



**APPEAL**  
*Integrated Planning Act 1997*

**File No. 3-03-030**

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

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**Assessment Manager:** Brisbane City Council

**Site Address:** 19 Landor Street Tarragindi

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### **Nature of Appeal**

Appeal under Section 21 of the Standard Building Regulation 1993 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 *Standard Building Regulation 1993* (SBR) for a deck to a detached house on land described as Lot 52 RP 75164 and situated at 19 Landor Street, Tarragindi.

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**Date and Place of Hearing:** 1 pm on Thursday 22 May, 2003  
At Brisbane City Council East Regional Centre  
2 Millennium Boulevard, Carindale

**Tribunal:** Dennis Leadbetter Referee

**Present:** Suresh Chandra Representative of the Owner  
Mark Dawson Brisbane City Council

### **Decision**

The decision of the Brisbane City Council as contained in its letter dated 12 May, 2003, reference DRS/BLD/A02-1219473, not to grant approval to permit the erection of a deck to a detached house within the street alignment setbacks is **set aside**.

The deck may be erected to within 4 metres to the outer most projection of the road boundary. The deck may be roofed but shall be open to the walls, except for the provision of handrails and balustrades as provided for under the Building Code of Australia.

## **Background**

The application was for permission to erect a deck to a single story detached house, within the standard road alignment setback as provided under section 36 of the SBR, being 6 metres for a all buildings and structure.

The Brisbane City Council had refused the application on the grounds it would overcrowd the allotment.

## **Material Considered**

- 1 Appeal notice and grounds of appeal contained therein;
- 2 Drawings submitted to Brisbane City Council;
- 3 Letter from Brisbane City Council not to approve the deck;
- 4 Verbal submissions by Mr Suresh Chandra, representing the owner, explaining the reasons why the relaxation should be granted;
- 5 Verbal submission by Mr Mark Dawson, Brisbane City Council, explaining the reasons why the application should not be granted;
- 6 The Standard Building Regulation 1993, in particular sections 36 and 48.

## **Findings of Fact**

I made the following findings of fact:

1. The deck has already been erected. This deck was erected to within approximately 3000 mm of the road alignment, and has necessitated the removal and thinning of the vegetation to the street alignment.
2. The site and surrounding areas have a gentle fall to the north.
3. The existing dwelling is an elevated single storey, timber structure.
4. Dwellings to surrounding sites are of a similar nature.
5. Dwellings to the street comply with Section 36 of the SBR.
6. A few sites to the street have landscaping to the front alignment, the majority having none, imparting a feeling of spaciousness to the road.
7. The road reserve is relatively narrow, being a secondary suburban street.
8. The site and surrounding properties have limited views, because of the topography.

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 are gently sloping to the north, and are of generous proportions. Buildings on both adjoining allotments generally 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 detached single storey timber dwelling, and associated out buildings.

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

The surrounding residences are detached, single storey, generally of similar proportion and siting.

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 impact on the street scape, having cognisance of its width, and the surrounding developments.

10. In varying the siting requirements, the local government 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 deck is on the eastern side of the residence, and has no impact on natural light or ventilation to the adjoining allotments.

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

The deck does not impact on the privacy of adjoining owners, because of the siting of adjoining properties and the landscaping currently in place.

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

The development does impact on the area of the site to the streetscape for landscaping, causing considerable thinning of that landscaping such that the structure would be quite visible at the boundary setback relaxation sought.

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

The deck does not unduly obstruct the outlook from the adjoining properties because of the existing vegetation to southern side of the site within the road alignment setback.

e. *Overcrowd the allotment.*

The deck does have an impact on the streetscape, providing a dominating structure very evident from the road reserve. This results in a feeling of overcrowding to the site frontage and

the streetscape. The reduction of the encroachment into the road boundary setback from 3 metres to 4 metres to the outermost projection will diminish that impact.

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

The proposal has no impact on off street parking available.

g. *Obstruct access for normal building maintenance.*

The development will not impact on access for maintenance, as there is adequate access and space for maintenance operations.

### **Reasons for the Decision**

Sections 48 (3) and (4) of the SBR allows for 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 existing structures and their siting on the adjoining allotments, and the limited impact the deck would have on the amenity and streetscape, the Tribunal found that there was reasonable grounds to vary the front alignment setback to allow the deck to be constructed to within 4 metres to the outer most projection of the road alignment.

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**Dennis Leadbetter**

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

**Building and Development**

**Tribunal Referee**

**Date: 27 May 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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