



Building and Development Dispute Resolution Committees—Decision

Sustainable Planning Act 2009

Appeal Number: 68-10

Applicant: Queensland Fire and Rescue Service (QFRS)

Assessment Manager: Trevor Gerhardt for and on behalf of Gecon

Concurrence Agency: Nil
(if applicable)

Site Address: Family Night Club, 8 McLachlan Street, Fortitude Valley and described as Lot 11 on RP42517 and Lot 9 on RP47078 — the subject site.

Appeal

Appeal under section 528 of the *Sustainable Planning Act 2009* (SPA) against the decision by the assessment manager to approve a development permit with conditions. The appeal is on the grounds that the assessment manager failed to:

- (a) provide adequate documentation for QFRS assessment;
 - (b) give QFRS notice of the decision within five business days; and
 - (c) include a requirement for fire hydrant coverage of the fifth level.
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Date of hearing: 11:30am on Tuesday 2 November 2010

Place of hearing: The subject site

Committee: Georgina Rogers – Chair
David Mansell – General Referee

Present: Mark Power (QFRS) – Applicant
Dave Brazel (QFRS) – Applicant
Mick Albrow (QFRS) – Applicant
Trevor Gerhardt – Assessment manager (for and on behalf of Gecon)
Louis Bickle – Owner
Tony Black – Builder/Construction Manager

Decision:

The Committee, in accordance with section 564 of the SPA makes the following directions;

1. Within 20 business days of this decision the assessment manager must refer documentation to the QFRS to verify how the development complies with Building Code of Australia 2010 (BCA) Performance Requirement EP1.3, or will be altered to comply with BCA Performance Requirement EP1.3. The

documentation must clearly identify a BCA Clause E1.3 deemed to satisfy solution or a BCA alternative solution. The level 5 terrace area must be assessed as an area that requires fire hydrant coverage under BCA deemed to satisfy Clause E1.3, however this direction does not limit the QFRS and assessment manager's ability to determine whether fire hydrant coverage is required by BCA Performance Requirement EP1.3. The referral must be accompanied by a QFRS application for re-assessment.

2. Within 10 business days of having received the QFRS referral agency advice or where a response is not received within 15 business days from the date the QFRS received the application referral, the assessment manager must issue an amended decision notice that includes the approval of documentation for the Family Night Club verifying compliance with BCA Performance Requirement EP1.3.
3. The assessment manager must otherwise follow the standard Integrated Development Assessment System process as prescribed in the SPA.

Background

An on-site hearing was attended by the appellant, assessment manager, owner and construction manager.

The neighbourhood is a well established central business district of the Fortitude Valley and consists of older, multi-storey, commercial buildings. The neighbourhood has an extensive mixture of uses including recreational, hotels, restaurants, commercial, offices, retail, parking and residential. The main fire station is located at Kemp Place which is within a quick response distance of approximately 10 minutes.

The building consists of five storeys and is currently used as a licensed night club with extended operating hours and is open throughout the night. It was advised that the current occupancy during operating hours would be in the vicinity of 1800 persons and evacuation exercises were able to clear the building of occupants within three minutes. The main entry and exit to the building is via McLachlan Street, which is a major traffic thoroughfare. The rear of the building is serviced by a sealed services lane which connects to Marshall Street. Fire exits from the building open directly onto this lane.

The building covers the whole of the site, having common walls with the adjoining buildings. The common walls are structural and are built of masonry. The roof of the building and adjoining buildings appear to be predominantly sheet metal. A sprinkler system is installed within the building.

The area in question and referred to is an open area on the fifth level which is to be used for an outdoor smoking deck. This deck is serviced by a wet bar and is to be furnished with outdoor seating. It was advised that no fire protection services have been provided on this deck at this point in time.

A fire isolated staircase has been installed giving direct access from the deck to an open area at ground level, being the services lane which leads directly to Marshall Street. This would be required to be assessed as compliant by the assessment manager at finalization of the construction. It was advised approximately 50 occupants would be using the roof deck at any time.

Two street hydrants are located close to the building. One is in McLachlan Street and the other in Marshall Street. On site measuring of the distances from the hydrant in Marshall Street, via the fire isolated stairs to the level five open roof deck was undertaken and checked by the committee and attendees. The parties agreed fire hydrant coverage of the roof deck is not available from this street hydrant.

The building is located in a high traffic volume area and during hours of operation there is considerable pedestrian traffic in the area which can often overflow onto the streets. This could cause difficulty for the fire officers attending a fire. The QFRS advised at the hearing that operationally a QFRS fire pumping appliance (fire truck) would not be taken down the lane off Marshall street to achieve better hydrant coverage as this would result in blockage of the egress path from the Nightclub to the Marshall Street public road.

The following correspondence and documentation was reviewed and taken into consideration:

- 27 August 2009 - QFRS issued a non-compliant assessment report stating the reasons for the non-compliance as:
 - (a) the drawings provided were not to scale, had no identifying information to determine if they were for the nominated premises and failed to provide any detail to enable assessment of the nominated special fire services; and
 - (b) the street hydrant fails to provide compliant coverage to the new areas of the premises.
- 27 August 2010 - QFRS issued a non-compliant assessment report stating the reasons for the non-compliance as:
 - (a) the street hydrant fails to provide compliant coverage to the new areas of the premises.
- The Committee was advised at the hearing that the second QFRS report was issued in response to revised documents being referred to the QFRS for a revised/reduced proposed scope of building work. On 31 August 2010 the assessment manager issued a decision notice listing the approved drawings as '1-2'. The approved plans and the decision notice do not appear to require any alterations to the existing fire hydrant system that serves the building, and is therefore inconsistent with the QFRS referral agency advice. It is difficult to determine from the approved plans what the existing building is and proposed new work. The Committee received further clarification on this matter at the hearing.
- 8 September 2010 - the assessment manager lodged the decision notice with the QFRS 16 September 2010 - the QFRS lodged a Form 10 – Application for appeal/declaration with the Committee Registry.
- The application for appeal was lodged within 10 business days after the day the decision notice was given to the QFRS as an advice agency in accordance with the SPA.
- During the hearing the Committee advised the QFRS that a thorough investigation of the QFRS and assessment manager's files would most likely be required to consider the first two sub-elements of the appeal i.e. the Certifier failed to:
 - (a) provide adequate documentation for QFRS assessment, and
 - (b) give QFRS notice of the decision within five business days.
- The QFRS advised that they are predominantly concerned with the compliance of the fire hydrant system and were therefore satisfied to withdraw the first two sub-elements of the appeal.
- The Committee queried whether the assessment manager had used discretion under a provision of the *Building Act 1975* in determining that fire hydrant system protection of the level five terrace area was not required. The parties agreed that the dispute was in relation to whether the new level five terrace area was assessable floor area and therefore whether it requires protection under the BCA and Australian Standard 2419.1-2005 (AS2419.1).

Material Considered

The material considered in arriving at this decision comprises:

1. Form 10 – Application for appeal/declaration, grounds for appeal and correspondence accompanying the appeal lodged with the Registrar on 16 September 2010.
2. Letter from the QFRS dated 14 September 2010 to the Committee accompanying the application for appeal.
3. Event Log prepared by QFRS accompanying the application for appeal detailing dates and events of communication and other actions between the assessment manager and the QFRS.
4. Decision Notice dated 31 August 2010 and associated approved drawings '1-2'.
5. Email dated 8 September 2010 from the assessment manager to the owners verifying the date for

lodgement of the decision notice with the QFRS.

6. QFRS non-compliant assessment report dated 27 August 2010.
7. QFRS non-compliant assessment report dated 27 August 2009.
8. The SPA.
9. The BCA.
10. Australian Standard 2419.1-2005.

Findings of Fact

The Committee makes the following findings of fact:

1. It was determined that the owners applied for a building approval for an open roof deck to be used as an outdoor smoking area on the fifth level of the existing building which is used as a night club.
2. The assessment manager advised that the open roof deck was not additional floor area and therefore not subject to fire assessment.
3. The fire officers advised that the open roof deck is a new area to be used by night club patrons who may not be familiar with the building. Two main concerns were raised by the fire officers: one being that the patrons would be able to exit the building easily and rapidly in the event of a fire anywhere in the building and that there would need to be sufficient warning available to occupants of this area to ensure that this happened; and secondly that when the fire officers arrived at the site that it was safe for these officers to attend to the fire without their lives being put in unnecessary danger. The QFRS consider premises not served by compliant special fire services can pose a work health and safety risk to the fire officers.
4. The documentation submitted to the fire brigade and to the committee did not indicate sufficient information to show where the street hydrants were located and distance to the open roof deck. In addition, the documentation failed to indicate that the fire exits actually exited directly onto the service lane, which is how it is constructed on site. The fact that the fire exit from the roof deck opened directly onto the service lane significantly reduced the distance required by the fire officers to get fire fighting equipment to the area. The level 2 plan does however appear to indicate the stairway discharges to the rear laneway.
5. The QFRS has raised concerns regarding the integrity (including service penetrations) of what appears to be a fire isolated stairway.
6. The QFRS has not issued a compliance assessment or undertaken an inspection of the open deck area as it currently does not meet the 'deemed to satisfy' requirements of the BCA. This decision does not affect the QFRS and assessment manager's ability to consider a BCA performance based alternative solution to determine whether fire hydrant coverage is required to the level five terrace area.
7. The decision notice dated 31 August 2010 and associated approved drawings '1-2' do not require the provision of a fire hydrant system as required by the BCA Clause E1.3 and AS2419.1.

Reasons for the Decision

The dispute between the QFRS and the assessment manager in essence is whether the level five external terrace area requires fire hydrant coverage. As the level five external terrace area is new, the area has not been treated as an existing non-compliant condition of the development and it is understood that the assessment manager intends for the area to comply with the BCA.

The existing Family Night Club development is served by external (street) fire hydrants. Clause 3.2.2.2

of AS2419.1 states in part:

'3.2.2.2 Location

External fire hydrants shall be located as follows:

- (a) In a position that provides pedestrian access to the building for the fire brigade.
- (b) When installed as a feed fire hydrant [See Figure 3.2.2.2(a), (b), (d) and (e)], within 20 m of a hardstand such that when a fire brigade pumping appliance is connected to it—
 - i. all portions of the building shall be within reach of a 10 m hose stream, issuing from a nozzle at the end of a 60 m length of hose laid on the ground; and
 - ii. a minimum of 1 m of hose shall extend into any room served.'

The level five external terrace area is considered a 'portion' of the building that requires fire hydrant coverage for the following reasons:

- 'Portion' is not a defined term under AS2419.1. BCA Performance Requirement EP1.3 however confirms in part that a fire hydrant system must be provided to the degree necessary to facilitate the needs of the fire brigade appropriate to the floor area of the building. 'Floor area' is a BCA defined term. The BCA defined term in part is as follows:

Floor area means –

- (a) in relation to a building – the total area of all storeys; and
 - (b) in relation to a storey – the area of all floors of that storey measured over the enclosing walls, and includes:
 - i. the area of a mezzanine within the storey, measured within the finished surfaces of any external walls; and
 - ii. the area occupied by any internal walls or partitions, any cupboard, or other built-in furniture, fixture or fitting; and
 - iii. if there is no enclosing wall, an area which has a use that –
 - (A) contributes to the fire load; or
 - (B) impacts on the safety, health or amenity of the occupants in relation to the provisions of the BCA.
- The level five roof terrace has a use that contributes to the fire load and impacts on the safety of the occupants in relation to the provisions of the BCA, and therefore must be considered part of the building's floor area.

It is common practice for Australian fire brigades and building surveyors to use the BCA floor area definition to help determine which parts of a building require fire hydrant coverage.

The 'deemed to satisfy' provisions are outlined in the BCA, where these cannot be easily met, 'performance requirements' are able to be used to design safe solutions which may be more suitable to complex building design and uses.

The fire hydrant system is required to comply with the BCA deemed to satisfy provisions or BCA performance requirements.

The decision held in this application is separate to any other applications which may be made over the property at this time or in the future.

In assessing the criteria in relation to the open roof deck, the Committee found that there were grounds for reassessment of the area

Georgina Rogers
Building and Development Committee Chair
Date: 21 January 2010

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 Infrastructure and Planning
PO Box 15009
CITY EAST QLD 4002
Telephone (07) 3237 0403 Facsimile (07) 3237 1248