



**Building and Development Tribunals**

**Queensland Government**

Department of **Local Government and Planning**

**APPEAL**

*Integrated Planning Act 1997*

**File No. 3-03-066**

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

---

**Assessment Manager:** Brisbane City Council

**Site Address:** 3 Smythes Avenue, Wynnum 4178.

---

### **Nature of Appeal**

Appeal under Section 4.2.9 of The Integrated Planning Act 1997 against the decision of Brisbane City Council to refuse a siting variation under the *Standard Building Regulations* for a relaxation of the boundary setback for the erection of an extension on land described as Lot 1 on RP71172 and situated at 3 Smythes Avenue, Wynnum QLD 4178.

---

**Date and Place of Hearing:** 10.30am. Thursday, 20<sup>th</sup>. November, 2003.  
Level 25, 41 George St., Brisbane.

**Tribunal:** Peter John Nelson

**Present:** Monague John Campbell - Applicant  
Gregory Schonfelder – Brisbane City Council

### **Decision**

The decision of the Brisbane City Council as contained in its letter of refusal is **SET ASIDE**, and the following decision replaces the decision set aside :-

A reduced set back to the outermost projection to the Selina Street boundary of 1.780 meters is **APPROVED** subject to the following conditions :-

- a. The extension is to be constructed in strict accordance with the plan (not numbered) but prepared by P.D. & D.J. CHALK – Building Designers at 60 Gordon Parade, Manly. This plan shows a hip roof at the same pitch as the existing roof . It also nominated cladding and roof tiles to match existing dwelling.
- b. Sympathetic landscaping to be planted and maintained between Selina Street and the new room.

### **Background**

The subject dwelling is located in an older developed area. The frontage of the residence is to Smythes Avenue and a substantial set back has been provided to this street. There are well established gardens surrounding the existing home that create a private landscaped barrier to neighbours and the streets.

### **Material Considered**

1. Appeal documentation.
2. 16 photographs provided.
3. 1 x A3 plan prepared by P.G. & D.J. CHALK of Manly.
4. A4 floor plan of existing house prepared by appellant.
5. Verbal submission from Brisbane City Council officers.
6. Verbal submissions from the appellant.
7. Letters sighted from one adjoining owner.
8. Letter from Building Certification Consultants Pty. Ltd.
9. Surrounding residences, setbacks and local amenity.

### **Findings of Fact**

I made the following findings of fact:-

1. The design prepared took care to ensure that the proposed extension looked as though it was built at the same time as the original structure. It addresses the streetscape in a sympathetic manner.
2. The Council agreed to a compromise to maintain the integrity of the purpose for the extension.
3. The Council has the discretion to vary the building alignment under Section 48 of the *Standard Building Regulations 1993*.
4. The neighbour's support to the relaxation without asking for any conditions.
5. The area where the extension is planned is the logical place for the new room to be sited.

### **Reasons for the Decision**

1. On a corner site the required set back is maintained to one street and the other boundaries are treated as side boundaries. This would allow the set back to Selina Street to be taken as 1.5 meters under normal circumstances, provided that the building does not obstruct the view for motorists using the intersection in accordance with the requirements under the *Standard Building Regulation 1993*. The proposed new room is well away from the required line-of-site unobstructed view area of the site.
2. The arrangement of the existing residence and garage with driveway access prevents the new room from being placed in any other position without compromising the useability of the room.
3. The Council's main concern was that the set backs in Selina Street are maintained at 6.00 meters with lowset cottage type residences, and this extension would result in a non-typical street appearance. However a site visit showed that the State Government was building new units along Selina Street, and some of these were closer to the front boundary than 6.00 meters. They were also of a more modern style and some were two storey. This will change the appearance of Selina Street quite dramatically in the next year or so.
4. The effect of the proposal on the streetscape. The proposed new room will look as though it has always been part of the original structure on completion with a low pitched hip roof having an eaves overhang of 600 mm. A sympathetic landscaping buffer between the new room and Selina Street will adequately protect the street appeal.
5. Well established gardens already exist around the residence and there is total privacy to the

neighbour at the rear who is the only neighbour affected by this proposal. This neighbour has provided a letter of support for the proposed new room.

---

**PETER JOHN NELSON**  
**Building and Development Tribunal**  
**Date: 25<sup>th</sup>. November, 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**