



**APPEAL**  
*Integrated Planning Act 1997*

**File No. 3-04-004**

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

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**Assessment Manager:** Brisbane City Council

**Site Address:** 56 Vale Street, Wilston

**Applicant:**

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### **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 335 & 386 RP 199024, situated at 56 Vale Street, Wilston.

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**Date and Place of Hearing:** 11.00 am on Tuesday 3 February, 2004  
At Department of Local Government and Planning  
Level 25 Mineral House  
41 George Street, Brisbane.

**Tribunal:** Dennis Leadbetter Referee

**Present:** Owners  
Brisbane City Council

### **Decision**

The decision of the Brisbane City Council as contained in its letter dated 18 December, 2003, reference DRS/BLD/A03-1250414, not to grant approval to permit the erection of extensions and alterations to a detached house within the side alignment setbacks is **set aside**.

The extension may be erected to within 2200 mm to the south alignment to the outer most projection, conditional upon the building envelope fitting within the set back line, refer sketch, when accurate building heights above natural ground level are determined.

### **Background**

The application was for consent to build a two storey extension to the rear of the existing detached dwelling, having a skillion roof following the natural ground level and being approximately 7.7 metres high above the natural ground to the north elevation and due to the site topography approximately 8.1 metres high to the south elevation. The set backs indicated on the drawing were 2.5 metres to the north facade and 2.2 metres to the south facade. There is no overhang to either the north or south facades.

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:-

- Unduly interfere with the privacy of the adjoining allotment.
- Unduly obstruct the outlook from adjoining allotments.

### **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 owners, explaining the reasons why the relaxation should be granted;
5. Verbal submissions from Brisbane City Council, explaining the reasons why the application should not be granted, which included a statement that Council's policy was to insist on the required 2.5 metre setback for structures over 7.5 metres high;
6. The Standard Building Regulation 1993;
7. The Queensland Development Code (QDC) Part 12; and
8. Additional drawings requested from and submitted by the Appellant after the hearing to provide the Tribunal with additional building height information.

### **Finding of Fact**

I made the following findings of fact:

1. The original application was lodged with the Brisbane City Council on 17 December, 2003, and was incorrectly assessed under the SBR, which was amended on 14 November 2003. This appeal has been correctly assessed under the Queensland Development Code, Part 12.

2. The existing detached dwelling is a high set weatherboard Queenslander, which it is proposed to raise to gain habitable room height to the lower level and reduce the excavation requirement under the existing detached dwelling, the proposed extension development is of two storey construction with a skillion roof which aligns with the land gradient.
3. The land slopes from the west-nor-west to the east-sou-east, the overall gradient being in the order of 1:10.
4. The extension is to line with the existing dwelling to the north face and this is setback approximately 2.5 metres from the site alignment, and the south face is to be projected approximately 300 mm outside the existing building line, leaving an alignment setback of approximately 2.2 metres.
5. The height of the building above natural ground level to the north elevation is approximately 7.3 metres and to the south, because of land topography, approximately 8.1 metres. This takes into account the proposed reduction in roof pitch to 6°.
6. There is no overhang to the north and south elevations.
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** 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**

**ASSESSMENT AGAINST CRITERIA**

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|--|---|
| <p><b>P1</b> The location of a <i>building</i> or <i>structure</i> facilitates an acceptable streetscape, appropriate for-</p> <ol style="list-style-type: none"> <li>a. The bulk of the <i>building</i> or <i>structure</i>; and</li> <li>b. The <i>road</i> boundary <i>setbacks</i> of neighbouring buildings or <i>structures</i>; and</li> <li>c. The outlook and views of</li> </ol> | <ol style="list-style-type: none"> <li>a. The proposed structure is a two storey extension located to the rear of the existing detached dwelling. Because of land topography, and the site works proposed, the lower floor of the extension line with the upper floor of the existing structure.</li> <li>b. The adjoining properties are set back approx 6 metres from the street</li> </ol> |
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neighbouring residents; and  
d. Nuisance and safety to the public.

c. The outlook from the adjoining neighbours will not be impeded because of the topography of the site and surrounding area and the predominant views to the east-sou-east direction, or the front of the site.  
d. The development would not cause any nuisance or increase safety issues 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*.

a. The proposed setbacks would not unduly restrict the daylight or ventilation to any habitable room to the dwelling on this site, as the setbacks are in excess of those set as acceptable solutions for those parts of the building. Only the roof encroaches within the *above 7.5 metres* area.  
b. The proposed development will not change the daylight or ventilation to any of the adjoining properties, which are set back approximately 5.5 metres from the alignment.

**P3** Adequate open space is provided for recreational, service facilities and landscaping.

The areas between the proposed development and the alignment is currently landscaped with mature trees, which provide suitable areas for recreation and also privacy to adjoining allotments. The mature landscaping extends to both side alignments and also across the rear of the site.

**P4** The *height* of a *building* is not to unduly-  
a. Overshadow adjoining houses; and  
b. Obstruct the outlook from adjoining lots

a. The proposed structure will not overshadow the adjoining lots further than the existing mature landscaping vegetation.  
b. The proposed structure will not obstruct the outlook, which is predominantly to the front of the sites because of the topography.

**P5** Buildings are sited and designed to provide adequate visual privacy for neighbours.

The building has been designed to maximise the visual privacy between this lot and the adjoining lots, and this is enhanced by the existing mature landscaping.

**P6** The location of a *building* or *structure* facilitates normal *building*

The setbacks shown provide adequate access for normal building maintenance.

maintenance.

- |   |  |
|---|--|
| <p><b>P7</b> 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><b>P8</b> Sufficient space for on-site carparking to satisfy the projected needs of residents and visitors, appropriate for-</p> <ul style="list-style-type: none"><li>a. The availability of public transport; and</li><li>b. The availability of on-street parking; and</li><li>c. The desirability of on-street parking in respect to the streetscape; and</li><li>d. The residents likelihood to have or need a vehicle.</li></ul> | <p>The development will provide secure covered car parking under the existing detached dwelling.</p> |

**Any other matter considered relevant.**

The QDC, under *Performance Criteria P2*, allows for stepped construction, ie a setback of 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*, and where the height is in excess of 7.5 metres, *2 metres plus 0.5 metres for every 3 metres of part thereof exceeding 7.5 metres*. In considering the intent of this, it would seem reasonable that those areas of the building up to 7.5 metres in height above natural ground could reasonably be constructed to a set back of 2 metres from the rear or side alignment. The proposed structure to the north elevation is approximately 7.3 metres in height, allowing a 2 metre setback. The height to the south elevation is increased by the site topography to approximately 8.1 metres.

In applying the intent of P2 of the QDC Part 12 in relation to side and rear alignment setbacks, it is reasonable to apply the concept of stepped construction to various parts of the building based on height. In extending this concept, it would seem reasonable to follow the *setback slope line* without compromising the intent or achieved outcome of the *Performance Criteria*.

With cognisance of that concept, it would seem that the proposed structure, although over the level of the step from 2 metres to 2.5 metres site alignment setback, still falls well within the *slope line envelope*, and would not result in any undue detrimental impact on the adjoining allotment.

### **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 2.2 metres of the south alignment, measured to the outer most projection, conditional upon the building envelope fitting within the setback line, refer sketch, when accurate building heights above natural ground level are determined.

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**Dennis Leadbetter**

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

**Building and Development**

**Tribunal Referee**

**Date: 11 February 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:

The Registrar of Building and Development Tribunals  
Building Codes Queensland  
Department of Local Government and Planning  
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