



**Building and Development Tribunals**

**Queensland Government**

Department of **Local Government and Planning**

**APPEAL**

*Integrated Planning Act 1997*

**File No. 03-03-036**

## **BUILDING AND DEVELOPMENT TRIBUNAL - DECISION**

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**Private Certifier:** Mr Max Ficca (Logan Development Services)

**Site Address:** 67 Cascade Street RACEVIEW

**Appellant:** Mr Raymond Davidson (Queensland Fire and Rescue Service, Brisbane South-Eastern Region)

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### **Nature of Appeal**

The appeal by the Queensland Fire and Rescue Service (QFRS) pursuant to *s4.2.10, Appeal by an advice agency* under the Integrated Planning Act 1997 disputes the respondent's actions to (1) issue a Decision Notice and the Certificate of Classification for the development application and (2) that the advice given by the appellant, as a *referral agency (advice)* under the Integrated Planning Regulation 1998, was not fully accepted by the respondent thus rendering a less safe approval than should be provided.

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**Date and Place of Hearing:** 11:00am, Thursday 17 July, 2003 at Level 25, Mineral House, 41 George Street, Brisbane

**Tribunal:** *Mr Russell Bergman* (Chair)  
*Mr Greg Schonfelder* (Member)  
*Mr Warwick Barnett* (Member)

**Present:** *Mr Raymond Davidson and Mr Brian Humphries*, Building Approval Officer, QFRS as applicant on Form 10 Building and Development Tribunals Appeal Notice;  
*Mr Massimo (Max) Ficca*, Building Certifier, Logan Development Services;  
*Mr Stephen Burton*, Fire engineer and Fire Safety Report author, FERM Engineering;  
*Mr Bill Kemp*, FERM Engineering;  
*Mr Ryne Enright*, builder's representative, Ramcorp and Associates Pty Ltd; and  
*Mr David Stoyankovich*, dient representative, Lifecare Services Australia.

**Decision:**

The appeal by the QFRS is upheld. The amended decision notice dated 17 June 2003 (Approval No. 023472) issued by Logan Development Services is set aside. A further Decision Notice is to be issued by the building certifier taking into consideration the deemed-to-satisfy provisions of the BCA or alternatively, an alternative solution under the Building Code of Australia (BCA) performance requirements. If a BCA *alternative solution* is to be adopted then a fire engineering analysis and report should examine all the relevant BCA performance requirements, not just BCA CP2. The report shall also address whether all alarms in a building shall require interconnection and to what level or standard. The new fire engineering report shall be referred to the QFRS for their advice in accordance with Schedule 2 of the Integrated Planning Regulation 1998.

The Certificate of Classification dated 19 June 2003 (Certificate No. LDS 0316) issued by the respondent is set aside. A new Certificate of Classification shall be issued after the decision notice itself has been issued.

**Background:**

The appeal concerned a development application for a cluster of seven (7) residential buildings containing sole occupancy units (SOUs) and in one (1) building ancillary uses for aged pensioner persons and some Class 4 accommodation. It was clearly noted by the Tribunal that the SOU's are for persons living independently and these units do not accommodate persons in need of supported care as would be expected in a typical Class 9c aged care facility. The units were assessed by the building certifier as Class 3 for the SOU parts and Class 4 for a caretaker's residence.

The development application as presented to the building certifier included an *alternative solution* and as a result, was assessed under A0.8, *Alternative Solutions* of the Building Code of Australia (BCA). The alternative solution proposal was instigated for the substitution of a fire-rated wall having a fire-resistance level (FRL) of 60/60/60. This is in accordance with the deemed-to-satisfy (DTS) provisions of BCA *Specification C1.1* and replaces it with an untested (for fire-resistance) wall system incorporating 10mm plasterboard to one side and a combination of 6mm fibre cement and 10mm plasterboard to the other wall surface.

To compensate for the lesser fire-rating standard of separating walls between SOU's, the fire engineer's alternative solution proposed elements including:

- a residential standard fire sprinkler system using AS2118.4;
- stand-alone hard-wired fire alarms in each room to AS3786, *Smoke Alarms*; and
- a system of fire alarm bells initiated by manual intervention of a trained on-site caretaker/s.

As the *alternative solution* also involved installation of a *special fire service*, then in accordance with Schedule 2 of the Integrated Planning Regulation 1998 and Schedule 2 of the Standard Building Regulation 1993, a formal request was made for advice from the QFRS. Subsequently, the advice given by the QFRS has not been accepted in full by the respondent.

## Material Considered

The Tribunal considered a range of written material as listed:

- *Form 10 - Building and Development Tribunals Appeal Notice* submitted by the Queensland Fire and Rescue Service (Mr Ray Davidson, Building Approval Officer, South-Eastern Region, QFRS) and dated 27 June 2003.
- *The Building Code of Australia* – Amendment 12 applicable to the development application.
- Copy of correspondence to the Registrar, Building and Development Tribunal, dated 26 June from Mr Ray Davidson, Building Approval Officer QFRS.
- Copy of correspondence to Mr Ray Davidson, QFRS, dated 19 June 2003 from Mr G R Kellar, Chief Executive Office, Logan Development Services.
- Copy of Certificate of Classification No. LDS0316 dated 19 June 2003 for Building Works approval number 02/3472 at 67 Cascade Street, Raceview.
- Copy of FERM engineering Reports Rev 5 and 6, Project Ref: F2090 dated 11 February, 2003 and 6 June 2003 respectively.
- A compendium of various copies of other supporting details.

## Findings of Fact

1. To compensate for a lesser specification of bounding wall construction than the DTS standard of FRL 60/60/60 passive fire protection, it was decided to include a residential fire sprinkler system to AS2118, *Automatic Fire Sprinkler Systems Part 4: Residential* as well as adoption of a hybrid occupant smoke/fire detection and warning system.
2. A report was prepared by a fire engineer to address use of a bounding wall construction between SOU's at a fire-resistance level less than prescribed by BCA Specification C1.1, Table 5 for Type C Construction.
3. The fire engineer's report did not specify which BCA performance requirements had been considered in the analysis other than BCA CP2. The report, however, discusses other elements relating to other BCA performance requirements. See further Items 3 and 4 below.
4. The BCA<sup>1</sup> states in A0.4, *Compliance with the BCA* of the Standard Building Regulation 1993, that the details of a development application must be assessed against the performance clauses of the BCA. In determining the application, the building certifier is also obligated to comply with s11 and s12 of Part 2, *Assessment of Development Applications* of the SBR 1993 as applicable. The building certifier has exercised his discretion and has so decided the application accordingly.
5. Further to Item 4, the building certifier is responsible for any discretionary elements of the application assessment where these might exist. For example, complying with s12, *Building certifier's discretion – BCA* and the BCA performance requirements, the building certifier must consider all evidence relevant to the development application proposal such as drawings, specifications, reports from experts including advice from any referral agencies as evidence that the proposed work which then, in his opinion, complies with the SBR 1993.
6. *s26 Information private certifier must give to assessment manager*, of the SBR 1993 and in subsection (e), states a private building certifier must also give to the assessment manager a notice of reasons where the “*application relates to building work that uses a performance based solution*”. This information was reasonably provided.

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<sup>1</sup> The BCA is law under the s8, *BCA forms part of this regulation*, of the Standard Building Regulation 1993

7. The Tribunal notes the action by the respondent of advising the QFRS of his decision as the QFRS is required under their own legislation to carry out future inspections to address ongoing public safety matters and standards.
8. The building certifier must, when preparing the Certificate of Classification, note on the Certificate that an *alternative solution* applies to the development approval. This was carried out.

### Reasons for the Decision

The respondent has taken all procedural steps to assess the development application content in accordance with the SBR 1993 and the BCA as he was required to do.

In making his decision, the respondent has communicated his decision (*viz.* Logan Development Services' amended Decision Notice 023472 including a letter from Mr Max Ficca to Mr Ray Davidson dated 19 June 2003 clarifying the issues where the application has involved an *alternative solution*. The building certifier (respondent) included a notice of his reasons.

The BCA is a performance based document and BCA A0.4 requires both design and assessment of proposed building work to be compliant against the performance requirements. BCA A0.5, *Meeting the performance requirements*, requires that where an *alternative solution* applies then it must be demonstrated (i) *the building work complies with the performance requirements*; or (ii) *the building work is shown to be at least equivalent to the deemed-to-satisfy provisions*. In this regard, s12 of the SBR 1993 is critical. The law requires the building certifier to decide the application.

The documentation tabled to the Tribunal supports that these duties of the building certifier and his considerations have been duly carried out. The actions of the respondent are supported by the Queensland building and development laws which detail the processes and responsibilities of the private certification system. While a couple of matters were noted in the administration of the documentation, there is clear evidence that the respondent has substantially adhered to due processes in accordance with the IPA and SBR 1993 even though the QFRS dispute some aspects.

However, the Tribunal holds that the report of FERM Engineering Pty Ltd was in itself inadequate as it did not address key criteria (ie. BCA performance requirements). As a guide, The Fire Safety Engineering Guidelines Edition 2001, s1.2.8.2, *Determine categories of evaluation extent*, suggests that this particular application is a multiple sub-system (Evaluation Extent 2) as a number of sub-systems are affected. The following views are expressed regarding the report by FERM Engineering Pty Ltd.

1. The fire engineering report should be revised to include identification, mention and analysis of other performance requirements relevant to the application. These are performance requirements brought about due to the inclusion because of the reduction in passive fire-resistance. For example, BCA Part E1, use of an automatic fire sprinkler systems, and BCA Parts E2 and E4, use of an occupant warning system provided where people are sleeping, has an important bearing on the overall assessment. While it is clear sprinkler systems and alarms have been considered, the report makes no reference to these BCA requirements. The *alternative solution* selected by the development applicant is not confined to performance requirement BCA CP.2. (*Section 3.4, Limitations* of the Ferm Engineering Report as it presently reads is inadequate.)
2. The reduction in sheet wall and ceiling thicknesses should be re-examined and at least better described as to requirements for its installation. Further discussion should provide for ensuring the potential effects of likely damage, for example, to a "Side 1" wall surface where

accidental impact damage may occur. Should this be the case, then this may enable leakage of smoke to an adjoining unit. Other issues might include penetrations to bounding wall construction such as insertion of power outlets and light switch locations and their opportunity to allow the passage of smoke and hot products of combustion and preventative treatments.

3. While the construction of the SOU's is for independent aged persons, there is no discussion within the report as to how the facility's management will deal with transition of aged persons from unsupported to supported accommodation. ie. from independent to care accommodation.
4. Where an occupant warning system is required, the specification of bells or electronic warning signals are required as local alarms then this a matter for the final approval of the building certifier. Bells should not be precluded from installation on the proviso that it can be demonstrated (to the satisfaction of the building certifier) that ringing bells are reasonably familiar to occupants and loud enough to the most disadvantaged location and under reasonable circumstances to be clearly heard. ie. reasonable consideration of physical abilities of residents and of their activities such as radio playing. A ringing bell must be understood by all occupants as a signal indicating "evacuate the building immediately". However, a bell poses a disadvantage in some circumstances when considered against a modern single tone electronic system or a two-tone system for "alert" and "evacuation" modes. Maintenance, replacements and reliability are other considerations for the selection of a suitable local occupant warning system. It is noted that bells are superseded warning devices in these types of residential instances.
5. Within AS2118.4 are statements that guide users to seek certain considerations or to act as required by the "regulating authority". The Tribunal holds the view that this shall be read as meaning the building certifier as the responsible entity. The building certifier is responsible for the code assessment of building work under the system of performance based assessment employed by the BCA and is law in Queensland. In so saying, it is expected that the building certifier will consult and where necessary reasonably negotiate locally with the QFRS.

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**RUSSELL BERGMAN**  
**Building and Development Tribunal Chair**  
**Date: 8 August, 2003**

## **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  
Department of Local Government and Planning  
PO Box 31  
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