



## Building and Development Dispute Resolution Committees—Decision

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### *Sustainable Planning Act 2009*

<b>Appeal Number:</b>	91/2011
<b>Applicant:</b>	Teresa Faraone
<b>Respondent:</b>	Brisbane City Council
<b>Concurrence Agency:</b> (if applicable)	N/A
<b>Site Address:</b>	7 Murray Street, Wilston – the subject site

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### Appeal

Appeal under section s532 of the *Sustainable Planning Act 2009* (SPA) against the issuing of a notice by Brisbane City Council. The notice relates to an alleged non-compliance with Queensland Development Code Mandatory Part QDCMP5.7, specifically non-compliance with A4 (a) – room sizes.

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<b>Date of hearing:</b>	10.00am on 14 March 2012
<b>Place of hearing:</b>	Offices of the Department of Local Government and Planning, Level 5, 63 George Street, Brisbane
<b>Committee:</b>	Greg Rust – Chair Jenny Owen – General Referee
<b>Present:</b>	Teresa Faraone – Applicant Damien Negus, Vice President – SAPA (Supported Accommodation Providers Association) Stephen O'Rourke – Council Representative Duncan Kirk – Council Representative

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### Decision:

The Committee, in accordance with section 564(2)(c) of the SPA **sets aside** the decision of the Brisbane City Council as contained in their written notice dated 11 November 2011 – regarding the part of the decision relating to the bedrooms and replaces it with the following decision.

The Committee directs the applicant and Council to work together to formulate and document an alternate solution that meets the performance criteria P4, to the acceptance of the Committee within 14 days of the date of this decision.

The alternate solution will form part of Council's compliance notice.

## Background

The applicant's property is a double storey residential services building.

The applicant purchased the building as a residential services building (or "boarding house" as they were then called) 30 years ago and took over running the facility 12 years ago.

The building contains 22 bedrooms, kitchen, laundry, manager's office, a generous dining room and large outdoor spaces.

The building is registered with the Residential Services Accreditation Unit (RSAU) of the Office of Fair Trading, and requires re-accreditation with the RSAU every 3 or so years. Part of the re-accreditation process requires that the building be assessed by the local authority to check for compliance against Queensland Development Code, Mandatory Part 5.7 (QDCMP5.7) – Residential Services Building Standard.

The QDC MP5.7 is a performance based code, whereby compliance can be achieved either through meeting the acceptable solutions of the code or demonstrating that the performance criteria can be met through an alternate solution.

After carrying out inspections on the subject site, Brisbane City Council (Council) issued a building compliance notice on 11 November 2011, stating the building did not comply with the QDC MP5.7. This is despite bedrooms 5, 10, 11, 12, 13 having remained unaltered in size for at least the past 12 years, during which time Council had issued previous notices stating that the building complied. (Bedroom 14 has recently been altered to accommodate new bathroom facilities and had to be reassessed).

Council found that the 6 bedrooms mentioned above did not comply with A4(a) of the QDC MP5.7, which requires:

"The minimum unencumbered floor area for each bedroom is –

- (i) for one person – 7.5m<sup>2</sup>; or
- (ii) for two people – 11m<sup>2</sup>; or
- (iii) for three people – 16.5m<sup>2</sup>; or
- (iv) for more than three people – 16.5m<sup>2</sup> plus an additional 5.5m<sup>2</sup> per additional person...".

The applicant appealed against the Compliance Notice to the Committees on 29 November 2011.

## Material Considered

The material considered in arriving at this decision comprises:

1. 'Form 10 – Appeal Notice', grounds for appeal and correspondence accompanying the appeal lodged with the Registrar on 29 November 2011, including Council's Building Compliance Notice dated 2 April 2003 and floor plan of premises
2. Council's Building Compliance Notice dated 11 November 2011.
3. Oral submissions by the applicant and the Council representatives at the hearing.
4. Written submission by the applicant, including photos of the rooms and statements from each of the room's residents.
5. Written submission by the respondent.
6. Phone call to the Residential Services Accreditation Unit (RSAU) to discuss the applicant's property and the re-accreditation process.

## Findings of Fact

The Committee makes the following findings of fact:

### *Compliance notices:*

- The subject site was assessed against QDC MP5.7 by Council on 2 April 2003. The Council deemed the building compliant.
- The subject site was reassessed against QDC MP5.7 by Council on 11 November 2011. Council deemed the building non-compliant. Specifically, Council found that the building did not comply with A4 (a) of QDC MP5.7, which sets minimum floor sizes for bedrooms. Council found that bedrooms 5, 10, 11, 12, 13 and 14 did not comply with the minimum bedroom size requirements.
- Council relied on the acceptable solutions of the QDC MP5.7 to determine compliance, but notified the applicant that alternate solutions were an option, but could not offer any assistance to formulate one.

### *The property:*

- Bedrooms 5, 10, 11, 12, 13 have remained unaltered in size for at least the past 12 years.
- Bedroom 14 has recently been altered to accommodate new bathroom facilities (2 toilets, handbasin and 1 shower).
- Each bedroom at the property has minimal but adequate facilities (typically including bed, wardrobe, rubbish bin, laundry hamper) and residents have very little personal possessions.
- The subject site has various recreation areas where residents can spend time outside their bedroom, including a large dining room and sizeable grounds.
- The property has a complaints register where residents can raise issues with the manager.
- Residents have access to various agencies such as Lifeline and receive monthly visits from a "Community Visitor".
- It would not be possible to simply shuffle residents to different rooms that have more space (and comply with the 7.5m<sup>2</sup> rule), as the residents would not be accepting of change.

### *The owner/operator:*

- The owner/operator (also the applicant to this appeal) operates the premises in a community-based manner. It is apparent that she cares for the residents and views them as an extension of her own family. She accommodates the residents according to their rooming preferences and special needs. The owner/operator has the capacity to operate the building and its residents effectively.

## Reasons for the Decision

The alleged non-compliance identified in Council's Compliance Notice is incorrect because:

Council relied on the acceptable solutions of the QDCMP5.7 to determine compliance and did not consider compliance with the performance criteria (i.e. using an alternate solution to achieve compliance).

- The applicant apparently cares genuinely for the residents.

The applicant often goes above and beyond what would normally be expected of a building manager, including mending resident's clothes and doing resident's grocery shopping. She also locates residents in a manner that best suits the residents (not necessarily in the most cost effective manner to herself). Some of the bedrooms at the property may be considered "under-utilised" when considering the QDC MP5.7 - 7.5m<sup>2</sup> per person requirement, however, the applicant makes it a priority to match people to the rooms – ensuring those who wish to share with others do so, and those who wish to occupy single rooms can too.

The applicant has demonstrated that she is keen to address issues at her property in an upfront manner, and work with authorities (i.e. the RSAU).

- The bedrooms are only marginally less in size than what is required in the acceptable solution of QDCMP5.7.
- The residents have access to areas outside their bedrooms – the property has various recreation areas – they don't need to spend all day in their bedrooms. Additionally, residents like the community environment at the premises; mostly they don't want to be in rooms by themselves.
- The property has been operating for an extended period of time, with low or no complaints from residents.
- There are very few supported accommodation premises in Queensland where residents are housed and provided with food and personal care services.
- As the building is an older style created prior to the current regulations, simply overlaying the deemed to satisfy requirements is not the most effective way to assess its performance. Thus, this is why the code is performance based.
- The Committee therefore is of the opinion that the premise satisfies the purpose and intent required by QDC MP5.7 by providing adequate personal space facilities for each resident.

**Greg Rust**  
**Building and Development Committee Chair**  
**Date: 16 April 2012**

## **Appeal Rights**

Section 479 of the *Sustainable Planning Act 2009* provides that a party to a proceeding decided by a Committee may appeal to the Planning and Environment Court against the Committee's decision, but only on the ground:

- (a) of error or mistake in law on the part of the Committee or
- (b) that the Committee 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 Committee's decision is given to the party.

## **Enquiries**

All correspondence should be addressed to:

The Registrar of Building and Development Dispute Resolution Committees  
Building Codes Queensland  
Department of Local Government and Planning  
PO Box 15009  
CITY EAST QLD 4002  
**Telephone (07) 3237 0403 Facsimile (07) 3237 1248**