



APPEAL
Integrated Planning Act 1997

FILE NO: 3/02/008

BUILDING AND DEVELOPMENT TRIBUNAL - DECISION

Private Certifier: Mark Cullinan Consulting Pty. Ltd.
Site Address: 2 Waite Street, Raceview, Ipswich.
Applicant: Queensland Fire and Rescue Service (QFRS)

Nature of Appeal

This is an appeal by a Building Referral Agency, namely the Queensland Fire and Rescue Service, against the decision of the Private Certifier (Mark Cullinan Consulting Pty. Ltd.) to issue a Certificate of Classification for a light industrial shed after notification by the Referral Agency pursuant to section 88(3)(b)(ii)(B) of the Standard Building Regulation 1993, (SBR) that the building work does not comply with the SBR.

Date and Place of Hearing: 10:30 am on Monday 4 March, 2002
at the Office of the Department of Local Government and Planning,
Level 25, 41 George Street, Brisbane.

Tribunal: Alan Finney – Chairperson
Peter Downer

Present: QFRS represented by Raymond Stewart Davidson and Mike Davis
Mark Cullinan

Decision

The appeal by QFRS against the decision of Mark Cullinan Consulting Pty. Ltd. to issue a Certificate of Classification for the Light Industrial shed at 2 Waite Street, Raceview, Ipswich on land described as Lot 1 on RP No. 78750 is dismissed.

Background

The main basis of this appeal commenced by QFRS is “that the applicant has built a Class 7 & 8 building greater than 500 m² (1257 m²) that requires hydrant coverage as per BCA – E 1.3. The

applicant has elected to use the street hydrant adjacent to his property in Waite Street, Ipswich for his hydrant coverage as called up in AS 2419.1 Clause 4.3.1.2. The street hydrant does not meet the requirement of flows and pressures that are required by AS 2419.1.”

Of secondary importance is that the Building Certifier did not comply with the requirements of section 88(7) of the SBR, in that he issued a Certificate of Classification contrary to the advice of the Referral Agency, QFRS.

Material Considered

Documents forming part of the appeal submission -

- The application, including transmission and assessment requirements forwarded to QFRS;
- Payment receipt;
- QFRS assessment;
- Spring hydrant test result from ABBOTTS FIRE PROTECTION dated 13 November 2001;
- QFRS notice of non-compliance dated 21 November, 2001;
- Fire hydrant pressure and flow test from Ipswich Water dated 12 December, 2001;
- Copies of facsimiles between the parties dated 17 December 2001 and 19 December 2001;
- Certificate of Classification dated 18 December 2001;
- Copies of facsimiles between the parties dated 21 December 2001; and
- Appeal documents lodged by QFRS.

Additional documents tendered at the hearing -

- Exhibit 1 - Unsigned engineering calculations detailing residual pressures at hydrants by Mark Cullinan Consulting Pty. Ltd., and
- Exhibit 2 – Letter from Ipswich Water dated 31 January 2002 including engineering design plans for water supply to the area, indicating hydrant location and pipe size.

Documents tendered whilst the hearing was adjourned -

- Flow and pressure test results from Ipswich Water dated 12 March 2002, and
- Response from QFRS dated 18 March 2002.

Findings of Fact

- The building at 2 Waite Street, Raceview, Ipswich required hydrant coverage in accordance with the requirements of the Building Code of Australia.
- Such coverage was assessed by QFRS using hydrants in both Parrot and Waite Streets, and approved subject to flow and pressure results.
- Flow and pressure testing was carried out for different hydrants in Waite and Parrot Streets by all testers, no test results were available for the specific hydrants assessed by QFRS.
- Subsequent Ipswich Water testing of the hydrants specified by QFRS showed results which complied with the requirements of AS 2419.1.

Reasons for the Decision

The Tribunal chose to conduct a hearing on the basis of the substantive issue and at the time of the hearing, make a determination in respect of non compliance with Section 88(7) of the SBR. In choosing to do so it was made clear to all parties that both issues were to be considered. During the

hearing it became obvious that test results were inconsistent with assessment details. Accordingly the hearing was adjourned for a maximum period of fourteen (14) days in order to give both parties the opportunity to undertake appropriate tests and provide written submissions to the Tribunal. The Certificate of Classification was taken to be ineffective during the conduct of the proceedings by the Tribunal.

As a consequence of appropriate testing both parties now agree that the hydrant pressure and flow rates comply with AS 2419.1. Accordingly the Certificate of Classification issued by the Private Certifier is now valid. The substantive reason for the lodgement of the appeal is therefore resolved. It is on this basis that the appeal has been dismissed.

In arriving at this conclusion, however, the Tribunal remains concerned that the Private Certifier did not comply with the requirements of Section 88(7) of the SBR. It would seem appropriate that the Private Certifier amend his practices in future cases of disagreement with Referral Agencies to comply with the SBR. This may allow for less formal consideration of the issues.

ALAN FINNEY
Building and Development
Tribunal Chairperson
Date: 10th April, 2002

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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