



**APPEAL**  
*Integrated Planning Act 1997*

**File No. 3/02/024**

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

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**Assessment Manager:** Toowoomba City Council

**Site Address:** 72 Spring Street Toowoomba

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### **Nature of Appeal**

The appeal is against the decision of the Toowoomba City Council to refuse an application to vary the siting provisions of the Standard Building Regulation for the proposed construction of a 6.3 metre long wall on the common boundary of land described as Lot 4 on RP No 896002 situated at 72 Spring Street Toowoomba.

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**Date and Place of Hearing:** 10.30 am Wednesday 3 July 2002  
Toowoomba City Council  
543 Ruthven Street Toowoomba.

An interview was held with the owner of 70 Spring Street Toowoomba at 10.00 am Wednesday 3 July 2002 at Toowoomba City Council.

**Tribunal:** L F Blumkie

**Present:** Mr A Finney - Applicant representative  
Applicant / Owner  
Mr B Orr - Toowoomba City Council representative  
Mr L Blumkie - Tribunal Referee

### **Decision**

In accordance with Section 4.2.34 (2) (b) of the Integrated Planning Act **I change** the decision by the Toowoomba City Council and grant a relaxation of the siting requirements to allow the proposal to be built up to the boundary subject to the following conditions: -

- (a) Adequate precautions are taken to avoid the discharge of rainwater onto the adjoining allotment; and
- (b) The building, for a distance of 1.5 metres from the boundary, has a height of not more than 4.5 metres and a mean height of not more than 3.5 metres, both measured above the natural ground surface; and
- (c) The total length of the wall within 1.5 metres of the boundary is no more than 6.3 metres in length i.e. as shown in the application and no other buildings are built within the minimum boundary clearances (i.e. 1.5 metres or greater depending on the height) including class 10a to the subject boundary; and
- (d) The wall construction for the portion of the development within the 1.5 metres of the boundary (including returns) is constructed with cavity brick.

## **Background**

### *A Proposed development.*

The development application is for a new residence. The applicant also proposed to build a full size tennis court on the property (part of owner's business promotion). The owner advised that this limits the area of the site available for the residence and has resulted in the design of the residence being two storey and square in floor plan.

The application is for a relaxation of the boundary clearance for a 6.3 metre long section of the residence adjacent to the side boundary adjoining 70 Spring Street. The original proposal for this section of the residence had a gable roof. This was subsequently changed to a hip roof.

The approved site plan shows the proposed residence with a 6-metre setback from the front boundary. This was changed on site to 7 metres due to alleged problems with service connections.

The development is under construction and framing appeared to be complete to the two-storey section. Footings appeared to have been poured to the subject area of the relaxation.

### *B Adjoining development*

The neighbouring property, 70 Spring Street, is developed with a residence which is set back some 15 metres from the front boundary and 3.5 metres from the subject boundary.

The development immediately adjacent to the 6.3 metre relaxation request is designated as garage and laundry. The area immediately outside the laundry has a timber fence approximately 1800 mm high to the boundary forming an enclosed courtyard with access from the laundry. It is noted from the photographs provided that garbage bins are stored in the courtyard area.

### *C General topography*

The overall sub-division is generally level, with no special views.

## **Material Considered**

In coming to a decision, consideration was given to the following material: -

- (1) Application to Toowoomba City Council for relaxation of boundary clearance;
- (2) Toowoomba City Council letter dated 22 May 2002 requesting response from neighbour;
- (3) Notification of changes to application by applicant dated 29 May 2002;
- (4) Original plans numbered 143-02 issue B;
- (5) Amended plans numbered 143-02 issue C;
- (6) Appeal Notice dated 7 June 2002;
- (7) Photographs of subject and adjoining properties;
- (8) Floor plans, elevations and site plan of adjoining property;
- (9) Altered subdivision plan;
- (10) Written submission from the owner of 70 Spring Street Toowoomba;
- (11) Written submissions from applicant;
- (12) GEOWEB map;
- (13) Verbal submissions from Applicant and Council representative;
- (14) The Building Act 1975;
- (15) The Standard Building Regulation 1993;
- (16) The Integrated Planning Act 1997;
- (17) The Building Code of Australia;
- (18) Phone call from the owner of 70 Spring Street Toowoomba on Friday 5 July 2002.

## **Findings of Fact**

The siting requirements for Class 1 and 10a buildings are contained in Part 3 of the Standard Building Regulation.

Part 3 Siting requirements in particular Division 2 Boundary Clearances Section 38 establishes amongst other things minimum boundary clearances for single detached class 1 buildings.

Under Section 38 the proposal being less than 4.5 metres in height would require a minimum boundary clearance of 1.5 metres.

It is noted Section 41 provides a concession for Class 10a buildings. This allows as of right Class 10a buildings being built up to the boundary provided certain conditions are met. If the proposal was for a class 10a building because;

- (a) it is less than 9 metres in length and
- (b) it has a mean height of less than 3.5 metres and
- (c) it is more than 1.5 metres from any window in any habitable room in an existing building on the adjoining allotment and
- (d) precautions have been taken to avoid the discharge of water onto the adjoining allotment,

it would not need a relaxation.

The local government has the power to vary these requirements under both Sections 45 and 48 of the Regulation.

## **1. Part 3 Siting requirements of the Standard Building Regulation**

### **A Section 45**

The local government has the right to prescribe alternative siting requirements under Section 45 of the Standard Building Regulation for Class 1 and 10 buildings or structures.

The Toowoomba City Council had not prescribed alternative siting requirements.

### **B Section 48**

Section 48 of the Standard Building Regulation provides power for the Local Government to vary the requirements of Division 2. In considering the variations to the requirements the Local Government must consider the criteria as set out in sections 48(3) and 48(4).

### **Reasons for the Decision**

Consideration of this criteria is as follows: -

#### **1 Section 48(3) from (a) to (f)**

*(a) the levels, depth, shape or conditions of the allotment and adjoining allotments.*

The allotments in the subdivision are typical rectangular shaped blocks. They are level and there appears to be no unusual conditions.

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

The applicant proposes to erect a two-storey residence. The area of the site available for the residence is restricted as the owner proposes to include a full size tennis court in the development. The proposal has taken into account the development on the adjoining site and has located the residence the minimum distance (6 metres) from the front boundary. This was subsequently changed to 7 metres (refer above). This decision puts the 6.3 metre wall (the subject of the variation) opposite (except for approximately 1 metre) the neighbour's garage. The 1 metre overlap is to the laundry. Hence, the impact on the habitable areas of the adjacent dwelling is, in my opinion, minimised.

*(c) the nature of any existing or proposed building or structures on adjoining allotments.*

The adjoining allotment has an existing residence. As mentioned above the overlap is to the garage, which has high windows.

*(d) whether the allotment is a corner allotment.*

It is **not** a corner allotment.

*(e) whether the allotment has two road frontages.*

The allotment does **not** have two road frontages.

*(f) any other matter it considers relevant.*

The neighbour has erected a timber screen fence approximately 1800 high to the boundary forming a courtyard to the laundry which impacts on the outlook and ventilation etc.

In addition to this, Section 41 of the Regulations (as outlined in Findings of Fact) allows as of right, a Class 10a building to be erected on the boundary with a mean height of 3.5 metres and a maximum height of 4.5 metres subject to other conditions being satisfied. The proposal, in my opinion, has less impact than a Class 10a building satisfying Section 41.

### **3 Section 48(4) from (a) to (g).**

In considering these criteria it is important to note that the proposal would not **unduly** affect the following criteria.

*(a) obstruct the natural light or ventilation of an adjoining allotment.*

Taking into account the use and location of the adjoining development, the proposal, in my opinion, will not unduly obstruct natural light or ventilation of the adjoining allotment. It would increase shade on the adjoining allotment for a small period of the day, however this would be quickly overtaken by the shade from the complying two-storey section. Ventilation would be reduced, however a 3.5 metre clearance particularly when the openings are high windows of a garage could hardly be said to have an undue effect on ventilation.

*(b) interfere with the privacy of an adjoining allotment.*

The proposal would not unduly interfere with the privacy of the adjoining allotments. In fact, if the relaxation is not allowed and the 1.5 metre clearance is required it would be possible to have doors from the entertainment area facing the neighbour. This would have greater impact than the proposal. The proposal has a cavity brick wall on the boundary with 1.5 metre cavity brick returns on both sides. In my opinion, this will provide greater privacy than openings facing the boundary.

*(c) restrict the areas of the allotment suitable for landscaping.*

The proposal would not unduly restrict the areas of the allotment suitable for landscaping.

*(d) obstruct the outlook from adjoining allotments.*

The existing fence at 1.8 metres on the neighbouring property already restricts the outlook. The proposal opposite the garage could hardly be said to unduly restrict the outlook. A 9-metre long 10a building opposite the habitable areas of the adjacent development would have a much greater impact than the proposal.

*(e) overcrowd the allotment.*

In my opinion, the proposal does not unduly overcrowd the allotment. A 3.5 metre separation between developments would be normal in similar size subdivisions.

*(f) restrict off-street parking for the allotment.*

The proposal does **not** restrict off-street parking. The applicant has purchased additional land from the opposite neighbour. This provides more than adequate parking.

*(g) obstruct access for normal building maintenance.*

The proposal would not obstruct access for normal building maintenance. It is proposed to construct the wall in cavity brick. This type of construction is generally maintenance free.

Taking into account the proposal and all the matters referred to under Section 48 of the Standard Building Regulation, I am of the opinion it would be reasonable to grant a relaxation and allow the proposal to be built up to the boundary subject to the following conditions: -

- (a) Adequate precautions are taken to avoid the discharge of rainwater onto the adjoining allotment; and
- (b) The building for a distance of 1.5 metres from the boundary has a height of not more than 4.5 metres and a mean height of not more than 3.5 metres, both measured above the natural ground surface; and
- (c) The total length of the wall within 1.5 metres of the boundary is no more than 6.3 metres in length i.e. as shown in the application and no other buildings are built within the minimum boundary clearances (i.e. 1.5 metres or greater depending on the height) including Class 10a to the subject boundary: and
- (d) The wall construction for the portion of the development within the 1.5 metres of the boundary (including returns) is constructed with cavity brick.

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**Leo F Blumkie**  
**Building and Development**  
**Tribunal Referee**  
**Date: 9 July 2002**

## **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  
PO Box 31  
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