



Building and Development Tribunals

Queensland Government

Department of Local Government and Planning

APPEAL

Integrated Planning Act 1997

File No. 03-04-013

BUILDING AND DEVELOPMENT TRIBUNAL - DECISION

Private Certifier: Mr Jeffery Ashby (Development Certifications)

Site Address: 39 – 75 Ross River Road, MUDINGBURRA

Nature of Appeal

The appeal pursuant to *s4.2.9, Appeal by applicants* under the Integrated Planning Act 1997 disputes the respondent's determinations with regard to the application of Part 22 of the Queensland Development Code (QDC) being for the provision of suitable shade covering in a licensed child care facility and other matters particular to that Part of the QDC.

Date and Place of Hearing: The hearing was by written submission.

Tribunal: *Mr Russell Bergman*

Submissions: Submissions were made by both applicant and respondent, a summary of which is listed under *Materials Considered* in this determination.

Decision:

The Decision Notice dated 23 January 2004 (Approval No. 92 025) issued by Development Certifications is changed by amending condition 12 as follows:

Shade

1. The provision for shade as documented on Plan No. 725-A-WD-1b is acceptable. The condition references of the building certifier in the Decision Notice for provision of additional shade are deleted. However, the Tribunal considers it is appropriate that children have direct access to adequate shade to participate in the program developed for their particular age grouping. If fences have been erected to better manage groups of children then shade attributable to each age group/s shall not be interpreted as access to shade in another play space separated by a fence.

Workbench

2. The workbench may remain in the room as detailed. The condition reference of the building certifier is deleted. However, the Appellant shall take steps to ensure that no child be placed upon the workbench surface at any time by including a written procedure to the centre's Management Procedures Manual.

Glazed Viewing Panels

3. The requirements of the QDC Part 22, Child Care centres have been met. The condition reference of the building certifier is deleted.

Background:

The appeal concerned a development application for the redevelopment of an existing facility by the remodelling of the existing building, including demolition and rebuilding, and construction of a new building as a connected extension to the existing part. This also included significant changes to parts of the external works facilities necessary to the function of the new centre as a licensed child care use building.

In his appeal statements, the appellant raised the issues of (1) the provision of shade (2) the provision of glazing in the dividing partitions to the baby's cot room and (3) the function of an item of furniture in the Babies Sleep Room. All these matters are prescribed under Part 22 of the Queensland Development Code – Child Care Centres.

Specifically, the dispute over the shade provisions related to the interpretation and application of the QDC Part 22 for allocation of the total amount of shade and its distribution across fenced outdoor areas on the allotment.

Material Considered:

The Tribunal considered a range of written material as listed:

- *Form 10 - Building and Development Tribunals Appeal Notice* submitted by Mr Kevin McCarthy on behalf of the Roman Catholic Trust Corporation for the Diocese of Townsville and dated 16 February 2004.
- *The Queensland Development Code* – amendment applicable to the development application.
- *Form 1 Development Application Parts A & B* – applicant Mr Michael Putney dated 11 November 2003.
- Copy of correspondence to the Registrar, Building and Development Tribunal, dated 17 February, 2004 from Mr Kevin McCarthy, Education Consultant – Childcare with extracts (pps 4 & 5) of Development Certification's Decision Notice 23 January, 2004.
- Copy of correspondence to Mr Kevin McCarthy, Catholic Education Office – Townsville (CEOT), dated 26 February, 2004 from Ms Anne Reddell, Manager, Child Care Unit, Queensland Department of Families.
- Copy of facsimile to the Registrar, Building and Development Tribunal dated 3 March, 2004 from Mr Kevin McCarthy, CEOT, re: copy of advice from the Dept of Families.
- Copy of facsimile to the Registrar, Building and Development Tribunal dated 4 March, 2004 from Mr Kevin McCarthy, CEOT.
- Written submission from Mr Kevin McCarthy, CEOT, dated 29 March 2004 re: Responses to

requests by Tribunal via Registrar dated 16 March 2004 for further information.

- Written submission from Mr Jeffrey Ashby, Development Certifications, dated 29 March 2004 re: responses to requests by Tribunal via Registrar, dated 16 March 2004, for further information.

Findings of Fact:

Shade

1. In accordance with Part 22 of the QDC the *licensed capacity* of this child care centre is a maximum of 75 children with the following breakdowns.

Age Groupings	Maximum	Child Care	Numbers
0 - 24 mths	8	0 – 15 mths	8
15 - 36 mths	10	15 – 30 mths	10
30 – 36 mths	16	30 – 42 mths	12 – 16
36 mths – 72 mths	24	36 – 60 mths	24
36 mths – 72 mths	25	36 – 60 mths	17 – 21
Total Children	Shows maximum		Max 75

From the above, the numbers advised by the licensee are within the scope of the maximum total numbers permitted by Part 22 of the QDC.

2. Item 3 to be read in conjunction with this Item. The proposal complies with QDC Part 22, A5. In particular:
 - (a) A5 (b) (ii) - requires a total shaded area of not less than 2m² per child being for this approval 158m². This is based on the applicant's own information as supplied in consideration of the flexible use of the spaces for nominated maximum child numbers.
 - (b) A5 (b) (iii) - requires at least 50% of the required shaded area to be roofed with a material impervious to water and UV radiation;
 - (c) A5 (b) (iv) - requires the shaded play area, in summary, be surface/s suitable for play and educational, developmental activities.

Table 2 – Summary of allocation of shade as required by QDC Part 22

Groups being Babies/Toddlers Pre-Kindy Kindy/Pre-School	Maximum Group Size As Nominated by Applicant/Appellant	Shaded Area QDC – Part 22 2m ² per child	Net Actual (estimates)	
			50% UV / Water Roofed	Shade Cloth
0 – 15 mths	8	16 m ²	9 m ²	16 m ²
15 – 30 mths	10	20 m ²	9 m ²	36 m ²
30 – 42 mths	16	32 m ²	21m ²	36 m ²
36 – 60 mths	24	48 m ²	28 m ²	36 m ²
36 – 60 mths	21	42 m ²	28 m ²	36 m ²
		158 m²	95 m²	160 m²

Table Notes:

1. The tabulation figures (values) are stated as whole numbers.
2. Outdoor play area has included unenclosed verandah space. Not defined by QDC, Part 22.
3. Plan No. 725-A-WD-1b, as provided by Decision Notice have been used as the basis for the assessment. See Item 3.
3. In perusing Plan No. 725-A-WD-1b, shade has been made available to covered play spaces for a major proportion of all sandpits. Outdoors shade includes covered areas of verandahs. The calculations and apportioning / distribution of shade across the centre is sufficient. However, the Tribunal notes the discrepancies between drawings presented (and stamped) as part of the Decision Notice. For example, architectural Plan No. 725-A-WD-1b (summary shade calculations were included) conflicts with the landscape Plan No. LD-WD-04. Also, Plan No. 725-A0WD-APP 01 provides another version of shade area.
4. It was noted that available play spaces are well complimented (not supplemented) with trees that could be used for shaded play though there was no evidence as to the type of the trees or their foliage ie. as to whether these are deciduous.

Workbench

5. Drawing No.s 725 – WD - APP – 01 and 02 show a workbench located in the cot room (01) and the details for the workbench (02).
6. The Respondent, in giving the Decision Notice, has not clearly indicated his objection (response Item 12 dated 26 March, 2004) to the workbench as detailed, being removed as part of the approval.

Glazed observation openings

7. Plan No. 725-A-WD-3a indicates the room has 3 glazed openings for viewing.

Reasons for the Decision:

Matters of a General Nature

1. The QDC is a performance-based document. In principle, the applicant must demonstrate compliance with the performance criteria to the satisfaction of the building certifier. In the case of the QDC, the application can be deemed-to-satisfy the performance criteria if the proposal meets the acceptable solution in all respects otherwise, an alternative solution is required and referral to the concurrence agency.
2. The Tribunal noted documentation submitted where the timing of the design and submission of a development application and changes to the legislation were discussed, ie. for the Department of Families and their concurrence agency role, have been noted. I take the view that for expediency, the new arrangement should prevail being that Schedule 13 of the Standard Building Regulation 1993, declares Part 22 be duly considered and that the application be assessed against that Part. The Integrated Planning Regulation Schedule 2 requires that *“assessment of an aspect of building work if (a) the Queensland Development Code, Part 22, applies to the work; and (b) the assessment relates to whether the work complies with the performance criteria stated in that part, other than by complying with the acceptable solutions. The Chief Executive of the Department in which the Child Care Act 2002 is administered.”* Therefore, a concurrence assessment of the building work against the performance criteria stated in the QDC, Part 22, by the referral agency is only required where the work is an alternative solution. In this instance, the Department of Communities (formerly Department of Families) was consulted as to their opinion on the aspects in dispute and not in the capacity of a formal application as a concurrence agency.

Shade

3. The Tribunal received sets of drawing documentation with conflicting details. The Tribunal has considered all documentation and has subsequently based its decision on the documentation provided to the building certifier as the basis for his decision.
4. Specifically, P5 (g) primarily applies *ie. areas are shaded to avoid excessive ground surface temperatures, and reduce exposure to UV radiation.* As well, other sub-sections of P5 should be considered and the development proposal tested in respect of making a final assessment.
5. Note *Table 2 – Summary of allocation of shade as required by QDC Part 22.* Outdoor play areas are not defined by the QDC. As there are many forms of possible outdoor play, it is reasonable then to assess and include the roofed area on verandahs on the condition that they remain unenclosed and unscreened by any permanent structure. The Tribunal considered that sufficient covered and compliant space has been provided to meet requirements of the QDC. This includes the provision of combinations of shade and various ground surfaces to permit a range of activities to be conducted suitable for safe play that contributes to the developmental activities of children in these age ranges. Therefore, the Tribunal takes the view that the performance requirements of QDC Part 22, P5 have been met without further additional provisions.

Workbench

6. The Tribunal considers the workbench in the Babies Sleep Room is acceptable as an item of furniture. If used as intended, it is not foreseen it will significantly compromise the safety of children up to 15 months of age or pose any workplace risks to staff in accordance with the requirements of QDC, Part 22, P4.

Glazing

7. The Tribunal considers that the documentation of Plan No. 725-WD-A-3a demonstrates satisfactory visual supervision to all cots in the Cot Room from the indoor playing area. The windows are of sufficient size, proximity and spacing to cover all areas as required by Part 22, P4. It is quite conceivable that childcare operations would only permit children of age 15 months or younger to be in the Babies Sleep Room at any time other than in their designated cots. Therefore, the QDC performance requirements have been met.

RUSSELL BERGMAN
Building and Development Tribunal Chair
Date: 6 May, 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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