



**APPEAL**  
*Integrated Planning Act 1997*

**File No. 3-02-031**

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

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**Assessment Manager:** Development Certifications Pty Ltd

**Site Address:** Lot 14 Banfield Drive, Mount Louisa, Townsville

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### **Nature of Appeal**

Appeal under Section 21 of the Standard Building Regulation 1993, against the decision of the Townsville City Council not to grant relaxation of siting requirements pertaining to, specifically, the required 6m road boundary setback for the erection of a dwelling.

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**Date and Place of Hearing:** 12.30pm, 1<sup>st</sup> August 2002  
at Lot 14 Banfield Drive, Mount Louisa, Townsville

**Tribunal:** Ms Gayle Plunkett

**Present:** Applicant  
Land Owner  
Mr Greg Dempster – Development Certifications Pty Ltd  
Mr Mick Scott – “  
Mr Peter Cardiff– Townsville City Council  
Ms Joanne Pendergast – “  
Mr Col Murdoch – “  
Mr John Bruschi – “

### **Decision**

In accordance with Section 4.2.34.(2) of the Integrated Planning Act 1997, the decision of the Townsville City Council as contained in its written notice dated 2 July 2002, not to grant a siting relaxation of the road boundary clearance of 6m is **confirmed**.

## **Background**

The site is currently one of several vacant lots, in a row, and it is proposed to construct a two storey dwelling within the road boundary setback. The existence of surface, and close to surface rock, create conditions over the site that restrict the area available for slab on ground construction for a dwelling of similar floor area to adjacent new dwellings.

## **Material Considered**

- I. Appeal documentation including site photographs, photos of some existing adjacent dwellings, title survey plan (860223), letter from owner of adjacent sites and supporting information.
- II. Letter dated 26 June 2002 from Development Certifications Pty Ltd to Townsville City Council - Request for siting concession including a drawing outlining the proposed new dwelling and the siting requirements sought by the applicant.
- III. Letter dated 2 July 2002 from Townsville City Council to Development Certifications Pty Ltd – Refusing the request for siting concession.
- IV. Verbal submissions on the day of the hearing by the applicant, land owner, representatives of Development Certifications Pty Ltd putting forward the reasons for requiring Council's granting of relaxation of the front boundary clearance.
- V. Verbal submissions from representatives of Townsville City Council on the day of the hearing giving reasons for the refusal to grant the relaxation.
- VI. Aerial photo of subject lots and adjacent dwellings submitted by Townsville City Council.

## **Findings of Fact**

- I. The vacant site at Lot 14 Banfield Drive is on the slightly higher side of the road. The front portion of the block has a minimal fall from back to front and rock outcrops are clearly visible from the start of the acute angle slope up to the rear of the block. To form a flat platform for construction, fill would reach a maximum depth of 500mm at the front wall of the proposed dwelling. The flatter area of the block is approximately 255 to 260 sqm. The total site area is 909 sqm. Road frontage is 21.385 metres wide. Footpath width is 6.6 metres on the side of the road with the vacant lots.
- II. Dwellings directly opposite the vacant site are mainly timber clad highsets approximately 25 to 30 years old and low site coverage. High fences or shrubbery is mainly used as a barrier at the road boundary line. Traffic noise and privacy from the street appears to be an issue for existing residents. Newer dwellings (built by appellant) on the same side of the road, and adjacent to the vacant lot development are single level brick veneer with higher site coverage. The only structures evident nearby within the road boundary setback line is an open carport or dwellings on corner lots with 6m setback to the side street.

- III. Banfield Drive is a relatively busy link road with parking beside single lanes in each direction.
- IV. The proposed residence was stated as proposed to be constructed with a block base and timber cladding and frame to the upper floor so as to avoid aesthetic concern of support posts and exposure of under floor from lower roadway viewing level, and, additional cost of suspended floor construction. The main covered deck was situated to the rear of the proposed plan for privacy. A number of different plans were considered by the appellant for fitting within the limits of the required setbacks. Plan requirements for the lower level, room for surface drainage off rocky slope to go around dwelling and laundry access were considered as brief for the plan.
- V. The proposed dwelling is an investment property not a dwelling specifically designed for a private client. The intention of the appellant and the land owner were to design dwellings to suit each block after considering the 'merits' of each lot. Additionally, their intentions for landscaping of the front garden were to match existing gardens of the newer dwellings adjacent and built in a previous development by them.
- VI. Townsville City Council enforces the 6 metre road boundary clearance. Council policy before the Integrated Planning Act for corner blocks was a 6/3 setback allowance. The aerial photo indicates that existing dwellings generally are a minimum of 6m back from the road boundary unless on a corner or carport as noted above. Newer dwellings comply with the 6m setback requirement.
- VII. Agreement could be made between the Townsville City Council and the Appellant after consideration of a proposal identifying all the building envelopes for the sites in this section of the development.
- VIII. Under Section 48 of the Standard Building Regulation 1993 (SBR), the local government may vary the application of Division 2 – Boundary Clearances.
- IX. In assessing the application of Section 48 (3) of the SBR, the local government was required by that regulation to consider the following points:-

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

The lot and adjoining lots are of similar size, shape and slope with rock outcrop positions being similar on several adjoining lots. The rock outcrop location over several blocks in fact mitigates against the proposed relaxation which is further considered under (c). The allotment and those immediately adjoining are prominent on the road curve and dominate the path of vision on the approach from the roundabout at the south end of Banfield Road.

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

The proposed dwelling has a basically flat front façade with a stair and narrow uncovered deck, as the front entry landing, giving part variation to the façade depth. The structure's length is proposed to be 15.1 metres, excluding gable overhangs. Height to the pitching point from pad level is proposed to be 6 metres. A large rear deck is a depth of 3.6m by 5.6 long which is a minimum practical size for family outdoor space. Placement of the deck relates only to reasonable access from the living space and can

move along the rear elevation some distance and still maintain access. Access from the lower level laundry could change to the area covered by the upper floor overhang with some minor planning changes.

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

There are no existing buildings on the adjoining lots. Existing buildings are situated across the road or spaced 2 lots and an access easement away. These are described more fully in Point II above. All existing dwellings appear to comply with the minimum 6m road setback.

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

This does not apply in this situation.

*(e) whether the allotment has 2 road frontages*

This does not apply in this situation.

*(f) any other matter considered relevant*

The issues of precedent and aesthetics as they relate to the locality were considered by the Council. Townsville City Council do not wish to set any precedents for relaxations which can be used to favour future setbacks on adjoining blocks which also have reduced area for slab on ground construction similar to this block.

The aesthetic of the dwelling was considered as inconsistent with the newer adjacent dwellings' style. The site's location on the outer section of a curve was considered by Townsville City Council to have the appearance of being prominent in the row of blocks.

The perception of block depth and total usable area versus the mass of the building were part of this consideration. The acute slope of the site behind the proposed dwelling gives the perception of a small site. This and other matters are further detailed in Point X (e).

X. Under Section 48 (4) of the SBR, the local government must also be satisfied that a relaxation would not unduly :-

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

The proposed dwelling would not unduly obstruct light or ventilation of Lot 13. A single level structure on Lot 15 may have winter sun reduced to front areas of the lot or building depending on placement of the building. North-east breezes may be slightly affected depending again on height and position of a Lot 15 structure.

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

The proposed dwelling will not interfere with privacy of any adjoining allotment.

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

The proposed siting of the dwelling will reduce the area in the front of the site suitable for landscaping. A driveway of suitable width to service the double garage and path to the front stair additionally reduce the scope for soft landscaping.

*(d) obstruct the outlook from adjoining allotments*

The proposed dwelling siting will not obstruct the outlook from adjoining allotments.

*(e) overcrowd the allotment*

The width, height and depth of the proposed dwelling is substantially more than existing nearby buildings once allowance for site fill is also added into the heights above existing allotments' levels. Combined with the perception of a small site area as noted in IX (f) this gives an impression of overcrowding of the site.

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

The proposal does not restrict the two parking spaces required by Townsville City Council for off-street parking. Additional parking is restricted as larger cars parking in the driveway would protrude over the boundary line and into the footpath area.

*(g) obstruct access for normal building maintenance*

There is no reason to determine that normal building maintenance would be affected.

- XI. The Townsville City Council would consider favourably articulation of the building's facade to allow the ground level to be sited at the reduced setback requested, but, the upper level setback to the required 6m line. The building's mass to step back with the slope to some degree.

**Reasons for the Decision**

Section 48 (3) and 48 (4) of the Standard Building Regulation allows for the local government to vary the application of siting requirements. The building work as proposed does not have features that might support a request for a relaxation and does sufficiently satisfy the matters required to be considered under those sections.

Approval of the proposed development at the setback requested would result in the finished building being in conflict with the nature and siting of nearby buildings, both older and new.

Landscaping possibilities to soften or reduce the impact of the mass of the building are reduced with the narrower area for front landscaping and need to have smaller trees and shrubs that would require less space.

The appellant is not to be the occupier of the proposed dwelling and has more scope for alternative briefs for the finished dwelling than if the dwelling was for a particular client that had very specific needs.

Opportunity exists for the appellant to discuss with the Townsville City Council some form of variation to the proposal to meet more closely the matters under consideration by Council.

The Tribunal therefore found that there were **not** reasonable grounds to vary the road boundary setback requirement to Banfield Drive, from 6m to 3.4m to the stair, in this instance.

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**GAYLE PLUNKETT**  
**Building and Development**  
**Tribunal Referee**  
**Date: 8 – 8 - 02**

## **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  
BRISBANE ALBERT STREET QLD 4002  
**Telephone (07) 3237 0403: Facsimile (07) 32371248**