



**Building and Development Tribunals**

Queensland Government

Department of Local Government and Planning

**APPEAL**

*Integrated Planning Act 1997*

**File No. 3-06-016**

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

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**Assessment Manager:** Hervey Bay City Council

**Site Address:** *withheld*-“the subject site”

**Applicant:** *withheld*

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### **Nature of Appeal**

Appeal under Section 21 of the *Standard Building Regulation 1993* against the decision of the Hervey Bay City Council to refuse an application for a siting concession necessary for the validation of an unapproved addition to a dwelling on land described as “the subject site”.

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**Date and Place of Hearing:** 11.00am, Thursday 23 February, 2006  
at “the subject site”

**Tribunal:** Geoff Cornish

**Present:** Applicants  
Stephen Clark – Hervey Bay City Council

### **Decision**

In accordance with Section 4.2.34 [2] of the *Integrated Planning Act 1997*, I hereby **confirm** the decision of Hervey Bay City Council to refuse the siting variation requested for the staircase already constructed to the front of a dwelling situated on land described as “the subject site”.

### **Background**

The matter concerns the construction of an elevated deck and stairs addition to the front of this dwelling without any approvals having been sought. The deck extends to within 2.1 metres of the road boundary of the property and doubles as a carport in front of an existing double garage. During its construction a complaint was received by Council which resulted in an inspection being carried out and a Show Cause Notice being issued. The construction of the structure for the applicants was undertaken by a friend who is not a licensed contractor entitled to perform such work.

## **Material Considered**

1. Letter dated 17 January 2006 from Hervey Bay City Council to the applicants stating that an application for a siting concession for the structure had been refused.
2. Notice of Appeal and attachments, dated 28 January 2006, against the decision of Council to refuse the application and setting out the grounds of the appeal.
3. Verbal submissions made by the applicants on 23 February 2006 setting out why they believed the appeal should be allowed.
4. Verbal submissions made by Stephen Clark of Hervey Bay City Council setting out why the application had been refused and why the appeal should not be allowed.
5. The *Building Act 1975*.
6. The *Standard Building Regulation 1993*.
7. The Queensland Development Code Part 12.
8. The *Integrated Planning Act 1997*.

## **Findings of Fact**

I made the following findings of fact:

1. The structure, consisting of stairs and an extensive elevated covered deck, is located almost entirely within 6 metres of the road boundary of the property. The elevated deck acts as a carport for vehicles parked beneath it.
2. The stair component is actually only a minor element of the overall structure that has been built.
3. The justification put forward for constructing an external set of stairs to the upper level at the front of the dwelling was based on a desire to facilitate dual occupancy of the dwelling and provide separate entrances for the upper and lower storey residents.
4. To provide the desired external front access to the upper storey of the dwelling, the stairs could have been constructed parallel to the dwelling, without the elevated deck and carport, and would have intruded on the front boundary setback by no more than 0.5 metre
5. No justification was put forward for the construction of the deck which, with its roof overhang, extends the original veranda at the front of the dwelling to within 2.1 metres of the road boundary of the property and provides a new entertaining area to the upper level of the dwelling.
6. The structure was erected without any prior approvals having been sought or obtained, in particular with respect to the siting of the structure.
7. No justification was put forward for the stairs being constructed out towards the road boundary instead of parallel to the existing dwelling.

8. There are no similar structures approved or constructed within the general vicinity of the property, either at ground level or elevated at first floor level, and it has been Council's practice not to approve of same.
9. Adjoining dwellings are, as was this previously unextended dwelling, all set back a minimum of 6 metres from their respective road boundaries. The streetscape is therefore comprised of landscaped gardens with complying dwelling setbacks with the exception of the intrusion of the unapproved structure.
10. The structure overlooks the adjoining property to its right, looking from the street. To overcome this problem it has been necessary for blinds to be fitted to the side of the structure to generate a level of privacy. That adjoining property now looks through the lower part of the structure in question, which is now utilised as a carport, thus having its views affected accordingly.
11. The structure, due to its nature, is far more intrusive on the streetscape than would be the case if it were simply a carport. As a carport it would be entitled to certain concessions but, as a Class 1 addition, no such concessions are normally applicable in such a location.

### **Reasons for the Decision**

After assessing the facts and the submissions of the parties, I have reached the following conclusions:

- Whilst at least one of the applicants was aware that the person who undertook construction of the deck and stairs was not licensed by the Building Services Authority as a contractor, the applicants nevertheless believed that they were entitled to have him undertake the work on their behalf. He was a friend of the applicants whom they had previously used to undertake work for them on a different property.
- Whilst the person who undertook the work made no application to Council for any approval for the construction or siting of the structure, and the applicants stated that he did not advise them that they were required to seek Council's prior approval before construction could commence, I am of the view that this person would have been aware that any application to Council for approval, prior to construction, would have met with refusal.
- At least one of the applicants was aware that the person who undertook the work had undertaken similar work before for other persons.
- Whilst one of the applicants stated that the person who undertook the work advised them that Council didn't worry about such structures, I cannot be certain as to the extent to which the applicants were aware of their obligations to seek prior Council approval for the location of the structure that was to be built for them. I also cannot be certain as to whether the applicants were aware of the need for building approval to be obtained from either Council or a Private Certifier and to have certain inspections undertaken during construction.
- While the applicants stated that the design of the structure was worked out on site by the person undertaking the work as the work progressed, the applicants would have had to approve of the developing design as meeting their requirements.

- As no reasons were put forward as to why the stairs were constructed towards the street instead of parallel to the dwelling, and no reasons were given for the construction of, or need for, the extensive covered deck area in this location, I have concluded that the deck was an unjustifiable requirement of the applicants and not simply a consequential benefit from the construction of the stairs.
- The structure, if approved in its current form, would establish a precedent in terms of the Queensland Development Code in relation to the immediate area and enable the extension of the dwellings on the adjoining properties towards their respective road boundaries in the future without the need for siting approvals by Council.
- Overturning the decision of Council in relation to this structure, erected without the necessary approvals, could establish a precedent whereby those desiring to construct similar structures in the future would be encouraged to build first and seek approval afterwards, in the knowledge that subsequent approval would most likely be granted because the structure was already be in place.
- As the hearing of this appeal set the grounds for the opening of a dialogue between the applicants and Hervey Bay City Council, and there was a positive indication that the two parties were prepared to work towards a compromise solution to the provision of stairs and a reduced size of deck that would be acceptable to both parties and be capable of obtaining Council approval, I have concluded that a satisfactory outcome will be obtained in the near future. Due to the various design options available to the parties, it was not possible to give a varied determination that set precise permissible siting limits ahead of the conclusion of those discussions.

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**G.S.Cornish**  
**Building and Development**  
**Tribunal Referee**  
**Date: 3 March 2006**

## **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:

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