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**BUILDING AND DEVELOPMENT TRIBUNAL – DECISION**

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**Assessment Manager:** Brisbane City Council

**Site Address:** 18 Fourteenth Ave, Brighton

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**Nature of Appeal:** Appeal under Section 4.2.9 of the Integrated Planning Act 1997, against the decision of the Brisbane City Council not to grant approval to vary the siting requirements of a proposed dwelling extension in a position observing a clearance of 2.93 metres (deck) from Fourteenth Ave alignment and 0.0 metres (garage) off Bugden Street alignment. The dwelling extension is proposed to be constructed on land described as Lot 3 on RP No. 110672 and situated at 18 Fourteenth Ave, Brighton.

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**Date and Place of Hearing:** 9:30 am on Thursday 22 May 2003 at 18 Fourteenth Ave, Brighton.

**Tribunal:** B J Williamson

**Present:** B J Williamson                      Tribunal Referee  
                  Owner  
                  G Johnsen                                Brisbane City Council

**Decision:**

The decision of the Brisbane City Council in its letter dated 8 May 2003 (Reference: DRS/BLD/A03-1208503) not to grant approval to vary the siting requirements of a proposed dwelling extension in a position observing a clearance of 2.93 metres (deck) from Fourteenth Ave alignment and 0.0 metres (garage) off Bugden Street alignment **is changed** to allow the erection of the deck and garage extensions subject to the following conditions:

- (a) The open or unroofed section of the low level deck is to observe a clearance of 3.5 metres from Fourteenth Ave alignment and not be wider than 7.0 metres; and
- (b) The outer most projection of the roofed section of the deck is to observe a clearance of 4.0 metres from Fourteenth Ave and be not wider than the distance between the existing front stairs and the eastern side of the existing dwelling; and
- (c) The outer most projection of the garage extension is to observe a clearance of 750 mm from Bugden Street alignment.

**Background:**

The existing spit level dwelling is on 597 m<sup>2</sup> corner allotment with an inground swimming pool at the rear. With a family increase it has been necessary to renovate and extend the dwelling. With the incorporation of part of the front verandah into the house it is proposed to erect a replacement deck in front of the dwelling and extend it to make use of the view to the bay. Under the split section of the dwelling is the existing garage, laundry, storeroom, toilet and shower. Because of the enlarged family the owners propose to enlarge the existing laundry and to provide a utility area. To achieve this accommodation change it is proposed to extend the existing double garage towards Bugden Street.

## Material Considered

1. Copy of proposed dwelling extension drawings and site plan.
2. Brisbane City Council location plan.
3. Letter dated 25 January 2003 from the adjoining owners at 18 Fourteenth Ave, Brighton.
4. Photostat copy of photographs of the existing dwelling.
5. Copy of the Request for Assessment application.
6. Letter dated 8 May 2003 from the Brisbane City Council.
7. Verbal submission at the hearing by the representative of Brisbane City Council outlining the reasons stated on the Council's letter.
8. Verbal submission at the hearing by the owner outlining the reasons for the extensions as proposed.
9. Additional submissions dated 23 & 26 May 2003 from the owner.
10. Verbal discussion on 30 May 2003 with the representative of Brisbane City Council concerning issues listed in the additional submission by the owner.
11. Site visit on 1 June 2003 to view other properties in the area noted in the additional submissions by the owner.
12. Verbal discussion with the owner on 2 June 2003 to discuss submissions dated 23 & 26 May 2003.

## Finding of Fact

I made the following findings of fact:

1. The existing dwelling does not currently provide the accommodation needs of a growing family.
2. Alternative arrangements for the garage extension were considered. The suggestion to locate the garage on the northern side of the dwelling was not considered desirable as it would significantly reduce the playground space for the children between the dwelling and the swimming pool.
3. Under Section 48 of the Standard Building Regulation 1993 the local government may vary the application of division 2 – boundary clearances.
4. In assessing the application of Section 48.(3) of the Standard Building Regulation, the local government was required to consider the following points:
  - *The levels, depth, shape or conditions of the allotment and adjoining allotments.*  
The 597 m<sup>2</sup> allotment has a truncated corner and is 16.033 metres wide at the rear and the site is flat. The eastern adjoining allotment is larger but the rear adjoining allotment is smaller.
  - *The nature of any proposed building or structure on the allotment.*  
The proposed extensions to the dwelling are a deck to the front of the dwelling, an extension of the double garage towards Budgen Street and a verandah extension at the rear of the dwelling.
  - *The nature of any existing or proposed buildings or structures on adjoining allotments.*  
On the rear adjoining allotment is a two storey timber dwelling and a single storey brick dwelling on the eastern adjoining allotment.
  - *Whether the allotment is a corner allotment.*  
The allotment is a corner allotment.
  - *Whether the allotment has 2 road frontages.*  
The allotment has two (2) road frontages.
  - *Any other matter considered relevant.*  
The council representative stated that having the garage extension with 0.0 metre clearance to Budgen Street alignment would make it difficult for a driver reversing out of the garage to see a pedestrian using the narrow footpath in Budgen Street.

5. In assessing the application of Section 48.(4), the local government must be satisfied that the dwelling on the allotment would not unduly-
  - *Obstruct the natural light or ventilation of any adjoining allotment.*  
The proposed locations for the deck and the garage extension will not obstruct natural light and ventilation to any of the adjoining allotments.
  - *Interfere with the privacy of an adjoining allotment.*  
The proposed locations for the deck and the garage extension will not interfere with the privacy of any of adjoining allotments.
  - *Restrict the areas of the allotment suitable for landscaping.*  
The proposed extensions will not unduly restrict landscaping on the site. There is ample room on the front, sides and rear of the allotment for landscaping.
  - *Obstruct the outlook from adjoining allotments.*  
Provided the roof section of deck is no closer than 4.0 metres to Fourteenth Ave and the unroofed low level deck is no closer than 3.5 metres to Fourteenth Ave, the deck extension will not unduly obstruct the outlook of the eastern adjoining allotment. The garage extension being on the side street alignment well away from the adjoining allotments will not obstruct the outlook from those allotments.
  - *Overcrowd the allotment*  
The proposed extensions together with the existing dwelling will not unduly overcrowd the allotment.
  - *Restrict off-street parking for the allotment.*  
The garage and deck extensions will not restrict off-street parking.
  - *Obstruct access for normal building maintenance.*  
The extensions as proposed will not obstruct access for normal building maintenance. However, the proposed garage extension if it were located with 0.0 m clearance to the street alignment would then require maintenance to be carried out from the narrow footpath, which is considered to be undesirable in a residential area.
6. As a letter of support for the proposal was received from the eastern adjoining owner and since the rear adjoining owner is located a considerable distance from the dwelling behind the swimming pool, no discussions were held with these adjoining owners.
7. Based on the above facts it is considered that the decision by the Brisbane City Council be changed to allow limited additional boundary relaxations.

**Reasons for the Decision:**

1. An assessment of Section 48.(3) & (4), identified the following concerns:
  - The safety of pedestrians on the narrow footpath of Bugden Street if the garage was located with 0.0 metre clearance from Bugden Street alignment;
  - It would be undesirable in a residential area for the maintenance of the western wall of the garage extension to be undertaken on the narrow footpath if the garage was located with 0.0 metre clearance from Bugden Street alignment; and
  - Locating the unroofed low level deck with a clearance of less than 3.5 metres to Fourteenth Ave alignment would obstruct the outlook from the eastern adjoining allotment.
2. The assessment of Section 48.(3) & (4) confirmed that there were grounds for some boundary relaxations.

3. The deck in front of the house is needed to replace the lost verandah space to be incorporated inside the house to meet the accommodation needs of a growing family. An entertainment deck in front of the house is common in many parts of Brighton especially where there is a view to the bay. The bay can be viewed from the front of the house. Using such a facility in front of the house will assist security in the street.
4. The garage extension is needed so that the laundry can be enlarged into a utility area with storage area for the needs of a growing family.
5. A clearance of 750 mm from Bugden Street for the garage extension will overcome the pedestrian and maintenance concerns raised by the assessment of Section 48.(3) & (4).
6. I am of the view that the reduced extensions to the southern and western sides of the dwelling will not adversely affect the streetscape in Fourteenth Avenue and Bugden Street.

**B J Williamson**  
**Building and Development**  
**Tribunal Referee**  
**Date: 3 June 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 grounds:

- (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 the 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 04 03: Facsimile (07) 3237 1248**