



Building and Development Tribunals

Queensland Government

Department of Local Government and Planning

APPEAL

Integrated Planning Act 1997

File No. 03-07-055

BUILDING AND DEVELOPMENT TRIBUNAL - DECISION

Building Certifier: Napier & Blakeley Pty Ltd

Site Address: *withheld*-the subject site.

Applicant: Queensland Fire & Rescue Service, Rockhampton

Nature of Appeal

Appeal by the Queensland Fire & Rescue Service (*QFRS*) pursuant to section 4.2.10 of the *Integrated Planning Act 1997* against the issuing of decision notice 4006318.PC2 *Development Permit for Building Work* by Napier & Blakeley Pty Ltd to permit construction of *withheld* on the subject site.

Date and Place of Hearing: 10:00 am Thursday 11 October, 2007
at Level 17, Mineral House, 41 George Street, Brisbane.

Tribunal: Christopher Odgers - Chairperson
Russell Bergman - Member

Present: Dan Caldwell - Building Certifier, Napier & Blakeley Pty Ltd
Raymond Davidson - QFRS Representative
Wayne Smith - QFRS Representative
Ross Williams - QFRS Representative

Decision

The appeal lodged by QFRS against the decision of Napier Blakeley Pty Ltd to disregard the QFRS advice in relation to access and egress for the proposed building, to be located at the subject site, is **CONFIRMED**.

Background

Applicant's submission to the tribunal

The grounds of appeal submitted by Queensland Fire and Rescue Service are *summarised* as follows:-

1. The building certifier issued a decision notice without taking into account QFRS *non compliant* assessment advice.
2. A Fire Safety Engineering Brief, revisions B and C, prepared by BCA Consultants, has been received but a final *Fire Engineering Report* has not been received for assessment.
3. The building has an effective height in excess of 25m requiring at least two (2) exits off each level. Floor levels, from the basement car park to level 3 has two (2) exits available. Floor levels 4 to 11 inclusive have only one (1) available exit because the configuration of the sole occupancy units causes bounding construction to dissect each floor into a compartment having only one (1) exit stair available at that part of the storey serving three (3) sole occupancy units on floors 4 to 10 and two (2) sole occupancy units on floor 11.
4. QFRS comments on the received Fire Safety Engineering Brief have been ignored by the building certifier.
5. Other grounds submitted by QFRS include:-
6. Restricted fire fighting operations caused by the single exit stair configuration on level 4 – 11 inclusive. Fire fighters may have to access the same stair that occupants are using to evacuate.
7. The location of the fire control centre does not facilitate fire brigade operational procedures. The fire control centre is proposed to be located on Level 1 (*Ground Floor*) within the confines of the car park.
8. Exit stair re-entry provisions have not been demonstrated and cannot be achieved due to the location of bounding construction on levels 4 – 11 inclusive (*an alternative exit would not be available*).
9. Discharge of Stair 4 to a road or open space. Travel more than 60m through a fire isolated exit configuration.
10. Managers office entry to a fire isolated passageway. The building certifier has considered the office to be public space.
11. Door leading into the passageway No 3 adjacent stair 3 on Level 2. Occupants using Stair 4 and the convoluted path of travel that follows Stair 4 will cause confusion.
12. Pressurisation of exit stairs and fire isolated passageways. There appears to be no doors separating the stairs from the passageways. It is not clear how pressurisation is to be achieved.

Napier and Blakeley Pty Ltd submission to the tribunal

Document dated the 11 October 2007 in response to QFRS matters.

Material Considered

Material submitted by the *applicant* with “*Notice of Appeal - Form 10*” to the Tribunal on the 24 September 2007-

- QFRS documentation dated the 20 and 21 September 2007 outlining the purpose for Appeal;
- QFRS documentation relating to the project dated the 14 November 2005 – comments relative to the review of the Fire Engineering Brief;
- QFRS documentation relating to the project dated the 22 March 2006 – comments relative to the review of the Fire Engineering Brief Rev C;

- Napier & Blakeley Pty Ltd Decision Notice dated the 6 September 2007;
- BCA Consultants Fire Safety Engineering Brief – Rev B – draft;
- BCA Consultants Fire Safety Engineering Brief – Rev C – draft;
- Compact disc containing – floor plans and elevation with the following architectural plans submitted to the Tribunal:-
 - Level 1B floor plan – A-010/44;
 - Level 2 Floor Plan – A-012/38;
 - Level 1 Floor Plan – A-011/48;
 - Level 3 Floor Plan – A-013/29;
 - Level 4 to 10 Typical Floor Plan – A-014/28;
 - Level 11 Floor Plan – A-015/19;
 - Level 12 Floor Plan – A-016/16;
 - Roof Plan – A-017/10;
 - North elevation – A-030/10;
 - Section A – A-040/11;
 - Section B – A-041/13;
 - Section C – A-042/11;
 - Section D – A-043/14; and
- The Building Code of Australia;
- The *Building Act 1975*;
- The *Integrated Planning Act 1997*;
- QFRS document dated the 5 October 2007 submitted to the Tribunal contain a summary of the concerns;
- “Queensland Fire and Rescue Service – *Policy on Fire Engineered Alternative Solutions*” submitted to the Tribunal by QFRS.

Following the Tribunal hearing, additional information, at the request of the Tribunal, was received-

- Letter dated the 11 October, 2007 received from Napier and Blakeley Pty Ltd providing their interpretation of the BCA D1.2(g), D1.7(a), D2.22, and Specification E1.8 applied to the building design.
- Building Codes Queensland – *68A Statement of reasons for approving alternative solution* extract from out of the *Building Act 1975*.

Note: The minutes of the Fire Safety Engineering meeting, conducted by all stakeholders to determine the alternative solution referenced in the BCA Consultants (*Fire engineering consulting firm*) Fire Safety Engineering Briefs, have not been submitted. These minutes were requested by the Tribunal to determine if *due process* had been followed.

Findings of Fact

The appeal was lodged with the Registrar within the prescribed time frame in accordance with section 4.2.10 of the *Integrated Planning Act 1997*.

Due process in delivering an alternative solution/s has not been adequately demonstrated. This is evidenced in the hearing presentations and the hearing submissions. *Due process* is the right of all stakeholders to participate and to be heard, and all methods and actions and decisions must be carried out in a prescribed, agreed and understandable way and recorded.

Due process is stated in the Building Code of Australia methodology as A0.8, A0.9 and A0.10 and must be used where an Alternative Solution is applied in whole or part to a building design. The Alternative Solution *process* is evidenced in the QFRS Policy on *Fire Engineered Alternative Solutions* and *The International Fire Engineering Guidelines – 2005*.

In particular, the BCA A0.10, requires the following-

Quote: In order to comply with the provisions of A1.5 (*to comply with sections A to J inclusive*) the following *method* must be used to determine the Performance Requirement or Performance Requirements relevant to the Alternative Solution:

- (a) identify the relevant *Deemed-to-Satisfy* Provision of each Section or Part that is to be the subject of the *Alternative Solution*.
- (b) identify the *Performance Requirements* from the same Sections or Parts that are relevant to the identified *Deemed-to-Satisfy* Provisions.
- (c) identify *Performance Requirements* from other Sections and Parts that are relevant to any aspects of the *Alternative Solution* proposed or that are affected by the application of the *Deemed-to-Satisfy* Provisions, that are the subject of the *Alternative Solution*.

The Building Code of Australia, A0.8 requires an *Alternative Solution* to be assessed according to one or more of the *Assessment Methods*. A0.9 lists the *Assessment Methods*.

There is no evidence in the Fire safety Engineering Brief or in the building certifier documents that demonstrates that the BCA A0.10 *assessment* has been provided.

The BCA *Performance Requirements* CP2, DP1, DP4, DP6 and EP2.2 are referenced in the Fire Safety Engineering Brief Rev B and C but these *Performance Requirements* have not been closed off in either a Fire Safety Engineering *Report* or the building certifiers *Decision Notice*.

The building certifier, acting as agent for and on behalf of Napier & Blakeley Pty Ltd, has *erred* in the interpretation of the Building Code of Australia being D1.2(b)(i). The proposed building will have an effective height of more than 25m and the BCA D1.2(b)(i) requires two (2) exits to be provided for safe occupant evacuation. The Guide to the BCA as commentary to support D1.2(b)(i) states “*It may be necessary to provide several alternative exits*”. It is pointless to provide an alternative exit if all of the building occupants on a particular floor cannot readily or reasonably access an *alternative exit* from the particular level or part where they may be situated.

The *Building Act 1975* Clause 68A requires the building certifier to include in the *Decision Notice* a *statement of the reasons for approving an alternative solution* when an *Alternative Solution* is applied. There is no evidence of Clause 68A being applied in the building certifiers *Decision Notice*.

The absence of minutes of meetings in relation to the *Alternative Solution* have not been presented.

A Fire Engineering *Report*, relative to the fire safety engineered alternative solution, has not been presented. The Tribunal has noted that a *Fire Safety Engineering Design Brief*, of which there are two (2) revisions, is currently in *draft* form.

Reasons for the Decision

In addressing the applicant's grounds for appeal to the issue of the *Decision Notice*, the following reasons are provided-

1. *Due process* in delivering an alternative solution/s has not been followed or adequately demonstrated.
2. The building certifier has *erred* in the interpretation of the BCA D1.2(b)(i) in relation to the required number of exits for a building in excess of 25m in effective height.
3. There is no evidence in the Fire Safety Engineering Brief or in the building certifier documents that the BCA A0.10 *assessment* has been applied.
4. The absence of minutes of meeting in relation to the Alternative Solution have not been presented.
5. A Fire Engineering *Report*, relative to the fire safety engineered alternative solution, has not been presented. The Tribunal has noted that the *Fire Safety Engineering Design Brief* is in *draft* form.

General Comments

Where an alternative solution is required to be followed because the building design cannot reasonably satisfy the BCA Deemed-to-Satisfy provisions, the following process should be put in place-

A. Assess the building design for compliance with reference to the methods stated in A0.08, A0.9 and A0.10 of the Building Code of Australia (BCA);

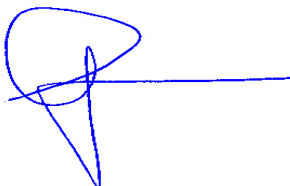
B. All stakeholders to meet to determine the BCA Deemed-to-Satisfy non compliant issues raised under the building certifiers A0.10 assessment;

C. Employ fire engineering methods, calculations and reporting to ensure there is *due process* applied in determining the alternative solutions.

Acceptable methods are contained in the "*International Fire Engineering Guidelines – Edition 2005*" and/or the "*Queensland Fire and Rescue Service – Policy on Fire Engineered Alternative Solutions*"

D. Issue a revised *decision notice* stating the reasons for issuing of such *decision notice* as outlined in the Building Act 1975 Clause 68A, following completion of *due process*.

In discussing whether construction should continue, it was considered the issues raised by the applicant will not have a detrimental affect on the main building construction; the issues raised will affect only bounding construction, partition walls and the fire alarm system design and installation. The Tribunal leaves this issue with the building certifier who must determine this matter.



Christopher Odgers
Building and Development Tribunal Chairperson
Date: 29 October 2007

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:

The Registrar of Building and Development Tribunals
Building Codes Queensland
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