



**Building and Development Tribunals**  
**Queensland Government**

Department of Local Government, Planning,  
Sport and Recreation

**APPEAL**  
*Integrated Planning Act 1997*

**File No. 3-04-041**

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**BUILDING AND DEVELOPMENT TRIBUNAL - DECISION**

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**Assessment Manager:** Gold Coast City Council

**Site Address:** 34 McCleary Street, Bundall

**Applicant:**

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**Nature of Appeal**

Appeal under section 21(2) of the Building Act 1975 against the decision of the Gold Coast City Council to refuse the application for a variation of part 3 of the Standard Building Regulations 1993 (alternative provisions, Part 5, Division 2, Chapter 4, Section 5.3 of Gold Coast City Council Planning Scheme). This application sought to allow alterations and additions to an existing Class 1a dwelling to be constructed to within 1.5m of the western allotment boundary on land described as Lot 303 on RP 154821 situated at 34 McCleary Street, Bundall.

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**Date and Place of Hearing:** 10.00am on Thursday 22 July 2004.  
At the office of the Gold Coast City Council,  
Nerang Administration Centre,  
Southport Road, Nerang.

**Tribunal:** Gregory Schonfelder

**Present:** Owners of the land  
Gold Coast City Council Representatives

**Decision**

I determine the decision to refuse the application for a siting variation issued by the Gold Coast City Council dated 29 June 2004 to construct alterations and additions to the existing Class 1a Dwelling on the property at 34 McCleary Street, Bundall **be changed** and approval is granted for:-

- (i) the proposed building works offset a minimum 1.0m to the external wall (This changes the condition of approval A1 only and would allow an eave to this wall to be similar to

that of the existing dwelling and provide some solar protection)

The decision is subject to the following conditions:

- (i) The balance of the conditions of the Decision Notice issued on 29 June 2004 remain with the following additions.
- (ii) Landscaping shall be planted between the dwelling and the western boundary of the site where possible and to the north and south of the addition, and this shall be maintained. Advice on the appropriate plantings shall be obtained from the Gold Coast City Council.
- (iii) The design, materials, and colours of the building work shall be similar to the existing dwelling.
- (iv) The roof design shall present a hipped end to the boundary, which will reduce the height and bulk of the building.

### **Background**

The applicant explained the basis for the application to the Council for a variation to the siting of the proposed alterations and additions to the existing dwelling and the subsequent appeal against Councils' decision to refuse this application:-

- The applicant advised that there have been no complaints from adjoining owners regarding the proposed building work.
- The dwelling addition has been designed to utilise the existing masonry wall, which has existed for many years and is located 560mm from the western boundary of the allotment.
- The dwelling is being renovated because of medical reasons for one of the owners.
- The design of the addition will have a hipped roof to lower the roof height near the boundary.
- The existing kitchen cupboards are to be reused and this and the functionality of the working spaces form the main basis for this application for siting variation.

The Council representatives in their response stated:-

- The application for a siting variation was made for 560mm setback to the dwelling and Council has varied their normal setback of 1.5m to 1.2m from the boundary.
- Council must take into account the public interest and the interests of future property owners and just because the adjoining neighbours may not have objected to this proposed building does not mean that the approval will be successful.
- Council assesses each application on its merits but is concerned about implied precedents being set in the area.
- Council is concerned about the impact of this addition on both the streetscape of the area and

especially the impact it would have from the waterway.

- This area is an older area of Bundall, there are no constraints, and Council's aerial photographs confirm the majority of buildings at the required setback from the boundaries.

### **Material Considered**

1. Document: Copy of Letter and application for setback variation  
From: The applicant  
To: Gold Coast City Council.  
Dated: 11 June 2004  
Detail: Letter, Application Form, Site Plan, Photos, Neighbours' Letter, Registered Plan, Architects Drawings, Existing floor plan.
2. Document: Copy of Decision Notice  
From: Gold Coast City Council  
To: The applicant  
Dated: 29 June 2004  
Detail: This decision notice gives approval for a 1.2m setback from the western allotment boundary in lieu of 560mm as requested.
3. Document: Copy of letter and amended plans  
From: The applicant  
To: Gold Coast City Council  
Dated: 06 July 2004  
Detail: Seeking a modification to the decision notice to allow a 3.5m length of wall to be setback the original requested 560mm from the boundary.
4. Document: Copy of file note  
From: The applicant  
To: Referee, Building and Development Tribunal.  
Dated: 07 July 2004  
Detail: Verbal advice given to applicant from GCCC with refused the modification to the decision notice with a suggestion for the placement of exterior door.
5. Document: Copy of Appeal Documents  
From: The applicant  
To: Building and Development Tribunal  
Dated: 08 July 2004  
Details: Historical background, existing kitchen plan, site plan showing neighbouring dwelling, photos of existing dwelling and adjacent dwelling, letter accompanying application, application form.
6. Document: Copy of letter  
From: The applicant  
To: Registrar, Building and Development Tribunal  
Dated: 12 July 2004  
Details: Further basis for appeal.

7. Document: Photos  
From: The applicant  
To: Referee  
Dated: 22 July 2004 (received)  
Details: External view showing proposed roof shape with the wall setback and internal view showing kitchen cupboards.
8. Document: Copy of letter  
From: Next door neighbours  
To: Referee  
Dated: 21 July 2004  
Details: Letter from neighbours supporting both the original application and the modified proposal.
9. Document: Extract Gold Coast City Council Planning Scheme.  
From:  
To  
Dated: (obtained 22 July 2004)  
Details: Part 5, Division 2, Chapter 4, Section 5.3
- 10 Document: Facsimile  
From: The applicant  
To: Registrar, Building and Development Tribunal  
Dated: 25 July 2004  
Details: Additional photo and further justification for the appeal.
11. A site visit conducted after the hearing and discussions with the applicants.
12. Standard Building Regulation 1993
13. The Integrated Planning Act 1997

### **Findings of Fact**

I made the following findings of fact:

1. The alterations and additions to the existing Class 1a dwelling carport is proposed to be constructed within the boundary clearances prescribed under the alternative siting provisions established by Part 5, Division 2, Chapter 4, Section 5.3 of the Gold Coast City Council Planning Scheme.
2. An application to the Gold Coast City Council to vary the alternative siting requirements to allow the alterations and additions to the Class 1a dwelling to be sited with the standard boundary setback has been considered and the Council has allowed 1.2m setback from the western boundary to the outer most projection.
3. Under this section of the Gold Coast City Council Planning Scheme, the performance criteria for building setbacks for dwelling and associated outbuildings is that:

“All buildings must provide for setbacks from the street frontage and side and rear boundaries which are appropriate to the efficient use of the site and the streetscape character of this domain”.

The acceptable solutions provided in the scheme are those from Part 12 of the Queensland Development Code.

4. In the documents provided by Council (extract of planning scheme) there is no basis to consider the merits of an application for a variation to the siting other than referring to the intent of the Chapter 4.
5. The Decision Notice did not give an explanation of why the application was refused for the 560mm setback which was requested or why the compromise setback of 1200mm from the allotment boundary was approved.

### **Reasons for the Decision**

The original proposal for a 560mm setback would have created an unusable strip of land, which hinders building maintenance and area available for landscaping. By setting back the exterior wall at 1.0m this land can utilised as a walkway, landscaped area and does not impinge on the neighbouring property. The justification for the original setback because of the possibility to reuse existing cupboards cannot be justified.

The proposed alterations and additions to the existing Class 1a dwelling because of the construction, materials used, design and similar colours which will be used does not unduly impact on the streetscape or adjoining properties. This is assisted by the shape of the allotment and the location of the adjoining dwelling especially in light of the distances between them.

The impact of the development from the waterway will not be adverse because of the shape of the allotment, existing siting of the dwelling, the adjoining dwelling and the existing and proposed landscaping.

Appropriate landscaping which is a condition of this decision will subdue the effect of the siting of the building from the streetscape and the waterway.

The setback from the western boundary can allow screening by the proposed landscaping to the adjoining property.

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**Gregory Schonfelder**  
**Building and Development**  
**Tribunal Referee**  
**Date: 8 August 2004**

## **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**