



Building and Development Dispute Resolution Committees—Decision

Sustainable Planning Act 2009

Appeal number:	62 - 10
Applicant:	Path Developments Pty Ltd
Assessment manager:	Chris Diggles for and on behalf of Caboolture Building Approvals
Concurrence agency: (if applicable)	N/A
Site address:	9 Gabrielle Court, Kallangur and described as Lot 7 on SP211090 – the subject site

Appeal

Appeal under section 532(1)(b)(ii) of the Sustainable Planning Act 2009 (SPA) against the decision by Chris Diggles for and on behalf of Caboolture Building Approvals as the assessment manager to issue a non-compliance notice requesting a form 16 from a fire engineer.

Date of hearing:	9:00am on Thursday 9 September 2010
Place of hearing:	The subject site
Committee:	Richard Prout – Chair David Mansell – General Referee
Present:	Peter Luckmann – Applicant Joanne Gough – Applicant Ngon Vo – Des Newport Consulting Engineers Aaron Ruhle – Preferred Plaster Michael Leonardi – MAW Electrical Pty Ltd Michael Duck – Fyreguard Pty Ltd

Decision:

The Committee, in accordance with section 564 of the SPA makes the following directions, to facilitate the existing building to be lawfully approved, built and used as a Building Code of Australia 2009 (BCA) Class 2 building (the building's correct classification);

1. The assessment manager shall have regard to Section 114 and Chapter 9 of the Building Act 1975 (BA) and take any appropriate measures within 5 business days from the date of this decision to ensure the safety of the public.
2. The assessment manager shall within 10 business days from the date of this decision issue to the applicant an information notice containing a clear and concise list of any information or documentation required to enable the issue of a decision notice for the building to be used as a BCA Class 2 building.

3. The applicant shall within 20 business days of the assessment manager having satisfied instruction 2 above, provide any information or documentation required to enable the issue of a decision notice for the building to be used as a BCA Class 2 building.
4. The assessment manager shall within 20 business days of having received the required information or documentation, issue a decision notice or amended decision notice for the building to be used as a BCA Class 2 building. The decision notice must clearly list any required inspections that may be necessary for any alterations required to the existing building.
5. The applicant shall within 20 business days from the date of this decision obtain a plumbing approval from Moreton Bay Regional Council (Council) for an additional water sub-meter for the associated unit and ensure its installation is as per Council's requirements.
6. The applicant shall within 20 business days from the date of the new decision notice carry out any required alterations approved by the decision notice to ensure the building complies with the requirements of the BA.
7. The assessment manager shall undertake inspections during construction as required and a final inspection on completion of any required building work.
8. Within 5 business days of the assessment manager's final inspection, the applicant shall provide the assessment manager with a Form 16 from a Competent Person - BSA Licensee (Passive Fire Protection - Fire and Smoke Walls and Ceilings) certifying the fire resistant plasterboard system installation. The applicant shall also provide the assessment manager with a Form 16 from a Competent Person - BSA Licensee (Passive Fire Protection - Fire collars, Penetrations and Joint Sealing) certifying any penetrations through the fire resistant plasterboard systems.
9. The assessment manager shall work with the applicant to ensure a certificate of classification is issued within 10 business days of the assessment manager's final inspection.

Background

1. On 16 November 2009 the assessment manager issued a development approval for building work for a Class 1a dwelling (Reference No. 20091334);
2. On 22 June 2010 the assessment manager issued a Form 61 – Non-compliance notice following an inspection of the site. The issues identified in the form were:
 - Certificate required Form 15 prefabricated frame & trusses including layout plan;
 - Handrail to be installed on the internal stair for the full length of stair;
 - Builder to bring inspections & inspection procedures into compliance with the Building Regulation 2006;
 - Part 5 Division 1 – Section 20,21,& 22;
 - Part 6 Division 2 Subdivision 1 – Section 24 & 26;
 - Part 6 Division 2 Subdivision 2 Section 27 & 28;
 - A reinspection will be required;
 - A fee of \$165.00 will be payable.
3. On 4 August 2010 the assessment manager issued a Form 61 – Non-compliance notice following an inspection of the site. The issues identified in the form were:
 - Certificate required Form 15 prefabricated frame & trusses including layout plan;
 - Certificate required Form 16 from a Fire Engineer for the separation between the dwelling units for both the vertical and horizontal separation firewalls and floors;
 - Handrail to be installed on the internal stair for the full length of stair;

- A reinspection will be required;
 - A fee of \$165.00 will be payable.
4. On 17 August 2010 the applicant appealed the requirements of the Form 61 under section 532(1)(b)(ii) of the SPA with the following grounds;
 - All items on Form 61 dated 4 August 2010 completed. Do not believe form from Fire Engineer is required for a Class 1a. Form is provided from RPEQ engineer and Form 16 from installer.
 5. The Committee received verbal advice on 9 September 2010 from Trevor McLean of Caboolture Building Approvals that he was representing the Chris Diggles as the assessment manager. Trevor McLean stated that as the assessment manager had disengaged himself from the project on 13 August 2010 that neither would be attending the hearing. Trevor McLean also stated that he believed Council had issued an enforcement notice on the subject property for non-conforming fire separation. It should be noted that the assessment manager was present when Trevor McLean provided the committee with the above advice.

Material Considered

The material considered in arriving at this decision comprises:

1. Form 10 – Appeal Notice', grounds for appeal and correspondence accompanying the appeal lodged with the Registrar on 17 August 2010;
2. Form 61 – Non-compliance notice issued by the assessment manager on 7 June 2010;
3. Form 61 – Non-compliance notice issued by the assessment manager on 4 August 2010;
4. Form 22 – Notice of discontinuance of engagement issued by the assessment manager on 13 August 2010;
5. The assessment manager's engagement and fee agreement (Reference No. 20091334) dated 20 November 2009;
6. Decision notice (Reference No. 20091334) dated 16 November 2009;
7. The approved drawings issued by the assessment manager dated 16 November 2009;
8. Form 15 (compliance certificate for building design or specification) for the footings and slab design signed by Ngon Vo RPEQ 8139 of Des Newport Consulting Engineers, date 30 September 2009;
9. Form 15 – Compliance certificate for building design or specification for the structural timber framing and tie down design signed by Ngon Vo of Des Newport Consulting Engineers, dated 30 September 2009;
10. Form 15 – Compliance certificate for building design or specification for the roof trusses dated 25 November 2009 and signed by Michael Taylor of Bunnings Pty Ltd;
11. Form 15 – Compliance certificate for building design or specification for the fire rated separation walls and acoustic design guide signed by Ngon Vo of Des Newport Consulting Engineers, dated 4 February 2010;
12. Form 16 – Inspection certificate/aspect certificate/QBSA license aspect certification for the installation of the fire rated plasterboard systems to front and rear units, including wall and ceiling systems, signed by Aaron Ruhle of Preferred Plastering dated 14 July 2010;
13. Letter from Aaron Ruhle of Preferred Plastering dated 15 July 2010 stating that Preferred Plastering takes no responsibility for any of the penetrations within the systems they have installed;
14. Form 16 – Inspection certificate/aspect certificate/QBSA license aspect certification for the penetration of fire walls for electrical work and complying with tested system 60/60/60, signed by Michael Leonardi of M.A.W Electrical Services Pty Ltd dated 5 August 2010;
15. Form 16 – Inspection certificate/aspect certificate/QBSA license aspect certification for the visual inspection on 12 August 2010) and consideration of drawings and certification by others for passive fire

protection – walls, ceilings and electrical penetrations thereof signed by Mark Sharples of BDA Fire dated 12 August 2010;

16. Verbal presentation from the applicant, advising that:

- the design was for a Class 1a dwelling with a separate associated unit as allowed under the Pine Rivers Plan
- he was within reason prepared to rectify any non-complying issues related to the building in order to obtain a complying certificate of classification for his client.

17. A limited inspection/assessment of the fire separation between the units undertaken by the Committee, which found the fire separation to be non-complying in a number of areas.

18. Email from Richard Konarski of Council dated 20 September 2010 confirming that the development does comply with the Pine Rivers Plan for a dwelling and associated unit. Mr Konarski also advised that an enforcement notice had been issued on the property for the incorrect building classification and non-conforming fire separation. He also advised that Mr. Trevor McLean of Caboolture Building Approvals had brought this issue to Council's attention.

19. Email correspondence from November 2009 between the applicant, assessment manager and Council discussing the design of the associated unit in order to comply with the requirements of the Pine Rivers Plan.

20. The BA

21. The Building Regulation 2006

22. The BCA

23. The SPA

Findings of Fact

The Committee makes the following findings of fact:

The development approval issued by the assessment manager on 16 November 2009 constitutes two separate class 2 sole occupancy units as per the BCA for the following reasons;

1. The approved drawings show the building separated into 2 sole occupancy units being a house with its own double garage and a unit with its own single garage and laundry. The drawings also show a fire separating wall between the unit garage and the house garage;
2. As per the BCA the building constitutes a class 2 building for the following reasons;

- Section A3.2 Classifications states the following;

Class 1: one or more buildings which in association constitutes –

(a) Class 1a – single dwelling being –

(i) a detached house; or

(ii) one of a group of two 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;

Which is not located above or below another dwelling of another class of building other than a private garage

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

- Part A1 Interpretation states a private garage means -

(a) Any garage associated with a Class 1 building; or

(b) Any single storey of a building of another class capable of accommodating not more than

- 3 vehicles, if there is only one such storey in the building; or
- (c) Any separate single storey garage associated with another building where such garage is capable of accommodating not more than 3 vehicles.
- Volume Two of BCA, section 3.7.1.8(a) (separating walls) states the following in regards to Class 1 buildings;

3.7.1.8 Separating Walls

- (a) A separating wall between Class 1 buildings, or a wall that separates a Class 1 building from a Class 10a building which is not appurtenant to the Class 1 building must have an FRL of not less than 60/60/60 and –
 - (i) Commence at the footings or ground slab; and
 - (ii) Extend –
 - (A) if the building has a non combustible roof covering, to the underside of the roof covering; or
 - (B) if the building has a combustible roof covering, to not less than 450mm above the roof covering.

In the configuration of this building, a sole occupancy unit is located above a Class 10a garage which is not appurtenant to the unit. In addition, the separating walls cannot commence at the footings or ground slab and extend to the underside of the non combustible roof as required by section 3.7.1.8(a) of Volume Two of the BCA for a Class 1 dwelling.

It should also be noted that Volume Two of the BCA, which is the specific document for Class 1 and Class 10 buildings, has no references to horizontal fire or acoustic separation. As such the building constitutes a Class 2 building as per the BA.

3. There was no internal connection between the two dwelling units;
4. Each building contained the facilities required for a Class 2 building as per section F2.1 (Facilities in residential buildings) and Table F2.1 (Provisions of sanitary and other facilities in residential Buildings) of Volume One of the BCA;
5. The decision notice issued by the assessment manager made no statements in the conditions of the approval preventing the use of the building as two separate dwelling units; and
6. As per Part 4 (Water meters for new premises) of the Queensland Plumbing and Wastewater Code each sole occupancy unit requires a water sub-meter.

Reasons for the Decision

The initial grounds of the appeal are relevant to fire separation and associated documentation required to satisfy the assessment manager that compliant fire separation has been achieved. To competently hear this appeal, the Committee needed to determine the required fire separation for the building. The reasons for the decision are relevant to fire separation and the steps required to achieve compliant fire separation.

It is clear from the design of the building and the email correspondences between the builder, certifier and Council that the intended use of the building was two self contained sole occupancy units. As per Section 1.3.1 (Principles of classification) of Volume Two of the BCA and section A3.1 (Principles of classification) of Volume One of the BCA the assessing private certifier had a responsibility to ensure building approval reflected this proposed use:

Section A3.1 (Principles of classification)

The classification of a building or part of a building is determined by the purpose for which it is designed, construction or adapted to be used.

Section 11 of the BA states the following:

- (1) Generally, the assessment manager for a building development application is the assessment manager for the application under the SPA, section 246(1).
- (2) However, if under section 48 a private certifier (class A) is performing functions for the application, the certifier is the assessment manager for the application.

As per this section of the BA the assessment manager for this development was Chris Diggles of Caboolture Building Approvals.

Section 532 of the SPA states the following:

- (1) If—
 - (b) a person—
 - (i) was an applicant for a building development approval; and
 - (ii) is dissatisfied with a decision under the Building Act by a building certifier or referral agency about inspection of building work the subject of the approval; the person may appeal against the decision to a building and development committee.
- (2) An appeal under subsection (1) must be started within 20 business days after the day the person is given notice of the decision.

Section 567 of the SPA states the following:

The building and development committee may decide an appeal or application for a declaration without the representations or submissions of a person who has been given a notice under section 559(b) or section 562(1)(b) if—

- (a) for a hearing without written submissions—the person does not appear at the hearing; or
- (b) for a hearing on the basis of written submissions—the person's submissions are not received within the time stated in the notice given under section 562(1).

As per section 532 of SPA, the applicant had the right to appeal the Form 61 issued by the assessment manager subject to the appeal commencing within the required 20 business days. The appeal was lodged within the timeframe and as such the Committee is of the opinion that the assessment manager remains the respondent and the Committee has the ability to issue directions to him.

As per section 567 of SPA the Committee does have the ability to issue a decision notice that includes the assessment manager even though he chose not to attend or represent himself at the hearing or provide a written submission.

Richard Prout
Building and Development Committee Chair
Date: 22 October 2010

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 Infrastructure and Planning
PO Box 15009
CITY EAST QLD 4002
Telephone (07) 3237 0403 Facsimile (07) 3237 1248

