



**APPEAL**  
*Integrated Planning Act 1997*

**File No. 3-02-002**

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

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**Assessment Manager:** Ipswich City Council  
**Building Certifier:** Mckenzie Group Consulting (QLD) Pty Ltd  
**Site Address:** Lot 113 Berry Street, Churchill  
**Applicant:** Ray Davidson (Queensland Fire and Rescue Service)

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### **Nature of Appeal**

Appeal by the Queensland Fire and Rescue Service under section 89 of the Standard Building Regulation 1993 (SBR) against a decision by McKenzie Group Consulting (Qld) Pty Ltd to disagree with the advice given by the Queensland Fire and Rescue Service in respect to alterations and additions to an existing building.

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**Date and Place of Hearing:** 9:30 am, Tuesday 22<sup>nd</sup> January, 2002  
Level 25, 41 George Street Brisbane.

**Tribunal:** Garry Leis – Tribunal Chairperson  
Clifford Holland – Tribunal Member  
John Rauber – Tribunal Member

**Present:** For the appellant – Queensland Fire and Rescue Service  
Mick Torrens  
Barry Bennett  
Ray Davidson

For the respondent  
Cameron McLean - McKenzie Group Consulting  
Rudy Van Morkestein - McKenzie Group Consulting  
Scott Ellis-Butler - DEB & Associates  
Geoff Perkins - Bassett Consulting Engineers  
Wojtek Wysocki - Clifton Cooney Stevens  
Henry Peterson - Woolworths

## 1.0 Decision

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

- performance of the fire services water main; and
- the requirement for detection within the existing building.

The decision of the Tribunal is as follows:

- In respect of the fire services water main. The Tribunal finds that the hydrant and sprinkler systems are inadequate for their intended purpose insofar as there is insufficient water for fire fighting purposes.
- In respect of fire detection within the existing building. The Tribunal finds that the requirement of the Queensland Fire and Rescue Service to provide an interconnected occupant warning system throughout the entire building is reasonable and warranted.

## 2.0 Background

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

The building was described as an existing single storey abattoir and meat processing plant. The time of construction of the original building was not stated, but it was agreed by the parties that it pre-dated the 1975 Building Act, and that there have been various additions, alterations and other works to the building between original construction and the present time.

The building is divided into two tenancies:

- Churchill abattoirs; and
- Brismeat meat processing.

The work under consideration was to the Brismeat tenancy. It comprised an extension of some 1305 sq metres, and alterations and refurbishments to a significant portion of the existing 2979 sqm portion of the tenancy.

The extensions and refurbishment works involved acceptance of two alternative building solutions:-

1. Non-compliance with the Deemed-to-Satisfy provision in respect of vehicular access around the perimeter of a large isolated building on the basis of additional compensatory hydrant coverage.
2. Substitution of VESDA smoke detection apparatus to the chiller storage rooms in lieu of sprinklers, and similarly, use of smoke detectors in the dry goods storage area in lieu of sprinklers.

It is understood that these matters have been discussed and agreed by the parties.

There was discussion about the tenancies being fire separated by a block wall (comprising two separate leaves separated by a 200mm approx cavity). The scenario presented to the Tribunal was indeterminate in respect of the question of the fire separation that may exist between the two tenancies. It was noted that a 2m by 2m (approx) hole existed for the transfer of animal carcasses between tenancies, but no information/description was available in relation to other penetrations or connections between the tenancies.

## **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. The QFRS have acknowledged that they did not lodge an appeal at the time of issue of the certifier's decision notice, and have now lodged an appeal at the time of inspection on completion.

Subsequent to the above issue, the parties both agreed that two major technical issues in dispute be identified as:-

- (a) the performance of the fire services water main; and
- (b) the need for extension of the fire alarm system into the Churchill abattoir tenancy of the building.

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

The Tribunal considered this matter and has formed the opinion that the Queensland Fire and Rescue Service are able to bring an appeal at the inspection stage.

The relevant legislation offers two separate and distinct opportunities for the Queensland Fire and Rescue Service (as a referral agency) to appeal a decision:-

- at the time of approval, refer IPA s 4.2.10; and
- at the time of inspection, refer SBR s 89.

The appeal at the time of inspection refers to the referral agency conducting an inspection against the SBR, rather than against the conditions of the approval.

## **2.4 Fire service main performance**

The documents originally submitted to the QFRS for approval indicated separate service feeds to both the fire sprinkler system and the hydrant main.

The QFRS included the following condition in their "Form 2 – Assessment" – FIRE HYDRANT SYSTEM bullet point 2:-

- *Hydrant system must comply with AS2419.1 and is required to have a flow of 30 L/p @ 200 kPa. (10 l/s from the three most disadvantaged hydrants)*

This point was included in the certifier's decision notice. There was no basis for dispute at the time of the assessment/decision notice.

The Tribunal was advised that during the construction period it became apparent the fire hydrant system and sprinkler system was a combined system served from the one water supply. The hydraulic consultant stated to the Tribunal that it was obvious without need of calculation or test that the fire service main would not be able to deliver the required flow rates and pressures.

The certifier elected not to refer the issue to QFRS, rather electing to undertake an assessment using the provision of s17 of the SBR, and drawing the conclusion that adequate water supplies existed for fire fighting purposes.

## ***2.5 Fire alarm extension into existing abattoir***

The certifier and the QFRS met and corresponded with each other regarding this item several times prior to the lodgement of documents for assessment.

The documents were duly submitted by the certifier to QFRS on 5 June, 2001.

The QFRS included a condition in their assessment requiring the provision of an audible occupant warning system interconnected between the two tenancies.

The certifier made no reference to this requirement in the decision notice.

The QFRS again raised the matter with a lengthy comment in their inspection report dated 8 November 2001. A meeting was held between the parties on 22 November 2001.

The QFRS hold concerns that an incident in one tenancy will not be apparent to occupants of the other tenancy unless an interconnected occupant warning system is installed. The Tribunal understood the QFRS were seeking installation of a detection and alarm which achieved the following objectives:-

- connection of the new/upgraded system in the Brismeat Tenancy to the existing warning device within the Churchill abattoir tenancy;
- interface of the existing alarm actuating device within the Churchill abattoir tenancy to the Brismeat system; and
- both systems arranged at the panel to permit resetting of the alarm system by the QFRS when called to attend an alarm at the site.

The certifier holds the position that the interconnection of the alarm is not warranted because the safety of the occupants in the existing portion of the building remains unaffected by the works in the Brismeat tenancy.

### **Material Considered**

The following materials have been considered.

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

- Record of minutes of consultant meeting with QFRS March 29 2001.
- File report of QFRS dated 15 May 2001.
- Letter from McKenzie Group to QFRS dated 28 May 2001.
- Letter from QFRS to McKenzie Group dated 6 June 2001.
- Letter accompanying submission of documents for assessment from McKenzie Group to QFRS dated 5 June 2001.
- QFRS "Form 2" Assessment advice dated 26 June 2001.
- McKenzie Group decision notice dated 16 July 2001.
- QFRS "Form 2" inspection advice dated 8 November 2001.
- Minutes of consultant and QFRS meeting dated 22 November 2001.
- Flow and pressure test records, testing conducted 21 November 2001.
- QFRS "Form 2" inspection advice dated 18 December 2001.

- Flow and pressure test records, testing conducted 18 December 2001.
- Letter from McKenzie Group to QFRS dated 21 December 2001 – advising intention to not observe QFRS advice.
- Facsimile from QFRS to McKenzie Group dated 21/12/2001 – advising intention to appeal.
- Letter from QFRS to Registrar of Building Tribunals dated 3 January 2002.
- Note, file material submitted also includes various other transmittals, inspection notifications and similar correspondence. This has not been listed in detail.

Material sought by the Tribunal prior to the hearing-

Drawings to illustrate the scope of the building works, submitted by the McKenzie Group through the Registrar. Identified as:-

- AR 070/0 Work area plan, sheet 1 of 2.
- AR 071/0 Work area plan, sheet 2 of 2.
- AR 100/0 Site Plan, Location Plan, Key Plan and Drawing Schedule.
- AR101/1 Part Site Plan.
- AR102/0 Part Proposed Site Plan – Cattle Yards.
- AR200/0 Existing Floor Plan.
- AR210/1 Master Floor Plan.
- AR211/2 Carton Chiller/Dry Goods Store Plan.
- AR212/2 Production Area Floor Plan.
- AR213/1 Amenities Area Plans.
- AR215/4 Production Equipment Plan.
- AR260/1 Elevations.
- B154/0401/1 Fire Services Site Plans and Legend.
- B1534/0402/2 Fire Services Fire Protection Layout to Existing Building Part A.
- B1534/0403/1 Fire Services Fire Protection Layout to Existing Building Part B.
- B1534/0404/1 Fire Services Fire Protection Layout to Existing Building Part C.
- 01021 Hydraulics Services Site Plan, Legend, Notes.

Material presented to the Tribunal at the hearing-

- Oral submissions from QFRS.
- Oral submissions by the McKenzie Group and Project team consultants (as listed for attendees).
- Written submission by the McKenzie Group dated 21 January 2002, consisting of a 6 page statement and 3 attachments.
- Oral submission from the owner's representative on behalf of Woolworths.

Material sought by the Tribunal after the hearing-

- Statement of reasons supporting alternative building solution regarding non-provision of sprinkler protection to the chiller rooms and dry-goods store – dated 24 January 2002.
- Statement of reasons to support a determination made using SBR s17 regarding the adequacy of the hydrant system – dated 24 January 2002.

## Findings of Fact

The Tribunal makes the following findings of fact:-

- The IPA (s 4.2.10) provides for a referral agency to bring about an appeal subsequent to a development approval being given.
- The SBR (s 88, 89) provides for a referral agency to bring about an appeal subsequent to the undertaking of inspections.
- At the time of assessment for approval, both the QFRS and the McKenzie Group were of the understanding that the hydrant system was complying.
- The private certifier became aware during construction that the hydrant system did not, and could not be made to comply.
- The private certifier did not notify the QFRS of the changed circumstances of the hydrant system at the time of discovery, or within a reasonable time thereafter.
- The hydrant system does not provide the flow rates or pressures required by the relevant Australian Standard AS2419-1994.
- The hydraulic consultant acknowledged that at the time of discovery of the changed circumstances it was apparent that the system could not comply with AS2419 flow and pressure requirements.
- The private certifier approved the hydrant system exercising discretionary powers available under SBR s17.
- It was not established during the design/documentation or construction process whether the two tenancies were fire-separated and could be considered as separate buildings.
- The works to the Brismeat tenancy involved two alternative building solutions-
  - one associated with a change in the circumstances of the building as a large isolated building; and
  - the second involving fire safety systems of sprinklers and alarms.

The statement of reasons in support of the alternative building solutions did not show consideration of the effect of the whole building, but instead was limited to the Brismeat tenancy alone.

- A statement of reasons supporting the discretionary determination submitted to the Tribunal was dated 24 January 2002. The SBR requires such a statement to be lodged with the assessment manager within 5 days of making the decision.
- The decision notice was dated 16 July 2001.
- The statement of reasons included an expectation that QFRS will isolate the sprinkler system prior to gaining control of the fire should additional flow be necessary to serve a third hydrant.
- QFRS standard operational procedure does not permit isolation of the sprinkler system until a fire is under control.
- The statement of reasons does not list any consideration of those parts of the building outside of the tenancy containing the proposed building works.

## Reasons for the Decision

The Tribunal lists the following reasons in support of the decision:-

- A referral agency can lodge an appeal at either the assessment stage, or the inspection stage, and the provisions permitting the lodgement of an appeal at either stage exist independently and can operate separately from each other.
- At the time of approval, the certifier and QFRS were both of the understanding the hydrant system was compliant.
- When the certifier discovered circumstances that differed to the basis of the approval, the certifier did not notify the QFRS.
- There is insufficient water to serve both the hydrant system and the sprinkler system simultaneously.
- The certifier's decision did not account for standard fire fighting operational procedure in respect of sprinkler control.
- From the submission presented to the Tribunal, there is not sufficient evidence to conclude that the certifier has followed the due process in establishing alternative building solutions, or statements of reasons supporting a discretionary decision under SBR s17, in that the certifier-
  - did not consider the whole of the building;
  - consequently did not consider all of the building safety sub-systems relevant to the alternative solution, or discretionary determination;
  - did not consider all the operational needs of the QFRS in making a decision in regard to the adequacy of the hydrant performance;
  - apparently did not prepare the statements of reasons to support these decisions at the time of making the decision.
- The requirement of the QFRS for all persons in the building to be warned of a fire incident is reasonable and relevant taking into account-
  - the extent of the additional and altered works;
  - the lack of certainty regarding the fire separation of the two tenancies; and
  - the nature of the fire load.

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**Garry Stephen Leis**  
**Building and Development**  
**Tribunal Chairperson**  
**Date: 27 February 2002**

## **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  
BRISBANE ALBERT STREET QLD 4002  
**Telephone (07) 3237 0403: Facsimile (07) 32371248**