



**Building and Development Tribunals**

**Queensland Government**

Department of **Local Government and Planning**

**APPEAL**

**File No. 3-02-053**

*Integrated Planning Act 1997*

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

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**Assessment Manager:** Brisbane City Council

**Site Address:** 7 Silene Street, Wavell Heights

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### **Nature of Appeal**

Appeal under Section 21 Standard Building Regulation 1993 against the decision of the Brisbane City Council in varying the application of Division 2 – Boundary clearances, as provided for under Section 48 of the *Standard Building Regulation 1993* (SBR) for a roofed verandah to a detached house on land described as lot 25 RP 131005 and situated at 7 Silene Street, Wavell Heights.

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**Date and Place of Hearing:** 10.00 am on Tuesday 14 January, 2003  
At 7 Silene Street, Wavell Heights

**Tribunal:** Dennis Leadbetter Referee

### **Present:**

Owners	
Colin Higginson	Applicant's representative
Adam Davies	Applicant's representative
Grant Johnson	Brisbane City Council
Peter Chamberlain	Brisbane City Council

### **Decision**

The decision of the Brisbane City Council as contained in its letter dated 4 December, 2002, reference DRS/BLD/A02-1201219, not to grant approval to permit the erection of extensions and alterations to a detached house within the front alignment setbacks is **set aside**.

The verandah extension may be erected to within 4 metres to the outer most projection of the northern Silene Street boundary.

## **Background**

The application was for permission to erect additions to an existing double story detached house, being an extension to an existing upper level verandah, within the 6 metre road boundary clearance to the northern road boundary.

The Brisbane City Council had refused the application on the grounds it would overcrowd the streetscape and overcrowd the allotment (front).

## **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 verandah extension;
- 4 Verbal submissions by the Owners, Mr Colin Higginson and Mr Adam Davies, town planners for the applicant and owners, explaining the reasons why the relaxation should be granted;
- 5 Verbal submission by Mr Grant Johnson and Mr Peter Chamberlain, Brisbane City Council, explaining the reasons why the application should not be granted;
- 6 Letter signed by several adjoining owners, indicating they had no objection to the development;
- 7 Letter submitted by the owner of the property at 9 Silene Street, immediately to the east, outlining objections to the development;
- 8 Telephone conversation with the owner of 9 Silene Street, to further discuss his objections to the proposed development;
- 9 The Standard Building Regulation 1993.

## **Findings of Fact**

I made the following findings of fact:

1. The detached dwelling is of two storeys, of brick construction, with a hip roof. The dwelling contains a narrow verandah to the north and west facades to both levels of the dwelling.
2. The area intended to be developed for the extension to the verandah was to the upper level only and to the north facade of the dwelling.
3. The site and surrounding areas slope to the west nor west, and the site has been cut slightly to the eastern side and has a retaining wall approximately 1 metre high to the western street frontage

4. The existing dwelling is elevated to the lower floor to the western façade approximately 2 metres above ground level. The height of the eaves above natural ground level is approximately 7 metres to the western facade.
5. The site and surrounding properties have views to the north and west, and the proposed development, because of the topography and siting would not interfere with neighbouring views, except those to the property to the east.
6. The majority of adjoining owners have no objection to the development, but the owner to the eastern property has  submitted that their views to the west will be compromised.
7. 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 level, depth, shape or condition of the allotment and adjoining allotments.*  
The allotment and the adjoining allotments fall to the west nor west, 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 large detached two storey brick dwelling, which because of natural topography is elevated approximately 2 metres above natural ground to the west facade.
  - c. *The nature of any existing or proposed building or structure on the adjoining allotments.*  
The surrounding residences are detached, double storey, generally of large proportion.
  - d. *Whether the allotment is a corner allotment.*  
The allotment is a corner allotment, with the shorter alignment to the west.
  - e. *Whether the allotment has 2 road frontages.*  
The allotment, being a corner allotment, has two road frontages.
  - f. *Any other matter considered relevant.*  
The proposal is to provide additional “external” living space off the existing living areas and maximise the available views and climate conditions.
8. 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 proposed verandah extension is on the north west corner of the site, and because of the topography and existing landscaping, which will remain, will have no impact on natural light or ventilation to the adjoining allotments.
  - b. *Interfere with the privacy of an adjoining owner.*  
The proposed verandah may impact on the privacy of adjoining owners, primarily to the property immediately to the east, due to sight lines resulting in exposure of and from limited areas of the proposed verandah, which could be reduced by the incorporation of suitable

screening.

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

The area of the site to the streetscape for landscaping will be reduced by the verandah, however because of its height, the lower level would be available for landscaping, including “low light” plantings. There are other substantial areas of the site to the street alignment available for landscaping.

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

The proposed verandah, being to the upper storey, and having cognisance of the topography, would minimally obstruct the westerly outlook from the adjoining property to the east only.

*e. Overcrowd the allotment.*

The proposed verandah, being only a small percentage of the existing structure, would have minimal impact on the current position.

*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 proposed structure and existing structures and their siting on the adjoining allotments, and the limited impact the verandah extension would have on the amenity and streetscape, the Tribunal found that there was reasonable grounds to vary the road alignment setback to allow the verandah to be constructed within the 6 metre road boundary set back as nominated in the decision.

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**Dennis Leadbetter**

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

**Building and Development**

**Tribunal Referee**

**Date: 21 January, 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  
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