



**APPEAL**  
*Integrated Planning Act 1997*

**File No. 3/03/041**

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

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**Assessment Manager:** Caloundra City Council  
**Site Address:** 28 Henzell Street, Dickey Beach  
**Applicant:** Bartley Burns Pty Ltd

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### **Nature of Appeal**

Appeal under section 21 of the Standard Building Regulation 1993 (SBR), against the decision of the Caloundra City Council not to grant a relaxation of the road setback requirements for the erection of a deck to a dwelling on land described as Lot 129 on RP No. 53611 and situated at 28 Henzell Street, Dickey Beach.

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**Date and Place of Hearing:** 3.00 pm on Wednesday, 16 July, 2003  
at 28 Henzell Street, Dickey Beach.

**Tribunal:** Georgina J Rogers

**Present:** Owner  
Mr Ken Burns – Applicant and Private Certifier  
Mr Robbie Pocock – Caloundra City Council representative  
Mr David Mansell – Caloundra City Council representative

### **Decision**

The decision of the Caloundra City Council as contained in its letter dated 24 June 2003 (Reference: BDD-01386) refusing the relaxation of the road boundary clearance to 3.800m and 4.800m sought for the construction of an addition of a deck to the Henzell Street frontage of the dwelling in lieu of the prescribed 6.000m road boundary clearance is **confirmed**.

### **Background**

The site has an existing dwelling in the process of being extensively renovated and extended. The extensions included new external decks to the east and west of the existing dwelling. The eastern

deck is proposed to be constructed within the Henzell Street road boundary clearance and is to be unroofed.

### **Material Considered**

1. Appeal documentation including drawings detailing the proposed eastern deck within the Henzell Street road boundary setback and the siting requirements sought by the applicant.
2. Verbal submission by the applicant and reasons for construction of the deck within the Henzell Street road boundary setback area.
3. Correspondence from the Council dated 24 June 2003, refusing the request to permit construction in lieu of the required road boundary clearance of 6.000m.
4. Verbal submissions by the representatives of the Caloundra City Council outlining the Council's assessment of the application and giving its reasons for refusal of the construction permit sought.
5. Verbal submission by the owner and reasons for construction of the deck within Henzell Street road boundary setback area.
6. Discussion with the adjoining neighbour who gave their reasons for concern if the deck was to be constructed.
7. Signed letters from two neighbours, one adjoining, stating their objection to the proposal.

### **Findings of Fact**

I made the following findings of fact:

1. The site at 28 Henzell Street, Dickey Beach has two road frontages being Henzell Street to the east and Tinbeerwah Street to the west. Both streets provide direct vehicle access to the site.
2. The Caloundra City Council have advised that there are no provisions within the current planning scheme to permit subdivision of the lot.
3. The Caloundra City Council have advised that there has been no precedent set to allow for construction within the 6.00m front road boundary clearance.
4. The site is on the higher side of Henzell Street, rising gradually to the western road frontage. The site is rectangular in shape.
5. The application includes the provision of an eastern deck in the Henzell Street road boundary setback area and a western deck which is located well clear of the Tinbeerwah Street road boundary setback area.
6. There is in excess of 180 degree ocean views from the east of the existing dwelling, across Henzell Street.

7. The dwellings constructed within the immediate vicinity appear to be a mixture of timber and sheet clad dwellings constructed during the mid to late-1900s. There appears to be a significant degree of upgrading of these dwellings within the immediate neighbourhood. These existing dwellings are generally setback in accordance with the 6.000m requirement; however there have been significant relaxations on corner allotments within the immediate vicinity.
8. The neighbourhood consists of a mix of one and two storey dwellings.
9. Under section 48 of the Standard Building Regulation 1993, the local government may vary the application of Division 2 – boundary clearances.
10. In assessing the application of section 48.(3) of the Standard Building Regulation 1993, 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 allotment and adjoining allotments are of similar, regular size and shape. The allotment is rectangular in shape and is accessed directly from both Henzell and Tinbeerwah Streets.

The site does not impose any irregularities, which would create difficulty in extending the existing dwelling within the Standard Building Regulation setbacks. The existing dwelling and current proposal allow for substantial area on the site for the construction of additions that would comply with the SBR front and side boundary setbacks.

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

The structure to which the application is relevant is an unroofed deck attached to the existing dwelling. The deck is proposed to be irregular in shape with the width on the northern side to be 2.450m reducing to 1.450m on the southern side. The setback from the northern alignment is proposed to be 2.280m; to the Henzell Street road alignment 3.800m and 4.800m and from the southern alignment 4.616m.

At the Henzell Street ground level the deck has been requested to provide weather protection over the external openings of the ground floor living areas. The weather protection could be achieved through other means including awnings.

At the second level the deck would provide an extension of the existing indoor living area. There is substantial room available to the rear of the dwelling to provide additional indoor and outdoor recreation areas.

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

The neighbourhood consists of a mix of one and two-storey dwellings. The adjoining neighbour to the south has significantly renovated their dwelling and constructed a verandah, which does not encroach into the 6.000m Henzell Street road boundary clearance.

Corner allotments within the immediate neighbourhood appear to have setbacks where the side street road boundary setback is significantly reduced from the 6.000m setback. The alternate road frontage of these sites appear to maintain the 6.000m setback.

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

The allotment is not a corner allotment.

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

The allotment has two (2) road frontages. Vehicle access is readily available from both road frontages being Henzell and Tinbeerwah Streets.

(f) *any other matter considered relevant*

Letters of objection from adjoining owners for the proposed structure were considered. These letters expressed their concern at the potential loss of privacy, amenity and views from their existing dwellings.

The provision of the deck within the Henzell Street road boundary setback area would provide outdoor area that could optimise the existing views. The existing dwelling is in the process of being renovated and has substantial scope to optimise the views through the provision of additional openable glazing on the second floor level living areas. From the plans submitted it would appear that it is proposed to take advantage of these views from the internal living areas.

For outdoor recreational purposes, the provision of the rear deck would appear to have the capacity to be constructed to a size that would be able to accommodate this requirement.

Weather protection of the ground level living areas would be able to be achieved by provision of awnings.

11. In assessing the application of Section 48.(4) of the Standard Building Regulation 1993, the local government must be satisfied that the proposed road boundary clearance on the allotment would not unduly –

- *Obstruct the natural light or ventilation of any adjoining allotment.*

The 3.800m road boundary clearance to the outermost projection of the proposed unroofed deck fronting Henzell Street will have minimal impact on the existing natural light and ventilation of the adjoining allotments.

- *Interfere with the privacy of an adjoining allotment.*

The 3.800m road boundary clearance to the outermost projection of the proposed unroofed deck fronting Henzell Street would impact upon the privacy of the adjoining allotments, particularly to the north where the greater views are achieved.

The proposed deck would overlook the adjoining northern property, reducing their opportunity for privacy. The adjoining property to the south has a fully fenced pool between the existing dwelling and Henzell Street and this outdoor recreation area would also have its privacy compromised. There would be little privacy for the occupants using this proposed deck from adjoining neighbours to the north and south.

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

The 3.800m road boundary clearance to the outermost projection of the proposed unroofed deck fronting Henzell Street will not unduly restrict the areas of the allotment suitable for landscaping.

A substantial area will remain available for landscaping adjacent to the street frontages and the outdoor recreation area to the west will remain.

- *Obstruct the outlook from adjoining allotments.*

The 3.800m road boundary clearance to the outermost projection of the unroofed deck fronting Henzell Street will impact upon the outlook from adjoining allotments, as the adjoining dwellings are located to take advantage of the significant views available.

The views and outlook from these properties on the western side of Henzell Street have substantial ocean views to the east and north. The construction of the balcony would reduce the northern view from the adjoining southern property, as it would intrude into the vista corridor.

- *Overcrowd the allotment.*

The 3.800m road boundary setback to the proposed unroofed deck fronting Henzell Street will not overcrowd the allotment.

With the increased building works, site cover will remain below 50%. There is considerable opportunity for additional extensions to be undertaken to the west of the existing dwelling.

- *Restrict off-street parking for the allotment.*

Off-street parking will not be affected by the proposed 3.800m road boundary clearance.

The area available for carparking off-street will not change with the proposed construction. Vehicle access and parking is available both from Henzell and Tinbeerwah Streets and it is not proposed to amend the onsite parking and access with this application.

12. Based on the above facts it is considered the appeal has not been proven.

### **Reasons for the Decision**

An assessment of Section 48.(3) and (4), did not identify sufficient reasons for supporting the proposed construction application for an unroofed deck fronting Henzell Street.

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**GEORGINA J ROGERS**  
**Building and Development**  
**Tribunal Referee**  
**Date: 11 August 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  
Department of Local Government and Planning  
PO Box 31  
BRISBANE ALBERT STREET QLD 4002  
**Telephone (07) 3237 0403: Facsimile (07) 32371248**