



**Building and Development Tribunals**  
**Queensland Government**

Department of **Local Government, Planning,**  
**Sport and Recreation**

**APPEAL**  
*Integrated Planning Act 1997*

**File No. 03-04-053**

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**BUILDING AND DEVELOPMENT TRIBUNAL - DECISION**

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**Assessment Manager:** Kilkivan Shire Council

**Site Address:** 5919 Burnett Highway, Goomeri

**Applicant:**

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**Nature of Appeal**

Appeal under Section 4.2.9 of the Integrated Planning Act 1997 against a decision of Kilkivan Shire Council to refuse to issue a Development Permit for the construction of an extension to a dwelling on Lot 1 on RP 22757, situated at 5919 Burnett Highway, Goomeri.

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**Date and Place of Hearing:** 12.00 pm on Wednesday 25 August 2004  
at 26 Bligh Street, Kilkivan

**Tribunal:** Clay Anderson

**Present:** Applicants  
Kilkivan Shire Council representative

**Decision**

In accordance with Section 4.2.34 (2) of the Integrated Planning Act 1997, I hereby **set aside** the Decision Notice issued by Kilkivan Shire Council, refusing permission for building work in the form of an extension to a dwelling on the grounds that the building work will not comply with AS2870-1996 and AS3600.1-2000, and direct that the Council reassess the application for an extension to a dwelling located on Lot 1 on RP 22757, situated at 5919 Burnett Highway, Goomeri taking into consideration, regarding that assessment, the following:

1. An inspection report by a Registered Practicing Engineer in Queensland (RPEQ) making an assessment and certification of the satisfactory performance of the existing slab/footing system for the sunroom/verandah against Section 2 and Appendix C of AS2870-1996 Residential Slabs and

Footings-Construction; and

2. An inspection report by a suitably qualified and licensed trade contractor for termite management and certification of the chosen termite management system in accordance with AS3660 Termite Management.

### **Background**

The matter concerns a Decision Notice, issued by Kilkivan Shire Council on 7 July 2004, refusing approval for the construction of an extension to a dwelling.

The application for building work, made in October 2002 by the appellant and the subject of this hearing, was to further enclose a verandah with rooms over the preexisting stiffened raft slab that had not had approval by Council, nor upon assessment would comply with AS2870-1996 and AS3600.1-2000 respectively.

### **Material Considered**

1. Decision Notice of Kilkivan Shire Council issued on 7 July 2004, refusing permission for the construction of an extension to a dwelling.
2. Building and Development Tribunals Appeal Notice dated 3 August 2004, containing reasons for the appeal, together with plans of the proposed development and existing dwelling and structures.
3. Verbal submission by the applicants on 25 August 2004 setting out why the appeal should be allowed.
4. Verbal submissions Kilkivan Shire Council representative on 25 August 2004 setting out Council's reasons for refusing the application.
5. Written submission by Kilkivan Shire Council detailing a historical summary and notes of the property and current and former building applications.
6. Letter from former owner dated 30 July 2004 stating that the concrete floor of the sunroom/verandah was in place in 1995 when she sold the property in the same year.
7. Integrated Planning Act 1997.
8. AS3660 Termite Management.
9. AS2870-1996 Residential Slabs and Footings-Construction.
10. Building Code of Australia Class 1 and 10 Buildings Housing Provisions.

### **Findings of Fact**

In 1993, a development permit was issued for the property to construct a 92.4 m<sup>2</sup>, 2 bedroom dwelling with an attached 42.2 m<sup>2</sup> verandah having an earth floor.

In 1995 an amendment was made to the plans to allow the enclosing of part of that verandah for the addition of a 9.86 m<sup>2</sup> sunroom on a stiffened raft slab.

Kilkivan Shire Council approved the amendment and granted a final for the dwelling/sunroom as amended in September of that year despite the fact that, upon further assessment, the sunroom slab did not comply with AS2870 and despite that no evidence was furnished that the interface between the new and existing work was treated to comply with AS3660 and further, despite Council having no record of inspecting of the sunroom slab prior to its pouring.

It was alleged that the stiffened raft slab for the verandah was poured monolithically at the same time as the sunroom extension and of the same materials, techniques and proportions. This conclusion, on the evidence, could not be supported. However, evidence suggests that the entire verandah slab was in existence in 1995 (not just the 9.86 m<sup>2</sup> sunroom) as alleged, when the Council granted the final.

On this basis, the verandah/sunroom slab and sunroom enclosure have been in existence for 9 years up until this time, although its compliance with appropriate standards as outlined is in question.

The latest application for building work, made in October 2002 by the appellant and the subject of this hearing, was to further enclose the verandah over this preexisting stiffened raft slab adjacent to the sunroom.

The enclosing and intermediate walls are of lightweight construction being non-loadbearing pine with external cladding. All roof loads are carried by the 100 x 100 mm HDW posts and verandah beams approved with the dwelling application in 1993.

The extension was built and completed by the applicant unlawfully without first having received the development approval.

### **Reasons for the Decision**

The verandah/sunroom slab and sunroom enclosure have been in existence for 9 years. This is sufficient time for the concrete and timber structure, as built, to experience a range of seasonal and climatic changes, thereby exposing the slab/footing system to foundation moisture changes which has tested the stiffness and ductility of the footing system, the strength of the wall system, the tolerance of the wall system to movement and the performance of the bearing pressure of the foundation soils. The structure would have by now, in all probability, manifested an incidence of damage that can now be measured by the Damage Categories outlined in Appendix C of AS2870.1 which is a direct measure of the footing system's performance.

Should the classification of damage due to foundation movements be within specified tolerances, it could be said that the footing/slab system meets the performance requirements set out in Clause 1.3.1 of AS2870 and the relevant parts of P2.1 (Structural stability and resistance to actions) of the Building Code of Australia.

Australian Standard 3660 Termite Management allows suitable post construction methods of termite control for the interface of new and existing work.

Both the appellant and Kilkivan Shire Council have agreed to this approach.

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**CLAY ANDERSON**  
**Building and Development**  
**Tribunal Referee**  
**Date: 31 August 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  
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