



## Development Tribunal – Decision Notice

---

### **Planning Act 2016**

<b>Appeal Number:</b>	<b>01-18</b>
<b>Appellant:</b>	Queensland Fire and Emergency Service (QFES)
<b>Assessment Manager:</b>	Shawn Patrick Brosnan of TT Building Surveyors
<b>Concurrence Agency:</b> (if applicable)	N/A
<b>Site Address:</b>	682 Rode Rd, Chermside West and described as Lot 1 on RP907033 – the subject site

---

### **Appeal**

Appeal by Queensland Fire and Emergency Service (QFES) as an Advice Agency under schedule 1, table 3 of the *Planning Act 2016* (PA) against the decision of an Assessment Manager to issue a Certificate of Classification for the subject site.

---

<b>Date and time of hearing:</b>	10:00 am – 19 April 2018
<b>Place of hearing:</b>	Meeting Rooms, Building Codes Queensland, Level 16, 41 George Street Brisbane
<b>Tribunal:</b>	Sam le Noble – Chairperson Michael Moran – Member
<b>Present:</b>	<b>Appellant</b> Peter Mattsson – QFES Steven McKee – QFES Geoffrey Verrall – QFES  <b>Respondent</b> Shawn Patrick Brosnan – TT Building Surveyors Ashley Trost – TT Building Surveyors  <b>Owner Representative</b> Martin – Tricare Developments

---

### **Decision:**

The Development Tribunal (Tribunal), in accordance with section 252 of the *Planning Act 2016* (PA) finds it has no jurisdiction to decide the appeal.

Please be advised that any period for starting proceedings in the Planning and Environment Court for the matter that was the subject of the proceedings before this Tribunal starts again when this decision notice is given to the Appellant (refer to section 252 of the PA).

The following link outlines the steps required to lodge an appeal with the Planning and Environment Court.

<http://www.courts.qld.gov.au/courts/planning-and-environment-court/going-to-planning-and-environment-court/starting-proceedings-in-the-court>

## Background

The approval granted on the subject site by the Assessment Manager is for a 4 storey class 9c/5/7a aged care facility as described in the building development approval.

The building is an extension to an existing 9c aged care facility and is of Type A construction in accordance with the Building Code of Australia (BCA).

During the assessment and approval process, a referral application was made to Queensland Fire and Emergency Services (QFES) as an Advice Agency in accordance with the provisions of Schedule 9 of the *Planning Regulation 2017* (PR). The assessment application included the following special fire services;

- Fire detection and alarms
- Fire Mains
- Sprinklers

A fire safety engineering report dated 11 March 2016 revision 1 prepared by Wood & Grieve was also submitted with the building development approval for assessment by QFES. The report contained two performance solutions, the first being a solution to permit steel columns to not achieve an applied FRL and the second to allow an increase to the size of certain smoke compartments.

QFES undertook a detailed assessment of the fire engineering report and the special fire services referred to in the assessment application. In accordance with the *Sustainable Planning Regulation 2009*, schedule 7 table 1 (applicable at the time) QFES issued advice stating the application was assessed as “compliant” on 14 April 2016.

Upon receiving QFES advice on 14 April 2016, the Assessment Manager issued a development permit for building work in accordance with the *Sustainable Planning Act 2009* (SPA) s335 on the 3<sup>rd</sup> August 2016.

QFES was given notice under section 38(2) of the *Building Regulation 2006* (BR) to inspect the referral agency aspects of the building work. During the inspection QFES raised concerns regarding two egress stairs. The primary concerns raised were that the egress stairs were interior to the building and therefore required stair pressurisation. QFES subsequently issued a “non-compliant” Advice Agency response letter dated 11 December 2017 (pursuant to section 39(3)(b)(ii) of the BR) that stated:

*The inspection revealed that there is no Fire Isolated Exist Pressurisation Systems in this nursing home extension. QFES believe the 2 x 4 storey staircases are internal stairs, and view them as internal stairs as referenced in the Building Development and Dispute Resolution Committee appeal 07-16.*

Upon receipt of the above response, the Assessment Manager reviewed the advice and evidently determined the stairs met the deemed to satisfy requirements of the BCA for external stairs, and subsequently issued a Certificate of Classification for the building. The QFES then brought this appeal seeking to ‘set aside’ the certificate of classification – see one page attachment to the Form 10 filed on 19 January 2018.

A hearing was conducted at Building Codes Queensland, Level 16 Mineral House, 41 George Street Brisbane at 10am on 19 April 2018. During the hearing the following representations were made:

Appellant Representations:

- Predominant issue for QFES is smoke logging which can hinder egress and intervention by QFES;
- QFES believe the stair was approved as an 'exterior' stair but identified it as 'interior' at the referral agency inspection;
- The stair is an internal stair and as per the deemed-to-satisfy requirements of the BCA, it requires a stair pressurisation system;
- Smoke logging in the stair would cause panic;
- There is potential for a clash of movement as brigade intervention and egress occur in the stairs;
- The presence of louvres meant that the stair is substantially enclosed;
- QFES referred to s40 of the BR and advised they never received an information notice pursuant to s40;

Respondent Representations:

- A meeting was held on 18 December 2015 between QFES, the Assessment Manager and Tricare Developments to discuss the Fire Engineering Brief (FEB);
- The Assessment Manager provided a brief summary of the building characteristics including the location of egress stairs and relevant fire safety provisions;
- QFES issued a 'compliant' assessment letter which did not detail requirements for stair pressurisation systems;
- QFES do not have referral jurisdiction for BCA deemed-to-satisfy elements and the external stair satisfies the BCA requirements;

After the hearing the following representations were made;

Appellant Representations:

- At the invitation of the Tribunal the appellant made a written submission concerning the Tribunal's jurisdiction for this appeal and also whether the appeal was commenced within the required time;

Respondent Representations:

- At the invitation of the Tribunal the respondent made a written submission concerning the Tribunal's jurisdiction for this appeal and also whether the appeal was commenced within the required time;
- At the invitation of the Tribunal the respondent made a written submission concerning the application of how the stairs meet the performance requirements of the BCA;

**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 Tribunals Registrar 19<sup>th</sup> January 2018 including the following;

- a. Appendices 1 through to 8;
  - b. QFES written submission dated 18 January 2018.
2. Wood & Grieve Meeting Minutes dated 18 December 2015.
  3. Wood & Grieve Fire engineering report revision 1, dated 11 March 2016.
  4. Architectural drawings prepared by PDT Architects; A00-02, A02-21, A02-50, A02-51, A02-52, A02-53, A04-02, A06-02, A09-22, A10-01, A10-02.
  5. Decision Notice – Development Permit for Building Work dated 3 August 2016.
  6. QFES “Compliant” Assessment Letter dated 14 April 2016.
  7. Application to Assess/Reassess Special Fire Services and/or Alternative Solution Design dated 23 March 2016 (Submission No. S00010824).
  8. QFES “Non-compliant” Inspection Letter dated 11 December 2017.
  9. Building and Development Dispute Committee Appeal No. 16-15.
  10. Submission by TT Building Surveyors presented at the hearing detailing the approval process, legislative process and photographs of the stairs.
  11. ‘Tribunal’ Notes TT vs QFES 180419 by Michael Moran.
  12. Submissions of the Queensland Fire and Emergency Services for appeal 01-18 received by the Registrar on 6 June 2018 in response to Tribunal email sent to the Appellant on 23 May 2018.
  13. Letter from Corrs Chambers Westgarth lawyers dated 21 June 2018 in response to QFES submission dated 6 June 2018 titled “QFES appeal against decision to issue Certificate of Classification’.
  14. *Sustainable Planning Act 2009 (SPA)*;
  15. *Sustainable Planning Regulation 2009 (SPR)*;
  16. *Building Act 1975 (BA)*;
  17. *Planning Act 2016 (PA)*;
  18. *Planning Regulation 2017 (PR)*;
  19. National Construction Code Series, Building Code of Australia, Volume 1, 2015 (BCA);
  20. Verbal submission from all parties at the hearing;
  21. Email correspondence from Shawn Brosnan dated 11 May 2018 regarding additional information requested by the Tribunal;
  22. Email correspondence from Chris White dated 15 May 2018 in response to additional information sent to the Registrar from Shawn Brosnan;
  23. Appellant’s written submission received by the Registry on 6 June 2018 concerning jurisdiction and the time limit for the appeal;
  24. Respondent’s submission (letter from Corrs Chambers Westgarth dated 21 June 2018) received by the Registry on 21 June 2018 concerning jurisdiction and the time limit for the appeal.

25. Building and Development Dispute Resolution Committee decision for appeal 07-16;

## Findings

The Tribunal makes the following findings;

1. QFES is given jurisdiction as a Referral Agency for advice only under schedule 9 of the PR for special fire services;
2. *Stairwell pressurisation systems* are considered a special fire service under schedule 19, part 1, item 14;
3. The building development approval issued on 3 August 2016 did not include *stairwell pressurisation systems*;
4. The plans issued to QFES for assessment were the same plans included in the building development approval;
5. QFES undertook an inspection of the building works pursuant to s39(2) of the BR and provided the assessment manager with an inspection notice stating the works did not comply with the building development approval;
6. The inspection notice provided to the assessment manager pursuant to s39(b)(3)(ii) included an aspect that did not form part of the building development approval;
7. A certificate of classification for the subject building was issued by the assessment manager on 19 December 2017 and received by QFES on 22 December 2017;
8. An appeal by QFES was lodged in the approved form (Form 10) and received by the Registrar on 19 January 2018;
9. The appeal notice in section 3 included a field labelled 'Date written notice of decision received'. This field was completed on behalf of the QFES with the words 'Certificate of Classification dated 19 December 2017, and received by QFES on 22 December 2017'. Also the grounds of appeal appearing in an attachment to the appeal notice included the statement "... it is QFES's opinion that the Building Certifier's decision to issue the Certificate of Classification was invalid and should be set aside.". The Tribunal accordingly construes the appeal as being against the decision to issue the Certificate of Classification, rather than some other decision.
10. The appeal period for appeals to a Tribunal and P&E Court is outlined in section 229(3)(a) of the PA;
11. Section 229(3)(a) of the PA states;  
*for an appeal by a building advisory agency – 10 business days after a decision notice for the decision is given to the agency*
12. Schedule 2 of the PA defines the term 'building advisory agency' as;  
*for a development application, means an advice agency for the application whose functions relate to the assessment of building work against the building assessment provisions*
13. The Tribunal accordingly finds that the QFES is a building advisory agency for the relevant development application in this instance;
14. An appeal may be lodged with the Registrar within the appeal period, however, in the Tribunal's opinion, QFES lodged an appeal after the appeal period had expired. In particular, the Certificate of Classification was received by the QFES on 22 December 2017 however the appeal was not filed until 19 January 2018, some 17 business days later.
15. The assessment manager made a decision to disagree with the inspection notice provided by QFES, however the assessment manager failed to provide an information notice to QFES about the decision, which is required pursuant to s40 of the BR;

16. The term 'information notice' is relevantly defined in schedule 2 of the BA as follows;

*Information notice, for a decision, means –*

- (a) *If the decision may be appealed under the Planning Act – a notice stating –*
- a. *The decision, and the reasons for it; and*
  - b. *All rights of appeal against the decision under the Planning Act; and*
  - c. *How the rights are to be exercised;*

17. The appeal rights for a referral agency outlined in Schedule 1, Table 3, Item 3 of the PA state;

*An appeal may be made against;*

- (a) *A decision under the Building Act, other than a decision made by the Queensland Building and Construction Commission, if an information notice about the decision was given or required to be given under the Act;*

18. The Tribunal considers that the BA does not require an assessment manager to give an information notice when issuing a certificate of classification.

### **Reasons for the Decision**

1. Having regard to the Form 10 (notice of appeal) which commenced this appeal, the Tribunal considers that the appeal is properly construed as an appeal against the decision to issue the Certificate of Classification.
2. In a written submission provided by the appellant on 6 June 2018 at the request of the Tribunal (after the formal hearing attended by the parties on 19 April 2018) the appellant sought to amend the notice of appeal so as to permit the decision appealed against to be treated as being the relevant decision of the building certifier under s40 of the BR. The effect of this amendment would be to fundamentally change the nature of the appeal. The Tribunal does not consider it has power to accede to this course, and if it does have such power that it would be appropriate to do so at such a late stage.
3. In the Tribunal's opinion, the only potential basis for such jurisdiction would be schedule 1, table 3, item 3(a) of the PA, however no 'information notice' requirement is triggered under the BA (or the BR) upon the making of a decision to issue a Certificate of Classification.
4. If the Tribunal were able to treat this appeal as being against the decision of the building certifier under s40 of the BR, the Tribunal would consider the Certificate of Classification operated as the decision notice for that decision in the absence of an information notice. The appellant provided a written submission asserting that the Certificate of Classification '*must necessarily be considered to be the notice of the certifiers decision*' under s40 of the BR. On this view, the appeal would be regarded as having been commenced after the appeal period (refer to section 229(3)(a) of the PA), and the Tribunal would have no jurisdiction to extend this time limit.
5. Therefore, the Development Tribunal (Tribunal), in accordance with section 252 of the PA, finds it has no jurisdiction to decide the appeal.

---

**Samuel le Noble**  
**Development Tribunal Chair**  
**Date: 27 July 2018**

## **Enquiries**

All correspondence should be addressed to:

The Registrar of Development Tribunals  
Department of Housing and Public Works  
GPO Box 2457  
Brisbane QLD 4001

**Telephone (07) 1800 804 833 Facsimile (07) 3237 1248**