



**Building and Development Tribunals**

**Queensland Government**

Department of **Local Government and Planning**

**APPEAL**  
*Integrated Planning Act 1997*

**File No. 3-03-058**

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

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**Assessment Manager:** Brisbane City Council

**Site Address:** 15 Ethel Street, Camp Hill

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### **Nature of Appeal**

Appeal under Section 21 of the *Standard Building Regulation 1993* (SBR), against the decision of the Brisbane City Council not to vary the application of Division 2 – Boundary clearances, as provided for under Section 48 of the SBR for a two storey extension to a two storey detached dwelling on land described as Lot 1 RP 81665 and situated at 15 Ethel Street, Camp Hill.

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**Date and Place of Hearing:** 2 pm on Thursday 23 October, 2003  
At Department of Local Government and Planning,  
Level 25 Mineral House,  
41 George Street, Brisbane.

<b>Tribunal:</b>	Dennis Leadbetter	Referee
<b>Present:</b>	Rodney Davis	Owner
	Suresh Chandra	Owners' Representative
	Dan Oliver	Brisbane City Council
	Tanya Favero	Brisbane City Council
	Greg Schonfelder	Brisbane City Council

### **Decision**

The decision of the Brisbane City Council, as contained in its letter dated 7 October, 2003, reference DRS/BLD/A03-1239858, not to grant approval to permit the erection of a two storey extension to a detached house to the same alignment set back relaxation for the two storey detached dwelling to the southern side alignment is **set aside**.

The two storey extension to the detached dwelling may be erected to not less than 1.5 metres to the

outer most projection (OMP) from the southern side alignment.

## **Background**

The application relates to a second side boundary setback relaxation to the southern side boundary. The original relaxation, granted by the Brisbane City Council, related to a relocated detached dwelling, where the side boundary relaxation was reduced from 2 metres to the OMP (4.5 metres to 7.5 metres high) to approximately 600 mm to OMP. The original relaxation also similarly reduced the side alignment setback to the northern side boundary.

Brisbane City Council have refused the second application on the basis that it would overcrowd the southern area of the site, because of the overall length and height of the building located so close to the southern alignment. Brisbane City Council in their assessment of the criteria under Section 48 (4) of the SBR, considered that the application did not otherwise conflict with the intent of those criteria.

The applicant, in support of their application to maintain the relaxed set backs, indicated that the proposal will not overcrowd the southern boundary as the adjoining property's structures are set back approximately 5 metres from that common side alignment.

## **Material Considered**

- 1 Appeal Notice and grounds of appeal contained therein;
- 2 Drawings submitted to Building and Development Tribunal with the appeal;
- 3 Letter from Brisbane City Council not to approve the extension in its desired position;
- 4 Verbal submissions by Messrs Rodney Davis, owner, and Suresh Chandra, representing the owner, explaining the reasons why the relaxation should be granted;
- 5 Verbal submissions from Ms Tanya Fazero and Messrs Dan Oliver and Greg Schonfelder, Brisbane City Council, explaining the reasons why the application should not be granted;
- 6 Correspondence and file notes, supplied by the Brisbane City Council at the hearing, in relation to their assessments of the various applications related to this development;
- 7 The *Standard Building Regulation 1993*, in particular sections 38 and 48;
- 8 The site and its topography and the relationship to its neighbours:
- 9 Advice from the Brisbane City Council that the adjoining neighbours to the south had made application for and been granted approval for extensions to their northern side;
- 10 Shade effects of the development, both existing and proposed, on the adjoining property to the south, based on the data extracted from *Sunshine and Shade in Australia*.

## **Findings of Fact**

I made the following findings of fact:

1. The site is not classified as a small lot, being of 508m<sup>2</sup>, and having a frontage to Ethel Street of over 15 metres, the reduced side alignment set back provisions of Section 40 (b) SBR for narrow allotments does not apply.
2. The original application for development approval to the Brisbane City Council for the relocation of the removal house, included drawings for the full upper storey development, and was approved by the Brisbane City Council, subject to conditions including inter alia that *relaxation of side boundary clearances may be required*. The first application for relaxation of side boundary clearances submitted to Brisbane City Council included drawings showing only the original dwelling, and a relaxation approval was granted. A second application for relaxation was made to develop the lower level below the original dwelling and for a two storey extension to the east side of the dwelling at the southern end, following the prior approved southern boundary relaxation.
3. The original dwelling is a removal dwelling and has been located on site, and has a side boundary clearance to each side boundary of approximately 600 mm to OMP
4. The site and surrounding areas have a moderate fall from east to west and a lesser fall from south to north.
5. The dwelling to the south is clearly the original dwelling to the area and is a large high set Queenslander with wide open verandahs to its perimeter, the dwelling to the north is also a high set weather board dwelling of pre 1950's vintage.
6. The relocated dwelling is set to a higher level than the surrounding high set houses to provide ceiling heights to the lower level in compliance with the requirement of the *Building Code of Australia*.
7. Contrary to Brisbane City Council's assessment, the development will impact on the natural light to the adjoining property to the southern side, by casting a varying shadow over portion of the adjoining property, from around early January to mid December. This shadow will increase to just over 6 metres with the sun at its zenith at the winter solstice, shading the entire northern area of the adjoining site. (Source of data: *Sunshine and Shade in Australia, Commonwealth Experimental Building Station, 1963* for latitude 27.5 degrees south). Based on these calculations, the proposed extension, with a nominal 600 setback to OMP, will cast a shadow encroaching approximately 1.2 metres onto the approved verandah extension to 13 Ethel Street at the winter solstice. This extension is positioned in compliance with the provisions of Section 38 SBR.
8. The owner's reliance on the current side alignment setback to the property to the south as alleviating the potential for over crowding, cannot be supported, as that site could be redeveloped or further developed, as evidenced by the current approved development proposal.
9. Under Section 48 of the SBR, a local government may vary how Division 2 applies to the application after considering under Section 48(3), the following points:-

a. *The levels, depth, shape or condition of the allotment and adjoining allotments.*

The allotment and the adjoining allotments have a small primary fall from east to west, and a smaller fall from south to north. The allotments are of varying sizes. Buildings on both adjoining allotments comply with the siting requirements under Division 2 of the SBR.

b. *The nature of any proposed building or structure on the allotment.*

The allotment currently has a relocated detached two storey timber weatherboard dwelling, the lower storey still incomplete.

c. *The nature of any existing or proposed buildings or structures on the adjoining allotments.*

The surrounding residences are detached, high set, timber dwellings, of varying but complementary style, generally of similar proportion and siting, with complying side alignment setbacks

d. *Whether the allotment is a corner allotment.*

The allotment is not a corner allotment.

e. *Whether the allotment has 2 road frontages.*

The allotment has only one road frontage.

f. *Any other matter considered relevant.*

The proposed building, being two storey, is higher than the surrounding high set residences, and its location significantly less than required under Section 36 of SBR, present a less than desirable environment that will impact on the adjoining owner to the south in terms of considerably increased shading to their property for most of the year.

The minimal side alignment setback would also impact on access for maintenance works.

10. In varying the siting requirements, the local government, under Section 48(4), must be satisfied that a building or structure, built on the allotment in the way proposed, would not **unduly** –

a. *Obstruct the natural light and ventilation of an adjoining allotment.*

The proposed house and extension will cast significant shadow to the property to the south. By calculation using *Sunshine and Shade in Australia* shadow angle charts, that shading would cover over 6 metres of the adjoining site at the winter solstice, compared to just over 4 metres if the setbacks prescribed under Section 38 were met.

b. *Interfere with the privacy of an adjoining owner.*

The incorporation of privacy screens and location of windows to the extension minimise interference with privacy.

c. *Restrict the areas of the allotment suitable for landscaping.*

The area to the side alignment is not suitable for landscaping, other than paving or similar, because of the minimal dimension and total shading all year

d. *Obstruct the outlook from the adjoining property.*

The proposed development will impact on the outlook from the adjoining property, but the side alignment setback will not alter this.

e. *Overcrowd the allotment.*

The dimension to the side alignment, together with the overall height and length of the total development present an unbroken, flat and a significant dominant structure to the southern neighbouring allotment.

f. *Restrict off-street parking for the allotment.*

The proposed extension has no impact on off street parking available.

g. *Obstruct access for normal building maintenance.*

The development will impact on access for maintenance, because of the minimal (just over 1.2 metre) alignment setback and length and height of structure.

### **Reasons for the Decision**

Sections 48 (3) and (4) of the SBR allows for a local government to vary the application of siting requirements. In assessing the criteria from this part of the legislation and considering the nature and use of the structure and other existing structures and their siting on the adjoining allotments, and the impact the extension would have on the amenity of the area generally and on the adjoining property to the south, the Tribunal found that there was reasonable grounds to vary the southern side alignment setback to allow the extension to be constructed no closer than 1.5 metres to the OMP to the southern alignment.

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**Dennis Leadbetter**

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

**Building and Development**

**Tribunal Referee**

**Date: 3 November 2003**

**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 and Planning  
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