



**Building and Development Tribunals**

**Queensland** Government

Department of **Local Government and Planning**

**APPEAL**

*Integrated Planning Act 1997*

**File No. 3/07/036**

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

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**Assessment Manager:** Maroochy Shire Council

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

**Applicant:** *withheld*

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### **Nature of Appeal**

Appeal under Section 4.2.9 of the *Integrated Planning Act 1997* against the decision of certifier, Steve Ferguson of Sunline Building Approvals to impose conditions on a development approval for building work on “the subject site”.

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**Date and Place of Hearing:** 9.00am Tuesday 3 July 2007  
at “the subject site”

**Tribunal:** Geoff Cornish – Tribunal Chair  
Don Grehan – Tribunal Member

**Present:** Applicants’ agent.  
Steve Ferguson – Sunline Building Approvals

### **Decision**

In accordance with Section 4.2.34 [2] of the *Integrated Planning Act 1997*, the Tribunal **confirms** the decision of Steve Ferguson of Sunline Building Approvals to impose conditions on a development approval for building work for a dwelling to be constructed on “the subject site”. The approval requires the protection of all openings in the dwelling to be in accordance with the “Deemed to Satisfy” provisions of the Building Code of Australia.

### **Background**

The matter concerns the decision of the certifier to impose conditions on the decision notice issued in relation to the new dwelling to be constructed on “the subject site”, requiring the screening of all openings in the dwelling in accordance with the “Deemed to Satisfy” provisions of the Building Code of Australia, Clause 3.7.4.3, or Australian Standard AS3959-1999.

This follows an assessment made by the certifier in accordance with AS3959 that the site, already designated by the local government as being one that was in a possible bushfire prone area, should be categorised as being exposed to medium bushfire attack.

No alternative solution or performance based solution to the problem was submitted to the certifier for his consideration at the time of submitting the application for development approval. The certifier made his assessment on the basis of the material supplied to him at the time.

### **Material Considered**

1. Form 10 – Building and Development Tribunals Appeal Notice, dated 28 May 2007, against the decision of the certifier to impose conditions on the development approval and setting out the grounds of the appeal;
2. Copy of the bushfire risk assessment dated 15 April 2007;
3. Copy of the decision notice for development approval for building work, together with relevant attachments;
4. Verbal submission made by the applicants’ agent on 3 July 2007 explaining the reasons for the appeal;
5. Verbal submission made by the certifier on 3 July 2007 setting out the reasons for imposing the conditions on the approval;
6. Copy of the Maroochy Shire Council map of bushfire prone areas incorporating the allotment in question;
7. The *Building Act 1975*;
8. The *Integrated Planning Act 1997*;
9. The Building Code of Australia; and
10. Australian Standard AS3959-1999.

### **Findings of Fact**

The Tribunal made the following findings of fact:

1. The property in question is located in an area defined by the local government as being a “Possible 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 Australian Standard and classified the site accordingly as “Medium”;
4. In the absence of any submitted alternative solution, the certifier applied the “Deemed to Satisfy” provisions of the Building Code of Australia to the approval as reasonable and relevant conditions of approval.

### **Reasons for the Decision**

1. The potential problems with the protection of openings within the dwelling to the bushfire risks associated with this designated site should have been identified and addressed by the designer of the building at design stage, and agreed with the appellants, before any final plans were prepared or submitted for development approval;
2. While the conditions applied to the approval may not be acceptable to the owners, for reasons including aesthetics and cost impediments, this does not constitute a valid reason for not requiring compliance with the provisions of the Building Code of Australia;
3. There was no dispute from any party to the appeal that the proposed dwelling was, in fact, located within an area defined by the local government as being a possible bushfire prone area;
4. There was no suggestion from the appellants’ agent that the bushfire assessment category of “Medium” determined by the certifier was incorrect or too severe;
5. The objections raised by the appellants in their submission to the Tribunal do not constitute a professionally competent and assessable alternative solution to the “Deemed to Satisfy” provisions of the Building Code of Australia.
6. No alternative solution or performance based solution prepared by an independent fire engineer was submitted to the Tribunal to demonstrate that construction of the dwelling could have been approved without the disputed conditions, but with alternative conditions that would be acceptable to the appellants;
7. 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 and to make a submission to the certifier for his consideration of a performance based variation to the current approval.

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**Geoff Cornish**  
**Building and Development**  
**Tribunal Chair**  
**Date: 5 July 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  
Building Codes Queensland  
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