



Building and Development Tribunals
Queensland Government

Department of Local Government, Planning,
Sport and Recreation

APPEAL

File No. 03-04-033

Integrated Planning Act 1997

BUILDING AND DEVELOPMENT TRIBUNAL - DECISION

Assessment Manager: Barry G Pellow – Central Coast Building Certification

Site Address: 12 Lighthouse Drive, Boyne Island

Applicant:

Nature of Appeal

Appeal against the decision of Barry G Pellow to not issue a Certificate of Occupancy until handrails and balustrade are fitted to the steps and front entry area as per Building Code of Australia (BCA) (Volume 2) Section 3.9.2

Date and Place of Hearing: Conducted by written submission

Tribunal: Gregory Paul Dempster,
(Ass. Dip. App. Sc. (Building), B. Bld. Svy.)

Submissions Received From: Applicant
Certifier

Decision:

The decision of Barry G Pellow as contained in its written notice dated 13 May 2004 to require the front entry and stairway to be provided with balustrade is **upheld**.

The existing entry and stairway is to be provided with a balustrade that is not less than 865 mm above the nosing of the stair and 1,000 mm above the entry landing and/or garden beds.

Background:

The existing front entry and stairway are bordered by garden beds, which are elevated to be level with the entry slab. The tops of the garden beds are between 1360 mm and 1460 mm above the surface beneath (ground surface).

The installation of garden plants in the garden beds and the overall depth of the garden beds are being presented as **other barrier** under Part 3.9.2 of the Building Code of Australia (BCA) Volume 2 or as an **alternate building solution** under Part 2.5.2 of the BCA Volume 2.

Material Considered:

1. Form 10 building and development tribunals appeal notice 3-04-033. Attachments A to F
2. Letter from Central Coast Building Certification - Barry G Pellow - dated 02/08/2004 to the Acting Registrar including photographs.
3. Email from the applicants dated 10/08/2004 to the Acting Registrar.
4. Building Act 1975.
5. Standard Building Regulations 1993.

Findings of Fact

1. The development approval No. 02562/2003 approved the construction of the dwelling situated at 12 Lighthouse Drive, Boyne Island.
2. The development approval does not specifically address any non-compliance of the proposed entry and stair.
3. Part 2 Section 4 (2) of the Building Act states;
In carrying out building work or in occupying a building a person must comply with the Standard Building Regulation even if a development permit given by an assessment manager is contrary to the Standard Building Regulation.
4. The entry slab and top three treads of the stair are at a level that is more than 1m above the surface below.
5. The entry landing and these three treads are not bounded by a wall or balustrade that meet the heights required by BCA Clause 3.9.2.3 being 1 m and 865 mm respectively.
6. The plants and horizontal projection of the garden beds are not identified as an alternative under deem to satisfy provisions of the BCA.
7. The proposal is not constructed to prevent people from falling through the barrier.
8. The proposal is not capable of restricting the passage of children.
9. The proposal is not of strength and rigidity to withstand:
 - the foreseeable impact of people; and

- where appropriate, the static pressure of people pressing against it.

Reasons for the Decision

The reasons for the decisions follows,

- The front entry and top three treads exceed one metre above the surface beneath and are not provided with a balustrade or other barrier that achieve the performance requirements of P 2.5.2 of the Building Code of Australia. The alternative proposal of garden planting and garden bed is not;
 1. Constructed to prevent people from falling through the barrier.
 2. Capable of restricting the passage of children.
 3. Of strength and rigidity to withstand-
 - (i) the foreseeable impact of people; and
 - (ii) where appropriate, the static pressure of people pressing against it.
- The front entry and stairs to this dwelling as shown on the approved plan and constructed on site do not provide a balustrade or other barrier that complies with the deem-to-satisfy requirements of the Part 3.9.2 of the Building Code of Australia Volume 2

Gregory Paul Dempster
Building and Development Tribunal Referee
Date: 6 September 2004

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