



APPEAL
Integrated Planning Act 1997

File No. 3-04-018

BUILDING AND DEVELOPMENT TRIBUNAL - DECISION

Assessment Manager: Brisbane City Council
Site Address: 291 The Esplanade, Wynnum
Applicant: Mark Jones Architects

Nature of Appeal

Appeal under Section 21 *Standard Building Regulation 1993* (SBR) against the decision of the Brisbane City Council in varying the application of Division 2 – Boundary clearances, as provided for under Part 12 of the *Queensland Development Code* (QDC), for an extension to a detached house on land described as Lot 41 & 42 RP 33008, situated at 291 The Esplanade, Wynnum.

Date and Place of Hearing: 1.00 pm on Wednesday 7 April, 2004
At 291 The Esplanade, Wynnum

Tribunal:	Dennis Leadbetter	Referee
Present:	Kevin McLeish Tanya Favero	Brisbane City Council Brisbane City Council

Decision

The decision of the Brisbane City Council as contained in its letter dated 8 March, 2004, reference DRS/BLD/A04-1257475, not to grant approval to permit the erection of extensions and alterations to a detached house within the side alignment setback to the eastern alignment is **set aside**.

The extension may be erected to within 1230 mm to the eastern alignment to the outer most projection of the approximate 900 mm eaves.

Background

The application was for consent to build a second storey extension above portion of the existing detached dwelling, having a skillion roof and being to a height ranging from approximately 5.7 to 8.4 metres high above the presumed natural ground to the east elevation. The set back from the eastern alignment indicated on the drawing is 1230 mm to the outer most projection of an approximate 900 mm overhanging roof, which lines with the existing overhang.

Because of the height of the building the nominated alignment setback for that part of the building greater than 7.5 metres above the natural ground level is to be 2.5 metres.

Council refused the application stating the grounds for that refusal in their letter, to be the proposed development would have a detrimental effect on the light and ventilation and privacy to the adjacent dwelling.

Council's letter of refusal was qualified in that *Council may positively consider the proposal if the eaves overhang on the proposed upper level extension on the eastern side was omitted and a letter of consent to the revised proposal was forthcoming from the owner of number 293 The Esplanade, Wynnum.*

Material Considered

1. Appeal notice and grounds of appeal contained therein;
2. Drawings submitted to Brisbane City Council;
3. Letter from the Brisbane City Council not to grant approval for the extension;
4. Verbal submissions from the owner, and Ms Rebekah Vallance from Mark Jones Architects, explaining the reasons why the relaxation should be granted;
5. Verbal submissions from Mr Kevin McLeish and Ms Tanya Favero, Brisbane City Council, explaining the reasons why the application should not be granted;
6. Letters from the owners of the adjoining property to the eastern side, the first dated 23 November, 2003, indicating no objection to the development and the second dated 26 March, 2004, expressly supporting the proposal and highlighting the benefits to their property of the proposed development and their unqualified support in its original form;
7. The Standard Building Regulation 1993;
8. The Queensland Development Code (QDC) Part 12;
9. Response from Ms Tanya Favero representing the Brisbane City Council, in response to my question as to what Council would accept if the building was to be limited to 7.5 metres above natural ground level, with Ms Favero's response being that they would accept the existing set back of 1230 mm; and,

10. Additional drawings requested from and submitted by the Appellant after the hearing to provide the Tribunal with an accurate building height above presumed natural ground level.

Finding of Fact

I made the following findings of fact:

1. The dwelling is located on two allotments, not one as indicated in the application. These are described as lots 41 and 42 RP 33008.
2. The existing detached dwelling is a two-storey brick veneer structure, built across two lots, and it is proposed to add an additional storey to approximately half of that building located to the northern portion. That portion of the existing building is currently the highest portion above the ground because of natural topography and will become two storey plus garages under, with a skillion roof, which rises to the north against the land gradient.
3. The land slopes from the south to north, the overall gradient being in the order of 2 metres.
4. The extension is to line with the existing dwelling to the east, north and west faces and it is the setback to the east alignment that is the subject of this appeal. This is setback 1230 mm from the side alignment to the outer face of the eaves.
5. The height of the building above natural ground level to the east elevation to the area of the proposed extension, varies from approximately 5.7 to 8.4 metres, with that portion above 7.5 metres totalling approximately 7 metres, and the encroachment ranging from 0 to just under 1 metre.
6. The overhang to the eastern alignment is currently approximately 900 mm, and it is proposed to maintain that overhang.
7. The QDC Part 12 *Performance Criteria P2* for side alignment setbacks is:

To provide adequate daylight and ventilation to habitable rooms; and
Allow adequate light and ventilation to habitable rooms of buildings on adjoining lots.

and

As an *acceptable solution* for allotments greater than 14.5 metres in width, sets that dimension at 1.5 metres where *the height of that part is 4.5 metres or less*, 2 metres where *the height of that part is greater than 4.5 metres but not more than 7.5 metres in height*, plus 0.5 metre for every three metres or part thereof exceeding 7.5 metres *for that part exceeding 7.5 metres*. (A setback of 2.5 metres *for that part of the structure* where the height of the proposed extension exceeds 7.5 metres.)

8. Part 12 QDC, sets out *Performance Criteria P1 – P8* in relation to siting requirements which a local government must consider and be satisfied that the application meets the intent of each criteria for that application and that the development does not **unduly** conflict with the intent of each of the *Performance Criteria*:-

PERFORMANCE CRITERIA

- P1** The location of a *building* or *structure* facilitates an acceptable streetscape, appropriate for-
- a. The bulk of the *building* or *structure*; and
 - b. The *road boundary setbacks* of neighbouring buildings or *structures*; and
 - c. The outlook and views of neighbouring residents; and
 - d. Nuisance and safety to the public.
- P2** Buildings and *structures*-
- a. Provide adequate daylight and ventilation to *habitable* rooms; and
 - b. Allow adequate light and ventilation to *habitable* rooms of buildings on adjoining *lots*.

ASSESSMENT AGAINST CRITERIA

- a. The existing structure is basically a single storey structure with garages under the front excavated into the land slope, and the proposed structure is an additional storey extension located to the front of the existing detached dwelling. The existing structure is set back approximately 25 metres from the street alignment and the front of the site contains a pool and associated facilities. This large setback will significantly reduce the impact any development will have to the streetscape.
 - b. The adjoining properties are set back a similar distance from the street alignment, providing an open vista.
 - c. The primary outlook from all properties is to the north overlooking the foreshore and water, and the adjoining neighbours will not be impeded because of the topography of the site and surrounding area and the predominant views to the northerly direction, or the front of the site, and the fact that the immediate neighbours are similarly aligned to the street alignment.
 - d. The development would not cause any nuisance or increase safety issues to the public.
- a. The proposed setbacks would not unduly restrict the daylight or ventilation to any habitable room to the dwelling on this site, as the internal layout provides light and ventilation to both north and south faces, with only minimal high set windows to the eastern façade.
 - b. The proposed development will not change the daylight or ventilation to any of the adjoining properties, which are set back approximately 3.5 metres from the alignment. The adjoining property owners have expressed their support to the proposal indicating that it will provide them some shading and

relief from the afternoon summer sun.

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| <p>P3 Adequate open space is provided for recreational, service facilities and landscaping.</p> | <p>The area between the proposed development and the alignment is currently open space with some landscaping. The large open front area and pool provide suitable extensive usable areas for recreation.</p> |
| <p>P4 The <i>height</i> of a <i>building</i> is not to unduly-</p> <ul style="list-style-type: none">a. Overshadow adjoining houses; andb. Obstruct the outlook from adjoining lots | <ul style="list-style-type: none">a. The proposed structure will not overshadow the adjoining lots, as the small portion of greatest height is located where the adjoining property's structures are furthest from the alignment, providing a significant void for light and ventilation and privacy.b. The proposed structure will not obstruct the outlook, which is predominantly to the front of the sites because of the topography and natural features. The additional height over the 7.5 metre height, at which the council delegate at the hearing indicated they would accept the proposed setback, will not further impede any potential outlook from the adjoining property. |
| <p>P5 Buildings are sited and designed to provide adequate visual privacy for neighbours.</p> | <p>The building has been designed to maximise the visual privacy between this lot and the adjoining lots, with use of small high set windows to the eastern façade, with the major windows located to the north and south.</p> |
| <p>P6 The location of a <i>building</i> or <i>structure</i> facilitates normal <i>building</i> maintenance.</p> | <p>The setbacks shown provide adequate access for normal building maintenance.</p> |
| <p>P7 The size and location of <i>structures</i> on corner sites provides for adequate sight lines.</p> | <p>The site is not a corner site.</p> |
| <p>P8 Sufficient space for on-site carparking to satisfy the projected needs of residents and visitors, appropriate for-</p> <ul style="list-style-type: none">a. The availability of public transport; andb. The availability of on-street parking; andc. The desirability of on-street | <p>The development will maintain secure covered car parking under the existing detached dwelling, and there is significant areas for additional on site uncovered parking to the large open areas to the front of the site.</p> |

- parking in respect to the streetscape; and
- d. The residents likelihood to have or need a vehicle.

Any other matter considered relevant.

The QDC Part 12 is performance based and sets the performance criteria and provides but one acceptable solution for each criteria. There may be alternative solutions that meet or exceed the objective of the performance criteria, dependent on several variables and these must be assessed for each individual scenario.

The site is in fact two allotments, each having a frontage of 10.058 metres. Had the building been on only one of those allotments, it would have been possible to have built up to the 7.5 metre height and maintained only a one metre setback. Thus it can be assumed that had all the allotments in the area, having a similar frontage, been built to conform to the acceptable standard set out in the QDC Part 12, a separation of only 2 metres between structures would satisfy the *Performance Criteria P2*, being:

To provide adequate daylight and ventilation to habitable rooms; and

Allow adequate light and ventilation to habitable rooms of buildings on adjoining lots.

It would seem that the space provided considerably exceeds that *acceptable solution*.

Also the proposed structure to the eastern façade, ranges from approximately 5.7 to 8.4 metres above what is a presumed natural ground level, which I believe is very conservative. The QDC defines *Natural Ground Surface*, and *where natural ground level on the day the first plan of survey is not known, the natural ground surface is as determined by the building certifier*. It is my opinion that the presumed ground level is lower than what the original natural ground level would have been, considering the overall site, the areas to the north to the water and the rise to the south. Based on the presumed natural ground line, more than half of the structure is below the 7.5 metre height limit. That portion which exceeds the 7.5 metre height is to the end of balconies and is predominantly a screen panel with significant openings allowing light and ventilation penetration. The average height of the eastern façade is well below 7.5 metres.

The prevailing summer breezes in the locality are north to north easterly and south easterlies, the proposed structure will not impede these to the eastern adjoining property.

The aspect of the site and sun angles, will result in that portion of the structure above 7.5 metres in height casting insignificantly larger shadows over the site to the east only in the late afternoon.

The submission from the adjoining owner, indicating acceptance of the proposal and the fact it will provide some shading from the afternoon summer sun, which is difficult to achieve currently as there is insufficient space to provide for adequate landscaping and trees to achieve suitable shading, and maintain any views.

The Council's representative at the Tribunal hearing indicated that Council would accept the maintenance of the existing eaves setback of 1230 mm up to a height of 7.5 metres.

Reason for the Decision

Part 12 of the QDC provides **Performance Criteria** and some **Acceptable Solutions**, but allows the local government to vary the application of siting requirements to take account of alternative solutions. In assessing the criteria from this part of the Code and considering the nature and use of the proposed structure and its siting on this allotment and the existing structures and their siting on the adjoining allotments, and after considering the minimal impact the reduced side alignment setback, for that portion of the building exceeding 7.5 metres in height, would have on the adjoining allotments, the Tribunal found that there was reasonable grounds to vary the side alignment setback to allow the extension to be constructed to within a minimum 1230 mm of the south alignment, measured to the outer most projection.

Dennis Leadbetter

Dip. Arch. QUT; Grad. Dip. Proj. Man QUT; METM UQ.

Building and Development

Tribunal Referee

Date: 26 April 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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