

## **BUILDING AND DEVELOPMENT TRIBUNAL – DECISION**

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**Assessment Manager** Gold Coast City Council

**Site Address:** 17 Savoy Drive, Broadbeach Waters.

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**Nature of Appeal:** Appeal under Section 4.2.9 of the Integrated Planning Act 1997, against the decision of the Gold Coast Building Certification Group to impose a condition on Building Application No. 2113414 requiring the habitable room floor height above flood level to comply with the Gold Coast City Council's advice for a proposed dwelling to be erected on land described as Lot 39 on RP 88326 and situated at 17 Savoy Drive, Broadbeach Waters.

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**Date and Place of Hearing:** 2:15 pm on Wednesday 3 October 2001 at 17 Savoy Dr, Broadbeach Waters.

**Tribunal:** B J Williamson

**Present:** B J Williamson Tribunal Referee  
Applicant's Representative  
I Roberts Builder  
B Gobie Gold Coast City Council

### **Decision:**

The decision of the Gold Coast Certification Group as contained in the "Floor Level in Flood Areas" requirement listed in the Conditions of Approval imposed on Building Application No. 2113414 requiring the floor level of habitable rooms in the proposed single detached dwelling to be RL 3.95 metres above Australian Height Datum, **is changed** to require the minimum floor level of the proposed dwelling to be RL 3.70 metres above Australian Height Datum subject to the following conditions:

- (a) To ensure that future owners are aware of the situation, the Gold Coast City Council is to record on its file that the minimum floor level of the dwelling is RL 3.70 metres AHD and not RL 3.95 metres nominated by Gold Coast City Council for this site; and
- (b) The owner is to submit to the Gold Coast City Council and the Registrar, Building and Development Tribunal, a letter in the form of Appendix A confirming that the owner is aware of the flood implications of constructing the floor level at RL 3.70 metres AHD instead of the nominated level of RL 3.95 metres AHD; and
- (c) Drainage problems are not to be caused for the adjoining neighbours by filling, earthworks or drainage work on the site.

### **Material Considered**

1. Copy of the Decision Notice from Gold Coast Building Certification Group for Building Application No.2113414 plus approved drawings for the proposed dwelling at 17 Savoy Dr, Broadbeach Waters.
2. Verbal submission by the representative of Gold Coast City Council, who advised that although the Gold Coast City Council does not currently have a flood level resolution as permitted by section 53 of the Standard Building Regulation 1993, the Gold Coast City Council still nominates that the floor level of habitable rooms should be 300 mm above the once in 100 ARI flood in flood prone areas.

3. Verbal submission by the applicant who advised that the nominated floor level of RL 3.95 would require the floor to be 890 mm above the ground. This would increase the height of the building 350 mm above that proposed. Since the building will be built close to the boundaries, the raised floor height of the building resulted in a comment from a neighbour concerning privacy sight lines.
4. Telephone conversation with the neighbour, confirmed that the statement was a comment only and not a complaint.
5. Performance Requirement P2.2.1 (b) of the Building Code of Australia, Housing Provisions.

### **Finding of Fact**

I made the following findings of fact:

1. The floor level of RL 3.95 metres is a recommended level as the Gold Coast City Council currently does not have a valid resolution under section 53 of the Standard Building Regulation 1993 to declare the floor level of habitable rooms on land liable to flooding.
2. The minimum floor level is therefore determined by Performance Requirement P2.2.1 (b) of the Building Code of Australia, Housing Provisions.

### **Reasons for the Decision:**

1. The resolution of the Gold Coast City Council, dated 25 May 1995, does not comply with subsection 53.(1) of the Standard Building Regulation 1993 as it does not declare land liable to flooding as required by subsection 53.(1) (a) and does not nominate habitable rooms as required by subsection 53.(2) (b) but instead nominates the floor clearance for residential, commercial and industrial buildings.
2. The council officer at the hearing advised that there is currently no other resolution by the Gold Coast City Council that declares land liable to flooding but it is anticipated that a new resolution will be passed in the near future.
3. In addition a local government cannot use a planning scheme to meet the requirements of subsection 53.(1) (a). Under section 3.1.3.(4) of the Integrated Planning Act, no planning scheme which purports to change a Building Code of Australia requirement (in this case the floor level of the building) is of no effect. A planning scheme cannot prescribe how building work must be carried out where it is regulated.
4. Since the Gold Coast City Council resolution of 25 May 1995 does not comply with subsection 53 (1), the freeboard requirement in the council resolution of 25 May 1995 is of no effect.
5. However, the floor level for the proposed dwelling must comply with the Performance Requirement P2.2.1 (b) of the Housing Provisions of the Building Code of Australia. This requires that surface water, resulting from a storm having an average recurrence interval of 100 years must not enter the building. The 1 in 100 year flood level for this site is currently RL 3.65 metres AHD. (This level had earlier been RL 3.64 metres AHD.)
6. To minimise that a storm having an average recurrence interval of 100 years does not enter the building, a 50 mm safety margin has been added to bring the floor level to RL 3.70 metres AHD.

**B J Williamson**  
**Building and Development**  
**Tribunal Referee**  
**Date: 8 October 2001**

## **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 grounds:

- (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 the notice of the Tribunal's decision is given to the party.

## **Enquires**

All correspondence should be addressed to:

The Registrar of Building and Development Tribunals  
Building Codes Queensland  
Department of Local Government and Planning  
PO Box 31  
BRISBANE ALBERT STREET QLD 4002  
**Telephone (07) 3237 04 03: Facsimile (07) 3235 4586**

Date

Letter 1

**Attention: Mr B Gobie**  
Building and Technical Services  
Gold Coast City Council  
PO Box 5042  
GOLD COAST MC QLD 9729

Letter 2

**The Registrar**  
Building & Development Tribunal  
Building Codes Queensland  
PO Box 31  
BRISBANE ALBERT STREET 4002

Dear Sir

**APPEAL No. 3-01-048 UNDER THE INTEGRATED PLANNING ACT 1997**  
**SITE ADDRESS: 17 SAVOY DRIVE, BROADBEACH WATERS.**

In accordance with condition (b) of the Decision concerning the above appeal, I confirm that I am aware of the flood ramifications of constructing the dwelling at 17 Savoy Drive, Broadbeach Waters with the minimum floor height of RL 3.70 metres AHD instead of RL 3.95 metres AHD nominated by the Gold Coast City Council.

Yours faithfully,

J R & J M Aitken  
PO Box 367  
MUDGEERABA QLD 4213