



Building and Development Tribunals

Queensland Government

Department of **Local Government and Planning**

APPEAL

Integrated Planning Act 1997

File No. 03/07/054

BUILDING AND DEVELOPMENT TRIBUNAL - DECISION

Assessment Manager: Express Plan Approval Services

Site Address: *withheld*—"the subject site"

Applicant: *withheld*

Nature of Appeal

The appeal is against the decision of Express Plan Approval Services to refuse to issue a 'Form 21 - Final Inspection Certificate' because the finished floor level (3.9AHD) is 120mm less than the Q100 level established by the Gold Coast City Council (GCCC). The Flood Search level RL 3.72 AHD plus 300mm free board requirement, establishes a minimum height of RL 4.02 AHD for habitable rooms.

The Class 1a dwelling is on land located at "the subject site".

Date and Place of Hearing: 9.00 am Thursday 27 September 2007.

Inspection of "the subject site" - the hearing commenced on site and continued at the GCCC Chambers, Nerang.

Tribunal: Mr L F Blumkie Chairperson

Present on site: Applicant/Owner
Mr Leo Blumkie Chairperson Tribunal

Present at Council Chambers Applicant/Owner
Mr Leo Blumkie Chairperson Tribunal
Mr Martin Roberts GCCC adviser (part of the time)
Mr Brian Gobie Principal Building Surveyor GCCC adviser (part of the time)

Decision

The Tribunal, in accordance with Section 4.2.34 (2) (b) of the *Integrated Planning Act 1997*, **changes** the decision of Express Plan Approval Services dated 10 September 2007 by:-

Directing Express Plan Approval Services to issue a Final Clearance Certificate (Form 21) with the finished floor level to the ground floor being a minimum RL of 3.90metres AHD subject to the following condition:-

*The GCCC is to record on its file for the property that the finished ground floor level of the class 1a dwelling is between RL 3.90 metres AHD and RL3.95 metres AHD, that is, **not 4.02 metres AHD** as required by the GCCC Resolution for this site.*

This file note is to ensure that the any future owners of the premises are aware that the finished ground floor level is between 70mm and 120mm below that required by the GCCC.

Background

The site is located in an approximate 1970's canal estate (verbal advice indicated that some properties were in existence before the 1974 floods).

Most of the existing properties were developed before the minimum FFL was established. Hence, the FFL of habitable rooms of the majority of the existing properties would appear to be some 500mm below the habitable rooms of the subject property. The adjoining property was existing in 1974 and verbal advice was that some 100mm of water covered the ground floor level at that time. It was noted that the FFL of the adjoining property was approximately 500mm below the subject property.

The Applicant for the appeal is *withheld* with the contact person nominated as *withheld*.

The subject property is owned by *withheld*, as advised in the Rate Notice dated 6 July 2007 - Rate Notice Number 2 1789611 4.

Withheld currently reside on the property. The current owners demolished the previous house (FFL approximately RL3.4 AHD) in 2006, for the purpose of constructing a new Class 1a dwelling.

Architectural drawings were prepared and the site plan nominated a FFL of RL3.9.

Building Approval was given for a new Class 1a dwelling on 15 June 2006 - Approval Number A1GC0509472.

The approval included a notation in red as follows:-

"HABITABLE ROOM FLOOR HEIGHTS Attached is Council advice on minimum floor heights above the 100 year flood level. Council resolution SBR 1993 - s 53 shall be complied with"

and written below the red notation is a notation in black pen as follows:-

"FFL to be 300 above Flood Level, therefore 4.01AHD required"

The construction of the class 1a dwelling was commenced and the surveyor, at the time, established the ground floor level as that shown on the Architects site plan i.e. 3.90AHD.

On completion, a surveyor's certificate was issued stating that "*the new building has been constructed in accordance with the approved Proposed Site Plan 05.SOBD57.1*"

The Class 1a dwelling was completed and it was not until the final inspection was undertaken that the owner realised that the notation on the approval requiring a FFL of 4.01 AHD had **not** been adhered to.

The owner subsequently engaged another Licensed Consulting Surveyor to confirm the finished floor level of the dwelling.

As a result of this, a building certificate was issued by the new licensed consulting surveyor, stating that the finished floor of the subject property was in fact RL 3.95 AHD, i.e. some 50mm above the previous surveyor's certificate.

An appeal was lodged with the Registrar on the 17 September 2007.

Material Considered

In coming to a decision, consideration was given to the following material: -

1. Building Approval A1GC0509472 dated 15 June 2006;
2. Appeal Notice dated 17 September 2007 including grounds for appeal and correspondence accompanying the appeal;
3. Rates Notice Number 2 1789611 4 dated 9 July 2007;
4. Certificate dated 5 June 2007 from Paul Graham Rowe - registered surveyor;
5. Certificate dated 20 September 2007 from Alan Sullivan & Associates Pty Ltd. Surveyor;
6. Verbal submissions from the applicant;
7. Verbal submissions from Mr Martin Roberts, GCCC;
8. Verbal submissions by Mr Brian Gobie, GCCC Principal Building Surveyor;
9. Flood Levels Search from GCCC dated 4 August 2005;
10. GCCC Resolution dated 20 August 2004;
11. Inspection of the site;
12. The *Building Act 1975*;
13. *Building Regulation 2006* - 13 land liable to flooding;
14. Building Code of Australia - Housing Code - P2.2.1 - surface water; and
15. The *Integrated Planning Act 1997*.

Findings of Fact

The subject property is:-

- Owned by *withheld*;

- Located in the "100 year ARI flooded area on the Gold Coast Overlay Map OM17 - Natural Hazard (Flood) Management Areas".

The GCCC established a lawful Resolution on the 20 August 2004, requiring the site to be 300mm above the Q100 AHD. The Q100 AHD is RL 3.72 metres AHD.

Therefore, the minimum FFL required by the GCCC resolution is RL 4.02 metres AHD.

The approval with the black notation required an FFL 4.01AHD, which was in fact incorrect - it should have been FFL 4.02 AHD.

The FFL for the completed class 1a dwelling, as constructed, is between RL 3.90 AHD and RL 3.95 AHD. The certificates provided indicate two different levels established by licensed surveyors.

The FFL is therefore some 70mm to 120mm below that required by the GCCC resolution.

It would appear that the FFL of the subject property is approximately 500mm above the majority of existing properties visible from the site.

Reasons for the Decision

The site is included in the "Gold Coast Overlay area OM 17 Natural (Flood) Management Areas".

The GCCC has a lawful resolution requiring the FFL of habitable rooms on land liable to flooding to be RL 300mm above the height of a flood having a 1 in 100-year average recurrence interval.

The FFL of the as constructed class 1a dwelling is between 70mm and 120mm below that required by GCCC resolution.

In the Tribunal's opinion, it is not economically feasible to make the building comply with the required GCCC FFL. The current owners/appellant are fully aware of the non-compliance.

Any future purchaser of the property should also be made fully aware of the non-compliance. This, in the Tribunal's opinion, can be achieved with a notation on the GCCC records for the site. A building search on the property should bring it to the attention of any intending purchaser.

It is noted that the existing FFL is above that required by Performance P2.2.1 surface water of the Building Code of Australia.

The senior Council Officer agreed that making a file note on Council records, namely that the FFL was 70mm to 100mm below the minimum height required by the GCCC resolution was, under the circumstances, an appropriate method of resolving the situation. The officer also advised that this endorsement had been used by GCCC in previous similar situations.

Therefore, in the Tribunal's opinion, it would be reasonable under the circumstances, to issue a final certificate subject to the condition that the GCCC records on its file for the site, that the minimum finished floor level of the dwelling is between 70mm and 100mm below that required by the GCCC.

Hence, the Tribunal, in accordance with Section 4.2.34 (2) (b) of the *Integrated Planning Act 1997*, changes the decision of Express Plan Approval Services dated 10 September 2007 by:-

Directing Express Plan Approval Services to issue a Final Clearance Certificate (Form 21) subject to the following condition:-

*The GCCC is to record on its file for the property that the finished ground floor level of the class 1a dwelling is between RL 3.90 metres AHD and RL3.95 metres AHD, that is, **not 4.02 metres AHD** as required by the GCCC Resolution for this site.*

This file note is to ensure that the any future owners of the premises are aware that the finished ground floor level is between 70mm and 120mm below that required by the GCCC.

Leo F Blumkie
Building and Development Tribunal Chairperson
Date: 28 September 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
Department of Local Government, Planning, Sport and Recreation
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