



Building and Development Tribunals

Queensland Government

Department of **Local Government and Planning**

APPEAL

Integrated Planning Act 1997

File No. 03-06-066

BUILDING AND DEVELOPMENT TRIBUNAL - DECISION

Assessment Manager: Brisbane City Council

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

Applicant: *Withheld*

Nature of Appeal

The applicant is appealing a decision notice issued by the Brisbane City Council with regard to upgrading of the subject premises in accordance with Part 14 of the Queensland Development Code being “Fire Safety in Budget Accommodation Buildings”.

The applicant is appealing under s12K of the *Building Act 1975* for an extension of time and/or exemption from the requirements of Part 14. The applicant has instigated a development application, currently with the Brisbane City Council, for the sale and redevelopment of part of its site, a portion of which will be used for construction of new premises for persons within its care. An offence notification has also been issued by the Queensland Fire and Rescue Service (QFRS) as a result of their joint inspection program of budget accommodation premises with the Brisbane City Council.

Date and Place of Hearing: The meeting was convened at Level 17, Mineral House, 41 George Street, Brisbane on Tuesday 22 August, 2006 commencing at 10:00 am. It was decided to adjourn this meeting and it was later reconvened at the site address on Tuesday, 29 August, 2006 at 10:00 am for a site inspection and continued hearing.

Tribunal: Mr Russell Bergman

Present: The following persons were in attendance:

Meeting Tuesday 22 August, 2006

Russell Bergman – Tribunal

“Applicant” representatives (3)

Ms Ruth Brown – Disability Services Queensland
Ms Denise Pambid – Disability Services Queensland

Mr Greg Schonfelder – Brisbane City Council
Mr Jamie Cook – Brisbane City Council
Mr Nathan Shipplock – Brisbane City Council

Mr Glen Brumby – Building Codes Queensland (Technical Advisor
to the Tribunal)

Meeting Tuesday 29 August, 2006

Russell Bergman – Tribunal

“Applicant” representatives (4)

BCA Consultants

Ms Ruth Brown – Disability Services Queensland

Mr Greg Schonfelder – Brisbane City Council
Mr Nathan Shipplock – Brisbane City Council

Ms Natalie Wilde – Building Codes Queensland (Technical Advisor
to the Tribunal)
Ms Michelle Hall – Building Codes Queensland (Community
Liaison Officer)

Decision

The Tribunal determines that the “*subject site*” (main) complex buildings do not satisfy the definition of a “budget accommodation building”. **The appeal is upheld.**

Background

The site is a spaciouly developed piece of land at “the subject site” in a semi-rural / rural residential setting. “The subject site” is bounded by the Brisbane River.

The “subject site” provides permanent accommodation for people with mostly a severe form of cerebral palsy. For residents, this necessitates them to be confined to a special wheelchair for movement or in less severe instances, in a self-propelled scooter chair. It was noted that beds are adapted for individual physical needs and requirements.

It was evidenced that residents are clustered in their community setting by use of smaller individual communities by occupying most of the accommodation blocks at “the subject site”. Not all parts of “the subject site” are used, as the community is much smaller than in past years. (A site plan of the “the subject site” layout is attached to this decision.)

All accommodation buildings comprise similar facilities namely: bedrooms, kitchenettes/sitting meals area, shower bathroom and toilet. Access within each of the buildings is via a wide passageway to one side of the building. The accommodation blocks could not be considered by themselves as large buildings by any means but probably about the same floor area as a modest three bedroom house though slightly longer and narrower. Each resident has their own identifiable bedroom and a wide, sliding door for privacy. At each end of all accommodation buildings is a means of entry/exit.

A separate Class 1 house (cottage / lodge) is also on the grounds which are occupied by three persons. This has not been considered as part of this appeal as it is not a budget accommodation building. There are a number of other smaller buildings of a support function.

The living accommodation and its amenities as provided by the applicant is approximately 45 years old. As mentioned above, it comprises a number of smaller dwelling modules and the site functions with the use of common facilities connected by semi-enclosed covered links. Common facilities include main entry, office administration, community meeting spaces, therapy rooms and sick bay or minor treatment areas.

Construction generally throughout is single storey, slab-on-ground or lowset and of masonry veneer construction. The internal wall and roof framing is timber, probably all hardwood, with internal finishes typical for buildings from this era (circa 1962). ie. hardboard, cement sheeting and “Super 6” roofing. Over time, a handful of additional structures have been added which are mostly related to cover over outdoor seating areas either permanent pergola type structures or shade sails. Some basic lawn lockers for storage have also been located.

At the time of this appeal, the Tribunal was advised of twenty-two (22) residents and the care provided by approximately sixty-five (65) staff. Overnight, there are two (2) staff on duty at all times in a non-sleeping role.

There are three (3) primary questions to be addressed initially, they are:

- (a) *Is this a building or a suite of buildings though connected by other structures?*
- (b) *Collectively, do these buildings constitute a “budget accommodation building” as defined by the Building Act 1975?*
- (c) *Is this a “health care” building/s as ditto?*

These are responded to in the later section “*Findings of Fact*”.

Material Considered

The following material has been considered:

- Form 10 – Building and Development Tribunals Appeal Notice – “Applicant” dated 19 July 2006. Attached was a statement including additional attached documentation stated as (i) to (viii) inclusive. (as recorded here):-
 - (i) Copy of correspondence dated 12 January 2006 to Mr Peter Bird, Brisbane City Council (BCC) from “withheld” re: Conformity with the Fire Safety Standard – Request for Assessment;
 - (ii) Copy of correspondence dated 14 March 2006 to the applicant from Mr Greg

Schonfelder (BCC) re: Request for extension of time pursuant to Section 12J of the *Building Act 1975* (response);

- (iii) Copy of correspondence dated 13 April 2006 to the applicant from Mr Greg Schonfelder (BCC) re: Fire Safety in Budget Accommodation Buildings;
 - (iv) Copy of fax (faxed 20 April 2006) to Mr Nathan Shipplock (BCC) from the applicant re: Fire Safety in Budget Accommodation Buildings;
 - (v) Copy of BCC Pre-lodgement (development application) meeting dated 4 May 2006 – Applicant, “withheld”;
 - (vi) Copy of correspondence from the BCC dated 19 June 2006 to the applicant from Mr Robert Kingsford, Team Leader BOLA, Licensing and Compliance ref: DRS/BLD/A06-1323811;
 - (vii) Copy of Queensland Fire and Rescue Service (Notice by Commissioner Section 104G) No. 2EN0884 dated 23 June 2006 and Authorised Officer Mr M J Rossiter; and
 - (viii) Copy of correspondence dated 6 June 2006 to the applicant from Mr Greg Schonfelder (BCC) re: Fire Safety in Budget Accommodation Buildings and joint inspection BCC and QFRS on Friday 16 June 2006.
- Part 14 of the Queensland Development Code – “Fire safety in budget accommodation buildings”. All versions have been noted ie. Publications dates 22 August 2005, 13 June 2005, 23 August 2002.
 - Explanatory notes extract *Building Amendment Bill 2005*. re: definition of budget accommodation buildings further amended and re-defined.
 - Schedule of works (for compliance with Part 14 of the QDC)
 - Applicants – Fire Safety Upgrading – Timeline attached were:-
 - (i) Copy of correspondence dated 18 August 2006 from BCA Consultants confirming engagement and general discussion including intention to undertake a performance based alternative (building) solution against the Building Code of Australia Clauses DP4 and EP2.2;
 - (ii) Copy of conceptual subdivision plan – “the subject site”;
 - (iii) Copy of schematic floor plan; and
 - (iv) Copy of redevelopment program – extends to late 2009.
 - Site Plan – generic and indicative; and

- Where appropriate and as cross-referenced by Part 14 of the QDC and *Building Act 1975*, the Building Code of Australia (2004 edition).

Findings of Fact

As stated in the “**Background**” section of this decision, there are three (3) primary questions to be addressed initially and all are complimentary to the other. These are:

- (a) *Is this a building or a suite of buildings connected by other structures?*
- (b) *Collectively, do these buildings constitute a “budget accommodation building” as defined by the Building Act 1975?*
- (c) *Is this a “health care” building/s as ditto?*

In responding to (a) above, (*Is this a single building or a suite of buildings connected by other structures?*), I state the following:-

- All accommodation units at “the subject site” are separate buildings. Some buildings are “connected” by walkways though whether this should mean inextricably and functionally joined to form a single building is a key question.
- The meaning of a “building” is located in the *Building Act 1975*. The walkways by their substantive enclosure are by definition a “building”.

building means 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.

Extract Building Act 1975

- As stated, the connecting walkway structures are buildings (East Wing walkway building and West Wing walkway building) by definition (*Building Act 1975*, *Schedule Dictionary*). ie. they are clearly roofed and walled or partly walled.
- The walkways comprise non-“habitable rooms” (refer to BCA A1.1, *Definitions*) and on inspection, there was no sign of use other than for transition between the habitable buildings.
- It is noted that according to Part 14 for a budget accommodation building, the walkways should be considered Type C Construction because, by exclusion, they are not Type A or Type B construction. In Part 14, P1 and P5 only reference the type of construction.
- The residential accommodation buildings are appreciably of a standard of construction not to current minimum requirements, for example, there is no fire-rated construction. This is one reason for the development and introduction of Part 14 of the QDC as a bridging, hybrid fire safety code for ensuring an acceptable fire safety standard permitting continued use of older buildings.
- Walkway roof construction is combustible and would be a significant source of spread-of-fire between buildings in the event of a rapidly accelerating, unchecked fire emergency. There would be few potential ignition sources in the walkways.
- Gable walls between the walkways and the accommodation units are masonry veneer with unprotected door openings.

- There is no roof space connections ie. between accommodation units and walkways as these are at different levels and junctures to other buildings.
- The proximity of unprotected openings in the building (eg. the effects of radiant heat exposure from the kitchen via (1) windows to doors or (2) doors to doors or (3) windows to windows) could pose a fire spread and life safety risk to occupants.
- By reference to BCA C1.1, it is noted in that the walkways have no applicable “type of construction” ie. as Class 10a buildings they are not themselves “fire-source-features” (see BCA A1.1). They are not places of meeting assembly or places of motor accommodation or storage as would be in the case for the separating between Class 1a and Class 10a in a domestic situation. Clearly, the walkways could be constructed fully of combustible materials and still not be considered as a “fire-source-feature”.
- If the accommodation buildings were to be constructed today, the type of construction would be Type C. ie. the lowest level of required fire-resisting construction. This assessment is in accordance with BCA A3.2, *Classifications of buildings and structures* and BCA C1.1, *Type of construction required*. (See also Part 14 definitions of Type of Construction and Schedule 2 and note also BCA C2.8, *Separation of classifications in the same storey*.)

With regard to the applicable definitions for (b) and (c) are as follows:

(b) *Collectively, do these buildings constitute a “budget accommodation building” as defined by the Building Act 1975?*

(c) *Is this a “health care” building/s as ditto?*

The meaning of “budget accommodation building” is in s12B of the *Building Act 1975*. For the purposes of full examination and explanation of this definition’s application to the “subject site”, it has been reproduced in full from the *Building Act 1975* (Reprint 4H). (*Note: critical parts for consideration are underlined though not all sections as underlined may not in its self either prove nor disprove but are relevant to the situation in hand and final outcome.*)

12B Meaning of budget accommodation building

(1) A budget accommodation building is a building that—

(a) has bathroom or sanitary facilities, other than a laundry, shared by all or any of the occupants of the building; and

(b) provides accommodation of a following type for 6 or more persons—

(i) boarding house, backpacker or other hostel, guesthouse or similar type accommodation;

(ii) bed and breakfast, farmstay or hotel accommodation;

(iii) accommodation for persons who have an intellectual or physical disability and require full time or part time care.

(2) However, each of the following is not a budget accommodation building—

(a) a building used as a class 1a building or class 2 building;

(b) a hotel that does not provide accommodation to paying guests;

(c) a motel building in which individual beds can not be let;

(d) a building that can only be let as a whole;

(e) a building—

(i) in which an employer provides, under, or as an incident of, an employer-employee relationship, accommodation to persons other than backpackers or fruit-pickers; and

(ii) in which no one is accommodated other than—

(A) a person provided accommodation as mentioned in subparagraph (i); or

(B) the employer; or

- (C) the employer's spouse or other relatives;
- (f) a building that is, or forms part of—
 - (i) a corrective services facility under the Corrective Services Act 2000; or
 - (ii) a detention centre under the Juvenile Justice Act 1992;
- (g) a facility in which residential care under the Aged Care Act 1997 (Cwlth) is provided by an approved provider under that Act;
- (h) a building—
 - (i) that is, or is located within or is part of, an educational institution; or
 - (ii) in which an educational institution provides accommodation only for its students;
- (i) a class 9a building, other than a building the primary use of which is to provide accommodation (rather than medical supervision) to persons with an intellectual or physical disability;
- (j) a building used as a womens' refuge or shelter that is not used for any other type of accommodation;
- (k) a building in which the only accommodation provided is to lifesavers;
- (l) a building in which the only accommodation provided is recreational accommodation for camps for school groups, girl guides, scouts or similar groups.

(3) In this section—

bathroom or sanitary facilities, for a building, means—

(a) bathroom or sanitary facilities located in the building; or

(b) bathroom or sanitary facilities located elsewhere that are used in relation to the occupation of the building.

Example for paragraph (b)—

an outhouse used by occupants of the building class 1a building means a building that, under the 2004 edition of the BCA, part A3.2, is classified as a class 1a building.

Editor's note—

BCA (2004 edition), part A.3.2 (Classifications)—

'Class 1a—a single dwelling being—

(i) a detached house; or

(ii) one or more attached dwellings, each being a building, separated by a fire-resisting wall, including a row house, terrace house, town house or villa unit; ...'

class 2 building means a building that, under the 2004 edition of the BCA, part A3.2, is classified as a class 2 building.

Editor's note—

BCA (2004 edition), part A.3.2 (Classifications)—

'Class 2: a building containing 2 or more sole-occupancy units each being a separate dwelling. ...'

class 9a building means a building that, under the 2004 edition of the BCA, part A3.2, is classified as a class 9a building.

Editor's note—

BCA (2004 edition), part A.3.2 (classifications)—

'Class 9a—a health-care building; including those parts of the building set aside as a laboratory; ...'

BCA (2004 edition), part A1.1 (Definitions)—

'Health-care building means a building whose occupants or patients undergoing medical treatment generally need physical assistance to evacuate the building during an emergency and includes—

(a) a public or private hospital; or

(b) a nursing home or similar facility for sick or disabled persons needing full-time care; or

(c) a clinic, day surgery or procedure unit where the effects of the predominant treatment administered involve patients becoming non-ambulatory and requiring supervised medical care on the premises for some time after the treatment.

educational institution means any of the following—

(a) a State educational institution under the Education (General Provisions) Act 1989, section 2(1);

(b) a school that is provisionally accredited, or accredited, under the Education (Accreditation of Non-State Schools) Act 2001;

(c) a TAFE institute under the Vocational Education, Training and Employment Act 2000;

(d) a university, farmstay, for accommodation, means accommodation at a farm for paying guests of the farm.

Conclusions from the reading of this definition/meaning are:

(b) Collectively, do these buildings constitute a "budget accommodation building" as defined by the Building Act 1975?

- There are no buildings that provide accommodation for six or more persons. Refer to s12B(1)(b)

of the *Building Act 1975*.

(c) Is this a “health care” building/s as ditto?

- The definition of “health care building” does not co-relate to the service provided at “the subject site”. Refer to Explanatory notes of the Building Amendment Bill 2005.
- The Queensland Fire and Rescue Service (Notice by Commissioner Section 104G) No. 2EN0884 dated 23 June 2006 is a separate matter for the Service under their particular legislation.
- Re-development of the “subject site” is a separate process for the applicant as a development application to the Brisbane City Council and has no bearing on building fire safety at the “subject site”.

Reasons for the Decision

It was expressed to the Tribunal that building fire safety standard issues for the “subject site” includes:-

- (i) Occupant safety at all times;
- (ii) Staffing : occupant ratio numbers particularly at night time and in the event of a need for immediate evacuation;
- (iii) Location, quantum, function and condition of fire safety equipment;
- (iv) Travel distances to exits and logistics in arriving at designated evacuation assembly areas;
- (v) One building physically abuts the *Client Services / Administration* building and is close to the kitchen wing of that same building. The buildings are not joined by openings;
- (vi) There is no fire-separation between sole-occupancy units or adjoining passageway corridors for any of the accommodation buildings;
- (vii) Value-for-money and affordability in the light of planned future accommodation development.

The *Building Act 1975* determines that Part 14 of the QDC is a stand-alone code affecting certain types of residential accommodation buildings being “budget accommodation buildings” as defined by the *Building Act 1975*. For a budget accommodation building applies, Part 14 is predominant over other similar codes and standards. However, Part 14 does reference the BCA including other legislation, approved guidelines and a range of key reference materials such as Australian Standards.

Part 14 highlights (p2) that the BCA is “associated requirements”. This is understood that it may be considered as appropriate to apply provisions or concepts of the BCA where there is need to determine other matters. This is further understood that the BCA may assist users in addressing any critical matters where Part 14 is silent and, in the opinion of the user (or another person), a matter or matters that should be addressed in satisfying the *Building Act 1975* with regard to fire safety for budget accommodation buildings.

Therefore, the following are reasons for this decision:-

- The accommodation buildings are separate buildings and not one large building. This is both in physical character and by function. The east and west walkways are non-habitable and are used as transit routes only. Assessment of current uses is supported by testing against BCA

classifications (refer to BCA A3.2) for all spaces under consideration of this appeal.

- As the buildings are not one building but six residential accommodation buildings, the application of the definition of a “budget accommodation building” has all accommodation buildings with fewer than 6 persons in permanent occupation. The definition of “budget accommodation building states “*provides accommodation*”. This is different to a capability “to provide accommodation”.
- While the applicant provides a service to residents at “the subject site” being “*accommodation for persons who have an intellectual or physical disability and require full time or part time care*”, the house communities function in small group settings of 3 or no more than 4 residents.
- The Tribunal recognises that the applicant has taken significant steps to redevelop its property at “the subject site”. This has required the commitment of substantial expenditure of its resources to ultimately provide modern accommodation for persons within its care as soon as possible.
- The applicant demonstrated a commitment to ensuring the safety of people in its care and an intention to work with the Brisbane City Council and Queensland Fire and Rescue Service in the process thus addressing their concerns in a timely manner.

Recommendations

As residential accommodation as provided at “the subject site” is old by general standards, the Tribunal has carefully considered the needs of the resident community with regard to building fire safety standards.

As the personal safety of residents is being addressed by the applicant, the Tribunal makes a number of recommendations including a suggested date for completion of recommended upgrading works and actions. It is recommended that:-

1. The applicant and the Brisbane City Council continue to engage in a relationship for addressing and achieving compliance with at least a building fire safety standard equivalent to Part 14 of the QDC.
2. As guidance, that reasonable time be afforded to the applicant by the Queensland Fire and Rescue Service for upgrading of the residential accommodation with a target date by which the upgrading works should be completed of 1 January, 2007. (The Brisbane City Council has no formal jurisdiction).
3. Parties continue with any development application for the existing residential accommodation and that considerations be given to a final building solution that will sustain the use of these buildings until the applicants new centre is occupied. This should include use of the appropriate guidelines as published by the Department of Local Government and Planning, Sport and Recreation. In particular the Tribunal suggests:
 - use of fire safety management procedures wherever possible and practicable;
 - re-use of serviceable equipment in preference to new fittings. This would include emergency light fittings, EXIT signs, fire hose reels, fire extinguishers, smoke alarms,

higher standard smoke detection and alarm systems, that when operational and properly located, will be deemed to satisfy Part 14 of the QDC;

- removal of all extraneous materials and equipment (eg. surplus furniture, appliances and stores) that could be considered a risk to ignition and/or adding to the fire load to remote non-residential accommodation storage depots and/or disposal to reduce fire load;
- at all times, ensure safe working conditions and appliances and undertake testing by a licensed electrician;
- removal of excess debris and discarded refuse eg. place in bins and dispose;
- review and continually improve the fire safety management plan by updating as required;
- review and where reasonable, adopt regular short training programs and drills to drive higher awareness levels of building fire safety including relief staff and inductions for new staff;
- review staff capabilities for critical evacuation tasks;
- review and where reasonable adopt safer work practices by staff members eg. regular maintenance and breakage response affecting building fire safety, keeping exits clear of drying buckets and mops, gas BBQ to be remote from accommodation buildings when stored or in use, relocate garden sheds and any flammable and combustible fuels to more suitable locations away from potential paths of travel and general access routes;
- review and seek to take any further initiative for fostering a good response relationship with the local operational unit from the Queensland Fire and Rescue Service; and
- review and consider use of localised communications systems particularly for use by after hours staff.

RUSSELL BERGMAN
Building and Development
Tribunal Referee
Date: 25 SEPTEMBER, 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:

The Registrar of Building and Development Tribunals
Building Codes Queensland
Department of Local Government, Planning, Sport and Recreation
PO Box 15031
CITY EAST QLD 4002
Telephone (07) 3237 0403: Facsimile (07) 32371248