



Building and Development Tribunals

Queensland Government

Department of Local Government and Planning

APPEAL
Integrated Planning Act 1997

File No. 3-06-105

BUILDING AND DEVELOPMENT TRIBUNAL - DECISION

Assessment Manager: Noosa Building Certifiers, Noosa Shire Council

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

Applicant: *Withheld*

Nature of Appeal

The appeal is against the decision of Noosa Building Certifiers dated 31 October 2006 to refuse to allow the use of the Slab Set (Little Robbie Mark 1) termite management system under AS3660.1-2000.

Date and Place of Hearing: By written submission

Tribunal: Greg Rust

Present: Not applicable

Decision

The decision of Noosa Building Certifiers dated 31 October 2006 to refuse the application for an alternative solution is **confirmed**.

Background

A building development application for alterations to enclose under an existing dwelling and deck was originally approved on 7th May 2004. Noosa Building Certifiers did not issue a final approval for the building because the termite management system used did not comply with the Building Code of Australia (BCA). A development application to change the existing approval to allow the use of an alternative termite management system was lodged and subsequently refused by Noosa Building Certifiers on 31 October 2006.

The reason given for refusal was that the application failed to demonstrate that the building solution complied with the performance requirement P2.1.1 of the BCA (applicable at the time of the original approval).

An appeal was lodged by the applicant against the decision of the Noosa Building Certifiers. The appeal was received by the Registrar on 23 November 2006.

Material Considered

1. Noosa Building Certifiers Development Application Decision Notice Refusal dated 31 October 2006;
2. Form 10 – Building and Development Tribunals Appeal Notice received by the Registrar 23 November 2006 including applicant letter dated 20 November 2006;
3. Letter From Slabset Australa Pty Ltd dated 8 December 2006;
4. Floor plan of proposed residence (Sheet 3 of 9) dated January 2004;
5. Letter from Noosa Building Certifiers dated 14 December 2006;
6. Report of Consulting NewSouth Global dated 10 February 2006, titled “RECERTIFICATION OF SLAB SET SYSTEM APPRAISAL”;
7. Letter from Consulting NewSouth Global dated 3 November 2006;
8. Correspondence from R. Ball dated 1 June 2006;
9. Submission from applicant received by Registrar 19 February 2006;
10. Letter from R. Ball dated 9 January 2007;
11. *Integrated Planning Act 1997*;
12. Building Code of Australia.

Findings of Fact

- The report of Consulting NewSouth Global dated 10 February 2006 is an appraisal to determine if the termite system meets the requirements of the Building Code of Australia and AS 3660.1-2000 for new building work.
- The report of Consulting NewSouth Global dated 10 February 2006 does not contain methodology for installation of the system post-construction.
- The system is to be used in conjunction with new building work however; the slab for the work has been constructed.

Reasons for the Decision

The appeal is based on refusal of Noosa Building Certifiers to approve the alternative solution termite management system to be retro-fitted to an existing concrete slab. The report provided as evidence of compliance with the performance provisions of the BCA, “RECERTIFICATION OF SLAB SET SYSTEM APPRAISAL”, contained no reference to the use of the system in a retro-fit situation. For consideration of the system in this situation additional information and testing would be necessary.

Whilst the system may perform adequately as a pre-construction system, suitable documentation to justify its approval for use as a retro-fitted system has not been provided.

Complying with the BCA performance requirements can only be achieved by compliance with the deemed to satisfy provisions, by formulating an alternative solution which complies with the performance requirements, by showing the system to be at least equivalent to the deemed to satisfy provision or a combination of both.

For these reasons this appeal cannot be supported.

A handwritten signature in black ink, appearing to read 'Greg Rust', is written over a light grey rectangular background.

Greg Rust
Building and Development
Tribunal Referee
Date: 9 February 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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