



**APPEAL**

**File No. 3-02-029**

*Integrated Planning Act 1997*

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

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**Assessment Manager:** Gold Coast City Council  
**Site Address:** 23 Feathertop Crescent, Gaven  
**Applicant:** Henley Properties (Qld) Pty Ltd

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### **Nature of Appeal**

Appeal under section 21 of the Standard Building Regulation 1993 (SBR) against the decision of the Gold Coast City Council to grant a preliminary approval (No 22/09901; Development Application No 22/02310) for the erection of a dwelling with a minimum front property boundary setback of 5.5m instead of 4.5m as requested in the application.

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**Date and Place of Hearing:** 9.00 am on Friday 19 July 2002.  
at 23 Feathertop Crescent, Gaven.

**Tribunal:** Gregory Schonfelder

**Present:** Rhonda Nelis for Henley Homes (Qld) Pty Ltd - Applicant  
Paul Roots for Henley Homes (Qld) Pty Ltd - Applicant  
Ken Wilcox - Applicant's Representative  
Simon Clarke - Applicant's Representative  
Brian Gobie - Gold Coast City Council representative

### **Decision**

In accordance with section 4.2.34.(2)(b) of the Integrated Planning Act 1997, I determine that the requirements of the decision notice to grant preliminary approval (No 22/09901; Development Application No 22/02310) for the erection of a dwelling be **changed** to allow the dwelling to be sited at 4.5m to outer most projection from the road boundary as shown of the plan submitted to Council.

## **Background**

The applicant explained the basis for their original application to Council for a siting variation and the basis for their appeal in that:

- The land has been presold as a house and land package.
- Setback on the original application was for 4.5m to OMP, which was changed by the Council in their decision to 5.5m.
- There are at least 3 other dwellings in the street, which had siting variations with similar setbacks to this application.
- The location of the dwelling as shown on the application is to maximise the area available for entertainment to the east of the dwelling.
- The reduced setback to the front boundary allows a more useable area to the north (rear) of the dwelling.
- This package provided by Henley Homes would include full landscaping of the site.

The Council's representative in their response stated:

- Appeal has been incorrectly classified on the appeal form.
- Variations of siting are not automatic and each application is judged on its merits.
- Other approvals do not set a precedent for future approvals.
- Local government is the sole arbitrator for granting a variation of the siting requirements.
- The basis for assessing variations to siting (SBR Sec 48) was explained in detail to the applicant.
- The effect of granting the siting variation would in Council's opinion create a corridor effect along the street and appropriate staggering of the setbacks to the dwellings would provide a streetscape in keeping with Council's planning policies.
- The basis for Council's refusal of the application was that the proposal would reduce the area for landscaping and the proposed building would overcrowd the site.
- The dwelling has not been designed for the site and may be too large for this allotment.

## **Material Considered**

1. Decision notice from the Gold Coast City Council dated 5 June 2002 granting preliminary approval (No 22/09901; Development Application No 22/02310) for the erection of a dwelling with a minimum front property setback of 5.5m instead of the 4.5m as requested in the application. Submitted plans and adjoining owner's letters of comment were also included.
2. Appeal form undated and accompanying letter dated 21 June 2002 from the applicant (Henley Properties (Qld) Pty Ltd) appealing the Council's decision to refuse their request for a siting variation.
3. E-mail from the owner of the land sent 18 July 2002 requesting the appeal be upheld. This document was hand delivered at the site meeting.
4. Site inspection conducted at 9.00 am on Friday 19 July 2002.

5. Additional site plan of the subject property with the adjoining allotments shown and a streetscape elevation received on 22 July 2002.
6. The Standard Building Regulation 1993.
7. The Integrated Planning Act 1997.

### **Findings of Fact**

1. The site was inspected with the Applicants, Applicant's representatives and the Council's representative.
2. The inspection revealed:
  - Approximately 60-70% of the site can be built on and with the standard road and boundary setbacks, the available space is further reduced.
  - The whole subdivision is barren and contains benched blocks with rock retaining walls. Some rear walls/embankments are of a substantial height.
  - The street has house blocks only on the north side with a small landscaping strip and a large drop off protected by a "pool type" fence to the south. This landscaping was provided as part of the subdivision and is to be maintained by the Council.
  - The house is similar in size to the adjoining dwelling either complete or under construction.
  - Some adjoining properties have only 2.3m at the rear (north) of the dwelling before the large retaining wall.
  - The road is lower than these blocks but will be much higher than the roofs of the house constructed on the south side, which are accessed from other streets.

### **Reasons for the Decision**

The proposed siting of the dwelling will provide a larger useable north orientated private open space area to the rear of the dwelling.

Council has not provided quantifiable reasons why the proposal would overcrowd the allotment and restrict the area for landscaping using the criteria under the Standard Building Regulation.

The additional plans submitted show sufficient variation to setbacks, materials used, roof lines and facade relief to provide a contrasting and varied streetscape. The location of the buildings on adjoining allotments should always be provided with the application for siting variation.

The street having dwellings located only on one side with the other side being landscaped, allows closer setbacks to be approved without giving the impression of overcrowding the street and the individual allotments.

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**Gregory Schonfelder**  
**Building and Development**  
**Tribunal Referee**  
**Date: 2 August 2002**

## **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.

## **Enquires**

All correspondence should be addressed to:

The Registrar of Building and Development Tribunals  
Building Codes Queensland  
Department of Local Government and Planning  
PO Box 31  
BRISBANE ALBERT STREET QLD 4002  
**Telephone (07) 3237 0403: Facsimile (07) 32371248**