 *Sprinklers*, and in particular BCA Table E1.5, Requirements for sprinklers where a question has arisen over the volume of combustible material stored to the specified height.

The building is a new building and was the result of a development application (Development Application to Brisbane City Council Approval No. 810488 - approval by BCC 24 May 2002) and a code assessment development application to Brisbane Certification Group to construct the initial complex. At that time, there was no indication that approval would encompass occupancy of an excessive hazard. A second approval was sought for the tenancy fit out as evidenced by a development application (BCG Approval No. 18449) by Mr Singer of VMR Truck Parts.

The approval for the tenancy fit out was based on a deemed-to-satisfy building solution for the extent of the hazard as outlined in BCA Table E1.5 with an alternative building solution for the provision of extended travel distances.

The disputation of interpretation centres on the reading of the introductory wording in the notes section of the Table at Item 3(b) which reads:

(b) Combustible goods with an aggregate volume exceeding 1000m³ and stored to a height greater than 4m including the following:

This BCA section then lists a number of examples of excessive hazards for manufactured and natural products. The Tribunal also notes that the word “combustible” is italicised and therefore, is defined in BCA A1.1.

The QFRS have not issued their final certificate of inspection and the BCG has therefore been unable to issue the Certificate of Classification.

Material Considered

The Tribunal considered a range of written material as listed:

- *Form 10 - Building and Development Tribunals Appeal Notice* submitted by the Queensland Fire and Rescue Service (Mr Lindsay Hackett, Community Safety Manager, Brisbane South, QFRS) and dated 15/11/2002.
- *The Building Code of Australia* – Amendment 11 applicable to the application.
- Copy of correspondence with attachment dated 31 July 2002 to QFRS from Mr Derek Ballard, BCG. Attachment was a copy of part of the Development Approval Decision Notice - Form 6, BCG No. 18449. (part Decision Notice mentions Alternate Building Solution Pages 1&2 which were not received and are not relevant)
- Copy of correspondence dated 24 July 2002 to Mr Terry Moran, BCG, from Mr Richard Singer requesting a change of application to increase the height for storage of timber boxes.
- Copy of Amended Assessment of Special Fire Services (QFRS Job No. 02/20205) dated 29 July 2002, signed by Mr Arthur Torrance, QFRS Building Approval Officer.
- Copy of Request for Inspection of Special Fire Services for the DA. Person making the request was Mr Richard Singer, VMR Truck Parts Pty Ltd.
- Copy of correspondence dated 15 August, 2002 to Mr Terry Moran, BCG from Mr Ron de Veer, Building Codes Queensland concerning BCG's interpretation of BCA E1.5 and Table E1.5 and Note: 3(b).
- Copy of Inspection of Special Fire Services (Advice for Building Certifier), QFRS Job No. 02/20205 dated 21 October 2002 signed by Mr Arthur Torrance.
- Copy of correspondence dated 31 October to Mr Arthur Torrance, QFRS from Mr Derek Ballard concerning a Notice of Disagreement Volvo Truck Parts.
- Copy of correspondence from Mr Richard Singer, VMR Truck Parts Pty Ltd stating information with regard to processes, parts stored and the nature and practices for storage.
- Copy of correspondence dated 11 December 2002 from Mr Michael McVeigh, McVeigh Consulting Engineers Pty Ltd concerning comment as to the parts stored and the nature and practices for storage.
- Copies of drawings by McVeigh Consulting Engineers 5575-A01/A (Site Plan) and part plans of storage area racking layout, Dexion System indicating height and width etc.
- Copy of amended DA BCG No. 18449 dated 15 August 2002 signed by Mr Derek Ballard, building certifier.
- A compendium of 22 No. various copies of correspondence, extracts, plans and other details as assembled by the QFRS File No. 00630.
- Various colour photos representative of the site and installed safety equipment including details of the storage highlighting its nature and extent.

Findings of Fact

Two development applications in respect of the building work were made for this building as follows:

- to BCG to construct the building as a shell only (April 2002, Applicant being Applewood Pty Ltd, BCG Decision Notice No. 19397);
- to BCG to do the tenancy fit out (Applicant, Mr Singer, VMR Truck Parts Pty Ltd)

The nature and extent of the storage was not known for the first development application though McVeigh Consulting Engineers (Mr Paul Crum) who wrote to BCG dated 30 April 2002 and stated an opinion that the occupancy was not “*excessive hazard*” with regard to BCA E1.5.

The first development application was requested to be assessed as a deemed-to-satisfy/comply (DTS) application assessment as evidenced by the *Application Form for Assessment of Special Fire Services* and dated 30/04/2002.

The QFRS in their advice agency response to the first development application (QFRS File No. 00630 and dated 22/05/2002) gave early indications that excessive hazard may be an issue by stating that fire sprinklers would be required subject to the inclusion of storage that was “deemed” *excessive hazard*.

The second development application was submitted by Mr Singer, VMR Truck Parts, on 24/06/2002 to BCG for the tenancy fit out. The key components of this second development application were the extent, layout and nature of the storage including the use of a proprietary heavy duty shelving system. As this is building work requiring code assessment, advice was required to be sought by the applicant of the QFRS as to the issue of the storage being “excessive hazard” (affected by BCA E1.5) or not.

Mr Crum on behalf of McVeigh Consulting Engineers again stated that the storage was, in his opinion, not *excessive hazard*. This was later refuted by the QFRS (by Mr Torrance) as evidenced after their inspection of the warehouse and advice to BCG.

BCA A1.1, *Definitions*, states for “combustible” materials that these be in accordance with testing requirements of *AS1530.1 – ... , Combustibility test for materials (1994)*. (Comment: While not all elements being stored in the warehouse racking system would meet the tests for combustibility of this standard, it is reasonable to conclude a substantial quantum of stored materials would be readily combustible. eg. parts crating, packaging and truck cab components.)

Actual volume of combustible materials would be extremely difficult to calculate. However, it is reasonable to consider that a volume of combustible materials present and as meeting the definition of BCA A1.1 is in excess of 1000m³ being the amount stated by BCA E1.5.

Mr Ron de Veer, BCQ, advised the Tribunal hearing with respect to his correspondence dated 15 August, 2002 to Mr Terry Moran, BCG, that his response was not as clear as he had intended. He stated that in his view, BCA E1.5, Table E1.5 and Note: 3(b) requires that to be classified as “excessive hazard” the aggregated storage of combustible materials with a volume greater than 1000m³ must be in a single fire compartment, and must be stored to an overall height greater than 4m, measured from the floor surface upon which they are stored.

After a discussion with Mr de Veer and the subsequent issuing of his correspondence to Mr Moran dated 15 August 2002, an amended Development Application Decision Notice – Form 6 was issued on the same day by Mr Derek Ballard. This was not received by QFRS. The amended BCG Development Application Decision Notice stated “*No limit on the storage of combustible goods below 4m. A limit of 1000 cubic metres of combustible goods measured over the volume of storage racking above 4 metres. No limit on non combustible goods above 4 metres.*”

Reasons for the Decision

The central issue of the Tribunal hearing is the reading of BCA E1.5 Table E1.5 Notes: 3(b) which in part reads:

Combustible goods with an aggregate volume exceeding 1000m³ and stored to a height greater than 4m including the following:

The above extract from BCA E1.5, Table 1.5 states that such storage is *excessive hazard* if:

- “combustible” in accordance with BCA A1.1, *Definitions* and
- of a volume greater than 1000m³ and
- to a height of greater than 4m.

After examination of the examples offered in Note 3(b), it is my view that these examples are offered as guidance in the first instance for the purpose of the designer/applicant in formulating the design to consider the nature and extent of the storage to be housed and, in the second instance, for the review and assessment of the details of the application by the building certifier and advice of the referral agency, in this instance the QFRS.

Appreciably, almost all storages in warehouses create a fire load which is influenced by their description, quantum and management practices. The development application process is the opportunity for the applicant to declare intentions as to these aspects and the reviewing authorities to seek any clarifications.

VMR Truck Parts have correctly made a development application to BCG, in this instance as building certifiers, for ensuring its premises comply with the law. The consideration of the storage, of whether it be *excessive hazard* or not, and particular to VMR’s premises, is the opportunity for reaching a binding agreement (in the issuing of the Decision Notice and knowledge of ongoing inspections by the QFRS) to ensure the performance requirements of the BCA (the primary basis of approval) and, therefore, the law are met.

This specific part of the BCA (E1.5) is clear in both its intent and requirement. The wording states “*to a height greater than 4m*”. I take the view that this means to consider the likely quantum of excessive, readily ignitable and combustible material causing an extraordinary hazardous fire load, in a building roofed or partly roofed walled or part walled. As a DTS exercise, this does mean a measurement of width, breadth and height including for an allowance for fluctuations (in amount and type of storage over time) as a reasonable factor of safety to calculate potential fire quantum ie. potential hazard and risk.

It is reasonable to accept that a fire in a building like as situated at 96 Westgate Street, Wacol, would present a far different problem to the attending fire service than a similar fire in an open situation. Therefore, as there is no requirement for early warning fire detection and alarm system installed, it is reasonable to conclude that fighting a fire in this particular situation poses a far greater hazard to the safety of the attending fire officers and potentially the wider community due to fire related emissions. For example, the fire compartment may well be extensively smoke logged and the storage contents well burning at the time of their arrival making initial assessments and any assessment for rescue very difficult to perform.

Additional Advice to Applicant

Should VMR Truck Parts wish to pursue an alternative solution, it is recommended that the applicant consider further steps as follows:

- seek to engage the services of a (third party) competent person who is suitably qualified and experienced in fire engineering principals, the effects of fire and of human behaviour for the purpose of examining all relevant conditions, issues and management practices to offer *expert judgement* specific to VMR Truck Parts operations. The competent person shall provide a written report for the purpose of supporting an *alternative building solution*; and
- if an *alternative building solution*, as permissible under the BCA A0.5, *Meeting the performance requirements*, is to be developed and adopted for the purpose of satisfying the relevant performance clauses of the BCA, then this must be carried out in full consultation with the building certifier (Mr Moran) enabling the performance of his responsibilities under the legislation and shall include the assessing officer of the QFRS (Mr Torrance) for providing advice and a representative of VMR Truck Parts (Mr Singer).

RUSSELL BERGMAN
Building and Development Tribunal Chair
Date: 7 January, 2003

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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