



**Building and Development Tribunals**  
**Queensland Government**

Department of **Local Government, Planning,  
Sport and Recreation**

**APPEAL**  
*Integrated Planning Act 1997*

**File No. 03-05-013**

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**BUILDING AND DEVELOPMENT TRIBUNAL - DECISION**

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**Assessment Manager:** Gold Coast City City Council

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

**Applicant:** *withheld*

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**Nature of Appeal**

Appeal under Chapter 4 Part 2 of the *Integrated Planning Act 1997* against the decision by Express Plan Approval Services to not issue a final inspection certificate for a dwelling constructed on land described as Lot *withheld* and situated at “the subject site”.

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**Date and Place of Hearing:** Commenced 10.00am, 7 April 2005  
at “the subject site”.

**Tribunal:** Phil Finnimore

**Present:** *withheld* – Applicant.  
*withheld* – Applicant’s Representative.  
*withheld* – Applicants Representative.  
Milenco Ruzic – Express Plan Approval Service.

**Decision**

Under the provisions of section 4.2.34 of the *Integrated Planning Act 1997* (IPA), the Tribunal **confirms** the decision by Express Plan Approval Services to not issue a final inspection certificate for a dwelling constructed on land described as Lot *withheld* and situated at “the subject site”.

## **Background**

The application for development approval to carry out building work on a dwelling at “the subject site” was decided by Stacy Kennedy (the certifier) on 8 March 2001. A final inspection of the building work was carried out by the certifier’s representative on 16 October 2002.

A final inspection report appears to indicate all on-site requirements were satisfactory, but there were outstanding certificates. One of the certificates noted as being required related to the waterproofing of the external walls of the building.

A certificate relating to the waterproofing of the external walls was provided to the certifier early in the year 2005 (no specific date available) by the applicant

. The certifier would not accept the certificate, as it was not considered suitable for various reasons. On this basis the certifier did not issue a final inspection certificate for the dwelling which prompted the applicant to appeal the decision to the Building and Development Tribunal (the Tribunal).

## **Material Considered**

Documents forming part of the appeal submission:

- The Form 10 application;
- Copy of letter from the certifier to East Coast Resorts (applicant’s representative) dated 23.02.05.
- Copy of letter from the applicant to Building Codes Queensland dated 08.03.05.

Documents provided on the day of the hearing:

- Folder from the certifier containing several certificates from various contractors in relation to construction of the house including a letter from the certifier to the applicant’s representative date 23.03.05.

Other documents:

- Copy of IDAS forms parts A & B;
- Facsimile from certifier to Building and Development Tribunal dated 12.04.05. outlining reasons for the decision.

## **Findings of Fact**

1. A final building inspection report was issued by the certifier indicating an inspection was carried out on 16 October 2002 at “the subject site”. This report set out several certificates as being required to allow the issue of a final inspection certificate.
2. A letter from the certifier to the applicant’s representative dated 3 February 2005 clarified that two outstanding certificates were required. The first certificate related to the construction of the balustrades and the second to the waterproofing of the external walls of the house.

The letter also explained that the certifier, to act in the public interest, must be satisfied that water will not penetrate the single skin of the house. It went on further to state that the certifier was still awaiting a certificate from a **competent person** in relation to the sealing of the external wall.

3. The author of the certificate relating to the waterproofing of the walls does not indicate they are the applicator of the paint system. This fact was also confirmed by the applicant's representative when they stated the original applicator, for various reasons, could not be contacted. Therefore there could be no way they could obtain the relevant certification.
4. The certifier provided a letter dated 23 February 2005 to the applicant's representative expressing dissatisfaction in relation to the waterproofing certificate received and confirms a refusal to issue the final completion certificate. This same letter also provided the rights of appeal available to the applicant in a somewhat vague manner.
5. The applicant appealed to the Tribunal on 14 March 2005 against the decision of the certifier not to issue a final inspection certificate for the dwelling at 33a Brittanian Crescent, Sovereign Island. A hearing in relation to this appeal was conducted on the site of the building work on 7 April 2005 at 10.00am.

#### **Reasons for the Decision**

6. Section 5.3.8(1) of the *Integrated Planning Act* (IPA) requires that a private certifier must always act in the public interest when performing the functions of a private certifier. Section 5.3.8(2)(e) of IPA further requires that a private certifier must not contravene a code of conduct approved under the regulation.
7. On 20 October 2003 the Chief Executive made a code of conduct for building certifiers in accordance with the provisions of section 32 of the *Building Act 1975* (the Act). This code became effective on 14 November 2003 and in part its purpose is to set standards and inform the community of the conduct expected from building certifiers.
8. Item 1 of the code of conduct states: '*a building certifier must perform certifying functions in the public interest*'. The code further explains by way of example that a building certifier when performing building certifying functions must ensure the health and safety of any person and that the person's property is not compromised.
9. By accepting the waterproofing certificate and its wording the certifier could not reasonably establish two critical aspects that would have ensured the person's health and safety and that the property would not be compromised.
10. The first aspect was the competency of the person providing the certificate. With wording on the certificate such as: '*I have inspected the paint and sealant relevant to the above and believe the materials to be appropriate*', any certifier could not reasonably consider the author to be competent. For clarity the term '*above*' referred to a material complying with Australian Standards and the BCA but did not reference any specific standard or BCA part.

11. The second aspect was the certificate itself did not provide any level of comfort that the waterproofing was in fact suitable. There appeared no profound statement supported by any testing or other means to establish the fidelity of the applied material. Given these circumstances it is entirely reasonable and expected that any certifier should not only question the strength of the certificate but not accept it.

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**Phil Finnimore**  
**Building and Development**  
**Tribunal Referee**  
**Date: 04 May 2005**

## **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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