



Building and Development Tribunals
Queensland Government

Department of Local Government, Planning,
Sport and Recreation

APPEAL
Integrated Planning Act 1997

File No. 03-06-019

BUILDING AND DEVELOPMENT TRIBUNAL - DECISION

LOCAL GOVERNMENT: Douglas Shire Council

SITE ADDRESS: *withheld*-“the subject site”

APPLICANT : *withheld*

NATURE OF APPEAL:

Appeal under Chapter 4 of Part 2 of the *Integrated Planning Act 1997*, against the decision of the Douglas Shire Council to give an Enforcement Notice to the Applicant, requiring the applicant to rectify balustrading by ensuring that the finished height of the balustrading is not less than 1.0 metres above the floor surface of the balconies; in the development on the property at “the subject site”.

DATE AND PLACE

OF HEARING: 8.30 am on Tuesday 14 February 2006
at “the subject site”

TRIBUNAL: Nigel Daniels

PRESENT: Applicant
Jeff Evans, Douglas Shire Council

DECISION:

Under the provisions of the *Integrated Planning Act 1997*, section 4.2.34, the Tribunal **confirms the decision appealed against**, as made by the Douglas Shire Council

BACKGROUND:

In the development at “the subject site” a multi-storey building of dwelling units, balconies to the units were provided with frameless glass Balustrading; that is, no top rail was provided. Subsequently, after the paved floor covering to the balconies was completed it became apparent that the height of the glass balustrading above the finished level of the paving is less than the 1 metre minimum required by the Building Code of Australia. The actual height varies from 986 mm to 999 mm. Council issued an enforcement notice requiring that the balustrade be not less than 1 metre in height above the surface of the paving.

REASONS FOR THE DECISION:

There is no evidence to show that balustrading of a height less than 1.0 metre will be equally effective as balustrading 1.0 metre high, as required by the deemed-to-satisfy provisions of the *Building Code of Australia*, in preventing falls from a balcony.

No evidence was presented to the Tribunal nor is known to the Tribunal of an Assessment Method which could determine that a balustrade of a height less than 1.0 metre will comply with the Performance Requirements of the Building code of Australia (BCA), so establishing an Acceptable Solution complying with the BCA.

MATERIAL CONSIDERED:

- Form 10 – Building and Development Tribunals Appeal Notice from the applicant and material attached to the Notice.
- Verbal submission by the applicant, at the hearing.
- Verbal submission by the Council’s representative, at the hearing.
- The *Building Act 1975*
- The *Standard Building Regulation 1993*.
- The *Integrated Planning Act 1997*.
- The *Building Code of Australia (BCA)*.

FINDINGS OF FACT:

1. The height of the balustrade above the surface of the balcony paving is less than 1.0 metre in a number of places.
2. The Building Code of Australia, in D2.16 (f) requires that the height of a balustrade to a balcony must be not less than 1.0 metre above the floor.
3. The Building Code of Australia does not provide for negative tolerances when assessing a balustrade's compliance with the deemed-to-satisfy requirements of the BCA. Effectively, the only tolerance permitted is a positive tolerance allowing balustrading to be higher than 1 metre, but not less than one metre.

Nigel Daniels,
Referee, Building and Development Tribunal.

Date: 15 February 2006

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 ground -

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

Enquiries

All correspondence should be addressed to:-

The Registrar, Building & Development Tribunals
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