



Development Tribunal – Decision Notice

Planning Act 2016, section 255

Appeal number:	23-045
Appellant:	Queensland Fire and Emergency Service
Respondent:	Stuart Andrews
Site address:	10 Ross River Road, Mundingburra Qld 4812 and described as Lot 3 on RP901570

Appeal

Appeal under section 229 and Schedule 1, Table 3, Item 3(a) of the *Planning Act 2016* against a decision under the *Building Act 1975*, other than a decision made by the Queensland Building and Construction Commission, if an information notice about the decision was given or required to be given under that Act.

Date and time of hearing:	14 December 2023, 11:00am 7 March 2024, 1:30pm 25 June 2024, 10:00am
Place of hearing:	Online via video
Tribunal:	Travis Schmitt – Chair Samuel Le Noble – Member

Decision:

The Development Tribunal in accordance with s 254(2)(c) of the *Planning Act 2016* upholds the appeal and replaces the decision of the Assessment Manager (Mr Stuart Andrews) to disagree with the Queensland Fire and Emergency Service (**QFES**) decision (as contained in its inspection report dated 29 August 2023 that certain aspects of the work did not comply with the building development approval) with the decision to accept the QFES decision concerning non-compliance to the extent that:

- (a) The additional hydrant installed to provide coverage to the Level 1 kitchenette be relocated to within 4m of an exit; and
- (b) The Alarm Signalling Equipment is reconfigured to transmit separate and distinct signals for each of the fire sprinkler and fire detection systems to the local monitoring centre.

Background

1. This appeal concerns a Certificate of Occupancy issued on 31 August 2023 in respect of building works for commercial premises at 10 Ross River Road, Mundingburra (**the COO**). The COO was issued by the Respondent, a building certifier (licence no. A81046), in

respect of a building development approval. The building works concerned the fit-out of a commercial gym and required the installation of special fire services.

2. The building development approval, dated 6 July 2023, had been approved following referral to the Queensland Fire and Emergency Service (**QFES**). Pursuant to the *Planning Regulation 2017*, Schedule 9, Part 3, Division 3, limitations are placed on the QFES's referral agency powers, such that it could provide advice only.
3. By its referral agency response, dated 30 June 2023, the QFES provided advice to the Respondent "regarding the degree to which the proposed building work meets the operational requirements of QFES referral jurisdictions identified in the *Planning Regulation 2017*". The response went on to assess the proposed "deemed to satisfy components" of the special fire service as being "suitable" and provided numerous comments which qualified that assessment.
4. It was a condition of the building development approval that "Conditions of Queensland Fire & Emergency Service 'Special Fire Service Report' prepared on the 30 June 2023, reference number 23-01629 to be complied with."
5. Pursuant to ss 69 and 74 of the *Building Act 1975*, it was a condition of the building development approval that the QFES be given notice to inspect and test the special fire services. That was done, and the QFES issued an inspection report dated 29 August 2023 which "identifies whether the referral agency aspects comply or do not comply with the building development approval". The report detailed that the "deemed to satisfy components" of the special fire service was "non-compliant" and numerous comments were provided that qualified that assessment (**the Inspection Report**).
6. The COO was subsequently issued by the Respondent on 31 August 2023.
7. Pursuant to s 107 of the *Building Act*, the Respondent was obliged to provide a copy of the COO to the QFES. That was done on or about 1 September 2023. In his correspondence to the QFES, the Respondent provided the following note:

Non-compliant inspection: The Certificate of Occupancy for the Planet Fitness fitout has been issued upon receipt of the building owner having provided confirmation that all non-compliant inspection items raised in the QFES inspection report will be addressed.

Grounds of appeal

8. By its notice of appeal, the QFES alleges that:
 1. Certificate of Occupancy issued without the building works complying with the assessment provisions stated in the Decision Notice - namely hydrant and sprinkler system not being installed to BCA 2019 amendment 1.
 2. Certificate of Occupancy issued without building works being substantially complete namely hydrant system and sprinkler system. a. Hydrant coverage, flow and pressure and block plan not complying with AS2419.1-2005. b. Sprinkler system not reporting on its own unique input on the ASE, block plan not complying with AS2118.1-2017.
 3. Certificate of Occupancy issued without referral agency being taken.
 4. Information notice not provided to referral agency namely Queensland Fire and Emergency Service.
9. During the hearing on 14 December 2023 the QFES confirmed that paragraph 3 should read "Certificate of Occupancy issued without referral agency advice being taken".

10. Relevantly, the notice of appeal identifies the date of the notice of decision sought to be appealed as 31 August 2023. The Tribunal finds that is a reference to the COO.

Conduct of appeal

11. The Tribunal first convened to hear the appeal via video link on 14 December 2023. The QFES was represented by Mr Ryan Alloway and Mr Jason Pearce, both QFES officers. The Respondent represented himself. Mr Callan Siphthorp, a representative for the building owner, also appeared.
12. At the commencement of the hearing, the Tribunal outlined to the parties that it must be satisfied that it has jurisdiction to hear and determine the appeal. Given the grounds of appeal, the matter of jurisdiction has been a particular concern for the Tribunal.
13. After hearing oral submissions from the parties, the Tribunal considered that further submissions were required in order to properly understand the nature of the appeal, and to assist in determining the question of jurisdiction. Directions were therefore issued by the Tribunal which required that the Respondent provide written submissions addressing the legislative basis on which he alleged that he was empowered to issue the COO in circumstances where the non-compliant items raised in the Inspection Report were yet to be rectified.
14. The Respondent provided written submissions on 19 December 2023. Relevantly, the Respondent submitted that:

The Planning Act 2016 & Building Act 1975 in conjunction with subordinate regulations Planning Regulation 2017 & Building Regulation 2021 enable a Certificate of Occupancy to be issued where an advice agency being QFES issue a notice "referral agency aspects do not comply with the approval" & also states reasons why works do not comply. **Note:** The relevant extracts from the legislation & regulations are provided within the submission.

Building Regulation 2021 enables the building certifier once a QFES (non-compliant) advice notice has been received to adopt one of the following two options.

- Agree with the QFES advice given,
- Disagree with the advice given & notify QFES accordingly.

In this instance the building certifier agreed with the advice given & issued the Certificate of Occupancy once the appropriate undertakings were received from the building owner's representative that all non-compliance items identified in the QFES inspection notice would be rectified. **Note:** As there was no disagreement with the QFES inspection notice, an Information Notice under BR2021 Section 66 (2) (b) was not issued. QFES officer Ryan Alloway had contacted me to enquire on why the Certificate of Occupancy had been issued. I explained to Ryan that all inspection items listed in the QFES inspection notice would be addressed & that suitable documentation would be provided to the authority once completed.

15. In response, the QFES provided written submissions on 4 January 2024. Relevantly, the QFES submitted that:

The Building Certifier has not provided legislation as to a Building Certifiers regulatory powers once a Certificate of Occupancy has been issued, QFES opinion remains - The Building Certifiers regulatory authority ceases once a Certificate of Occupancy has been issued. Therefore while the building owner may have given the Building Certifier certain undertakings the Building Certifier is unable to enforce such undertakings. By issuing the Certificate of Occupancy the Building Certifier has deemed the building to be substantially complete and therefore the building meets all minimum safety requirements, and the Building Certifiers regulatory authority ceases. QFES report clearly articulated that several fire safety requirements had not been met. As the Certificate of Occupancy had been issued, without

the QFES advice taken at time of certificate being issued then an information notice was required to be issued (Building reg 2021, section 66).

16. Following receipt of those submissions, further directions were issued to the parties. Those directions required the parties provide submissions and documents to the Tribunal which, it was intended, would assist the Tribunal in determining the issue of jurisdiction.
17. On 7 March 2024, the Tribunal reconvened by video link. Again, Messrs Alloway, Pearce, Andrews, and Siphthorp appeared. At that time, the Tribunal outlined that it was yet to be satisfied that it had jurisdiction to hear and determine the appeal. In particular, given the notice of appeal referred to the COO, the QFES was invited to confirm on what basis, by reference to Schedule 1 of the *Planning Act 2016*, had the appeal been brought. Mr Alloway confirmed the appeal had been brought pursuant to Schedule 1, Table 3, Item 3 of the *Planning Act*, but sought that he be afforded an opportunity to provide any additional submissions following the hearing.
18. Directions were therefore made which allowed the QFES to provide “written submissions concerning the jurisdiction of the Tribunal to hear and determine the appeal. The submission should outline the legislative basis upon which the Appellant says the Tribunal has jurisdiction to hear and determine the appeal, including by reference to the *Planning Act 2016*, Schedule 1.”
19. On 21 April 2024, Mr Alloway for the QFES provided the following written submission: “I can confirm that the appeal is in line with the Planning Act, Schedule 1, Table 3, item 3.”
20. In response, the Respondent provided the following written submission on 26 April 2024:

It is acknowledged that the building appeal lodged by the appellant has been submitted in accordance with the relevant provisions of the Planning Act 2016, Section 229 (1), Schedule 1 clause (5) & Table 3, Item 3.

It is also noted that in accordance with the Building Regulation 2021 Section 66 no “Information Notice” had been issued to the referral agency (QFES) as there was no disagreement with the agency’s inspection compliance items (QFES Reference: 22-03883).
21. After considering those submissions and the question of jurisdiction, the Tribunal again reconvened by video link on 25 June 2024. Messrs Alloway, Pearce and Andrews appeared. At that time the Tribunal advised the parties that it had formed a preliminary view concerning its jurisdiction to hear the appeal and invited submissions as to the substantive issues in the proceedings. In particular, the Tribunal sought the parties’ submissions concerning those non-compliant items identified in the Inspection Report and the extent to which the Respondent disagreed with those items.

Materials

22. The Tribunal has received the following material:
 - (a) Form 10 – Notice of Appeal and attachments:
 - (ii) Development application decision notice issued by Building Certifiers & Regulatory Consultants, dated 6 July 2023
 - (iii) Note prepared by the Respondent titled “QFES Job Reference: 23-01629”, undated¹
 - (iv) Form 11 Certificate of Occupancy, dated 31 August 2023
 - (v) Building plans for Planet Fitness Rising Sun

¹ As referred to herein at paragraph 7.

- (vi) Letter, QFES to the Respondent (enclosing referral agency response), dated 30 June 2023
- (c) Letter, QFES to the Respondent (enclosing inspection report), dated 29 August 2023
- (d) Form 12 – Aspect Inspection Certificate, dated 29 September 2023
- (e) Form 72 – fire hydrant and sprinkler system period testing and maintenance, dated 8 November 2023
- (f) Respondent’s written submissions dated 19 December 2023
- (g) QFES’s written submissions dated 4 January 2024
- (h) Respondent’s written submissions in reply, dated 10 January 2024
- (i) Respondent’s written submissions (email), dated 14 March 2024
- (j) QFES’s written submissions (email), dated 21 April 2024
- (k) Respondent’s written submissions (email), dated 26 April 2024
- (l) Respondent’s written submissions (email), dated 28 June 2024 including attachments:
 - (i) Photographs of installed fire services
 - (ii) Record of test of automatic fire sprinkler system
 - (iii) Plan, Fire hydrant coverage / fire hose reel coverage / mezzanine floor plan
- (m) Respondent’s written submissions (email), dated 9 July 2024 including attachments:
 - (i) Hydrant Booster Block Plan
 - (ii) Sprinkler Zone Block Plan
 - (iii) Example Hydrant Block Plan
 - (iv) Extract of AS2419.1-2005
- (n) QFES’s written submissions (email), dated 12 July 2024
- (o) Respondent’s written submissions (email), dated 16 July 2024

Jurisdiction

23. The Tribunal has limited jurisdiction. Only those matters prescribed by s 229 and Schedule 1 of the *Planning Act* may be appealed to the Tribunal. Pursuant to Schedule 1, Table 3, Item 3, certain decisions under the *Building Act* may be appealed to the Tribunal. Relevantly, an appeal may be made against:

- (a) a decision under the Building Act, other than a decision made by the Queensland Building and Construction Commission, if an information notice about the decision was given or required to be given under that Act

24. The appellant for such an appeal is “A person who received, or was entitled to receive, an information notice about the decision”. The respondent is “The entity that made the decision”.
25. The notice of appeal identified the “notice of decision under appeal” as the COO issued on 31 August 2023.
26. Whether the Tribunal has jurisdiction to hear and determine an appeal against that decision turns upon whether “an information notice about the decision was given or required to be given” to the QFES under the *Building Act*.
27. The term “information notice” is relevantly defined at Schedule 2 of the *Building Act* to mean:

information notice, for a decision, means—

- (a) if the decision may be appealed under the Planning Act—a notice stating—
 - (i) the decision, and the reasons for it; and
 - (ii) all rights of appeal against the decision under the Planning Act; and

(iii) how the rights are to be exercised; ...

28. The QFES submits that, as the COO had been issued in circumstances where the matters of non-compliance identified in the Inspection Report had not been rectified, an information notice was required to be issued by the Respondent pursuant to s 66 of the *Building Regulation 2021*. To understand the QFES's argument, it is necessary to outline the relevant provisions of the *Building Act* and the *Building Regulation*.
29. As detailed above, pursuant to ss 69 and 74 of the *Building Act*, it was a condition of the building development approval that the QFES be given notice to inspect and test the special fire service. Section 74 provides:

74 Inspection and testing of special fire service installation

- (1) This section applies to a building development approval for a building served by a special fire service.
- (2) The person installing the service must—
- (a) give QFES—
- (i) while the installation of the service is being carried out but before it is finished—a notice to inspect the installation; and
- (ii) after the installation of the service but before interior surface finishes are applied—a notice to test the service; and
- (b) give a copy of the notices to the assessment manager when they are given to QFES.
- (3) QFES may inspect and test the building work only about special fire services.

30. Sections 65 and 66 of the *Building Regulation* then provide:

65 Referral agency's decision about inspection

- (1) This section applies if a referral agency receives—
- (a) a notice to inspect under section 64(2); or
- (b) a notice to inspect the installation of, or test, a special fire service under section 74(2) of the Act.
- (2) If the referral agency decides to not inspect the building work or inspect or test the special fire service the agency must, within 5 business days after receiving the notice, give the builder and the building certifier a notice stating it will not inspect the building work or inspect or test the service.
- (3) If the referral agency decides to inspect the building work or inspect or test the service the agency must, within 15 business days after receiving the notice—
- (a) inspect the work or inspect or test the service; and
- (b) give the builder and the building certifier a notice stating—
- (i) the referral agency aspects comply with the building development approval; or
- (ii) the referral agency aspects do not comply with the approval, and the reasons why they do not comply.

- (4) If the building certifier is a local government building certifier, subsection (2) or (3)(b) may be complied with by giving the notice to the local government.

66 Responding to notice given by referral agency

- (1) The building certifier must, in performing functions under the Act for the building work, accept the statement made in a notice given under section 65(3)(b).
- (2) However, subsection (1) does not apply if the building certifier—
 - (a) disagrees with the decision stated in the notice; and
 - (b) within 5 business days after receiving the notice, the certifier gives the referral agency an information notice about the certifier's disagreement.

31. The *Building Regulation* does not define the term “information notice”, and the Tribunal finds such term takes its meaning from the *Building Act*.²

32. It is also necessary to understand the processes for issuing a certificate of occupation under the *Building Act*. Relevantly, ss 101 and 102 provide:

101 Meaning of *substantially completed*

- (1) A building has been ***substantially completed*** when—
 - ...
 - (k) if the relevant development approval includes conditions advised or required by a referral agency and the conditions are about the building work for the building—the conditions have been complied with.
 - ...

102 Obligation to give certificate of occupancy on inspection after particular events

- (1) This section applies if—
 - (a) the building certifier has inspected the building and—
 - (i) decided that it has been substantially completed; or
 - (ii) given written consent to the occupation of part of the building before all of it has been substantially completed; or
 - (iii) if the development is alterations to an existing building—decided that they have been substantially completed; and
 - (b) if there is any fire safety installation installed in the building—the applicant has given the building certifier—
 - (i) a list of all of the installations; and
 - (ii) drawings showing their location; and
 - (c) any requirement under the building assessment provisions or a condition of the building development approval for a referral agency inspection of the building has been complied with or has ceased to apply.
- (2) The building certifier must, as soon as practicable, ensure the owner of the building is given a certificate of occupancy by a building certifier that complies with the

² *Acts Interpretation Act 1954* (Qld), ss 7 and 32AA.

requirements under section 103 for a certificate of occupancy (the **certificate requirements**).

Maximum penalty—20 penalty units.

- (3) If a requirement mentioned in subsection (1)(c) applies, the certificate must not be given until the requirement has been complied with or it has ceased to apply.

Notes—

1 For rights of appeal to a development tribunal, see the Planning Act, section 229.

2 See also section 132.

33. Relevantly, s 107 of the *Building Act* then requires that a referral agency be given a copy of the certificate of occupation together with “a copy of plans and specifications showing the aspects of the completed building work relevant to the agency’s functions as a referral agency” and, if the agency is the QFES, “a list of all fire safety installations installed in the building” and “drawings showing the location of the fire safety installations.”
34. The QFES argues that the COO was issued by the Respondent in circumstances where: the building works did not comply with the assessment provisions stated in the referral agency response (namely, “hydrant and sprinkler system not being installed to BCA 2019 amendment 1); the building works were not substantially complete (namely, “hydrant coverage, flow and pressure and block plan not complying with AS2419.1-2005” and “sprinkler system not reporting on its own unique input on the ASE, block plan not complying with AS2118.1-2017”). In that premise, the QFES says its advice provided in the Inspection Report (provided pursuant to s 65(3)(b) of the *Building Regulation*) had not been accepted, and the Respondent was therefore required to provide an information notice pursuant to s 66(2) of the *Building Regulation*. Inherently, such argument requires that the Respondent disagreed with the QFES advice.
35. The Respondent has said that there was no disagreement. As indicated in his written submissions:
- In this instance the building certifier agreed with the advice given & issued the Certificate of Occupancy once the appropriate undertakings were received from the building owner’s representative that all non-compliance items identified in the QFES inspection notice would be rectified.
36. That is consistent with the note the Respondent provided to the QFES with the COO:
- Non-compliant inspection: The Certificate of Occupancy for the Planet Fitness fitout has been issued upon receipt of the building owner having provided confirmation that all non-compliant inspection items raised in the QFES inspection report will be addressed.
37. While the Respondent has submitted there was no disagreement with the QFES advice, the Tribunal does not look past the fact that it was a condition of the building development approval that the “Conditions of Queensland Fire & Emergency Service ‘Special Fire Service Report’ prepared on the 30 June 2023, reference number 23-01629 to be complied with”. By its Inspection Report, the QFES was telling the Respondent that such conditions had not been complied with. Such matters are relevant to determining whether the building was “substantially complete” (s 101(k) of the *Building Act*) and informs the circumstances as to when the Respondent was empowered to issue the COO (s 102 of the *Building Act*).
38. To accept the submissions of the Respondent, that he was not required to provide an information notice under s 66 (2) of the *Building Regulation* in these circumstances,

ignores what is plainly the purpose of the legislative provisions cited herein. That is, by a system of referral, assessment and inspection, the QFES is able to ensure that building works comprising special fire systems are installed in accordance with those matters prescribed by Schedules 9 and 19 of the *Planning Regulation* prior to occupation.

39. By issuing the COO, the Respondent permitted occupation of the building. Importantly, the COO contained no restriction on the use or occupation of the building to suggest that it was conditional upon the rectification of the non-compliances identified by the QFES. As the QFES has correctly submitted, upon issuance of the COO the Respondent's ability to regulate the use and occupation of the building, or ensure the matters of non-compliance were rectified, ended.
40. In those circumstances, the Tribunal does not accept that the matters of non-compliance identified by the QFES in the Inspection Report could be rectified at some time post the issuance of the COO. In other words, the matters of non-compliance should have been rectified before the Respondent issued the COO. Alternatively, the Respondent should have issued an information notice under s 66(2) of the *Building Regulation*.
41. That s 107 of the *Building Act* required that the Respondent provide to the QFES with the COO "a copy of the plans and specifications showing the aspects of the completed building work relevant to the agency's functions as a referral agency", together with "list of all fire safety installations installed in the building" and drawings showing their location, supports the Tribunal's findings. Section 107 would serve little purpose if a building certifier could provide plans of incomplete or non-compliant building works.
42. In that premise, the Tribunal finds that by issuing the COO in these circumstances the Respondent provided notice to the QFES that it disagreed with the decision of the QFES that certain aspects of the work did not comply with the building development approval as stated in the Inspection Report.³ Contrary to the requirement in s 66(2) of the *Building Regulation*, the Respondent did not issue an information notice to the QFES.
43. Further, despite the Respondent's initial submissions that there was no disagreement with the decision of the QFES that certain aspects of the work did not comply with the building development approval as stated in the Inspection Report, during the hearing (particularly that convened on 25 June 2024) it became apparent to the Tribunal that the Respondent did disagree with that decision. Those items of disagreement are considered below. Contrary to the requirement in s 66(2) of the *Building Regulation*, the Respondent did not issue an information notice to the QFES.
44. It follows that the Tribunal finds that the QFES was entitled to receive an information notice about the Respondent's decision to disagree with the QFES's decision that certain aspects of the work did not comply with the building development approval as stated in the Inspection Report. The Tribunal therefore finds it has jurisdiction to hear and determine the appeal pursuant to Schedule 1, Table 3, Item 3 of the *Planning Act*.

Findings and reasons

45. The Tribunal convened a third hearing held on 25 June 2024 to hear submissions from the parties as to the substantive issues in the appeal. In particular, the Tribunal sought submissions from the parties as to those items listed in the Inspection Report as being "non-compliant".

³ A similar approach was adopted in: *Queensland Fire & Emergency Services v Thomas Independent Certification*, Building and Development Dispute Resolution Committees Decision, Appeal no 16-2015 at 7; *Queensland Fire and Emergency Services v TT Building Surveyors*, Development Tribunal Decision, Appeal no 19-2018 at 5-6.

46. The parties agreed that many of the non-compliant items have since been rectified to the QFES's satisfaction. Therefore, the items in dispute were limited to the following matters.

Hydrant performance

47. The Inspection Report identified the "Fire Mains (including booster and/or pumps)" to be non-compliant. In particular, it was said that:

1. The Hydrant System could not meet the Not Boosted attack pressure of 20L/s @ 350Kpa as required by AS 2419.1-2005 2.3.4 Table 2.1 and 2.2. QFES achieved Not Boosted flow and pressure of 20L/s @ 300Kpa at time of inspection.

48. The referral agency response dated 30 June 2023 had previously required that "Required flow and pressure is 20L/s @350 kPa (unassisted) and 20L/s @ 700 kPa (boosted)" and that "Certification (Form 12) indicating compliance of system performance with AS 2419 is to be provided prior to/at QFES' inspection".
49. The Tribunal notes a Form 12 has been produced which certifies that fire hydrant aspects of the building work have been certified against AS2419.1-2005. Moreover, a Form 72 has been produced which evidences that the hydrant system achieved the 20 L/s @ 350 kPa requirement.
50. During the hearing the QFES submitted that the required pressure was to be achieved while the fire sprinkler and fire hydrant systems were operating simultaneously. In particular, it submitted that AS 2419.1 (2005) clause 2.1.1 combined with fire-fighting operational need requires both systems to operate simultaneously.
51. The Respondent argued that the QFES referral agency response dated 30 June 2023 did not stipulate that both systems must be designed and tested simultaneously, and that he accepted the advice that the hydrant system met the performance requirement set out therein.
52. When read together, the Tribunal considers that neither the Inspection Report nor the referral agency response of 30 June 2023 indicate that the QFES required that both systems must be tested simultaneously. The Respondent accepted the QFES's advice that the hydrant system must meet the performance requirement of 20 L/s @ 350 kPa as stipulated in the referral agency response.
53. Having regard to the grounds for the appeal listed on the Form 10 and the accompanying documents, it was not a requirement of the referral agency response for the flow and pressure be achieved while both fire sprinkler and fire hydrant systems operated simultaneously. The position now submitted by the QFES (that simultaneous operation was required) was not presented to the Respondent prior to lodgement of the appeal.
54. The fire hydrant system was tested to the standard required of the referral agency response - 20L/s @ 350 kPa. Little more could be expected of the Respondent at this stage in the process, and introducing additional aspects of non-compliance during the appeal proceedings would change the nature of the appeal.
55. It follows that the Tribunal finds there was no non-compliance with the referral agency aspects of the building development approval concerning this item.

Hydrant hose coverage

56. The Inspection Report identified the “Fire Mains (including booster and/or pumps)” to be non-compliant. In particular, it was said that:

4. QFES was unable to achieve full Hydrant Hose coverage to all parts of the building, specifically Level one Kitchenette.

57. In acknowledgement of that non-compliance and in an attempt to address the shortfall in fire hydrant hose coverage, a fire hydrant was later installed on the mezzanine level adjacent to the kitchen in the training room (as shown circled red on plan drawing FH2, revision A dated 25 September 2023). This was done after issuance of the COO.

58. The QFES argues that the location of the hydrant is unsafe and therefore cannot be used. In particular, the QFES submitted that its location did not comply with fire brigade operational requirements or the Australian Standards. Mr Alloway referred the Tribunal to clause 2.1.1 of AS 2419.1 which states:

Fire hydrant systems designed in accordance with this Standard shall be compatible with the equipment and procedures employed by the attending fire brigade when fighting a fire in one location in a building or complex.

59. Mr Alloway also pointed out clause 3.2.3.3 of AS 2419.1 which states:

If floor coverage cannot be achieved in accordance with Clauses 3.2.3.1 and 3.2.3.2, additional provisions shall be made to suit the operational requirements of the fire brigade.

60. Mr Alloway argued consultation with the QFES had not taken place with respect to the installation of the fire hydrant which is a condition of clause 3.2.3.3. That is, the additional hydrant must meet the operational requirements of the fire brigade through a consultation process.

61. The Respondent submitted that the fire hydrant was installed in an attempt to rectify the hose shortfall and that it must meet AS 2419.1. The QFES did not object to this.

62. When asked whether the location of the fire hydrant met the requirements of AS 2419.1 the Respondent agreed it provided compliant hose coverage, but the location is at the discretion of QFES.

63. The Respondent then argued that, if the project adopted the 2021 edition of AS 2419.1,⁴ the additional hydrant would not have been needed as the measurement of hose coverage is different and that the fire hydrants located elsewhere would have provided sufficient coverage. However, he pointed out this edition of the Australian Standard was not adopted in the building development approval.

64. In the absence of information that would direct the Respondent to these operational requirements of the QFES and thereby enable him to comply with the referral agency advice, a consultation process to ascertain such requirements should follow. This did not happen.

65. Reference is made to section 3 of AS 2419.1 which details the location and other provisions for fire hydrants. Clause 3.2.3.2 provides for the following:

3.2.3.2 Location

Internal fire hydrants shall be located as follows:

⁴ The Building Development Approval indicates the 2005 edition was adopted.

- (b) For required non-fire-isolated exits —
 - (i) within 4m of the required exit;
 - (ii) at each level or at the lowest level provided coverage of all levels is achieved; and
 - (iii) fire hydrant outlets need not be located adjacent to each required non fire-isolated exit provided coverage can be achieved by fire hydrants located elsewhere, e.g. within a fire-isolated exit or external fire hydrants

66. Clause 3.2.3.3 relevantly goes on to state:

3.2.3.3 Additional fire hydrants

If floor coverage cannot be achieved in accordance with Clause 3.2.3.1 and 3.2.3.2, additional provisions shall be made to suit the operational requirements of the fire brigade.

- 67. The intent of the provisions in AS 2419.1 relating to fire hydrant location are made clear. Clause 3.2.3.2 makes provision for locating internal fire hydrants, firstly within fire-isolated exits (where they exist), and secondly within 4m of non-fire-isolated exits.
- 68. Where fire hydrant hose coverage cannot be met pursuant to clauses 3.2.3.1 and 3.2.3.2, then clause 3.2.3.3 relevantly provides that additional provisions shall be made to suit operational requirements of the fire brigade.
- 69. In the Tribunal's opinion, there is a clear process to be followed when locating fire hydrants. Firstly, fire hydrants are located pursuant to the provisions of clauses 3.2.3.2(a) and (b). A measurement of hose coverage is then undertaken and where hose coverage does not comply, then clause 3.2.3.3 provides for additional provisions.
- 70. The Australian Standard makes clear the hydrant is to be positioned, in this circumstance, within 4m of an exit. The Tribunal finds that this did not happen. Moreover, the Tribunal finds that the location does not comply with clauses 3.2.3.1 and 3.2.3.2 of AS 2419.1, and further, as a consultative process did not take place, the location does not comply with clause 3.2.3.3.
- 71. It follows that the Tribunal finds there is non-compliance with the referral agency aspects of the building development approval concerning this item.

System alarms

- 72. The Inspection Report identified the "Sprinklers (General System (AS 2118.1))" to be non-compliant. In particular, it was said that:
 - 1. While testing for system monitoring, QFES observed activation of Input 1 for the Fire Detection and Alarm System simultaneously with the Installed Sprinkler System. Each system is required to activate a unique signal for the individual system being monitored.
- 73. The QFES submitted that where multiple fire systems are installed and required to transmit an alarm signal to the monitoring centre, these signals must be separate. That is, each system is required to transmit a unique signal for the individual system that is monitored.
- 74. The alarm signal is transmitted by a device known as Alarm Signalling Equipment. A feature of this device, as pointed out by the QFES, is that it is capable of transmitting multiple signals.
- 75. The Respondent argued the standards do not require separate signals to be sent, and that it does not matter what activates the system but rather as long as the signal is sent.

76. The QFES argued the requirement for separate signals stems from the fire sprinkler standard AS 2118.1 (2017 Amendment 1), and, further, that the QFES response to an emergency is dependent upon the signal they receive.
77. The subject site comprises of two fire safety systems capable of transmitting alarm signals: the fire sprinkler system, and the fire detection and alarm system. Both systems operate on the principle that once heat and/or smoke is generated, they activate, and a corresponding alarm signal is sent to a monitoring centre triggering a response from the fire service.
78. The QFES contend that the requirement for separate alarm signals is informed by the relevant requirements in AS 2118.1, which provides as follows:

3.3.2 Transmission of the alarm signal

3.3.2.1 General

Upon actuation of the sprinkler system, an alarm signal shall be automatically transmitted to an alarm monitoring and dispatch centre in accordance with Clause 8.13 and AS 1670.3

79. Further examination of clause 3.3.2 provides guidance the Tribunal considers relevant in determining the issue of separate signalling:

***C3.3.2** The fundamental object of an automatic fire sprinkler system is to detect, control and report a developing fire to the fire brigade. Therefore, it is an intrinsic part of a sprinkler's design to alert the fire brigade upon activation of the sprinkler system, to maximize its effectiveness.*

80. AS 2118.1 makes clear the fire sprinkler system is to detect, control and alert the fire brigade upon activation of the fire sprinkler system. Combining the signal with the fire detection and alarm system to produce a generic signal, in the Tribunal's opinion, does not comply with clause 3.3.2 of AS 2118.1.
81. It follows that the Tribunal finds there is non-compliance with the referral agency aspects of the building development approval concerning this item.

Disposition

82. For the reasons above, the QFES has satisfied the Tribunal that the appeal should be upheld.
83. The decision of the Respondent to disagree with the QFES decision that certain aspects of the work did not comply with the building development approval as stated in the Inspection Report is replaced with the decision to accept the QFES decision concerning non-compliance to the extent that:
- (a) The additional hydrant installed to provide coverage to the Level 1 kitchenette be relocated to within 4m of an exit; and
 - (b) The Alarm Signalling Equipment is reconfigured to transmit separate and distinct signals for each of the fire sprinkler and fire detection systems to the local monitoring centre.

Travis Schmitt
Development Tribunal Chair
Date: 29 August 2024

Appeal rights

Schedule 1, Table 2, item 1 of the *Planning Act 2016* provides that an appeal may be made against a decision of a Tribunal to the Planning and Environment Court, other than a decision under section 252, on the ground of -

- (a) an error or mistake in law on the part of the Tribunal; or
- (b) jurisdictional error.

The appeal must be started within 20 business days after the day notice of the Tribunal decision is given to the party.

The following link outlines the steps required to lodge an appeal with the Court.

<http://www.courts.qld.gov.au/courts/planning-and-environment-court/going-to-planning-and-environment-court/starting-proceedings-in-the-court>

Enquiries

All correspondence should be addressed to:

The Registrar of Development Tribunals
Department of Housing, Local Government, Planning and Public Works
GPO Box 2457
Brisbane QLD 4001

Telephone 1800 804 833

Email: registrar@epw.qld.gov.au