



**Building and Development Tribunals**

**Queensland Government**

Department of **Local Government and Planning**

**APPEAL**

*Integrated Planning Act 1997*

**File No. 3-06-058**

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

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**Assessment Manager:** Hervey Bay City Council

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

**Applicant:** *withheld*

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### **Nature of Appeal**

An appeal under Section 21 of the *Standard Building Regulation 1993* against the decision of the Hervey Bay City Council to refuse an application for a siting variation. The approval of a siting variation is required to build an extension to an existing covered verandah. The proposed works being an elevated deck, within the 6m street setback, on property described as “the subject site”.

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**Date and Place of Hearing:** 10.00am, Thursday 20<sup>th</sup> July 2006 at “the subject site”

**Tribunal:** Debbie Johnson

**Present:** Applicants  
Stephen Clark - Hervey Bay City Council  
Jeff Rose - Hervey Bay City Council

### **Decision**

The decision of the Hervey Bay City Council to refuse an application for a siting variation, Application No AS060564, as contained in its written notice dated 31<sup>st</sup> May 2006, is **confirmed**.

### **Background**

An application was made to the Hervey Bay City Council for a siting variation following discussions between the applicants, and Stephen Clarke of Hervey Bay City Council. The application, comprised a sketch design of the proposal and photographs of the existing development. The application was prepared by Tony McVey, Consulting Engineer, in partnership with the applicants.

The applicants consulted their immediate neighbours in regards to the proposal, before lodging the application with the Hervey Bay City Council. Both adjoining residents signed a letter supporting the extension of the uncovered deck within the 6m street setback. This information was also provided to the Hervey Bay City Council as part of the application.

### **Material Considered**

The primary reference sources for this decision were;

- *Standard Building Regulation 1993*;  
Part 3 Requirements for Siting, Amenity and Aesthetics, Section 34;  
Queensland Development Code (QDC) Part 12, Element 1, P1 Buildings and Structures.
- Hervey Bay City Transitional Planning Scheme, Part 3.3.1 Residential Zones,  
Clause 3.3.1.3 Building Setbacks, (b) and (b) (i); and
- Amcord, Element 5.3 Street Setbacks.

The tribunal was given several written representations including;

- A written submission sent to Hervey Bay City Council, by the applicants, on the 30<sup>th</sup> March 2006. This letter indicates support, by the adjoining residents for a siting variation to be approved;
- A written submission, by the applicants to the Hervey Bay City Council, outlining the development proposed, being part of the documentation supplied for the siting variation application;
- Sketch drawings prepared by Tony McVey, Consulting Engineer;
- The Decision Notice from Hervey Bay City Council dated 31<sup>st</sup> May 2006; and
- A written submission to the tribunal, being 'Grounds for Appeal' from the applicants, notated as Appendix A.

Other information considered by the tribunal at the time and place of the hearing included;

- Visual inspection of the building and surrounding site conditions;
- Verbal representations by the applicants and Stephen Clark;
- Photographs taken of the site and in particular the existing covered verandah; and
- Photographs taken of other adjoining and neighbouring residential properties.

### **Findings of Fact**

From observations made at the tribunal hearing and from sketch plans provided, the existing residence appears to be sited at 6m from the street boundary alignment. There has been no detail survey information provided or sighted, and therefore it is not known how reliable the dimensions on the sketch plans are.

The existing residence to the South, at *withheld*, has a small open upper level balcony that appears to be set forward of the subject dwelling by approximately 500mm. The existing residence, adjoining the subject site on the Northern side, appears to be set back several metres further from *withheld* than the required 6M. Almost all the residences situated along this section of *withheld*, appear to have a covered verandah, being approximately 2m wide, across the frontage of their homes.

The *Standard Building Regulation 1993*, Part 3, Clause 34(2) under the heading, Siting and Design Standards for Single Detached Dwellings, cites 'If a planning scheme identifies or states alternative provisions that apply to the buildings and structures, the alternative provisions apply'.

The Hervey Bay City Transitional Planning Scheme, Section 3.3.1.3 Clause (b), stipulates:

- (b) In respect of a dwelling house or dual occupancy dwelling (excluding a Class 10 building as defined in the *Building Act 1975*) on a lot 599sq/m or smaller;
- (i) Setbacks are to be determined in accordance with the criteria set out in Amcord and approved in a Plan of Development.

Amcord, Element 5.3 Setbacks states the following:

Street setbacks are perceived primarily as a means of protecting neighbour amenity and assisting in the establishment of streetscape character.

They may provide,

- A landscape and visual setting for the building;
- Space for carparking;
- A noise attenuation zone;
- Privacy from the street;
- A buffer to street activity;
- An area that allows daylight and sunlight to reach the building;
- A territorial threshold between public or communal street and private home;
- Continuity with the existing streetscape.

The document further states:

Small setbacks can impact negatively on attractive streetscapes, particularly in established areas.

In established areas, the objective is to blend new development ('development' in this reference, includes extensions to existing development) into the public streetscape. Adopting similar setbacks to those already existing helps to integrate the new development. Where setbacks of adjacent buildings differ significantly, it is usually better to average the setbacks of the two adjacent buildings.

The QDC part 12, P1 stipulates:

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 structure; and
- (c) the outlook and views of neighbouring residents; and
- (d) nuisance and safety to the public.

The letter of refusal from the Hervey Bay City Council stipulates:

The location of the structure does not facilitate an acceptable streetscape, appropriate for-

- (1) the road boundary setbacks of neighbouring buildings; and
- (2) the outlook and views of neighbouring residents.

The applicants have stipulated that the existing covered verandah is insufficiently wide enough to be adequate for their outdoor entertainment needs. The proposed 2m wide verandah extension would not be covered, therefore the overall height would be approximately 4m above the finished ground level.

## **Reasons for the Decision**

The QDC performance criteria must be satisfactorily addressed to permit siting variations to be approved.

### *(a) the bulk of the building*

Currently there is an 1800mm high, solid masonry wall (to be rendered) across the entire street frontage of the site, with the exception of the driveway gates. Behind the brick wall there is an existing inground, swimming pool built within the 6m setback. The proposed deck being 4m high, and set back only 4m would have to be built over the swimming pool. The overall bulk of the development being proposed along the street frontage is determined as being excessive.

### *(b) The road boundary setbacks of neighbouring buildings*

The neighbouring residences that abut *withheld*, are predominately at 6m from the street frontage. There are obvious exceptions to this 6m setback, being the Northern neighbours to the subject site. These sites are larger and the established homes are already set back several metres from the residence owned by the applicants. It is determined that the development, as proposed, will further exacerbate an obvious break in the building line, particularly as the development would be up to 4m high. The streetscape should not be compromised in this instance.

### *(c) The outlook and views of neighbouring residents*

If the development as proposed were to be given approval there would be no loss of views, however the neighbouring vista is always impacted upon when the street building line is reduced. This is generally considered undesirable unless site conditions determine that no other option exists or the adjoining residences are already located within the 6m setback.

There are no valid site conditions that would justify a siting variation in this instance.

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**Debbie Johnson**  
**Building and Development**  
**Tribunal Referee**  
**Date: 14<sup>th</sup> August 2006**

## **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, Planning, Sport and Recreation  
PO Box 15031  
CITY EAST QLD 4002  
**Telephone (07) 3237 0403: Facsimile (07) 32371248**