



APPEAL
Integrated Planning Act 1997

File No. 03-05-015.

BUILDING AND DEVELOPMENT TRIBUNAL - DECISION

Assessment Manager: Logan City Council

Site Address: *withheld* – “the subject site”

Applicant: Queensland Fire and Rescue Service C/- Brian Humphreys

Nature of Appeal

An appeal under Section 4.2.10. of the Integrated Planning Act 1997 by the Queensland Fire and Rescue Service against a decision by Stephen Bartley to issue a decision notice for the building development application. The decision notice disregarded the Queensland Fire and Rescue Authority’ advice in relation to the need for services and equipment to a Class 6 compartment.
The building development application is for building work to be erected on land described as Lots 1 and 18 on *withheld* and situated at “the subject site”.

Date and Place of Hearing: 9:30 AM on Wednesday the 20th April 2005
at Level 25, 41 George Street, Brisbane

Tribunal: Ron Blake

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|-----------------|-----------------|---------------|
| Present: | Brian Humphreys | QFRS |
| | Ken Hammond | QFRS |
| | Stephen Bartley | Bartley Burns |
| | Phil Finnimore | Bartley Burns |

Decision

In accordance with Section 4.2.34 [2] (a) of the *Integrated Planning Act 1997*, I find as follows –

1. The Queensland Fire and Rescue Service has the right to lodge this appeal and the Tribunal has the jurisdiction to hear it;
2. The decision of the certifier that the deemed-to-satisfy provisions require the installation of an automatic smoke detection and alarm system complying with Specification E2.2a to the supermarket compartment is **set aside** and require that the supermarket compartment (under the deemed-to-satisfy provisions) is to include either of the following:
 - an automatic smoke exhaust system complying with Specification E2.2b; or

- a sprinkler system complying with Specification E1.5

3. The decision notice of the certifier is to be **set aside** and the certifier is to issue a new decision notice taking into account this decision.

Background

A building development application relates to construction of a new supermarket and speciality shops at ground level and a slight increase in size of an existing partially underground car park. The matter to be considered relates to the interpretation/application of Clause E2.2(a)(ii) of the Building Code of Australia 2004 (BCA-2004). The interpretations are influenced by the meaning of the word “building”.

Jurisdiction

Timing

Decision notice given to QFRS: 3/3/05.
Maximum period for appeal: 10 Days.
Appeal must be made by 17/3/05.
Date of appeal: 15/3/05.
Conclusion: Satisfactory.

Content

Both parties recognised the QFRA as an advice agency for the building development application. IPA contains the appropriate legislation relating to the content of the QFRS response.

3.3.19 Advice agency’s response powers

- (1) *An advice agency’s response may, within the limits of its jurisdiction, recommend to the assessment manager 1 or more of the following—*
- (a) *the conditions that should attach to any development approval;*
 - (b) *that any approval should be for part only of the application;*
 - (c) *that any approval should be a preliminary approval only.*
- (2) *Alternatively, an advice agency’s response may, within the limits of its jurisdiction, advise the assessment manager—*
- (a) *it has no advice agency recommendations; or*
 - (b) *it should refuse the application.*
- (3) ***An advice agency’s response may also do either or both of the following—***
- (a) ***offer other advice to the assessment manager about the application;***
 - (b) *tell the assessment manager to treat the response as a properly made submission.*

Both parties agreed that the responses issued by the QFRS satisfied the requirements of 3(a). Hence it is concluded that the Tribunal has jurisdiction to hear the appeal.

Material Considered

The following design documentation was considered during the hearing.

Drawings prepared by: Thomson Adsett Architects
Project: Re-development at “the subject site”

| Title | Drawing No | Issue |
|------------------------------|-------------------|--------------|
| Site plan | 7337 - A001 | D |
| Basement Floor plan | 7337 - A002 | F |
| Supermarket - Floor plan | 7337 - A003 | C |
| Speciality Shop - Floor plan | 7337 - A004 | E |
| Roof Plan | 7337 - A007 | D |
| Elevations | 7337 - A008 | B |
| Elevations | 7337 - A009 | B |
| Sections | 7337 - A010 | B |

The reference material also included the responses by the fire brigade to submissions via the building certifier and the decision notice of the building certifier. The decision notice also included a statement of interpretation on the matter being considered.

Verbal submissions were made by both the Fire Brigade and the certifier. Both parties discussed points presented by the other.

Review Methodology

The following BCA interpretation method was adopted.

- BCA-2004 and in particular the deemed-to-satisfy (DTS) provisions are primarily considered as a code for designers. The interpretation of DTS requirements should not require detailed knowledge of specialist fields for clarification.
- Determine the relevant clause being interpreted.
- Determine any other clause that may have a significant bearing on the section being reviewed.
- Interpretation of the clause based on the normal meaning of any building industry terms in that section.
- Review sentences in full context.

Analysis

The key components, ie compartments, relating to the application are indicated in the following sketches. It has also been agreed by both parties that the rise in storey is 2. The calculation of rise in storey is as per clause C1.2.

BCA-2004 contains clause A1.7 which relates to language.

“A1.7 Language

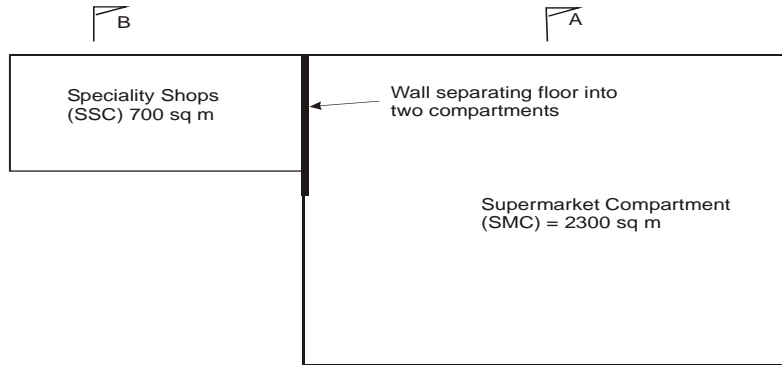
(a) A reference to a building in the BCA is a reference to an entire building or part of a building, as the case requires.”

Hence when the word “building” appears in the DTS provisions it may be referring to the whole building or part of the building. The particular situation where it appears should give guidance to the extent.

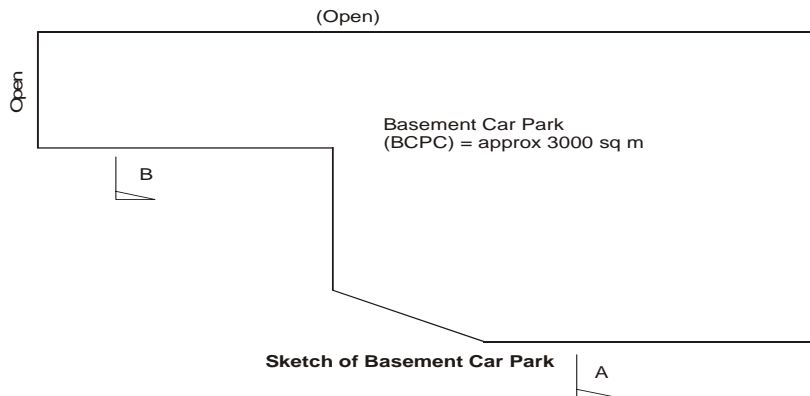
Applicable information relating to compartment sizes:

| Description of Compartment | Area |
|--------------------------------------|---------------------|
| Basement Car Park Compartment (BCPC) | 3000 m ² |
| Supermarket Compartment (SMC) | 2300 m ² |
| Speciality Shop Compartment (SSC) | 700 m ² |

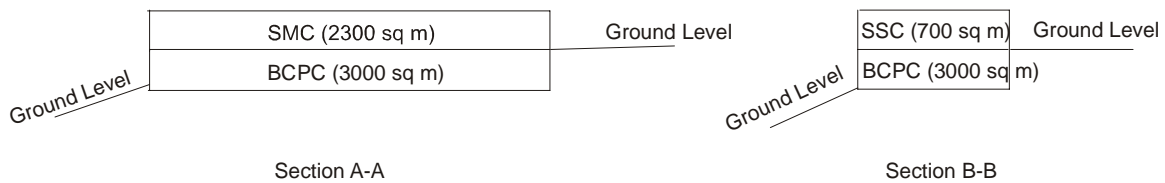
The building certifier and Fire Brigade agree on all aspects of BCA application except for the requirements of clause E2.2(a)(ii) in its requirements to the ground floor level of the building and in particular to the supermarket compartment (SMC).



Sketch of Ground Level Floor Plan



Sketch of Basement Car Park



| BCA Clause | Comment |
|--|--|
| <p>E2.2 General requirements (a) A building must comply with (b), (c), (d) and— (i) Table E2.2a as applicable to Class 2 to 9 buildings such that each separate part complies with the relevant provisions for the classification; and (ii) Table E2.2b as applicable to Class 6 and 9b buildings such that each separate part complies with the relevant provisions for the classification.</p> | <p>Both parties agree that clause E2.2 is directing the reader to Table E2.2b. The information to be determined for this building design is related to the Class 6 section of the building. (ie separate part of the classification)</p> |
| <p>Table E2.2b SPECIFIC PROVISIONS</p> | <p>Relevant section to determine requirements.</p> |
| <p>CLASS 6 BUILDINGS—IN FIRE COMPARTMENTS MORE THAN 2000 m²</p> | <p>The speciality shop compartment is not considered as it is less than 2000 m². By continuing the analysis the requirements for supermarket compartment will be determined.</p> |
| <p>CLASS 6 BUILDINGS (not containing an enclosed common walkway or mall serving more than one shop)</p> | <p>This table is applicable as the design does not contain a common walkway or mall.</p> |
| <p>(a) Each fire compartment having a floor area of more than 2000 m², other than in a shop described in (b), must be provided with—</p> | <p>The following will apply to supermarket compartment as it is greater than 2000 m².</p> |
| <p>(i) an automatic smoke exhaust system complying with Specification E2.2b; or</p> | <p>This may be an optional design choice.</p> |
| <p>(ii) automatic smoke-and-heat vents complying with Specification E2.2c, if the building is single storey; or</p> | <p>The design of smoke and heat vents is generally through a roof and hence this sub section would generally apply a top floor. However the use of “<i>building</i>” and “<i>single storey</i>” in a sentence with the phrase “<i>building is single storey</i>” indicates “<i>building</i>” refers to the whole not part. i.e. the design relates to a single storey building.</p> |

| | |
|---|--|
| <p>(iii) if the floor area of the fire compartment is not more than 3500 m² and the building—</p> | <p>As the supermarket compartment is less than 3500 m² then this section may be applicable. The meaning of “<i>building</i>” has to be determined from reading this and the continuing subsections.</p> |
| <p>(A) is single storey, an automatic smoke detection and alarm system complying with Specification E2.2a; or</p> | <p>The continuing sentence can be read as “<i>if the floor area of the fire compartment is not more than 3500 m² and the building is single storey,</i>” The use of “<i>single storey</i>” suggests a holistic approach and hence “<i>building</i>” refers to the whole and not part. When the building is examined from some elevations it appears to be two storeys. Hence this sub-section would not be applicable as the whole building is not a “<i>single storey</i>”.</p> <p>The alternative way of examining this clause is to make the substitution for “<i>building</i>” ie “<i>part of a building</i>” “<i>if the floor area of the fire compartment is not more than 3500 m² and the part of a building is single storey,</i>” If it was intended to refer to part of the building then the reference to a single storey is incongruous. The appropriate reference would be to a single level.</p> |
| <p>(B) has a rise in storeys of not more than 2, a sprinkler system complying with Specification E1.5.</p> | <p>The continuing sentence can be read as “<i>if the floor area of the fire compartment is not more than 3500 m² and the building has a rise of storeys of not more than 2,</i>”.</p> <p>This is applicable to the case as the building has a rise of storey of 2 and the BCA method of determination of “<i>rise in storey</i>” is based on a holistic approach to the form of the structure.</p> <p>The alternative way of examining this clause is to make the substitution for “<i>building</i>” ie “<i>part of a building.</i>” “<i>if the floor area of the fire compartment is not more than 3500 m² and the part of a building has a rise of storeys of not more than 2,</i>”.</p> <p>Again this is not logical as the method of determination of rise of storey is based on the whole building not part. Hence building refers to the whole and not part. This supports the interpretation of the previous subsection. Hence the requirement for a sprinkler system is a design choice.</p> |

Conclusion

Based on the analysis, it is apparent the designer has a choice of two systems to allow the building to comply with the DTS provisions.

The appropriate choices for the designer to install in the supermarket compartment are either of the following;

- a. an automatic smoke exhaust system complying with Specification E2.2b or
- b. a sprinkler system complying with Specification E1.5

Findings of Fact

Based on the methodology outlined and the analysis I made the following findings of fact:

The designers must implement one of the following DTS choices for the Class 6 supermarket compartment.

- a. an automatic smoke exhaust system complying with Specification E2.2b or
- b. a sprinkler system complying with Specification E1.5

The decision of the certifier and the designer is to be altered to reflect the DTS requirements. The option of an Alternative Solution for a departure to either of these clauses is also available.

Reasons for the Decision

The decision is based on the submissions, discussions with the parties and the analysis. I have reached the following conclusions that the DTS clauses require the installation of either:

- a. an automatic smoke exhaust system complying with Specification E2.2b; or
- b. a sprinkler system complying with Specification E1.5; and

the decision of the certifier to approve the proposal based on the proposed installation of “an automatic smoke detection and alarm system complying with Specification E2.2a” is incorrect.

Ron Blake
Building and Development
Tribunal Referee
Date:

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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