



## Building and Development Dispute Resolution Committees—Decision

---

### *Sustainable Planning Act 2009*

<b>Appeal Number:</b>	40- 12
<b>Applicant:</b>	CAJI Properties C/-Christine Colbert
<b>Assessment Manager:</b>	Brisbane City Council (Council)
<b>Concurrence Agency:</b> (if applicable)	N/A
<b>Site Address:</b>	38 Colville Street Highgate Hill -the subject site

---

### Appeal

Appeal under section 526 of the *Sustainable Planning Act 2009 (SPA)* against a Building Compliance Notice given on 26 July 2012 specifically condition number P4/A4 in respect of bedroom 21 not having the minimum floor area of 7.5m<sup>2</sup> required by the Queensland Development Code MP 5.7 -Residential Services Building Standard.

---

<b>Date of hearing:</b>	Tuesday 11 December 2012 at 2.30pm
<b>Place of hearing:</b>	63 George Street, Brisbane
<b>Committee:</b>	Greg Rust– Chair Jenny Owen - Member
<b>Present:</b>	Christine Colbert – Applicant Damien Negus - SAPA (Supported Accommodation Providers Association) Vice President Stephen O'Rourke–Brisbane City Council Dave Garel – Brisbane City Council

---

### Decision:

The Building and Development Dispute Resolution Committee (Committee), in accordance with section 564 of the SPA **sets aside** the condition of Brisbane City Council Building Compliance Notice condition P4/A4 dated 26 July 2012 and replaces that condition as follows:

P4/A4 – complies, subject to the following alternate solution and conditions for Room 21, which is a bedroom having a floor area less than the required 7.5m<sup>2</sup>:

- Room 21 be modified as proposed by the owner by way of a cupboard being built within the doorway which leads to the adjoining bathroom. The piece of furniture that the storage cupboard replaces shall be removed permanently from within the room.

- All prospective and future occupants of Room 21 be informed that the room has a reduced floor area and the occupant has signed an agreement that the room is adequate for their personal space. Renewal applications for Building Compliance Notices made to the Brisbane City Council shall include evidence of the occupant's acceptance when made.
- Brisbane City Council record as necessary that Room 21 is the subject of an alternative solution.

Note that this work shall occur and be checked by Brisbane City Council prior to giving its amended Building Compliance notice

## **Background**

Premises regulated under the *Residential Services (Accreditation) Act 2002* (RSA) are required to be reviewed for the purpose of accreditation every three years. Brisbane City Council is the authority required to conduct that review on application and have on several previous occasions carried out that responsibility for the subject property. With an increase in public demand and changes to regulations for safety and amenity, Council have looked more closely at compliance with these types of buildings. A more thorough inspection has indicated that the room in question, which has been licensed in the past, does not comply in regards to floor area.

The present requirements for these buildings are provided for as part of the Queensland Development Code MP5.7-Residential Services Building Standard (QDC MP 5.7). The standard, although legislated after the building's creation, retrospectively applies. Registration requirements include demonstration that the premises complies with the mandatory requirements of the standard. The standard has a number of acceptable solutions, however it also provides for an alternative solution that adequately satisfies the standard.

After application was made to Council, a Building Compliance Notice was received by the building owner which stated that Bedroom 21 was not compliant with the standard in regards to floor area and that the room must cease being used as a bedroom or an alternative solution be submitted for consideration. These buildings generally, from the Committees understanding, operate on very limited budgets and some not only provide accommodation but assist in the social well-being of their residents.

It is the Committee belief that no agreement regarding an alternative solution could be reached and that is the reason this matter is the subject of this appeal.

## **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 28 August 2012.
2. Building Compliance Notice given by Brisbane City Council dated 26 July 2012
3. Verbal submissions by the applicant and council representatives at the hearing
4. General acceptance by Council of an outline proposed by applicant to modify the room
5. Queensland Development Code MP 5.7 – Residential Services Building Standard (QDC MP 5.7)
6. The *Sustainable Planning Act 2009* (SPA)
7. *The Residential Services (Accreditation Act) 2002* (RSA)

## **Findings of Fact**

The Committee makes the following findings of fact:

- The room in question has been accepted as a bedroom in the past by approval authorities.
- The room in question, despite having a floor area less than 7.5m<sup>2</sup>, could satisfy the performance provisions of the QDC MP 5.7 and perform its function as presently occupied, subject to an alternate/performance based solution being applied.
- The present occupant of the room has expressed a desire to continue to occupy the room in its current state.
- Most of the contents of the room are owned and therefore controlled by the proprietor of the building.
- Generally a performance based solution is professionally prepared by an applicant for consideration by the review authority.
- The Committee accepts that the expense to have a professionally prepared alternative solution is prohibitive. This is the reason why the Committee has taken unusual steps to assist, in conjunction with Council officers, to develop an alternative solution for room 21 at the hearing i.e. cupboard built in the doorway within the floor space of the adjoining bathroom and removal of a piece of furniture from the room.

**Reasons for the Decision**

QDC MP 5.7 Residential Service Standard outlines ‘Requirements for Bedrooms’ in section 4.

An alternative solution is a method which demonstrates compliance with the standard. The standard has two methods for which compliance with the standard may be achieved. The first is the deemed to satisfy (acceptable solution, floor area 7.5m<sup>2</sup>) the second performance criteria outlined below.

**Bedrooms**

Performance Criteria

P4 “Bedrooms must provide adequate personal space facilities for each resident”

Acceptable solutions

A4 (a) The minimum unencumbered floor area.....  
 (1) For one person -7.5m<sup>2</sup>, or.....

The facilities contained within the space outlined by the owner consist of a bed, small beside table, shelving unit and hanging device. The room, inclusive of furniture, is managed and owned by the proprietor and occupants in this type of accommodation generally do not have many possessions.

The occupant of room 21 has been residing there for some time and has been informed that the floor area of the room does not comply with the QDC’s acceptable solutions (ie it is under-sized) and is resistant to change. The proprietor outlined to the Committee that many occupants receive assistance from the establishment in their day to day lives as well being provided with accommodation.

By removing a piece of furniture from the floor space of the room and the installation of a storage cupboard in the floor area of the adjoining bathroom, a moderate increase in floor space will be achieved. This will satisfy the performance requirements in respect to personal space facilities for the resident.

Having further regard to the occupants of this type of accommodation, the Committee is mindful of

the disruption that relocation may cause to the occupant's wellbeing. The occupant has indicated acceptance of the space and the space in question has been in existence and performed its function. The regulation of room floor area, while of importance particularly for new designs, was not generally intended to close down existing buildings but ensure a review of their suitability

Room 21's occupant has been informed of the room size non-compliance and indicated that he is accepting of its current configuration size. Giving consideration to P4 of the Standard together with the small increase in floor area by the removal of one piece of furniture and the building of a cupboard to service the room built within the floor area of the adjoining bathroom, the Committee is satisfied such changes meet the performance provisions of QDC MP5.7

---

**Greg Rust**  
**Building and Development Committee Chair**  
**Date: 25 January 2013**

## **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 Housing and Public Works  
GPO Box 2457  
Brisbane QLD 4001  
**Telephone (07) 3237 0403 Facsimile (07) 3237 1248**