

Alderman hits out at building code

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The senior Lismore City Council health surveyor's report to the meeting said that the department had interpreted Ordinance 70 of the State Building Code to not require houses to have external walls.

The Department of Local Government's Building Advisory Section advised the council that under the Local Government Act, a council could require external walls as a condition of the building approval.

But any such conditions

would be subject to an appeal by the applicant to the Land and Environment Court.

Ald J Crowther said the council should formulate a policy on external walls.

"It will remain a matter of intimidation until it has gone to the Land and Environment Court for testing," he said.

Ald Habib said the council should inform the Minister for Local Government, Mrs Crosio, of its feelings about the department's interpretation of Ordinance 70.

He said that unless some action was taken, it would be just another example of the council accepting whatever the Government said.

"We should be protesting to show that we are not weak and will just accept anything," he said.

"The council should take up the matter with the Local Government Association."

The committee recommended that the council receive the information from the department, but take no further action.

It also adopted recommendations from the senior health surveyor that when considering a building application, the council use its general powers under the Local Government Act to require external walls; where a building application designated an area in a dwelling as a room, that such a room be required to be provided with external walls and that if no such room designation was assigned to an area, that it not be included in the floor area calculation.

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REPORT TO GENERAL PURPOSES COMMITTEE MEETING 10/2/87:

SENIOR HEALTH SURVEYOR'S REPORT TO DEPUTY CITY HEALTH SURVEYOR:

SUBJECT: EXTERNAL WALLS AND MEZZANINE FLOORS (WDS/AZ/81925/L7-6,B2-1):

The Department of Local Government Building Advisory Section in Advisory Note No. 102 have informed Councils that in its opinion Ordinance 70 does not require the provision of external walls to a dwelling. The Ordinance does require that where walls are provided that they be so constructed as to prevent the penetration of rain or other water to the inner parts of the building. Although not mentioned in the Advisory Note the Ordinance does not specifically state that roofs are required; however it does require that where they are provided that they also be constructed as to prevent the penetration of rain or other waters to the inner parts of the building.

It is obvious when reading the Ordinance that it is not a matter of the drafters of the Ordinance not requiring external walls or roofs and not being concerned above mezzanine floors, but that at the time it was assumed that all dwellings would have external walls and roofs and mezzanine floors were not an issue. The Ordinance otherwise would have been worded; "Where walls are provided".

The Advisory Note also draws attention to the fact that the size of mezzanines and the ceiling heights above and below mezzanine floors in dwellings is not regulated under the Ordinance and that certain provisions of the Ordinance are therefore not applicable.

The Advisory Note also states that the absence of relevant mandatory provisions does not necessarily prevent a Council from requiring, as a condition of building approval under the general powers of Section 313 of the Local Government Act, those matters not regulated; however, any such conditions are subject to appeal by the applicant, to the Land and Environment Court.

Council has been aware of the above opinion and the inadequacies of the Ordinance for some time and in fact the new Australian Draft Building Code has not overcome the abovementioned deficiencies and it is proposed to draw these two matters to the attention of the Code Committee.

The matter of requiring an external wall and the height above and below mezzanine floors were the main issues in an appeal by Bodhi Farm against two Council demolition orders in 1983 and although the decision was not in favour of Council it is obvious from reading the judgement that the decision was not for universal application as such statements as; "It is unlikely that rooms without external walls will become a State-wide fashion, because security as well as weatherproofing is a matter of paramount importance to the majority of people" and later "If these two houses were to pass into the ownership, or indeed if the present occupants were to have a change of mind, it would not be a major task to enclose these rooms as the Council wants them to and indeed as others have already done at Bodhi Farm. In the interim, however, the Court is of the opinion that the matter may well rest".

And in relation to the mezzanine ceiling height the judgement states, "The present height is obviously not worrying the present occupants and therefore the Court is prepared to let this matter rest also, but it would point out that in future the provisions of 317M of the Local Government Act (i.e. an appeal to the Court) should be investigated at building application stage if it is considered unreasonable and unnecessary by the applicant that the full ceiling height as required by Ordinance 70 should be provided."

The Court is clearly stating here that any reduced ceiling height is a matter for appeal to the Court and not a matter for general relaxation by Council.

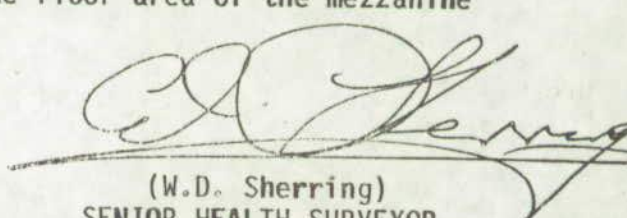
There is no basic objection to mezzanine floors in dwellings, although the view could be taken that if the Ordinance does not provide a means of regulating them in dwellings, then they are not permitted in dwellings; however, there is no problem with mezzanine floors if the height above and below them is regulated or the percentage of floor area they cover of the room in which they are constructed is regulated.

It is recommended that in considering dwelling applications with rooms without external walls and with mezzanine floors that Council use its general powers under Section 313 of the Local Government Act, 1919, to require, where applicable, the provision of external walls and to regulate mezzanine floors, as set out hereunder.

Council can not introduce a general blanket policy on building approvals as the Act requires that each building application be considered on its merits, therefore any resolution of Council would have to be treated by its Building Surveyors as an indication of Council's view on the matter.

It is therefore recommended as a building approval guideline that where a plan designates an area in a dwelling as a room, that such room is required to be provided with external walls and that if no such room designation is assigned to an area, that it not be included in the floor area calculation.

It is also recommended as a building approval guideline that where mezzanine floor exceeds one-third of the floor area of the room in which it is erected that the ceiling height above and below the mezzanine floor be a minimum of 2,400 mm. for two-thirds of the floor area of the mezzanine floor.



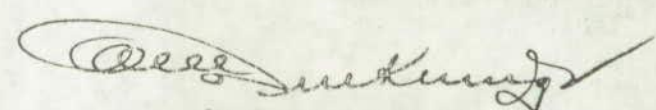
(W.D. Sherring)
SENIOR HEALTH SURVEYOR

29th January, 1987

DEPUTY CITY HEALTH SURVEYOR'S REPORT:

Recommended in accordance with the above.

Although this will not entirely prevent instances of this nature occurring and it is a reasonable approach for Council to take, as it will necessitate the applicant who is persistent enough to insist upon the above conditions being included in his building application and design having to appeal through the N.S.W. Land and Environment Court in his endeavour to obtain the approval of the conditions that he requires. This could in some instances act as a deterrent not to pursue the issue to this level.



(W.C. Duckering)
DEPUTY CITY HEALTH SURVEYOR

29th January, 1987

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- ✓ Gause
- ✓ Fair
- ✓ Corkhill
- ✓ Dennis

6. Department of Local Government, N.S.W. Building Regulation Advisory Note No. 102 - interpreting the application of provisions of Ordinance No. 70 as related to the provision of external walls to, and the location of mezzanines within a building of Class 1. (Copy circulated to all Aldermen)
Deputy City Health Surveyor's Report: (Copy attached)

RECOMMENDED that the letter be received and noted and no further action taken; the report be received and the following be adopted as Council's policy -

- (i) That in considering dwelling applications with rooms without external walls and with mezzanine floors, Council use its general powers under Section 313 of the Local Government Act, 1919, to require, where applicable, the provision of external walls and to regulate mezzanine floors, as set out hereunder;
- (ii) As a building approval guideline, that where a plan designates an area in a dwelling as a room, such room is required to be provided with external walls and that if no such room designation is assigned to an area, that it not be included in the floor area calculation;
- (iii) As a building approval guideline, that where a mezzanine floor exceeds one-third of the floor area of the room in which it is erected the ceiling height above and below the mezzanine floor be a minimum of 2,400 mm. for two-thirds of the floor area of the mezzanine floor.

(82304/L7-6/B2-1/L7-5/1)

✓ Lyall
✓ Deane
✓ Davis

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It is obvious when reading the Ordinance that it is not a matter of the drafters of the Ordinance not requiring external walls or roofs and not being concerned above mezzanine floors, but that at the time it was assumed that all dwellings would have external walls and roofs and mezzanine floors were not an issue. The Ordinance otherwise would have been worded; "Where walls are provided"

The Advisory Note also draws attention to the fact that the size of mezzanines and the ceiling heights above and below mezzanine floors in dwellings is not regulated under the Ordinance and that certain provisions of the Ordinance are therefore not applicable.

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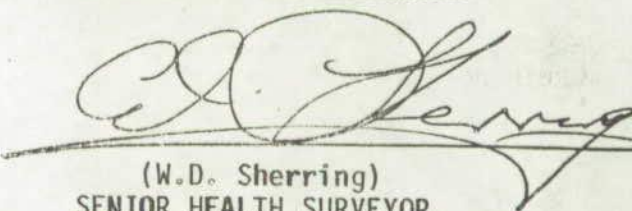
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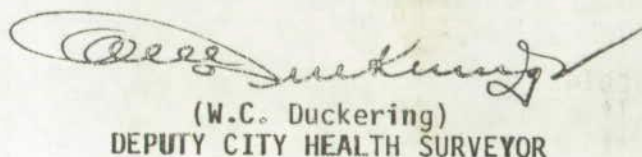
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(W.C. Duckering)
DEPUTY CITY HEALTH SURVEYOR

29th January, 1987

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L7-6 & B2-1



Department of Local Government



FILE: F83/2768B
AUBRCC:
DATE: Dec., 86

New South Wales Building Regulation Advisory Note No. 102

For Enquiries:

Mr. J.B. Hall
Mr. S.J. Dwyer
(02) 240-4426

Ms. J.B. Hall
(02) 240-4526

SUBJECT: CLASS I BUILDINGS: EXTERNAL WALLS AND MEZZANINES

PROVISIONS AFFECTED: ORDINANCE NO. 70, CLAUSES 1.3, 47.1(2)
AND 49.5

EXPLANATION:

Difficulties have arisen with the interpretation and application of provisions of Ordinance No. 70 as related to the provision of external walls to, and the location of mezzanines within a building of Class I.

Clause 47.1(2) of the Ordinance requires that external walls (including openings around windows and doors) shall be so constructed as to prevent the penetration of rain or other water to the inner parts of a building.

The provisions of the abovementioned subclause are being interpreted such as to require external walls to be provided in all cases. However, with the exception of clause 16.1(4) (which applies only to buildings of Class II to IX inclusive) it is this Department's view that no mandatory requirement for the provision of external walls exists in Ordinance No. 70; the provisions of subclause 47.1(2) applying only when external walls are provided.

The absence of relevant mandatory provisions does not necessarily prevent a council from requiring, as a condition of building approval under councils general powers pursuant to Part XI of the Local Government Act, 1919, the provision of external walls where such is considered warranted on the grounds of health or similar matters; such a condition being subject to appeal by the applicant, pursuant to Section 317L of the Local Government Act, to the N.S.W. Land and Environment Court.

Clause 49.5 of Ordinance No. 70 specifies the minimum ceiling heights of habitable rooms contained in, amongst others, a building of Class I. It has been drawn to the attention of this Department that when a mezzanine is proposed to be located within a habitable room of a Class I building, the minimum ceiling height required by clause 49.5 is frequently applied from the floor of the room to the underside of the mezzanine and from the upper surface of the mezzanine to the ceiling above.

It is this Department's view that the position of a mezzanine located within a habitable room of a Class I building is not regulated. Clause 1.3(1) of Ordinance No. 70 defines a "mezzanine" as being that space within a room which is situated between an intermediate floor constructed within the room and the floor level next above, or if there is no floor above, the ceiling or roof above. As the provisions of clause 49.5 apply to the height of the room, the height above and below a mezzanine floor is not regulated by that clause.

In respect of the area of a mezzanine or consideration of a mezzanine as a storey, it is the Department's view that the relevant provisions of Ordinance No. 70 (clauses 16.16 and 17.1(6)) do not apply to a Class I building; the aforementioned clauses being applicable only to buildings of Class II to IX inclusive.

L. Dix.

L. Dix
Manager
Building Branch

✓ Daw

✓ Donin

✓ Conkall

✓ Donis



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Department of Local Government

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