



Building and Development Tribunals

Queensland Government

Department of **Local Government and Planning**

APPEAL

Integrated Planning Act 1997

File No. 3/07/071

BUILDING AND DEVELOPMENT TRIBUNAL - DECISION

Assessment Manager: Maroochy Shire Council

Site Address: *withheld*-“the subject site”

Applicant: *withheld*

Nature of Appeal

Appeal under Section 4.2.12A of the *Integrated Planning Act 1997* against the decision of certifier, Robert Boog of RC Building Inspections, to impose conditions in respect of the final inspection of building work on “the subject site”.

Date and Place of Hearing: 10.00am Tuesday 20 November 2007
at 29 Bowerbird Place, Mons.

Tribunal: Geoff Cornish – Tribunal Chair

Present: Applicants
Robert Boog – RC Building Inspections

Decision

In accordance with Section 4.2.34 (2) of the *Integrated Planning Act 1997*, the Tribunal **confirms** the decision of Robert Boog of RC Building Inspections to impose a condition on the Final Inspection Report for a dwelling constructed on “the subject site” requiring the installation of corrosion resistant steel, bronze or aluminium screens to all openable parts of windows and doors in the dwelling.

Background

The matter concerns the decision of the certifier to impose a condition on the notice issued in relation to the final inspection of a new dwelling constructed on “the subject site”. This condition requires all openings in the dwelling to be screened with corrosion resistant steel, bronze or aluminium mesh in accordance with the deemed to satisfy provisions of the BCA. The bush fire risk category of the site, when assessed in accordance with the State Planning Policy, is “High”.

No alternative solution or performance based solution to the problem was submitted to the certifier for his consideration, either at the time of submitting the application for development approval or subsequently at final inspection stage. The certifier issued his final inspection report on the basis of the dwelling, as constructed, with a number of unprotected openings.

Material Considered

1. Form 10 – Building and Development Tribunals Appeal Notice, dated 5 November 2007, against the decision of the certifier to require screening of the openings and setting out the grounds of the appeal;
2. Copies of the bushfire risk assessments dated 12 April 2005 prepared by Robert Boog and 15 September 2006 prepared by Richard Lohse of the Queensland Fire and Rescue Service;
3. Copies of the relevant attachments to the decision notice for development approval for building work;
4. Verbal submission made by the applicants on 20 November 2007 explaining the reasons for the appeal;
5. Verbal submission made by the certifier on 20 November 2007 setting out the reasons for requiring the screening;
6. The *Building Act 1975*;
7. The *Integrated Planning Act 1997*;
8. The Building Code of Australia; and
9. Australian Standard AS3959-1999.

Findings of Fact

The Tribunal made the following findings of fact:

1. The property is defined by the local government as being within a bushfire prone area;
2. The application made to the certifier, for assessment for a development permit for building work, did not include any independently assessed material from an appropriately qualified person suggesting that a performance based solution could be applied to the bushfire exposure aspects of the proposed dwelling;
3. As required, the certifier assessed the bushfire risk in accordance with the provisions of the State Planning Policy and classified the risk associated with the site as “High”;
4. The Queensland Fire and Rescue Service separately classified the risk as “High”;
5. With no submitted alternative solution, the certifier applied the Deemed to Satisfy provisions of the Building Code of Australia as reasonable and relevant conditions of approval;

6. A performance based alternative solution, addressing the bush fire protection issues raised in the initial approval, had still not been submitted to the certifier at the time of final inspection.

Reasons for the Decision

1. The potential problems with the protection of all openings within the dwelling to the bushfire risks associated with this designated site should have been identified and addressed at design stage. Specialist advice should have been sought and obtained on this matter before any plans were prepared or submitted for development approval;
2. While the conditions applied to the approval may not be acceptable to the owners for various reasons, this does not constitute a valid basis for not requiring compliance with the provisions of the Building Code of Australia;
3. Similarly, whilst other dwellings in the immediate vicinity may or may not either have been correctly assessed or inspected, the situation with respect to those dwellings is totally irrelevant to the correct assessment and final approval of this particular building;
4. There was no dispute from any party to the appeal that the dwelling was, in fact, located within an area defined by the local government as being a bushfire prone area;
5. There was no suggestion from the appellants that the bushfire assessment category, determined independently by both the certifier and QFRS, was incorrect or too severe;
6. The objections and proposals raised by the appellants in their submission to the Tribunal do not constitute a professionally competent and assessable performance based alternative solution to the “Deemed to Satisfy” provisions of the Building Code of Australia.
7. No performance based alternative solution, prepared by an independent fire engineer or other suitably qualified person, was submitted to the Tribunal to demonstrate that the dwelling, as constructed, should be approved with those alternative conditions acceptable to the appellants;
8. Notwithstanding the decision of this Tribunal in respect of this appeal, the appellants still have the opportunity to obtain independent professional advice on the fire protection aspects of the Australian Standard and the Building Code of Australia. Following such advice, a submission could then be made to the certifier for reconsideration of his final inspection conditions.

Geoff Cornish
Building and Development
Tribunal Chairperson
Date: 23 November 2007

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
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