



Building and Development Dispute Resolution Committees—Decision

Sustainable Planning Act 2009

Appeal Number:	7-2012
Applicant:	Queensland Rail Limited
Assessment Manager:	Caboolture Building Approvals
Concurrence Agency: (if applicable)	Not Applicable
Site Address:	8 Oxley Station Road Oxley, described as Lot 105 & 116 on RP29516 (the subject site)

Appeal

Appeal under section s532 of the *Sustainable Planning Act 2009 (SPA)* against matters by a Building Certifier about inspection of building work under the *Building Act 1975*, as stated in a Non-compliance Notice. The Notice related to building works associated with a new assembly building and was issued by the assessment manager following a final inspection.

Date of hearing:	1:00pm on 4 April 2012
Place of hearing:	Level 5, 63 George Street Brisbane, being the Offices of Building Codes Queensland.
Committee:	Debbie Johnson - Chair Dean Misso - Referee
Present:	Joel Fleming and Mac Major - Representatives of Queensland Rail Trevor and Debbie McLean – Caboolture Building Approvals Richard Pugh - Building Contractor of Glendale Homes

Decision:

The Building and Development Dispute Resolution Committee (the Committee), in accordance with section 564 of the SPA **confirms** the decision by Caboolture Building Approvals to issue the Non-compliance Notice dated 14 February 2012.

Background

Queensland Rail Limited contracted Glendale Homes to build a new hall at Oxley for the Country Women's Association (CWA). The Committee understands that the building was gifted to the CWA by Queensland Rail Limited because they had resumed the land that contained their original hall. The new hall is situated on land owned by the Brisbane City Council (Council).

The new development was defined as Community Facilities (Country Women's (CWA) Hall). The proposed works included an assembly building, stormwater management, footpaths, landscaping, driveway and car park. Development approvals for a Material Change of Use and Building Works were required. The Council issued an approval with conditions for the Material Change of Use and Preliminary Building Works on 19 November 2009. Following a request to change the Development Application by Queensland Rail Limited, the Council issued a revised approval with conditions on 16 August 2010.

Under their contract with Queensland Rail Limited, Glendale Homes was required to obtain a Development Approval for the building of the assembly hall. Glendale Homes engaged Caboolture Building Approvals who subsequently issued a Development Approval for building work with conditions for the assembly building.

The Committee understands that Glendale Homes was only engaged to build the assembly hall. The Committee was advised that Queensland Rail Limited contracted the car park, driveway and all other associated site works to other contractors.

Following notification from Glendale Homes, Caboolture Building Approvals undertook a number of inspections at the subject site. At the initial inspection, on 25 November 2011, the Assessment Manager issued a Non-compliance Notice stating eight matters that were to be rectified or addressed.

Following notification from Glendale Homes, Caboolture Building Approvals undertook a second inspection of the works. However, on 16 January 2012, the Assessment Manager issued another Non-compliance Notice stating ten matters that were to be rectified or addressed. Seven of the items listed were a duplication of those listed on the original Non-compliance Notice, the remaining three matters were new.

After notification from Glendale Homes, Caboolture Building Approvals undertook a third inspection of the works. Following this inspection, on 10 February 2012, the Assessment Manager issued a Non-compliance Notice stating eight matters that were to be rectified or addressed. All of the matters raised were effectively new items.

The Notice also stated:

'This Non-compliance Notice is issued based on advice from the following parties: builder/ applicant (Glendale Homes), Brisbane City Council and Queensland Rail, that a planning and development certificate or a letter from BCC Planning Department confirming all conditions of planning approval (council file reference: A00285888) have been satisfied will not be provided to the assessment manager by any of the parties.'

The eight items were:

- *'The building is not substantially completed*
- *Provide a copy of cross road connection to kerb and channel approval from Brisbane City Council, as advised by BCC on 16 December 2011.*
- *Provide a copy of driveway approval from BCC as advised by BCC on 16 December 2011.*
- *Provide Form16 certificate from a registered professional engineer of Queensland (RPEQ) to confirm all stormwater drainage on site complies with AS/NZS3500.3-2003 and BCC City*

Plan

- *Threshold ramp to be rectified to comply with AS1428.2001.*
- *Provide maintenance certificate from licensed fire service maintenance person that portable fire extinguishers comply with AS1851.*
- *Provide Form 16 from manufacturer of floor coverings to confirm that coverings comply with AS4586 & HB197.*
- *Provide Form 16 from RPEQ to confirm car parking on site complies with AS2890.1-1993 & BCC City Plan 2000.'*

The Applicant argued that the building was completed and that the Assessment Manager had not specified what works were considered incomplete other than listing various certificates and Form 16's that were required.

Similarly the Applicant stipulated that the remaining items were not part of the building works that had been approved by the Assessment Manager, rather that they were works approved by the Council.

As part of the hearing, the Applicant also referred to conditions contained within the Development Application dated 16 August 2010. In particular, condition 18 "Access Grades, Manoeuvring, Car parks, Signs", condition 21 "On Site Drainage – Minor" and condition 25 "Equitable Access". These conditions (as part of the Material Change of Use approval), and their relationship to the Non-compliance Notice issued by Caboolture Building Approvals were discussed in some detail. In some instances, the Committee noted these conditions required certification by other suitably qualified professionals in order to comply with that part of the approval.

The Applicant was particularly concerned about further delays because the CWA were needing to occupy the building. The Committee understands that the applicant therefore lodged an appeal with the Registrar on 14 February 2012.

The intention of the appeal is to resolve the matters raised in the Non-compliance Notice so that the building can be lawfully occupied.

Material Considered

The material considered in arriving at this decision comprises:

1. 'Form 10 – Application for Appeal/ Declaration', grounds for appeal and correspondence accompanying the appeal lodged with the Registrar on 14 February 2012.
2. Oral submissions by the Applicant's, the Assessment Manager's representatives and the building contractor at the hearing.
3. Property details as available through Council's website.
4. The Brisbane City Plan 2000
5. The *Sustainable Planning Act 2009* (SPA)
6. The *Building Act 1975* (BA)
7. The *Building Regulation 2006* (BR)
8. The Building Code of Australia 2010 Volume 1 (being the current version at the time the development permit for building works was issued by the assessment manager)
9. Australian Standard - AS 1428.1 2001 Design for Access and Mobility

Findings of Fact

The Committee makes the following findings of fact:

Substantially completed is a defined term in the *Building Act 1975* (BA) Part 2 Division 1 as follows:

Section 101 Meaning of *substantially completed*

'(1) A building has been substantially completed when—

- (a) all wet areas are waterproof as required under the building assessment provisions; and*
- (b) reticulated water is connected to and provided throughout the building; and*
- (c) all sanitary installations are installed as required under the building assessment provisions; and*
- (d) the local government has issued a compliance certificate under the Plumbing and Drainage Act 2002 stating the plumbing work, drainage work and on-site sewerage work for the building has been completed under that Act; and*
- (e) all fire safety installations are operational and installed as required under the building assessment provisions; and*
- (f) all health and safety matters relating to the building comply with the building assessment provisions; and*
- (g) electricity supply is connected to the building to the extent necessary for it to be used under the BCA classification sought; and*
- (h) the building is weatherproof as required under the building assessment provisions; and*
- (i) the building is structurally adequate as required under the building assessment provisions; and*
- (j) all means of access and egress to the building comply with the building assessment provisions; and*
- (k) if the relevant development approval includes conditions advised or required by a referral agency and the conditions are about the building work for the building—the conditions have been complied with.'*

For a building to be deemed substantially completed, all of the above mentioned matters must be satisfied.

In Section 102 of the BA states that a building certifier has an obligation to give certificate of classification on inspection after particular events. Conversely a building certifier cannot give certificate of classification until the following matters are satisfied.

Section 102(1) of the BA. This section applies if—

- '(a) the building certifier has inspected the building and—*
 - (i) decided that it has been substantially completed; or*
 - (ii) given written consent to the occupation of part of the building before all of it has been substantially completed; or*
 - (iii) if the development is alterations to an existing building—decided that they have been substantially completed; and*
- (b) if there is any fire safety installation installed in the building—the applicant has given the building certifier—*
 - (i) a list of all of the installations; and*
 - (ii) drawings showing their location; and*
- (c) any requirement under the building assessment provisions or a condition of the building development approval for a referral agency inspection of the building has been complied with or has ceased to apply.'*

In the Non-compliance Notice dated 10 February 2012 the building certifier has stated that the building was not substantially completed. At the hearing, the building certifier explained that he was unable to determine by inspection alone, if the building complied with all of the provisions of the *Building Act 1975*. In particular specific items listed in Section 101 of the BA:

- (1)(e) all fire safety installations are operational and installed as required under the building assessment provisions; and*
- (f) all health and safety matters relating to the building comply with the building assessment provisions; and*
- (j) all means of access and egress to the building comply with the building assessment provisions.'*

To ensure that these items were addressed and that the building did comply, the Non-compliance Notice also stated:

- *'Provide a copy of cross road connection to kerb and channel approval from Brisbane City Council, as advised by BCC on 16 December 2011.*
- *Provide a copy of driveway approval from BCC as advised by BCC on 16 December 2011.*
- *Provide Form 16 certificate from a registered professional engineer of Queensland (RPEQ) to confirm all stormwater drainage on site complies with AS/NZS3500.3-2003 and BCC City Plan*
- *Threshold ramp to be rectified to comply with AS1428.2001.*
- *Provide maintenance certificate from licensed fire service maintenance person that portable fire extinguishers comply with AS1851.*
- *Provide Form 16 from manufacturer of floor coverings to confirm that coverings comply with AS4586 & HB197.*
- *Provide Form 16 from RPEQ to confirm car parking on site complies with AS2890.1-1993 & BCC City Plan 2000.'*

Buildings must be accessible in accordance with the provisions of the Building Code of Australia (BCA). Specifically Part D3.2(c) states external access to a building required to be accessible must be in accordance with this part and Australian Standard 1428.1 and must be provided-

- '(i) from the allotment boundary at the main points of entry; and*
- (ii) from any accessible car parking space on the allotment in accordance with D3.5; and*
- (iii) any adjacent and associated accessible building on the allotment; and*
- (iv) through the principal public entrance.'*

Functional statement FF1.1 of the Building Code of Australia , Section F Health and Amenity states: *'A building including any associated site work is to be constructed in a way that protects people and other property from the adverse effects of redirected surface water.'*

The subsequent Performance Requirements state:

'FP1.1 Surface Water, resulting from a storm having an average recurrence interval of 20 years and which is collected or concentrated by a building or site work, must be disposed of in a way that avoids the likelihood of damage or nuisance to any other property.

FP1.2 Surface water resulting from a storm having an average recurrence interval of 100 years must not enter the building.

FP1.3 A drainage system for the disposal of surface water must-

- (a) convey the surface water to an appropriate outfall; and*
- (b) avoid the entry of water into a building; and*
- (c) avoid water damaging the building.*

Part F1 Damp and Weatherproofing deemed to satisfy provisions F1.1 states: Stormwater drainage must comply with AS/NZS3500.3.'

The BCA, Specification A1.3 contains a schedule of referenced documents. AS1428.1 Design for Access and Mobility is one of the referenced documents in this section. Within this Standard, Part 12

'Surface on a continuous accessible path of travel', reference is made to AS4586 and HB197 for guidance on slip resistant surfaces.

Reasons for the Decision

The Committee finds that each of the matters listed by the Assessment Manager in the Non-compliance Notice are valid and relevant to specific provisions contained in the BA and the BCA. Where the building certifier cannot by inspection determine compliance with specific building provisions, documentary evidence must be provided.

Debbie Johnson
Chair
Building and Development Committee
Date: 16 May 2012

Appeal Rights

Section 479 of the *Sustainable Planning Act 2009* provides that a party to a proceeding decided by a Committee may appeal to the Planning and Environment Court against the Committee's decision, but only on the ground:

- (a) of error or mistake in law on the part of the Committee or
- (b) that the Committee 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 Committee's decision is given to the party.

Enquiries

All correspondence should be addressed to:

The Registrar of Building and Development Dispute Resolution Committees
Building Codes Queensland
Department of Local Government and Planning
PO Box 15009
CITY EAST QLD 4002
Telephone (07) 3237 0403 Facsimile (07) 3237 1248