



Building and Development Tribunals
Queensland Government

Department of Local Government, Planning,
Sport and Recreation

APPEAL
Integrated Planning Act 1997

File No. 03-04-039

BUILDING AND DEVELOPMENT TRIBUNAL – DECISION

Assessment Manager: Caboolture Shire Council

Site Address: 12 Winnett Street, Woorim
on land described as Lots 306 W 7539

Applicant:

Nature of Appeal

An appeal was lodged under Section 30 of the *Residential Services (Accreditation) Act 2002* against the decision by Caboolture Shire Council not to grant a Building Compliance Notice under Section 29 of the Act for residential service at the above site address.

Date and Place of Hearing: 29 July 2004
Department of Local Government, Planning, Sport and Recreation
Level 25 Mineral House, 41 George Street, Brisbane Queensland

Tribunal: Tanya Favero
B. App. Sc Environmental Health,
Master of Environmental Management

Present: Applicant
Caboolture Shire Council
Ms Tanya Favero – Tribunal Referee

Decision

Under Section 4.2.34 of the Integrated Planning 1997, the tribunal **confirms** the decision made by Caboolture Shire Council in their decision Notice dated 11 June 2004.

Background

An application was made by the applicants to the Caboolture Shire Council under Section 29 of the Residential (Accreditation) Services Act 2002 for a Notice of Compliance stating whether their residential service did comply with the prescribed building requirements under Part 20 of the Queensland Development Code (QDC).

On 02 June 2004, an officer of Caboolture Shire Council carried out an inspection. A standard inspection report was used, which was based on the one provided by the office of Fair Trading to all Local Governments.

The inspection concluded that the residential service did not meet the requirements of the acceptable solutions given or any proposed alternative solutions were not considered.

On 11 June 2004, Caboolture Shire Council issued a Decision Notice to the applicants, in the form of an inspection advising the premises did not comply. The Notice outlined the areas of non-compliance with the acceptable solutions in the QDC.

Material Considered

- A copy of the appeal application made by the applicants for the residential service dated 11 June 2004.
- A copy of the Decision Notice, dated 27 April 2004, under section 29 of the *Residential Services (Accreditation) Act 2002* advising of the Council decision not to give a notice of compliance. This Notice outlines the reason for the decision.
- Set of plans of the residence provided by the applicants.
- Concerns raised by each party at the Tribunal Hearing:
 - The applicants raised the following matters during the hearing:
 - The residence is 2 storey and was purpose built.
 - Washing machines are provided for communal use by residents.
 - The residents provide their own furniture and white goods.
 - Further clothes lines have been provided that should address the outstanding matter.
 - They advised they felt they had been disadvantage by the process of accreditation, as they were unaware of that they had to do to comply
 - They did not know about the outstanding issues when they bought the premises.
 - An officer of Caboolture Shire Council provided the following information in relation to the Council's decision Notice:
 - An enforcement notice was issued to the previous owners of the residential service.
 - In the Council's opinion, it is the responsibility of the Office of Fair Trading to approve any alternative solutions provided by an applicant.
- Each issue/point of non-compliances identified by the Caboolture Shire Council and stated in the decision notice were discussed.

The following legislation was considered:

The *Residential (Accreditation) Services Act 2002* provides the following:

Section 29 Notice of compliance with prescribed building requirements

- (1) A person conducting, or who proposes to conduct, a residential service in premises may make written application to the local government for the local government area in which the premises are situated for a notice stating whether the premises comply with the prescribed building requirements.
- (4) If the local government decides the premises do not comply with the prescribed building requirements, the notice must state —
- (a) the reasons for the decision; and
 - (b) that the decision may be appealed to a tribunal under the *Integrated Planning Act 1997*; and
 - (c) that, if an appeal is made, the appeal must be made within 20 business days after the person receives the notice; and
 - (d) what must be done by the person to make the premises comply with the prescribed building requirements.

The Queensland Development Code provides the following information for service providers of residential services:

“ PART 20 – RESIDENTIAL SERVICES BUILDING STANDARD - Part 20 Page 2
Queensland Development Code (Residential Services Building Standard Publication Date: 23 August 2002)

Registration requirements include demonstrating that the premises in which the residential service is offered complies with the mandatory building requirements contained in this document and that new building work also meets the requirements of the Building Code of Australia.

The building requirements focus on objectives and outcomes. They are presented as performance based requirements. A number of acceptable solutions are identified and listed for each outcome. Premises may need to use some or all solutions depending on the nature of the premises and business. Alternatively, you may be able to meet an outcome using a solution or method not listed in this standard. This allows for service providers to put forward alternative solutions to meeting the requirements thus supporting innovation and flexibility.

Before implementing alternatives, seek advice from local government. *Local government officers will assess if a premises meets the acceptable solution given or if alternative solutions proposed are sufficient to meet the performance criteria.”*

PART 20 – RESIDENTIAL SERVICES BUILDING STANDARD

Queensland Development Code Page 3 Part 20 (Publication Date: 23 August 2002 Residential Services Building Standard)

Compliance

Premises in which a residential service is provided will comply with the requirements if they satisfy the performance criteria. Compliance with the performance criteria can only be achieved by:

- (a) Complying with the acceptable solutions; or
- (b) Formulating an alternative solution which complies with the performance criteria or is shown to be at least equivalent to the acceptable solutions; or
- (c) A combination of (a) and (b).
- (d) Where an alternative solution is utilised, the building compliance notice issued by local government should highlight the solution and how this demonstrates that the relevant performance criterion is met.

Decision Made by a Local Government

(4) If the local government decides the premises do not comply with the prescribed building requirements, the notice must state—

- (a) the reasons for the decision; and
- (b) that the decision may be appealed to a tribunal under the *Integrated Planning Act 1997*; and
- (c) that, if an appeal is made, the appeal must be made within 20 business days after the person receives the notice; and
- (d) what must be done by the person to make the premises comply with the prescribed building requirements.

Findings of Fact

- The premises at 12 Winnett Street, Woorim are currently being used as a residential service.
- The facts and information provided by the applicants revealed the following remained non-compliant:
 - The self laundering facilities did not contain a 7.5kg washing machine to comply with the acceptable solution, but at the time of inspection there were two 5kg washing machines for 6 occupants,
 - The laundering facilities do not contain a wash trough with cold water reticulation per 15 residents. This was confirmed by the applicants.
 - The minimum storage space for occupants is not provided in every room. The applicants have indicated that they do not provide furniture in each room, but do have storage cupboards available for tenants.
 - The bedrooms do not contain a bed frame, mattress or mattress protector. The applicants indicated that the tenants are required to provide their own bedding.
 - The vermin control within the buildings does not comply with Part 20 of the QDC as there was a hole in the external wall and on the soffit board of the building. The applicants indicated that this had been sealed.
 - The early warning system does not comply with the acceptable solutions of Part 20 of the QDC in that each bedroom does not have a smoke alarm.
 - It is not clear whether or not the alarms comply with AS3786-1993 Smoke alarms. The applicants indicated they are battery operated.
 - The emergency lighting system does not comply with the acceptable solutions of Part 20 of the QDC.
- Some alternative solutions were provided.

Reasons for the Decision

The premises is currently being used as a residential service and as provided by the *Residential (Accreditation) Services Act 2002*, must comply with the acceptable solutions provided by Part 20 of the Queensland Development Code. A premises for the purpose of a residential service must comply with the acceptable solutions or provide alternative solutions that are equivalent.

A person may apply to the relevant local government for an inspection to be undertaken for the purpose of determining whether or not the premises complies with the QDC. The publication dated 23 August 2002 provided by Queensland Department of Local Government and Planning, regarding Part 20 of the Queensland Development Code states that a service provider may put forward alternative solutions to meet the requirements of Part 20 of the QDC. This indicates the responsibility is on the service provider and not the Local authority to recommend or provide the alternative solutions and for the Local Government to assess those to determine if they are equivalent to the acceptable solution of the Code. The Office of Fair Trading has confirmed this is the intention of Part 20.

The inspection on 02 June 2004 indicated that the premises did not comply with Part 20 of the QDC, which is outlined in the above facts. In making a decision regarding providing a compliance notice to a person who is conducting residential services, a local government may either decide that the premises complies or doesn't comply with the acceptable solutions or decides that any alternative solution is equivalent to the solution. The legislation does not allow a local government to make exemptions if the alternative solution is not equivalent to the acceptable solution.

The information provided at the tribunal hearing has confirmed there are still items that do not comply with the Code. Of particular concern are the non-compliant early fire warning system and emergency lighting system. The current systems provided by the applicants clearly do not meet the acceptable solution or provide equivalent systems to the solution. With regards to the other items non-compliant as indicated on the inspection report, the applicants would need to demonstrate to the Local Government that their premises meets the acceptable solutions.

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Tanya Favero
Building and Development Tribunal Referee
Date: 16 August 2004

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:

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