



**APPEAL**  
*Integrated Planning Act 1997*

**File No. 3-03-021**

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

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**Assessment Manager:** Cairns City Council  
**Site Address:** 47-63 Williams Esplanade, Palm Cove  
**Applicant:** David Bruce Van Dorssen (Queensland Fire and Rescue Service)

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### **Nature of Appeal**

An appeal by the Queensland Fire and Rescue Service against a decision by Building Approval Service to not require sprinkler protection, contrary to the advice provided by the Queensland Fire and Rescue Service, in respect of a proposed new building.

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**Date and Place of Hearing:** 9:00 am, Tuesday 27<sup>th</sup> May, 2003  
Level 25, 41 George Street Brisbane.

**Tribunal:** Garry Leis – Tribunal Chairperson  
Greg Schonfelder – Tribunal Member  
Peter Downer – Tribunal Member

**Present:** No representative for either the Queensland Fire and Rescue Service or Building Approval Service were in attendance at the hearing. Both parties agreed to the Tribunal deciding the appeal on the basis of written submissions. A written submission from Cairns City Council (co-respondent) was also received.

### **1 Decision**

The deliberations of the Tribunal revealed two distinct issues requiring decision:

- The jurisdiction of the QFRS to offer an opinion in regard to the application of DTS provision of the BCA, and
- Whether the subject building required sprinkler protection in accordance with the DTS provision of the BCA.

The decision of the Tribunal is as follows:

- in respect of the jurisdiction question. The QFRS does have jurisdiction to include in this assessment an opinion as to whether a Special Fire Services is needed in order to comply with the DTS provision of the BCA.
- in respect of the requirement for sprinkler protection. The DTS provision of the BCA requires sprinkler protection for the proposed building.

## **2 Background and Discussion**

### ***2.1 The building and the nature of the development***

The proposed building is a multi-level residential development with a carpark at the lowest level, described in some documentation as a basement carpark. The building is described as being multi-classification, including classes 2, 5, 6, 7a, 10a & 10b, and requiring Type A construction. There is no contention between the appellant and respondent on these facts.

The carpark provides accommodation for 80 cars. It is divided into two separate areas, each providing accommodation for 40 cars. Documentation submitted to the Tribunal indicates that the two car parking areas are separated by a fire wall having a FRL of 120/120/120. An interconnecting door is also listed as having a FRL of 120/120/120 (although, it is assumed that this door should have been correctly described as having a FRL of at least -/120/30<sup>1</sup>). The door closes automatically on activation of the fire alarm system, with thermal detectors being located within the carpark.

It is understood that FRL's for the building are in accordance with the BCA DTS requirements for a non-sprinklered carpark

### ***2.2 Identification of the issues***

The first issue in contention is the matter of the ability of the QFRS to bring this appeal to the Tribunal for hearing and determination.

Subsequent to the above issue, the major technical issue in dispute is to determine if the building does require sprinklers in order to be considered as DTS under the BCA

### ***2.3 QFRS ability to bring an appeal***

The Certifier has contended that the QFRS role is as an advice agency, and hence they are required to advise on their requirements in respect of the Special Fire Services the Certifier has determined apply to the building. Hence, if the Certifier considers that a particular Special Fire Services is not required under the DTS requirements, then the QFRS are not required (and therefore not entitled) to offer advice in respect of that non-required Special Fire Service. Consequently, as there is not a requirement for an assessment to be made against such a Special Fire Service, there exists no right of appeal against the Certifier's decision for not including that Special Fire Service.

The QFRS hold the view that their role is to assess the Special Fire Service requirements for a building, with the Special Fire Services being defined in Schedule 2 of the SBR. Accordingly, in making this assessment they are required to determine if a particular Special Fire Service is required before they can first determine if the provisions of that particular Special Fire Service meets their

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<sup>1</sup> See BCA96 Amdt 12, clause c3.5(a)(iii) and AS1905.1-1997 - clause 1.5.13

operational needs. If a particular Special Fire Service they believe, as a result of their assessment, is required but is not provided, then their assessment of that particular Special Fire Service will be that it does not comply because it is not provided.

➤ The relevant legislation

- The Integrated Planning Regulation – Schedule 2 – lists the QFRS as an “Advice” Agency for matters under the Standard Building Regulation which contain Special Fire Services as listed in schedule 2 of the Standard Building Regulation
- Schedule 2 of the Standard Building Regulation lists the various Special Fire Services, and included on the list are “Sprinklers”
- In accordance with the Integrated Planning Act s 3.3.15(1)(a) a referral agency must, within the limits of its jurisdiction, assess the application against “*the laws administered by...*”, and by definition of the Integrated Planning Regulation, this means the QFRS must make an assessment against those matters listed in schedule 2 of the Standard Building Regulation
- Also in accordance with the Integrated Planning Act s 3.3.19(2), a referral agency’s response may also “*offer advice to the assessment manager<sup>2</sup>...*”

It is also noted that the QFRS jurisdiction in respect of their role as an advice agency as set out in schedule 2 of the Standard Building Regulation is further qualified in schedule 3 (specific matters to be assessed) and schedule 4 (specific matters to be inspected) of the Standard Building Regulation.

- Schedule 3 of the Standard Building Regulation lists those matters the QFRS is to assess – listing four (4) separate matters in respect of sprinklers
- Schedule 4 of the Standard Building Regulation lists those matters the QFRS is to inspect – again listing four (4) separate matters in respect of sprinklers

In seeking to make an assessment under Schedule 3, if sprinklers were not to be provided for a building the QFRS believed should be provided with sprinklers, then their correct recourse would be to assess the building proposal as non-compliant due to the non-provision of sprinklers. Notwithstanding this approach, in accordance with the Integrated Planning Act s 3.3.19(2) the QFRS can offer their advice to the Assessment Manager<sup>2</sup>.

Taking into account the above matters, the Tribunal has formed the opinion that the Queensland Fire and Rescue Service have a requirement to determine if a Special Fire Service is required, and to offer advice that such a Special Fire Service is required should it not have been provided for assessment. Accordingly, the QFRS is entitled to appeal the certifier’s decision should a certifier issue a Decision Notice contrary to that advice<sup>3</sup>.

#### **2.4 The requirement for Sprinklers**

The QFRS advised the certifier of their opinion that the building requires sprinklers in order to

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<sup>2</sup> It is assumed that for the purpose of this Development Assessment, Building Approval Service has been acting as the Assessment manager in accordance with the provisions as set out in the Integrated Planning Act s 5.3.5(1)

<sup>3</sup> see Integrated Planning Act s 4.2.10

<sup>4</sup> see BCA96 Amdt 12, clause A.06

comply with the Deemed-to-Satisfy provisions of the BCA96. This is based upon the interpretation of Clause E1.5 and Table E1.5 of the BCA.

- Clause E1.5(a) requires sprinklers to be installed in a **building** when required by Table E1.5. Table E1.5 lists a *class 7a building (other than an open deck carpark) accommodating more than 40 cars*. The QFRS contend that this clause applies to the number of cars accommodated in the building – not to the number of cars accommodated in a fire compartment.
- The QFRS support their argument through reference to the Objectives and Functional statements which are used as an aid to interpretation<sup>4</sup>, noting that the Objectives and Functional Statements of Part E require provisions to safeguard the occupants and to facilitate the fire brigade undertaking fire-fighting operations.
- Their argument is also supported by material which demonstrates the risk presented by and difficulty in fire-fighting a carpark fire.
- The QFRS also note that the carpark is provided with several access and entrances for “golf-buggies” and are concerned that the presence of golf-buggies will increase the number of vehicles above the 40 vehicles that parking spaces are provided for

The contrary argument, presented by both the certifier and the Cairns City Council, takes the view that

- the term **building** is not defined in the BCA96
- Standard Building Regulation 8 states that the BCA forms part of and is to be read as one with the Standard Building Regulation
- The Standard Building Regulation does not define the term building
- However the IPA defines the Standard Building Regulation as a code for IDAS (Integrated Development Assessment System), being the assessment system defined under the Integrated Planning Act
- The Integrated Planning Act includes in Schedule 10 (the dictionary for the Act) a definition of the term **building** as follows: *means a fixed structure that is wholly or partly enclosed by walls and is roofed, and includes a floating building and any part of a building* (emphasis added)
- The carparks are separate parts of a building, and as such the provisions of Table E1.5 are applied to the relevant **parts** of the building. As neither part contains more than 40 cars, then the building meets the DTS prescription of the BCA.
- Performance Requirement EP1.4 requires that an automatic fire suppression system must be installed to the degree necessary and appropriate to (among other things) the size of the fire compartment. This would support the interpretation that the “part of a building” Table E1.5 applies to is each separate fire compartment.
- The Private Certifier advises that there are no parking spaces allocated for golf-buggies within either of the basement carparks

The Tribunal noted that the matter underlying this appeal presents a number of points of discussion and differing points of view. There are indeed a number of conflicting interpretations that can be derived from various references within the BCA. Due to this uncertainty, the Tribunal requested Building Codes Queensland to seek clarification from the authors of the provision – the Australian Building Codes Board (ABCB). The ABCB have offered their advice that if the building contains more than 40 vehicles, then Table E1.5 applies and the whole of the building is required to be sprinkler protected.

### **3. Material Considered**

The following materials have been considered

#### Materials submitted by the appellant at the time of lodging appeal

- Form 10, Building and Development Tribunals Appeal Notice, as completed by the Appellant, and dated 3/4/03
- Decision Notice issued by Building Approval Service, dated 24/03/03
- Partial copies of 3 drawings, not identifiable by any reference number but showing
  - key plan
  - typical unit floor plan layout (for unit 423)
  - basement carpark layout

#### Written submissions by appellant, respondent and co-respondent

- letter from Building Approval Service, dated 2 May 2003
- written submission from Building Approval Service, dated 26 April, 2003 – 9 pages and 15 attachments
- letter from QFRS dated 22 April, 2003 – 3 pages and 3 attachments
- letter from Cairns City Council dated 30/04/03 – 4 pages and 7 pages of attachments
- Form 18, Notice of election, from Thakral dated 28/4/03

#### Written responses to first round of submissions by appellant and respondent

- letter from Building Approval Service, dated 20 May, 2003 – 1 page
- submission from QFRS, dated 14 May, 2003 – 7 pages and 2 attachments

#### Material sought by the Tribunal

- copy of RD 91/02
- copy of BCA90 specification C1.1, clause 2.2 as amended by Amdt 10
- copy of RD 96/01
- copy of BCA96, Specification C1.1, clause 2.2 as published in Amdt 0
- e-mail advice - dated 24 June from Mr. Norm Bowen, Project Manager with the ABCB – and addressed to Mr. Peter Rourke of Building Codes Queensland.

### **Findings of Fact**

The Tribunal makes the following findings of fact

- The Integrated Planning Act requires under s 3.3.15(1)(a) that a referral agency must assess a development application against the laws administered.
- The Integrated Planning Regulation provides that the QFRS is a referral agency in respect of building works that contain Special Fire Services, as prescribed by Schedule 2 of the Standard Building Regulations
- Schedule 2 of the Standard Building Regulation lists “sprinklers” as a special fire service
- The Integrated Planning Act provides under s 3.3.19(1) that an advice agency should offer a response that either recommends conditions that should be attached to an approval, or to refuse an application. S 3.3.19(2) further provides that a referral agency may give advice to the assessment manager.

- The Private Certifier issued a Decision Notice contrary to the advice of the QFRS
- The BCA is acknowledged by the Standard Building Regulation as one of its regulations
- The BCA does not define *building*
- The SBR does not define *building*
- The SBR is referenced as a Code by the Integrated Planning
- The Integrated Planning Act defines *building* and includes in the definition *part of a building*
- The subject carpark are separated from each other and the remainder of the proposed building by construction having fire resistance levels consistent with each carpark being a separate fire compartment
- The proposed carpark accommodate 40 vehicles
- While access is provided for golf-buggies, no parking spaces for golf buggies are nominated
- Table E1.5 requires a building to be provided with sprinklers if it accommodates more than 40 vehicles
- The Australian Building Codes Board is the author of the provision and has advised the provision is intended to apply to the entire building.

### **Reasons for the Decision**

The Tribunal lists the following reasons in support of its decision

- In making an assessment of the provision of special fire services, it is appropriate to make note in the assessment of Special Fire Services that should be provided, but have not been provided
- In making an assessment of special fire services, the QFRS (as a referral agency) is able to offer advice to the assessment manager
- The number of cars accommodated in the building exceeds the Deemed-to-Satisfy limitation specified by the BCA

**Garry Stephen Leis**  
**Building and Development**  
**Tribunal Referee**  
**Date: 15 July, 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  
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