



## Building and Development Dispute Resolution Committees—Decision

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### *Sustainable Planning Act 2009*

<b>Appeal Number:</b>	35 - 12
<b>Applicant:</b>	Queensland Fire and Rescue Service (QFRS)
<b>Assessment Manager:</b>	All Construction Approvals (ACA)
<b>Concurrence Agency:</b> (if applicable)	Nil
<b>Site Address:</b>	326-344 and 364 Mulgrave Road Westcourt described as Lot 30 on SP171190 and Lot 2 on RP716145 – the subject site

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### **Appeal**

Appeal under section 528 of the *Sustainable Planning Act 2009* (SPA) by QFRS as the Referral Agency against the decision of All Construction Approvals as the Assessment Manager to approve a Building Development Approval. The appeal is on the grounds that the Assessment Manager failed to consider QFRS assessment advice regarding the requirement to provide a fire hydrant booster system.

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<b>Date of hearing:</b>	10:30am on Thursday, 21 November 2012
<b>Place of hearing:</b>	The subject site
<b>Committee:</b>	David Mansell– Chair
<b>Present:</b>	David Gilbard - QFRS – Applicant Steve West - QFRS - Applicant Harald Webber – ACA – Assessment Manager Martin Accatino - ACA – Assessment Manager Mark Catchpole on behalf of AFL Cairns Ltd – Co-respondent Joanne Parisi – Macdonnells Law (passive attendee) Gary Young – AFL Cairns Ltd – Co-respondent Reg Lillywhite – AFL Cairns Ltd – Co-respondent John Hollandier – Hollandier Homes Greg Gilboy – Gilboy Hydraulic Solutions

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### **Decision:**

The Building and Development Dispute Resolution Committee (Committee) in accordance with section 564(2)(c) of the SPA **sets aside the decision appealed against** and approves the Development Application in accordance with the conditions stated in the Amended Development Approval No. 00014010 issued by the Assessment Manager and dated 1 November 2012.

## Background

Based on the information available, the background to this appeal can be summarised as follows;

- This appeal involves a development application for extensions to a building known as Cazalys which is owned by AFL Cairns Ltd. 'Cazalys' has been classified in accordance with the Building Code of Australia 2012 (BCA) as a class 9b Clubhouse. The existing building has been incrementally extended and altered over a long period of time
- The QFRS and Assessment Manager agreed that the proposed addition to the existing building will result in a total floor area marginally less than 5000m<sup>2</sup> and a maximum fire compartment size less than 5000m<sup>2</sup>.
- The QFRS and Assessment Manager agree that the unassisted water supply complies with the flow and pressure requirements of Table 2.2 of AS2419.1-2005.
- The existing Clubhouse and proposed addition is served by one on-site fire hydrant at the rear of the building and two off-site street hydrants located on Mulgrave Road.
- The existing external street hydrant adjacent to the proposed addition was planned for relocation at the time of the hearing to be greater than 10m from the building it serves and the QFRS have confirmed that the location of this street hydrant in relation to the building is not the subject of the appeal.

## Material Considered

The material considered in arriving at this decision comprises:

1. Application for Appeal - 'Form 10' – grounds for appeal and correspondence accompanying the appeal lodged with the Committee Registrar on 26 July 2012. The accompanying documents included;-
  - a) QFRS Letter dated 25 July 2012 outlining the QFRS position in relation to the appeal.
  - b) QFRS Referral Agency 'non-compliant' assessment advice dated 24 April 2012.
  - c) Gilboy Hydraulic Solutions Hydraulic Plan 111819/HS002/C dated February 2012
  - d) Cochrane MRP Facsimile dated 4 October 2002.
  - e) QFRS Community Safety Operations Program Office CSO ICT Project – Phase 1, Version 1. QFRS operational requirements regarding fire hydrant systems for buildings with fire compartments in excess of 2000m<sup>2</sup> (Business Rule).
  - f) QFRS Referral Agency 'non-compliant' assessment advice dated 28 June 2012.
  - g) QFRS t<sup>2</sup> Fire Spreadsheet.
  - h) Assessment Manager Approval (No. 00014010) dated 4 July 2012 and stamped 'amended'.
2. 'Form 8 – Notice of Election', whereby AFL Cairns Ltd seek election as a co-respondent and nominate Mr Mark Catchpole (Catchpole) as the agent for AFL Cairns Ltd.
3. Catchpole submission dated 20 November 2012 outlining the position of AFL Cairns Ltd in relation to the appeal.
4. Plans stamped by the Assessment Manager as Permit No. 14010 and dated 3 July 2012 including;-
  - a) SutersPGD Site Plan 600039-A111-1 dated 19 March 2012.

- b) SutersPGD Existing Floor Plan 600039-A202-1 dated 19 March 2012.
- c) SutersPGD Proposed Floor Plan 600039-A261-1 dated 19 March 2012.
- d) Gilboy Hydraulic Solutions Hydraulic Plan 111819/HS002/C dated February 2012.
- e) Gilboy Hydraulic Solutions Hydraulic Plan 111819/HS005/C dated February 2012
5. Assessment Manager Approval (No. 00014010) dated 16 July 2012 and stamped 'Amended'.
6. Assessment Manager Approval (No. 00014010) dated 1 November 2012 and stamped 'Amended'
7. Australian Standard AS2419.1-2005.
8. The *Sustainable Planning Act 2009* (SPA)
9. The *Building Act 1975* (BA)
10. The Building Code of Australia 2012 (BCA)

## Findings of Fact

The Committee makes the following findings of fact:

- On 24 April 2012, the QFRS issued Referral Agency advice assessing the referred application as 'non-compliant'.
- On 28 June 2012, the QFRS re-assessed the application with a revised design and again provided Referral Agency advice assessing the application as 'non-compliant'.
- On 4 July 2012 the Assessment Manager issued a Development Application Approval (No. 00014010) for the construction of alterations / additions to the existing club house.
- On 10 July 2012, the QFRS received Approval (No. 00014010) from the Assessment Manager for the proposed alterations and addition.
- On 16 July 2012, the QFRS received an Amended Approval (No. 00014010) from the Assessment Manager which disregarded the QFRS re-assessment advice regarding the requirement to install a hydrant booster system. The Approval does not include information to clarify why the QFRS advice was disregarded, nor provide information to clarify which building assessment provisions have been used.
- On 26 July 2012, the Committee received an Application for Appeal – Form 10 from the QFRS as the Advice Agency on the grounds that the Assessment Manager failed to consider the QFRS advice.
- In or about late September 2012, the Assessment Manager received a request from AFL Cairns Ltd as the owners of the building, to change the existing Approval (No. 00014010) dated 16 July 2012. The changes requested that the approval be:
  - a) *amended to include the fact that the street hydrant which is currently situated within 10 metres of the building will be moved so that it is more than 10 metres from the building in accordance with revised drawings which will be provided; and*
  - b) *amended so that it clarifies that the hydrant system was assessed and will continue to be assessed against the current hydrant code being AS2419.1-2005; and*
  - c) *amended so that it clarifies that the works the subject of the Approval relate to alterations to an existing building; and*
  - d) *amended so that it clarifies that the discretionary provisions in sections 61, 68 and 81 of the Building Act (as applicable) have been used.*
- On 3 October 2012 the Assessment Manager referred the AFL Cairns Ltd request to change the existing approval to the QFRS. The associated covering letter by the Assessment Manager dated 3

October 2012 states in part;-

*'The following methodology from the Building Act 1975 has been utilised in the assessment of the proposed additions at the above address;-*

- a) The alteration is considered to be an alteration to existing safe work pursuant to section 61(1) and (2).*
- b) The additions are also being considered under section 68(1) and (3)(a), (b) and (c) so as not to reduce the existing level of safety to the occupants of the building; the existing level of fire resistance, and the existing spread of fire to adjoining buildings or structures.*
- c) Pursuant to section 81(3), the proposed additions and existing building are to be assessed under the current BCA 2012 Part E1.3 which in turn makes reference to the rationalised AS2419.1-2005.*

.....

*It is therefore requested that you provide your advice with regards to the compliance of the premises with AS2419.1-2005.'*

- On 16 October 2012, the QFRS advised the Committee in part that;-

*'..... the new application received by the QFRS in respect of this property address has no relevance to the appeal lodged. The Application lodged was a proposal to re-locate an existing street hydrant, situated closer than 10 metres to the building it is protecting, to a location no closer than 10 metres to the building it is protecting. The location of this street hydrant was not the subject of the QFRS appeal.'*

- On 17 October 2012, the QFRS as the Referral Agency issued an assessment stating the referred application was 'non-compliant'.
- On 1 November 2012, the Assessment Manager issued a further Amended Approval (No. 00014010) which provided detailed reasons for disregarding the QFRS advice.
- The relevant section of AS2419.1-2005 in contention is Section 7.2(f) and is stated as follows;-

*'A fire brigade booster assembly shall be fitted to each fire hydrant system where-*

*(a) .....*

*(b) .....*

*(c) .....*

*(d) .....*

*(e) .....*

*(f) More than one external on site fire hydrant is required to serve a building where the floor area of any fire compartment is greater than 2000m<sup>2</sup>.'*

- AS2419.1-2005 does not contain a definition for the term 'on site'. The QFRS stated at the hearing that QFRS do not consider the street hydrants on Mulgrave Road to be 'on site'. Therefore the parties agree that the building will be served by one external on site fire hydrant and two external off site or street hydrants.
- The proposed addition is predominantly located over Lot 2 on RP716145 which adjoins the existing Clubhouse on a separate allotment.
- The location of the proposed addition in relation to allotment boundaries is not considered directly relevant to the Appeal and therefore associated fire separation issues have not been considered by the Committee. This decision does not reduce the Assessment Manager's responsibility to ensure that this matter is duly considered.

## **Reasons for the Decision**

The proposal of one on site fire hydrant at the rear of the building and two off site street hydrants located on Mulgrave Road is considered to satisfy Clause 2.1.1 and 7.2(f) of AS2419.1-2005.

A fire brigade booster assembly is not required because not more than one external on site fire hydrant is required to serve the building.

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**Building and Development Committee Chair**  
**Date: 19 December 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 Housing and Public Works  
GPO Box 2457  
Brisbane QLD 4001  
**Telephone (07) 3237 0403 Facsimile (07) 3237 1248**