

BUILDING AND DEVELOPMENT TRIBUNAL - DECISION

Assessment Manager: Gold Coast City Council

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

Applicant: *withheld*

Nature of Appeal

Appeal under section 20 of the Building Act 1975 against the Gold Coast City Council to issue the Enforcement Notice for carrying out building works without a development permit. The building work relates to the provision of two self contained units contrary to the approved plans.

The Enforcement Notice lists the work additional to the approved plans and states other requirements of fire separation between units and additional parking necessary when separate units are provided.

The Notice points out that the ceiling heights of the Ground Floor unit is less than 2.4 m – the deemed to satisfy provision or Part 3.8.2 of the Building Code of Australia (BCA)

This Tribunal will address the ceiling heights issue only. All other matters raised relate to the usage of the building and will be further considered by Council on a material change of use (MCU) application by the owners.

Date and Place of Hearing: 10.00 am, Tuesday/20 December 2005
at offices of Department of Local Government, Planning, Sport and Recreation, Level 25 Conference Room, 41 George Street/Brisbane

Tribunal: Raymond W Rooney

Present: *withheld* – Applicant/ Owners
S. Mitchell – City Planners
R. Young – Excel Design Pty Ltd

Decision

Taking into consideration the relevant facts and circumstances, the Tribunal **sets aside** the Gold Coast City Council’s Enforcement Notice (PN 8987/16) requirement that ceiling heights to Ground Floor accommodation be in accordance with Part 3.8.2 of the Building Code of Australia and **decides** that – the existing ceiling heights be approved, subject to:

- (a) The provision of an additional windows to the left (looking from street) side of wall of the bedroom. Openable portion of window to be equivalent to 1200 × 600 mm; and
- (b) The Ground Floor being used as non rental accommodation such as dual occupancy or family accommodation.

Background

Applicants purchased the property about 10 years ago as it provided separate accommodation at Ground Floor level for applicants' elderly mother.

Plans (dated 3 August 1999) were prepared to modify the premises and were approved by Gold Coast Certification Group – reference BA 99/16816. The plans indicated a Ground Floor ceiling height of 2400 mm in the Living Room.

Final Inspection certificate issued 'ticked off' the building work including 'compliance with drawings' although the actual ceiling heights were less than those approved.

An inspection by Gold Coast City Council on a complaint revealed that the owners had under taken further building work without a permit. This revealed the ceiling heights to habitable spaces to be less than 2400 mm – the 'deemed to satisfy' requirement of the BCA.

The owners state the accommodation provided has been used by family members, including an aunty, and is not intended for any other purpose.

Material Considered

1. Form 10 – Building and Development Tribunal, Appeal Notice dated 2 December 2000 with attached submission by City Planners.
2. Approved plans (BA 99/16816)
3. Final Inspection Approval (Notice 16207) dated 26 June 2000.
4. Plans prepared by Excel Design Pty Ltd to clarify new work and work previously approved.
5. Letter dated 10 November 2005 from Mrs Hansard.
6. Further verbal submissions by Mr and Mrs Hansard, Mr Mitchell and Mrs Young.
7. The Building Act 1975, referencing the Standard Building Regulation 1993, referencing the Building Code of Australia.

Findings of Fact

1. The Gold Coast certification Group approved plans (3 August 1999) for building work BA 99/16816.
2. Plans showed 2400 ceiling height to Ground Floor accommodation.
3. Inspection revealed ceiling heights less than 2400, the 'deemed to satisfy' requirement of the BCA.
4. Gold Coast City Council issued a Show Cause Notice dated 28 April 2005 and an Enforcement Notice dated 22 November 2005 for various unauthorised work, and noting a ceiling height less than the BCA 'deemed to satisfy' requirement for habitable rooms.

Reasons for the Decision

1. The Building Code of Australia (BCA) is a 'performance' based document, setting out 'performance requirements' with corresponding 'deemed to satisfy' provisions.
2. Part F 2.4.2 Room Heights sets the performance requirement as- 'A building is to be constructed to provide height in a room or space suitable for the intended use'.
3. The 'deemed to satisfy' provision is contained in Part 3.8.2 which nominates 2400 mm for habitable rooms and 2100 mm for a kitchen, laundry, bathroom, passageway, and the like.
4. In determining satisfactory ceiling heights consideration has been given to the size of the space, its occupancy and its general amenity including movement of air within the space.
5. Although all areas are air conditioned the habitable rooms within premises have good natural ventilation in case of power failure and are not large spaces. The provision of an additional window in the bedroom allows better cross ventilation and helps compensate for the lower ceiling height. Further, there are no protrusions from the ceiling, such as light fittings or ceiling fans.
6. The owners assert it is not their intention to have other than family accommodation on the premises.
7. Accordingly, I am of the opinion that the requirement of the BCA is satisfied.

Mr Ray Rooney
Building and Development
Tribunal Referee
Date: 10/01/2006

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
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