

Home owner fined \$80,000 for upper storey extension

By Peter Gillett

A home owner was recently fined \$80,000 of the \$200,000 maximum penalty under the *Planning and Development Act 2005* for carrying out an extension to a residential dwelling without development approval.

When sentencing the accused, the Magistrate took into account the fact that the accused had a prior conviction for a planning offence, albeit relating to the use of land rather than 'development'. Accordingly, the Magistrate accepted that the accused was intimately aware of the local government's planning requirements and the offence was flagrant and deliberate. The works involved the extension of an approved second storey addition by constructing 3 additional bedrooms, each with its own ensuite, and extending an approved upstairs balcony to create an additional 20m² of balcony space. In total, the unapproved second storey additions covered an area of 80m².

Importantly, the Magistrate, correctly in our view, imposed a significant penalty despite the fact that the accused had subsequently obtained retrospective approval for the unauthorised works. The decision highlights that significant penalties may still be imposed despite retrospective approval subsequently being obtained, particularly where the offence is flagrant and deliberate.

If you require assistance with any planning compliance matters, please contact Peter Gillett or Tim Beckett on 9383 3133.