



**Building and Development Tribunals**

**Queensland** Government

Department of **Local Government and Planning**

**APPEAL**

**File No. 3-07-012**

*Integrated Planning Act 1997*

## **BUILDING AND DEVELOPMENT TRIBUNAL - DECISION**

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**Assessment Manager:** Hervey Bay City Council

**Site Address:** *withheld*-“the subject site”

**Applicants:** *withheld*

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### **Nature of Appeal**

An appeal under Part 2, Section 4.2.9 of the *Integrated Planning Act 1997*, against the decision by Hervey Bay City Council, not to approve a siting variation for a second storey extension over an existing residence.

The proposed extensions, are to be situated within the 2m, side boundary *setback*, on land described as “the subject site”.

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**Date and Place of Hearing:** 12.30pm, Monday 19<sup>th</sup> March 2007 - at “the subject site”

**Tribunal:** Debbie Johnson

**Present:** Applicants  
Stephen Clark – Hervey Bay City Council

### **Decision**

The decision by the Hervey Bay City Council to refuse the siting variation for a second storey extension over an existing residence, as contained in their Decision Notice, dated 12<sup>th</sup> October 2006, is **confirmed**; and

A minimum *setback* of 2m is therefore required from both side boundaries, as taken from the proposed external walls of the second storey; and

A minimum *setback* of 1.5m, being a relaxation of the building *setback* requirements, is granted for any roof overhang on the proposed second storey. This confirms an agreement made between all parties present at the hearing.

## **Background**

Several years ago, the applicants purchased this property, which has a gentle slope to the street and pleasant views across to Hervey Bay. The applicants built a single storey residence for themselves and their children at *withheld*.

The existing residence, as built, is *set back* 1.5m from each side boundary and approximately 24m from the street boundary. In their front garden, they have built a double garage and an attractive swimming pool area. Their rear garden is comparably quite small, but pleasant and functional. Their family have grown up in this home and their needs have recently changed. The family now require a much larger home.

They've determined that the most appropriate way to accommodate their needs is to build over their existing home. The additional storey will be in keeping with many of the adjoining residences in the vicinity and they will enjoy even better views.

In looking at cost effective designs, it was decided to build up directly over their existing external walls. The proposed increase in building height adjacent to the side boundaries, has necessitated an application for a siting variation, as the building would be over 4.5m high and within 2m of each of the side boundaries.

## **Material Considered**

1. Conceptual architectural drawings by Denmead Design & Drafting, for building works proposed at *withheld*;
2. Form 10 – Building and Development Tribunals Appeal Notice;
3. A written submission to the Tribunal from the applicants documenting their thoughts and concerns in relation to the proposed siting of the extensions;
4. Verbal representations, at the hearing, by the applicants;
5. Verbal representations, at the hearing, by Stephen Clark of Hervey Bay City Council;
6. The *Standard Building Regulation 1993*; and
7. Part 12 of the Queensland Development Code (QDC).

## **Findings of Fact**

The following points are considered as findings of fact:

1. The existing house has been built with a gable roof. The external brick walls are parallel to the side boundaries and they are *setback* 1.5m. These end walls extend up into the gable infill and there are no roof overhangs.
2. The neighbouring residences adjacent to these side boundaries are each sited well forward of the subject residence. Neighbours to the rear of the site look out predominately in the opposite direction, which is to their own street frontages.
3. The proposed extensions will increase the bulk of the existing building quite substantially and as the building is high on the site this will further add to the dramatic affect. The potential impact of these works will not be particularly significant however, as the *withheld* residence, is attractively landscaped and set well back from the street.

4. The site is large, being 900sq/m, rectangular in shape, with a 20M frontage and rises up from the street.
5. Siting for Class 10 buildings and structures, is determined by the Queensland Development Code (QDC), Part 12, to the extent that the planning scheme does not identify or state alternative provisions for *boundary clearances*.

Under Definitions in the QDC:

*Setback* means:

- (a) for a building or structure other than a swimming pool, the shortest distance measured horizontally from the *outermost projection* of the *building* or *structure* to the vertical projection of the boundary or the lot.

*Side and rear boundary clearance* means:

- (a) for a building or structure other than a swimming pool, the shortest distance measured horizontally from the outermost projection of the buildings or structure to the vertical projection of a boundary of the lot.

Element 1 Design and Siting of Buildings and Structures

A2 (a) The *side and rear boundary clearance* for a part of the building or structure is-

- (i) where the *height* of that part is 4.5m or less- 1.5m; and
- (ii) where the height of that part is greater than 4.5m but not more than 7.5m- 2m; and
- (iii) where the height is greater than 7.5m – 2m plus 0.5m for every 3m or part exceeding 7.5m.

6. The Performance Criteria, P2, of Element 1- Design and Siting of Buildings and Structures states:

Buildings and *structures*-

- (a) provide adequate daylight and ventilation to *habitable* rooms;
- (b) allow adequate light and ventilation to habitable rooms on adjoining *lots*; and
- (c) do not adversely impact on the amenity and privacy of residents on adjoining lots.

### **Reasons for the Decision**

Although 1.5m is a permissible side boundary setback distance, typically this dimension is measured to the fascia of the building's roof overhang. Effectively, with a 600mm eave, the external walls are then 2.1m, not 1.5m, in from a side or rear boundary. As a residence increases in height, the setback requirements alter such that at the second floor level, an external wall with a 600mm roof overhang must be 2.6m in from the side boundary.

In this instance, the external walls of the *withheld* residence have been built at 1.5m from the side boundaries as there is no roof overhang on either end. The impact of these existing walls would be substantially increased should the wall height be increased to a second storey without the necessary setbacks being adopted.

There would be a negative impact on the adjoining properties should this occur.

It is considered practical, environmentally responsive and aesthetically beneficial to provide a roof overhang for a residence wherever possible. Following discussions at the hearing, it was mutually agreed that should the applicant's choose to provide a roof overhang for the second storey, then, that part of the roofline, may be varied to 1.5m from the side boundaries.

**Debbie Johnson**  
**Building and Development**  
**Tribunal Referee**  
**Date: 30<sup>th</sup> March 2007**

## **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  
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