



**Building and Development Tribunals**  
**Queensland Government**

Department of **Local Government, Planning,  
Sport and Recreation**

**APPEAL**  
*Integrated Planning Act 1997*

**File No. 03-04-032**

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**BUILDING AND DEVELOPMENT TRIBUNAL – DECISION**

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**Assessment Manager:** Atherton Shire Council

**Site Address:** 36-38 Kennedy Highway, Tolga  
on land described as Lots 3 & 4 on RP713714

**Applicant:**

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**Nature of Appeal**

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

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**Date and Place of Hearing:** 1.00pm on 1<sup>st</sup> July 2004  
at Gecko Lodge, 36-38 Kennedy Highway, Tolga

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

**Present:** Applicant  
Atherton Shire Council  
Building Designer  
Small Business Advisor

**Decision**

Under Section 4.2.34 of the Integrated Planning 1997, the tribunal **confirms** the decision made by Atherton Shire Council in their decision Notice dated 27 April 2004.

## **Background**

An application was made by the applicant to the Atherton Shire Council under Section 29 of the Residential (Accreditation) Services Act 2002 for a Notice of compliance stating whether the premises comply with the prescribed building requirements.

The building requirements are prescribed in Part 20 of the Queensland Development Code (QDC).

On 6 April 2004, a Building Officer and an Environmental Health Officer of Atherton Shire Council carried out an inspection. A standard inspection report, provided by the office of Fair Trading to all Local Governments was used.

The inspection concluded that the Gecko lodge did not meet the requirements of the acceptable solutions given or proposed alternative solutions.

It is apparent that no alternative solutions were proposed to meet the performance criteria as stated in the QDC.

On 27 April 2004, Atherton Shire Council issued a Decision Notice advising the premises did not comply to the applicant, the person conducting the residential service. The Notice outlines the areas of non-compliance with the acceptable solutions in the QDC.

## **Material Considered**

- A copy of the appeal application made by the applicant of the Gecko Lodge dated 27 May 2004.
- A copy of a letter, dated 21 May 2004, from the CEO of Atherton Shire Council to the applicant, advising that the matter would be held over to the Council's meeting 8 June 2004 at which a Building Surveyor for the Council would advise the Council in relation to any building work outstanding.
- A letter dated 10 May 2004 from the applicant to the Mayor of Atherton Shire Council advising of his concerns about the non-compliant matters raised by the Council.
- 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.
- A copy of the first page of an Enforcement Notice under Section 22 of the *Building Act 1975* regarding the outstanding building requirements under the *Building Act 1975*.
- Concerns raised by each party at the Tribunal Hearing:
  - The applicant provided the following reasons for his appeal:
    - He has approval from Atherton Shire Council for a boarding house to have thirty-two (32) occupants.
    - The proposed second kitchen was not considered in the inspection and therefore cannot be included in his application for a financial grant to the Department of Housing.

- That the inspection of the ventilation of room five (5) has not included the skylight in the room.
  - That the Council did not provide alternative solutions to the acceptable solutions in the Code. After consultation with the Office of Fair Trading and the Council he advised no person advised him that alternative solutions could be provided.
  - He was waiting to apply for a grant to the Department of Housing to carry out the outstanding work.
  - He has approved plans by the Council that will bring the building into compliance.
- The Building Officer, Atherton Shire Council provided the following information in relation to the Council's decision Notice:
    - The Certificate of Classification granted in 1998 has expired.
    - The decision was made based on an inspection carried out by himself and an Environmental Health Officer against the acceptable solutions under Part 20 – Residential Services Building Standard of the Queensland Development Code (QDC).
    - That no alternative solutions were provided by the applicant for the non-compliant items of section 20 of the *Residential Services (Accommodation) Act 2002*.
  - A Site inspection carried out on the day of the hearing with all parties present.

The following relevant 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.

### **Findings of Fact**

- The premises is currently being used for budget accommodation.
- The inspection revealed that little work had been carried out to comply with the outstanding requirements as stated in the Decision Notice of Atherton Shire Council dated 27 April 2004.
- The inspection revealed the following:
  - The main kitchen does not comply with Part 20 of the Code in that it does not have surfaces which are durable, impervious and finished to a smooth even surface free of cracks and crevices,
  - The proposed second kitchen is in state of construction and does not comply with Part 20 of the QDC,
  - The self laundering facilities did not contain enough washers to comply with Part 20 of the QDC,
  - The minimum unencumbered floor area of most of the bedrooms does not comply with Part 20 of the QDC,
  - The minimum storage space for occupants is not provided in every room,
  - The sanitary facilities do not comply with Part 20 of the QDC and require at least one more closet pan,
  - The vermin control within the buildings does not comply with Part 20 of the QDC particularly the kitchen and the eaves of the building are not maintained to prevent the undetected entry of vermin.
- No alternative solution has been provided which complies with the performance criteria or is

shown to be at least equivalent to the acceptable solutions.

### **Reasons for the Decision**

The premises are 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 inspection on 1<sup>st</sup> July 2004 confirmed that the premises do not comply with Part 20 of the QDC, which is outlined in the above facts. The non-compliant items identified during the inspection were consistent with the issues stated by Atherton Shire Council in their Notice dated 27 April 2004. 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.

Irrespective of the reasons for non-compliance and the fact that the applicant is applying to the Department of Housing for a grant to carry out the necessary work and has appeared to have experienced difficulty in obtaining information about the process and requirements, the legislation is clear of the requirements required before a Local Authority can issue a Compliance Notice under the Act.

Furthermore, 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.

However, it is felt in this case that Atherton Shire Council in providing their Decision Notice could have provided the applicant with more thorough information as to what work had to be done as required by section 29 (4) (d) of the Act, so that the applicant could take the matter forward.

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**Tanya Favero**  
**Building and Development**  
**Tribunal Referee**  
**Date: 20 July 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:

The Registrar of Building and Development Tribunals  
Building Codes Queensland  
Department of Local Government and Planning  
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