



Building and Development Dispute Resolution Committees—Decision

Sustainable Planning Act 2009

Appeal Number:	37 - 10
Applicant:	Queensland Fire and Rescue Service (QFRS)
Assessment Manager:	Geoff Mitchell and Associates (GMA)
Concurrence Agency: (if applicable)	N/A
Site Address:	Kabalulumana Hostel, 37-41 Pamela St, Mount Isa QLD 4825

Appeal

Appeal under section 532 of the *Sustainable Planning Act 2009*, where a referral agency is entitled to be given an information notice about a decision under section 40 of the *Building Regulation 2006*.

Date of hearing:	Friday, 3 September 2010
Place of hearing:	Hearing by tele-conference (see below)
Committee:	Mr Russell Bergman – Chair [Brisbane, BCQ] Miss Cath Patterson – Committee Member [Brisbane, BCQ]
Present:	Mr Paul Lange (QFRS) – Appellant [Townsville] Mr Steven McKee (QFRS) – Appellant [Fortitude Valley] Mr Ian Shepherd (QFRS) – Appellant [Townsville] Mr David Brazel (QFRS) – Appellant [Fortitude Valley] Mr Jamie Ryder (QFRS) – Appellant [Townsville] Mr Geoff Mitchell (Geoff Mitchell and Associates) – Respondent [Nerang]

Decision:

The Committee, in accordance with section 564 of the *Sustainable Planning Act 2009*, **changes** the decision notified by the respondent (GMA) under section 40 of the *Building Regulation 2006* about the non-compliant inspection notice issued by the Queensland Fire and Rescue Service as follows:

A shortfall in hydrant coverage for the rear upper units, based on a hardstand located 10m from the building as required by AS2419.1-2005, shall be made compliant by one of the following means prior to 31 January 2011:

- Installation of an on-site hydrant in a suitable position that provides hydrant coverage to the furthestmost rear upper units from a complying hardstand location; or
- Re-assessment of the application for building development as separate buildings ensuring hydrant hose coverage to any building greater than 500m² including provision of suitable hardstand serving that building; or

c) Formulating an alternative solution to demonstrate compliance with the BCA.

Suitability of the final building solution will be confirmed by the Queensland Fire and Rescue Service and Assessment Manager.

The Committee further decides that the existing Certificate of Classification shall remain in force.

Background:

In summary, the appeal is based on (a) a lack of hydrant coverage to the rear accommodation building affecting fire-fighting and safety and (b) failure by the respondent to adhere to some procedural matters.

On 13 February 2009, a Development Approval for Building Works was issued for the Kabalulumana Hostel by the respondent (GMA). This Development Approval was issued following receipt of referral agency advice from the appellant (QFRS).

The development for building work was approved as a BCA class 3 accommodation building. It consists of a number of different blocks (accommodation and service related facilities) on the site connected by a series of walkways. The floor area of the rear, two storey accommodation building exceeds 500m² and therefore, under BCA E1.3, a hydrant system complying with AS2419.1-2005 is required to serve the building.

In their submission dated 18 May 2010, the QFRS, established on 11 May 2010 that the building was occupied. Subsequently, the QFRS contacted GMA (12 May, 2010) and GMA provided QFRS with a copy of the Certificate of Classification (Form 11) which was dated 12 March, 2010.

On 1 February, 2010, a Non-Compliant Inspection Notice was issued stating that the hydrant system did not comply with AS2419.1-2005.

The appellant (QFRS) and respondent (GMA) dispute the method of measurement for the hydrant coverage.

Material Considered

The material considered in arriving at this decision comprises:

1. 'Form 10 – Appeal Notice', grounds for appeal and correspondence accompanying the appeal lodged with the Registrar on 1 June 2010;
2. Decision Notice for Development Application for Building Works issued by GMA on 13 February 2009 and attached material;
3. Certificate of Classification issued by GMA on 12 March 2010;
4. Further submission by letter from the Queensland Fire and Rescue Service on 16 August 2010, clarifying the grounds for the appeal;
5. Plans submitted by the respondent after the hearing numbered AWD101 rev 4; AWD201 rev 4; AWD202 rev 2; AWD 203 rev 3; and AWD204 rev 1;
6. The *Sustainable Planning Act 2009* and *Sustainable Planning Regulation 2009*;
7. The *Building Act 1975* and *Building Regulation 2006*; and
8. Australian Standard AS2419.1-2005 *Fire Hydrant Installations Part 1: System design, installation and commissioning*.

Findings of Fact

The Committee makes the following findings of fact:

1. In their written submission to the Committee and stated at the hearing, the QFRS made the following two (2) assertions:
 - a) The QFRS had not been provided with an information notice as was required by section 40 of the *Building Regulation 2006*; and
 - b) The hydrant coverage to the upper rear units does not satisfy AS2419.1-2005 when measured on site from a fire appliance located on the roadway.
2. In relation to point (a) above, the Committee finds that the correspondence issued by the respondent (GMA) to the appellant (QFRS) about the disagreement does not satisfy the definition of an 'information notice' under the *Building Act 1975*.
3. In relation to point (b) above, the following key requirements of AS2419.1-2005 are to be considered:
 - a) all points on a floor must be reachable by a 10m hose stream issuing from a 60m length of hose, with the hose projecting a minimum 1m into the room or area served (cl 3.2.2.2(b));
 - b) the starting point for the hose measurement is from the pumping appliance;
 - c) the pumping appliance, located on the hardstand, must be a minimum of 10m from the building it is protecting (serving) (cl 3.2.2.1).
4. The appeal to the Committee, as clarified in the letter from the applicant (QFRS, Mr Paul Lange) dated 16 August 2010, is against the failure of the respondent to provide an information notice as per section 40(2)(b) of the *Building Regulation 2006* and the material that would have been contained in such an information notice if it had been issued.
5. The appellant (QFRS) have noted their objection to the issuing of a Certificate of Classification permitting occupancy of an accommodation building that has inadequate hydrant coverage (see final dot point, QFRS correspondence dated 16 October 2010).
6. GMA requested early advice as to serviceability of external hydrants and this was provided in QFRS correspondence dated 21 May 2008 File Ref: 2888 signed by Mr John Harris, Building Approvals Officer.
7. Prior to issue of a Development Approval for Building Works, the application material was referred by the assessment manager (GMA) to the Queensland Fire and Rescue Service (QFRS) as an advice agency.
8. The QFRS returned a Compliant Assessment as their written referral advice.
9. The QFRS was notified for a site inspection on or about the time of completion of building works.
10. The QFRS advised, on inspection, that hydrant coverage to the upper rear 6 units did not, in their opinion, comply with AS2419.1-2005.
11. A series of exchanges of correspondence followed during which the respondent GMA advised that they disagreed with the measurements conducted by the QFRS and had undertaken their own site measurements which were asserted to comply with AS2419.1-2005.
12. QFRS were entitled under section 40(2)(b) of the *Building Regulation 2006* to receive an information notice from the certifier, if the certifier decided not to act on their inspection advice.
13. Whilst the disagreement was noted and discussed in the email correspondence following the QFRS' inspection, the correspondence from the respondent (GMA) did not constitute an 'information notice' as defined by the *Building Act 1975*.
14. A copy of the Certificate of Classification (dated 12 March, 2010) was subsequently provided by the building certifier, after the date of the 11 May, 2010 inspection.

Reasons for the Decision

The determining issue in deciding this appeal is the location of the pumping appliance when connected to the hydrant on the basis for measurement under AS2419.1-2005. AS2419.1-2005 provides some limited guidance as to how this should be applied including dealing with any fixed obstructions which would restrict normal hose coverage.

The key point of difference in the methods of measurement used by QFRS and GMA, is the assumed location of the fire pumping appliance (and its outlet) at the hardstand. GMA stated in their representations that their position was reached by measuring from a position directly adjacent to the hydrant (a concreted driveway) and on the basis, that suitable hardstand is available at that point. Conversely, the QFRS stated that in their opinion, the pumping appliance must be located on the road in order to achieve a minimum 10m separation from the building in question and, their measurements commence from this point.

The location and arrangement of external hydrants and suitable hardstand for pumping appliances is within the advice referral agency jurisdiction of the QFRS under Schedule 8 Part 2 of the *Sustainable Planning Regulation 2009*. Therefore, given the established processes of building work assessment, this is a matter which the appellant and respondent should equally have identified and resolved during the assessment process.

Measurements conducted by the Committee on both site and floor plans as provided, indicate that:

- a) if a pumping appliance were located on the road, a 60m hose would be unable to reach into all of the rear upper units;
- b) if a pumping appliance were to be located approximately at the entry gates close to grid 21A, a 60m hose appears likely to provide coverage to the rear upper units. However in this case, as assessed by each party, the pumping appliance would need to be located within 10m of the building and the hardstand would need to be confirmed as able to be safely negotiated by the relevant fire tender vehicle.

Review of the Decision Notice and Certificate of Classification indicates that the complex has been assessed and thus approved as a single building.

The respondent (GMA) stated during the hearing that the different portions of the development were able to be assessed as different buildings. This would have bearing on the pumping appliance location because AS2419.1-2005 only requires the appliance to be 10m from the building it is protecting and not from other buildings on the allotment. However, the Decision Notice and Certificate of Classification have been granted with the complex assessed as a single building. Therefore, from review of the plans provided by the respondent it appears that the pumping appliance should not be located directly at the hydrant, as it would be within 10m of the front portion of the building.

The Committee has not assumed in its deliberations that the various portions of the construction are separate buildings for the purpose of hydrant coverage under AS2419.1-2005 as this would necessitate re-assessment of the construction and such re-assessment is properly the jurisdiction of the assessment manager.

In order to provide adequate means of fire-fighting to the facility (including the rear two-storey building), the provisions of the Building Code of Australia and AS2419.1-2005 must be satisfied. It is the view of the Committee that there are options for achieving this end. The Committee does not intend to select one particular means of compliance on behalf of the assessment manager, designer or property owner.

The Committee orders that necessary measures be taken to implement this decision and ensure the building complies with the relevant provisions of the Building Code of Australia and AS2419.1-2005 as a high priority.

In reaching the decision, the Committee noted the evidence of the respondent's efforts during the assessment process to confer with the QFRS about the advice agency matters of the proposed building work.

Non-adherence to some procedural matters of the building legislation are noted. The Committee is of the view that steps have been taken to resolve these matters and mitigate recurrence for future assessments.

A revocation of the Certificate of Classification is not considered necessary as safety of ordinary building occupants is not at any higher risk given other building fire safety measures. However, the Committee does acknowledge the QFRS's legislative responsibilities to protect persons and property from fire emergencies as well as noting the definition of "substantially completed" under the *Building Act 1975* which includes functional fire safety installations and the like.

Russell Bergman
Building and Development Dispute Resolution Committee
Date: 3 November 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:

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Building Codes Queensland
Department of Infrastructure and Planning
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