



Building and Development Dispute Resolution Committees—Decision

Sustainable Planning Act 2009

Appeal Number:	36 - 14
Applicant:	David Ising
Assessment Manager:	Harald Weber, Private Certifier, QBCC Licence No A73379
Concurrence Agency: (if applicable)	Not Applicable
Site Address:	126 Anderson Road, Bayview Heights and described as Lot 149 on RP 748703 – the subject site

Appeal

Appeal under section 532 of the *Sustainable Planning Act 2009* (SPA) regarding an Information Notice issued by the Private Certifier under the *Building Act 1975* (BA) requiring a truss design certificate and wet area waterproof membrane installation certificate be provided to comply with the conditions of the development permit for building work prior to the issue of a final inspection certificate for the building work.

Date and time of hearing:

Place of hearing: No hearing was held. The parties elected to have the appeal heard by written submissions.

Committee: Ain Kuru – Chair
Samantha Hall - Member

Decision:

The Building and Development Dispute Resolution Committee (Committee), in accordance with section 564 of the SPA **confirms** the decision appealed against that the Applicant is to provide a truss design certificate and wet area waterproof membrane installation certificate to comply with the conditions of the development permit for building work prior to the issue of a final certificate for the building work.

Background

The Applicant engaged Harald W Weber as a licenced Private Certifier on 11 July 2008 to assess and decide a development application for building work for additions and alterations to an existing dwelling. It appears two different development applications for the building work were lodged by different builders, with a later development application lodged in 2011 being the subject of this appeal. The building work involved a family and dining room, laundry, en-suite and covered patio. The extensions involved a concrete slab on ground, galvanised metal posts, manufactured trusses and lightweight metal sheet roofing. The construction method allowed extensive use of glazing to the external walls of the extension.

On 14 February 2011, the Private Certifier approved the development application for building work subject to conditions. The conditions included a list of the certificates required to be provided prior to the issue of the final inspection certificate for the building work. These included the following:

- a design certificate for the engineered roof framing;
- an inspection certificate for wet area waterproof membrane installation.

On 14 July 2014, the Private Certifier prepared a Form 57 – Reminder Notice for the Lapsing of an Approval. The Notice stated that the lapsing time for the development approval for building work was 10 December 2014.

On 5 August 2014, the Private Certifier prepared a Form 61 – Non-Compliance Notice stating that the final inspection did not comply with the development permit for building work as the following certificates were required but had not been provided:

- truss design certificate;
- wet area waterproof membrane installation.

The Notice is addressed to “TBA” rather than a builder, but it does identify a postal address and contact telephone numbers.

The Private Certifier prepared an Information Notice which is undated but which the Private Certifier has advised was given to the Applicant on 21 August 2014, stating that the Private Certifier was not able to issue the final inspection certificate for the building work as the following certificates were required:

- truss design certificate;
- wet area waterproof membrane installation.

The undated Information Notice was received by the Applicant who lodged an Application for appeal against the Notice with the Committees Registrar on 11 September 2014. The grounds for appeal were as follows:

- the required certificates had been lost;
- both companies responsible for the truss design and wet area waterproof membrane installation work were reputable but have since closed down;
- the building work was certified by both companies at the time; and
- the building work listed in the Information Notice had been completed.

Material Considered

The material considered in arriving at this decision comprises:

1. Engagement of Private Certifier dated 11 July 2008 by David Ising;
2. ‘Form 15 - Compliance Certificate’ issued by Charles Gianarakis RPEQ 1370 for Footings/Ground Slab, Bracing, Tie Down, Concrete Masonry, Wall and Roof Framing and Structural Steel dated 25 July 2008;
3. IDAS Development Application Form 1, Parts A and B dated on or about 11 July 2008;
4. IDAS Development Application Form 1, Parts A and B for the proposed building work the subject of this appeal;
5. Decision Notice dated 14 February 2011, approving the development application for the building work the subject of this appeal;

6. Approved drawings prepared by S Gleeson Architect showing proposed additions and alterations to an existing house, drawings 380606/1 to 4;
7. 'Form 57 Reminder Notice for the lapsing of an approval' dated 14 July 2014, issued by the Private Certifier addressed to Dave Ising and Kim Doyle;
8. 'Form 61 – Non-compliance notice' dated 5 August 2014, issued by the Private Certifier without builder details;
9. Information Notice (undated) issued by the Private Certifier addressed to Dave Ising and Kim Doyle;
10. 'Form 10 – Application for appeal/declaration', grounds for appeal and correspondence accompanying the application for appeal lodged with the Committees Registrar on 11 September 2014;
11. Letter dated 15 September 2014, from the Private Certifier advising that the Private Certifier is unable to issue the final inspection certificate for the building work;
12. E mail from David Ising dated 18 September 2014, agreeing that the appeal be considered by written submissions;
13. E mail from Janine Williams on behalf of Harald Weber dated 2 October 2014, agreeing that the appeal be considered by written submissions.

Findings of Fact

The SPA and the BA provide the legislative requirements by which a development application for building work is assessed and inspected. Chapter 6 of the SPA provides for the making of the application, a request for further information, referral of a development application to referral agencies and decision making processes. Section 324 of the SPA relevantly provides that an Assessment Manager (in this case the Private Certifier) may approve a development application subject to conditions, and section 345 of the SPA relevantly provides that such conditions must be reasonable and relevant.

Harald Weber is a Building Certifier and is also endorsed as a Private Certifier, Licence No A73379. Pursuant to the BA, he is able to decide development applications for building work. The functions of a Building Certifier include carrying out building assessment work, the giving of certificates and inspection work as provided under section 10 of the BA. Section 17 of the Building Regulation 2006 (BR) relevantly provides that a Building Certifier may decide an individual is competent to provide assistance in the design and/or inspection of work. Section 18 of the BR requires that if under a relevant law the individual must be licensed or registered, then that individual must be so licensed or registered.

Section 28 of the BR relevantly provides that a Building Certifier must ensure that each stage is completed before the builder commences work on the next stage.

Section 124 of the BA relevantly provides that if a Building Certifier decides not to give a final inspection certificate because the building work does not comply with the development approval for building work, the Certifier must give the Applicant an Information Notice.

It is industry practice for private certifiers to require design and inspection certificates where the building work the subject of the certificate is outside their field of competency, or it is not practical for the private certifier to undertake the inspection. In this respect, it is common practice for private certifiers to accept certificates from licensed installers for termite protection, glazing, waterproofing

and the like. In respect of roof framing, where trusses are engineered, it is common practice to accept a design certificate from a registered engineer, who the private certifier deems competent.

In deciding the development application for the building work the subject of this appeal, the Private Certifier came to the view that a number of certificates would be required and imposed conditions upon the approval to that effect, including a design certificate for an engineered frame or roof certification and an installation certificate for the installation of waterproofing to wet areas. An engineered frame certificate was required because the approved drawings show a proprietary roof truss for which no details were provided. Therefore it was reasonable for the Private Certifier to request a design certificate for the frame from a competent person. In addition, it was also reasonable for a certificate to be required for waterproofing, given the specialist nature of the work.

Unfortunately, the Applicant has advised that these certificates have been lost, and as such, the Private Certifier is unwilling to issue a final inspection certificate without them because in their absence, the building work does not comply with the development approval for the building work. In addition a certificate provided by Charles Gianarakis (as a Registered Engineer) on 25 July 2008, does not satisfy the conditions of the development approval for the building work, as it is assumed from the date of that certificate that it relates to the construction of the existing dwelling and further, it does not include the design of the truss itself.

Reasons for the Decision

Pursuant to section 564 of the SPA, in deciding an appeal, the Committee can make whatever orders and directions it considers appropriate. This includes confirming the decision appealed against, changing the decision appealed against, or setting aside the decision appealed against and making a decision replacing the decision set aside.

The Committee considers the Private Certifier has acted in accordance with the legislation and current industry practice in requiring these certificates. As the Applicant has lost these certificates, it is incumbent on the Applicant to obtain new certificates to comply with the conditions of the development approval given for the building work. In this regard, it is common practice to engage new experts to provide these certificates.

In respect of the certificate for the engineered roof frame, the Applicant can engage a registered engineer to provide a new design certificate. An expert on waterproofing could advise on how best to assess the waterproofing and how to obtain certification regarding the installation of the waterproofing to the wet areas. The Committee believes there may be other options for obtaining a waterproofing certificate, even if this was to include the application of sealant over the existing work. The Applicant may also wish to consider engaging a building consultant to provide further advice in this regard.

Ain Kuru
Building and Development Committee Chair
Date: 1 December 2014

Appeal Rights

Section 479 of the *Sustainable Planning Act 2009* provides that a party to a proceeding decided by a Committee may appeal to the Planning and Environment Court against the Committee's decision, but only on the ground:

- (a) of error or mistake in law on the part of the Committee or
- (b) that the Committee 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 Committee's decision is given to the party.

Enquiries

All correspondence should be addressed to:

The Registrar of Building and Development Dispute Resolution Committees
Building Codes Queensland
Department of Housing and Public Works
GPO Box 2457
Brisbane QLD 4001
Telephone (07) 1800 804 833 Facsimile (07) 3237 1248