



## Building and Development Tribunals—Decision

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### *Integrated Planning Act 1997*

<b>Appeal Number:</b>	<b>3—09—041</b>
<b>Applicant:</b>	Mr Trevor Gerhardt
<b>Assessment Manager:</b>	Sunshine Coast Regional Council (Council)
<b>Concurrence Agency:</b> (if applicable)	
<b>Site Address:</b>	1 Jasper Court, Coolum Beach and described as Lot 22 on SP 134312— the subject site

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### **Appeal**

Appeal under section 4.2.9 of the *Integrated Planning Act 1997* (IPA) against the conditions of a Decision Notice of Council for Preliminary Approval for Building Work with respect to siting variation criteria for the subject site.

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<b>Date of hearing:</b>	9:30am on Tuesday 16 June 2009
<b>Place of hearing:</b>	Level 3, 63 George Street, Brisbane
<b>Tribunal:</b>	Mr Phil Dance – Chair Mr Stan Spyrou – General Referee
<b>Present:</b>	Mr Trevor Gerhardt – Applicant Mr John Dunn – Sunshine Coast Regional Council representative

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### **Decision:**

The Tribunal, in accordance with Section 4.2.34 of IPA **changes** the decision appealed against and **directs** the Council to approve the siting relaxation (so far as it relates to the subject of the appeal), subject to compliance with the following conditions:

1. The Council in its approval may have regard to any revised plan and elevations of the pathway and steps as may be provided, drawn to a recognised scale and with datum reference to the existing boundary fence shared with the property to the north.
2. A privacy screen is to be erected directly along the northern edge of the pathway and steps, commencing at the bottom step of the most easterly steps (“as constructed” adjacent to garage) and extending generally westerly, along the edge of the pathway and stairs to a point adjacent to the bottom stair at the level of the lower terrace.

The privacy screen must be:

- a) At least 1800mm in height measured from the pathway level, save that changes in level for stairs shall be constructed as a regular transition averaging 1800mm in height (above stairs).
- b) Constructed of materials that afford an effective visual screen.
- c) Constructed of materials that are aesthetically appropriate to, and consistent with the modern architectural vernacular prevailing in the locale.

(**Note:** The screen may include voids to a height of not more than 250mm above the pathway surface level, to assist in access for cleaning and maintenance).

3. The decision held in this application is separate to any other applications which may be made over the property.

## **Background**

The property is located at the corner of Avalon Street and Jasper Court in a well established, if fairly recent, residential neighbourhood.

The site falls generally from north east to south west. The adjoining property to the north has a similar cross fall. It is near the interface with the northern adjoining property that the siting relaxation is sought.

A concrete pathway and stairs have been constructed adjacent to the northern boundary of the site. It is not disputed that a section of concrete pathway, and some stairs, over a length of approximately 3.6m are more than 1.0m and up to 1.3m above natural ground, and within 1.5m of the boundary.

The pathway and stairs as they have been constructed are not as they are represented on the application drawings. Perhaps in an endeavour to lower the overall height of the pathway, additional stairs were added at a location adjacent to the garage. This allowed the height of the pathway above natural ground level to be reduced.

There is no issue from a siting perspective with respect to the level of the swimming pool and its surrounding deck which is all removed 1.5m or more from the boundary.

The application enclosing Parts A and E of the IDAS forms was made to the Assessment Manager for two separate siting relaxations. The Decision Notice issued by the Assessment Manager, dated 7 May 2009, approved the application subject to conditions. Under the heading "Assessment Manager Conditions" the notice provides:

### ***"Siting Variation Criteria – Approved***

*The siting variation approved herein applies to the following;*

- (a) 5.50m setback of the first floor outermost point from the Avalon Street road boundary.*

### ***Siting Variation Criteria – Refused***

- (b) 0.15m setback from the north side alignment for a suspended walkway, stairs and landing at a maximum height of approximately 1.30m for a length of approx 3.60m".*

As noted above one of these siting variations – northern boundary setback – concrete foot path – was refused for the following reason:

### ***“Reasons for Refusal***

*The proposed development does not comply with and cannot be conditioned to comply with QDC MP1.2 Element (1), Section P2 – Item (c) –*

*Buildings and Structures –*

*(a) .....*

*(b) .....*

*(c) Do not adversely impact on the amenity and privacy of residents on adjoining lots.”*

### **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 18 May 2009.
2. The Council’s advisory letter to Gecon dated 20<sup>th</sup> March 2009.
3. The Gecon siting variation application dated 17<sup>th</sup> April 2009.
4. The Council’s Decision Notice dated 7<sup>th</sup> May 2009.
5. Appeal Notice dated 17<sup>th</sup> May 2009 and undated covering letter.
6. The Council report dated 10<sup>th</sup> June 2009, including attachments.
7. Submission, including photographs, from Ms. J. Doherty, owner of 3 Jasper Court, adjoining appeal site;
8. Relevant parts of Queensland Development Code.

### **Findings of Fact**

The Tribunal makes the following findings of fact:

1. The stairs and pathway which are the subject of the application refusal and appeal, have been constructed.
2. A part of the pathway and stairs, approximately 3.6metres in length are between 1.0metres and 1.3metres above natural ground level.
3. The QDC is applicable, and the siting relaxation was refused because of non-compliance with QDC MP1.2, Element (1), Section P2 – Item (c).

### **Reasons for the Decision**

The Tribunal considered that the stairs and pathway *do* adversely impact on the amenity and privacy of residents on the adjoining lot (3 Jasper Court), and the degree of impact was increased by the height of the walkway and stairs above natural ground level and relative to the adjoining property and fence.

The Tribunal considered that lowering the walkway and stairs which are located within 1.5metres of the boundary be less than 1.0 metre above natural ground level, would only marginally improve amenity and privacy of adjoining residents.

The required visual screen mounted on the northern edge of the pathway and stairs will restore amenity and privacy for the adjoining residents at least to the degree that would be achieved by full compliance with the relevant QDC provision.

The allowance of an unscreened void from the pathway surface level up to a maximum height of 250mm will allow some access for maintenance and cleaning.

The building work that is the subject of this appeal is not prescribed as “self assessable development” or “exempt development” under IPA.

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**Phil Dance**  
**Building and Development Tribunal Chair**  
**Date: 17 August 2009**

## **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 Infrastructure and Planning  
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