



Building and Development Tribunals

Queensland Government

Department of **Local Government and Planning**

APPEAL

Integrated Planning Act 1997

File No. 03-05-042.

BUILDING AND DEVELOPMENT TRIBUNAL - DECISION

Assessment Manager: Maroochy Shire Council

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

Applicant: *withheld.*

Nature of Appeal

An appeal was lodged against a “site inspection notice” indicating full test reports for fire collars used in the construction of a unit development was required. The notice was issued by the building certifier Mr B. Benporath of the Maroochy Shire Council.

Date and Place of Hearing: 10:30 AM on Friday the 5th August 2005
at Level 18, 41 George Street, Brisbane.

Tribunal: Ron Blake

Present: Paul Robertson Allied Polymer Technologies
B. Benporath Maroochy Shire Council

Decision

In accordance with the section 4.2.34 of the *Integrated Planning Act 1997*, I find as follows;

1. The building certifier’s decision to require a full test report in accordance with C3.15(a) of the BCA is changed as follows:
 - A “Regulatory information report” as described in clause 2.15.3 of AS 1530.4 – 2005 and containing the information specified in Appendix A of this decision to be submitted to the building certifier for assessment.

Background

A building development application relating to the construction of units was initially approved in 2000. The design of the project requires the use of fire collars between two levels of the development.

A site inspection by a certifier for the Assessment Manager indicated the presence of the fire collars. A hand written section of an undated form prepared as a “site inspection notice” requested the submission of a “full test report” for the installed fire collars. The “site inspection notice” was not directed to a specific builder or any other party.

An appeal was initially lodged by Allied Polymer Technologies. This appeal does not indicate the category of the appeal.

Investigations revealed that Allied Polymer Technologies had no right of appeal. Subsequently an appeal was lodged by the owners, *withheld* with Paul Robertson of Allied Polymer Technologies being nominated to act on their behalf.

Jurisdiction

Category

The appeal relates to a decision of the building certifier after the inspection of building work. Section 91 of the *Standard Building Regulation* is applicable.

Timing

Due to the nature of the submission, this has not been considered by the Tribunal.

Content

The nature of the appeal relates to a fire collar that is required to comply with Clauses A2.2 and C3.15 of the BCA.

A2.2 Evidence of suitability

(a) *Subject to A2.3 and A2.4, evidence to support that the use of a material, form of construction or design meets a Performance Requirement or a Deemed-to-Satisfy Provision may be in the form of one or a combination of the following:*

(i) *A report issued by a Registered Testing Authority, showing that the material or form of construction has been submitted to the tests listed in the report, and setting out the results of those tests and any other relevant information that demonstrates its suitability for use in the building.*

(b) *Any copy of documentary evidence submitted, must be a complete copy of the original report or document.*

From the BCA documentation it is evident that the building certifier should receive such records to confirm the adequacy of construction. The BCA also has requirements for compliance for the items under consideration as indicated by Deemed-to-Satisfy (DTS) provision C3.15.

C3.15 Openings for service installations

Where an electrical, electronic, plumbing, mechanical ventilation, air-conditioning or other service penetrates a building element (other than an external wall or roof) that is required to have an FRL with respect to integrity or insulation or a resistance to the incipient spread of fire, that installation must comply with one of the following:

(a) *The method and materials used are identical with a prototype assembly of the service and building element which has been tested in accordance with AS 4072.1 and AS 1530.4 and has achieved the required FRL.*

Material Considered

Verbal submissions were made by both Paul Robertson of Allied Polymer Technologies and the building certifier.

The submission by Mr Robertson related to confidentiality of reports, the attitude of Maroochy Shire Council to a confidentiality agreement and that a full report would disclose other information not yet released to the market place.

Advice has been received from Maroochy Shire Council that it had no records of an approach relating to “confidentiality”.

Technically the disagreement relates to a desire by Allied Polymer Technologies to submit a “Short Form” report instead of the standard report required by the legislation.

In particular the following is referenced in AS 1530.4 - 1997.

“2.14.2 Test report *The test report shall contain the following information:*

.....
(g) *the critical observations during the test as required in Clause 2.10 together with records of—
(i) temperature versus time;*

.....”

and

“10.7 TEST REPORT *In addition to the requirements of Clause 2.14, the test report shall include records of the observations made in accordance with Clause 10.5.”*

The Australian Standard AS 4072.1 contains the following additional requirements:

“3.5 TEST REPORT *In addition to the information required by AS 1530.4, the test report shall include the following:*

- (a) *Temperature data from all critical thermocouples specified in this Standard and AS 1530.4.*
- (b) *A detailed description of the penetrating services.*
- (c) *A detailed description of the test construction.”*

Comments

Discussions with a testing authority that issues this type of report indicated that a full report does not have to make reference to all the different products being tested at the time of the test. Reports may be provided that relate to the specific product being tested.

The Guide to the BCA indicates the intent of section **A2.2 “Evidence of Suitability”** is “*to detail evidence which may support a claim that a material, construction or design achieves a performance Requirement or Deemed-to-Satisfy Provision*”.

Analysis

The building is under construction and the building certifier wishes to determine if a construction product is complying with the BCA. The building certifier requires additional information relating to C3.15 and A2.2 of the BCA.

A “site inspection notice” has been issued and it references section 87 of the *Standard Building Regulation – 1993 (SBR)*.

The BCA clauses allow for the submission of certain information to building certifiers to support claims that a product achieves a level of performance. The nature of that submission is indicated in the Australian Standards AS 1530.4 and AS 4072.1.

The current edition of AS 1530.4 and AS 4072.1 that are referenced by the legislation requires a test report as noted previously.

AS 1530.4 “Methods for fire tests on building materials, components and structures, Part 4: Fire-resistance test of elements of construction” has been revised. The new code will not be referenced in the BCA until 2006.

The revised code has three forms of reports. Section 2.15 specifies the minimum requirements for a test report (Clause 2.15.2), a Regulatory information report (Clause 2.15.3) and a Test Certificate (2.15.4).

The revised edition of AS 4072.1 does not reference Test Reports.

A review of the proposed draft of BCA-2006 does not indicate any other changes that could be related to the revised codes.

Other Legislation

Clause 4.2.33 of *Integrated Planning Act 1997* allows the Tribunal to consider any new laws and policies.

“4.2.33 *Matters the tribunal may consider in making a decision*

If the appeal is about a development application (including about a development approval given for a development application), the tribunal must decide the appeal based on the laws and policies applying when the application was made, but may give the weight to any new laws and policies the tribunal considers appropriate.”

Findings of Fact

I make the following findings of fact:

1. The building certifier has not received a test report recognised by current regulations and hence the submission does not support the claim of a level of performance as recognised by the Deemed-to-Satisfy provisions of the BCA. Hence the building certifier has correctly identified a non-compliance with the BCA.
2. When a non-compliance with the BCA occurs, it is possible for the submission of an Alternative Solution under section A0 of the BCA.
3. Alternatively under clause 4.2.33 of IPA the Tribunal **“*may give the weight to any new laws and policies*”**. In this case, as the matter is a reporting, issue then the Tribunal believes reports in compliance with Clause 2.15.3 of AS 1530-2005 may be considered.

Reasons for the Decision

The decision is based on the submissions, discussions with the parties and the analysis. I have reached the following conclusions

1. The building certifier’s decision is based on existing BCA requirements.
2. In accordance with section 4.2.33 of IPA, the Tribunal can refer to new policies in forming an opinion.
3. Clause 2.15.3 of AS 1530.4 – 2005 is considered to satisfy the IPA section. This amendment to the Australian Standard allows the submission of a report that contains the minimum information for building certifiers to confirm the level of performance of the report as compared with a report for the client’s research and development requirements. The requirements of a “Regulatory information report” are contained in Appendix A.
4. The Australian Building Codes Board has supported the amendment of the standard which is likely to be referenced in future editions of the BCA.

Ron Blake
Building and Development
Tribunal Referee
Date: 27th September 2005

Appendix A

2.15.3 Regulatory information report

The regulatory information report shall contain the following:

- (a) The name and address of the testing authority.
- (b) The name and address of the applicant.
- (c) The date of the test.
- (d) The unique reference number of the test.
- (e) The name of the manufacturer (if known) of the test specimen and of the products and components used in the construction, together with identification marks and trade names.
- (f) The construction details of the test specimen, including description and drawings and principal details of the components.
- (g) The relevant properties of materials or components that have a bearing on the fire performance of the test specimen. Where it is impractical to measure some of these properties, this shall be reported.
- (h) The method of assembly and installation of the test specimen.
- (i) For load-bearing elements, the load applied to the test specimen.
- (j) The support and restraint conditions employed and the rationale for their selection.
- (k) For asymmetrical separating elements, the direction in which the specimen was tested and the reason for this choice.
- (l) Statement that conditions complied with the Standard.

The result stated in terms of time, in elapsed whole minutes, between the commencement of heating and the time of failure with respect to the relevant criteria

- (m) A description of any significant behaviour of the test specimen.
- (n) The field of direct applicability of the results for the specimen to be evaluated, for example, applicable for fire exposure from direction tested.
- (o) The following statements:

THIS REPORT DETAILS THE METHODS OF CONSTRUCTION, TEST CONDITIONS AND THE RESULTS OBTAINED WHEN THE SPECIFIC ELEMENT OF CONSTRUCTION DESCRIBED HEREIN WAS TESTED FOLLOWING THE PROCEDURE OUTLINED IN AS 1530.4. ANY SIGNIFICANT VARIATION WITH RESPECT TO SIZE, CONSTRUCTIONAL DETAILS, LOADS, STRESSES, EDGE OR END CONDITIONS, OTHER THAN THOSE ALLOWED UNDER THE FIELD OF DIRECT APPLICATION IN THE RELEVANT TEST METHOD, IS NOT COVERED BY THIS REPORT.

BECAUSE OF THE NATURE OF FIRE RESISTANCE TESTING AND THE CONSEQUENT DIFFICULTY IN QUANTIFYING THE UNCERTAINTY OF MEASUREMENT OF FIRE RESISTANCE, IT IS NOT POSSIBLE TO PROVIDE A STATED DEGREE OF ACCURACY OF THE RESULT.

- (p) The FRL assigned to the test specimen.

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:

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