



APPEAL
Integrated Planning Act 1997

File No. 3-02-021

BUILDING AND DEVELOPMENT TRIBUNAL - DECISION

Building Certifier The Certification Professionals s

Site Address: 2 Staghorn Street Enoggera

Nature of Appeal

Appeal under section 91 of the Standard Building Regulation 1993 against the decision of the Certification Professionals not to give final approval for the construction of a spiral stair in a dwelling erected on land described as Lot 1 Registered Plan 119567 and situated at 2 Staghorn Street, Enoggera

Date and Place of Hearing

The applicant and the Certification Professionals agreed to the Tribunal deciding the appeal on the basis of written submissions.

Tribunal: Referee - Greg Rust

Decision

In accordance with section 4.2.34.(2) of the Integrated Planning Act 1997, the decision of the Certification Professionals not to give final approval for the construction of a spiral stair is **set aside** and the following replaces the decision set aside.

The spiral stair is permitted to remain in its present configuration subject to:

1. The stair being used as a private stair.
2. The owner of the building being fully informed of the need to supervise young children using the stair. This is particularly important for visitors to the building who may not be familiar with the stair geometry.
3. The balustrading on an adjoining landing or balcony area served by the stair complies with the deemed to satisfy provisions of the Building Code of Australia (BCA).

4. Self-closing, self-latching gates suitable to prevent access for children under 5 years of age are to be provided at the top and bottom of the spiral stair.

Background

- Development permit CP1-2306 was given for alterations at the subject premises on 3rd October 2001 which included an internal spiral stair connection of two floor levels of the building, the ground floor rumpus room and first floor lounge room.
- Final inspection of the building work indicated the stair had not been built in accordance with the deemed to satisfy provisions of the Building Code of Australia.
- The Certification Professionals rejected a request for the stair to be considered under the performance provisions of the Building Code of Australia.

Material Considered

Letter from Enzie Stairs Pty Ltd to the Certification Professionals dated 21 February 2002.

Letter from the Certification Professionals dated 11 June 2002.

Facsimile from the Certification Professionals dated 18 June 2002.

Report Numbered PBS 045 02 prepared as an alternative solution under the Building Code of Australia by Progressive Building Solutions dated 19 July 2002.

Facsimile dated 14 August 2002 from Stuart McLennan of Progressive Building Solutions.

Appeal notice dated 8 May 2002 and supporting documentation from the applicant.

Building Code of Australia.

Findings of Fact

The gap between the treads exceeds the requirements of clause 3.9.1.3 (e) of the Building Code of Australia.

The gap between balusters serving the stair exceeds the requirements of clause 3.9.2.3 (c) of the Building Code of Australia.

Reasons for the Decision

The stair geometry has been the subject of considerable review and acceptance including certificate of accreditation from the Building Control Commission and CSIRO appraisal. The stair has a good long-term safety record claimed by the stair supplier, Enzie Stairs. I note the stair is approved for domestic private use only and the owner has confirmed acceptance of the stair's present configuration.

Having regard to the assessment of the stair under the performance provisions of the Building Code of Australia by Progressive Building Solutions the stair has been reviewed against Clause P2.5.1 and P2.5.2 of the Building Code of Australia. Grounds submitted in "Consideration of the BCA requirements" are outlined in the report and summarised as follows:-

- The stair is within a private dwelling and the occupants using the stair on a regular basis become familiar with the characteristics of the stair.
- The owner is required to supervise visitors and young children using the stair.

Comment

It is accepted that in a private residence users of the stair will become familiar with the stair geometry and characteristics of the stair and therefore may overcome the degree of the non-compliant gap between the risers and balusters. Supervision of persons using the stair may assist in persons using the stair to safely negotiate its flight. However the required maximum gap of 125mm has been adopted as a safe measure to prevent a child falling through the space between the risers or balusters.

The test of Clause P2.5.1 (b) requires that any stairway or ramp must-

- have suitable landings to avoid undue fatigue of users; and
- be suitable for safe passage in relation to the nature, volume and frequency of likely usage; and
- have slip-resistant walking surfaces on ramps and on stairway treads or near the edge of the nosing.

The test of Clause P2.5.2 requires that the barrier must be-

- constructed to prevent people from falling through the barrier;
- capable of restricting the passage of children.

The test of the performance of these measures has been proposed as, persons becoming familiar with the stair geometry therefore making movement over the stair safe, and the introduction of supervision of users of the stair. However, how can this be guaranteed for all future users of the stair? A further concern is that the stair connects the rumpus and lounge rooms of the building, favourite places for children.

For this reason I refer to the data sheets of Enzie Spiral Stairs and note the stair can be fitted with optionally extra measures, which may be incorporated within the stair for safety. I am aware the owner has been presented with these additional measures but declined them. However not being fully satisfied that the stair, as constructed, will provide safe passage for all current and future users, alternatives must be introduced. Therefore the requirement for inclusive self-closing self-latching gates has been required to be incorporated with the stair. In conjunction with the alternative measures (supervision) proposed, it will prevent unauthorized use of the stair when supervision is not available and satisfy the relevant BCA performance requirements.

Gregory Rust
Building and Development
Tribunal Referee
Date: 2 September 2002

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:

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