



Building and Development Dispute Resolution Committees—Decision

Sustainable Planning Act 2009

Appeal Number:	36- 15
Applicant:	Chelbrooke Homes Pty Ltd
Assessment Manager:	Professional Certification Group Pty Ltd
Concurrence Agency: (if applicable)	N/A
Site Address:	7419 Ellensbrook Drive Hope Island and described as Lot 20 on GTP107210 – the subject site

Appeal

Appeal under section under section 532 of the *Sustainable Planning Act 2009* (SPA) against a decision by the Professional Certification Group to refuse to issue a final inspection notice for a new house because a continuous handrail was not provided to one side of the stairway under Building Code of Australia clause 3.9.2.4

Date and time of hearing:	2/11/15 at 10am
Place of hearing:	The subject site and the Hope Island Golf Club
Committee:	Greg Rust– Chair Keith Thomas - Member
Present:	Peter Riewoldt – Applicant Gregory Wilson – Owner (present at subject site only) Rick Valencia – Industry Representative Robert Beard – Industry Representative

Decision:

The Building and Development Dispute Resolution Committee (Committee), in accordance with section 564(2) of the SPA changes the decision appealed against and under section 564(1) directs the Professional Certification Group Pty Ltd to remove the requirement on the Final Inspection Notice (Notice) for a continuous handrail to be provided to one side of the stairs.

Background

The Applicant in this appeal, Chelbrooke Homes Pty Ltd, engaged the Professional Certification Group Pty Ltd as the Building Certifier for a new two storey home to be built on the subject site. During the course of the final inspection of the home it was identified by the Assessment Manager that the stairway handrail did not meet the requirements of the Building Code of Australia (BCA) clause 3.9.2.4 and a Final Inspection Notice dated the 2 October 2015 was refused in part because the stairway handrail was non-compliant with the BCA. There were other issues identified on the final inspection notice but the part relating to the stairway handrail is the subject of this appeal.

The stairway contains one flight made up of two conventional stair flights with a set of winder stairs about the middle of the flight.

If the flight was considered and viewed in three parts for clarity (i.e. two conventional stairs and one winder stair about middle) each respective part has been supplied with a handrail. The handrail on the two conventional parts runs parallel to the flights whilst the winder section is serviced by a newel post which is considered as a handrail.

The point of contention is that the handrail on the two conventional stair parts is located on opposite sides of each flight i.e. the lower section handrail is on the outside of the flight whilst the upper stair handrail is on the inside of the flight.

The Notice requires that a continuous handrail be provided however at the hearing the Certifier clarified that his reference in this regard in the Notice is to the handhold provision. This particular wording of BCA 3.9.2.4 is the technical difference appealed in this case.

Material Considered

The material considered in arriving at this decision comprises:

1. 'Form 10 – Appeal Notice', grounds for appeal and correspondence accompanying the appeal lodged with the Committees Registrar on 14 October 2015.
2. Site inspection at time of hearing of the stair and handrail
3. Verbal submissions taken at the time of the hearing
4. National Construction Code Series 2015 Volume Two Building Code of Australia (BCA)
5. Regulation Impact Statement
"Proposal to revise the Building Code of Australia to reduce the risk of slips, trips and falls in buildings Australian Building Codes Board June 2011 "(ABCB)
6. Monash Report -Monash University Accident Research Centre -"The relationship between slips, trips and falls and the design and construction of buildings" 2008

Findings of Fact

The Committee makes the following findings of fact:

The Certifier performed a final inspection of a newly constructed home built by the Applicant and refused to issue the final inspection notice in part because of the BCA 3.92.4 requirement for a continuous handrail be provided to one side of the stairs.

The appeal is about whether or not the handrail to the stair complies with the BCA requirements. The Applicant and industry representatives in attendance at the hearing contended that the handrail to the stairs meets BCA requirements. The Certifier maintains that it is not compliant.

The site inspection by the Committee revealed a full flight stairway consisting of standard treads and risers in two parts and three winders in the centre. The handrail on the top/upper area is on the inside of the stair and the winders have a newel post installed. The bottom/lower portion of the stair has a handrail on the outside wall that extends down from the seventh riser to the third riser.

Compliance with the BCA clause 1.04 Volume 2 states a building solution will comply with the BCA if it satisfies the performance requirements. Compliance with the performance requirements can only be achieved by compliance with the deemed-to-satisfy provisions, or by formulating an alternative solution or a combination of both.

The Applicant and Certifier have confirmed that the deemed-to-satisfy provisions have been used for the dwelling house approval and construction.

BCA Clause 3.9.2.4 does not state that a continuous handrail must be installed.

BCA 3.9.2.4 Handrails

(a) *Handrails to a stairway or ramp must –*

- (i) *be located along at least one side of the flight or ramp; and*
- (ii) *be located along the full length of the flight or ramp, except in the case where a handrail is associated with a barrier the handrail may terminate where the barrier terminates; and*
- (iii) *have the top surface of the handrail not less than 865mm vertically above the nosings of the stair treads or the floor surface of the ramp; and*
- (iv) *have no obstruction on or above them that will tend to break a handhold, except for newel posts, ball type stanchions, or the like*

Reasons for the Decision

BCA 3.9.2.4 requires that handrails to a stairway must be located along at least one side of the full length of the flight and at least along one side of the flight. The stairway is one full flight and includes three parts i.e. two standard tread and riser portions and three winders about middle.

The Certifier at the hearing accepted that the upper portion handrail and newel post complies with the deemed-to-satisfy provisions. The Certifier did accept that should the handrail on the lower portion be located on the inside of the flight rather than the outside of the flight, the construction would conform to the deemed-to-satisfy provisions.

The clause that the Certifier used in his interpretation of a continuous handrail is:

BCA 3.9.2.4 '(iv) have no obstruction on or above them that will tend to break a handhold, except for newel posts, ball type stanchions, or the like'

The word '*tend*' in the above phrase '*tend to break a handhold*' means literally 'to be inclined or to have inclination to act in a certain way'. If this literal meaning is used in interpreting the above clause then it would mean that the hand hold on the handrail can be broken. A continuous handhold on a handrail is therefore not required.

The stairway width may also be considered in terms of the handrail providing assistance as the stair in this appeal has a width of less than one metre. Its purpose within a private dwelling where occupants would be familiar with the stair geometry and handrail position would also aid with movement. The handrail located on opposite sides would also encourage the use of both hands and may reduce the risk of a fall.

The Committee also considered the BCA Performance Requirement of P2.5.1 (b) which states;

any stairway or ramp must-

- (i) *Have suitable handrails where necessary to assist and provide stability to people using the stairway or ramp"*

The constructed handrails do provide assistance to provide stability to people using the stairway. The Monash Report noted the potential for injury from falls if an anchoring function was not provided by a handrail. The main purpose of the handrail to reduce the risk of the falls is to provide a handhold to enable the persons to have an anchor.

The construction process in the Regulation Impact Statement of June 2011 indicated that a continuous handrail was not fully supported. Section B2 of the Regulation Impact Statement outlines the benefits for the introduction of handrails in private dwellings only related to the handrail effect in preventing falls by providing an anchoring function.

The Committee confirms that the Certifiers requirement that a continuous handrail be installed is deleted from the requirements of the final inspection notice.

Greg Rust
Chairperson
Building and Development Committee Chair
Date: 24 November 2015

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
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