



**APPEAL**  
*Integrated Planning Act 1997*

**File No. 3-04-006**

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

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**Assessment Manager:** Brisbane City Council

**Site Address:** 11 Jubilee Close, Eight Mile Plains.

**Applicant:**

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### **Nature of Appeal**

Appeal under Section 4.2.9 of The Integrated Planning Act 1997 against the decision of Brisbane City Council NOT to grant a set back variation for a proposed residential dwelling to be erected on land described as Lot 67 on SP 163539 Parish of Yeerongpilly and situated at 11 Jubilee Close, Eight Mile Plains.

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**Date and Place of Hearing:** 11.30am. Thursday, 5<sup>th</sup>. January, 2004.  
11 Jubilee Close, Eight Mile Plains.

**Tribunal:** Peter John Nelson

**Present:** Applicant  
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 :-

The position of the proposed garage as shown on the plans submitted with a set back of 3.60 meters. to the wall of the proposed Lounge Room, is **APPROVED** subject to the following conditions :-

- a. The eaves as shown on drawing dated 5<sup>th</sup>. December, 2003 shall not exceed 600mm. in width.
- b. The set back off the western boundary shall remain as shown at 2000mm. min. to outermost projection.
- c. The set back off the eastern boundary remains as shown at 1500mm. to outermost projection.

## **Background**

The Council's concern was that a general set back of 4.5 meters was agreed to when the subdivision approval was granted. This was relaxed from 6.0 meters, which is the usual set back required in the Brisbane City Council areas. The Council representative stated that the Team Leader for the Town Planning Department of Brisbane City Council who is responsible for this area was adamant that "rules are rules, and no relaxation will be allowed". No other reasons were put forward.

## **Material Considered**

1. Appeal documentation.
2. Plans showing Job No. 03/67.? dated 5-12-2003.
3. Verbal submission from Brisbane City Council officers.
4. Verbal submissions from the appellant.
5. Statement from neighbour dated 22-12-2003.
6. On site inspection.
7. Copy of subdivision plan of Jubilee Close
8. Copy of Regency Heights subdivision.
9. The Queensland Development Code.

## **Findings of Fact**

I made the following findings of fact:-

1. Lot 67 is the last lot on the Southern side of Jubilee Close after entering the Close from Ellendale Circuit.
2. The shape of the land follows the curvature of the turn around of the cul-de-sac end of Jubilee Close.
3. Because of the shape of the land, dictated by the shape of the road, the western boundary is quite restricted in length. The eastern boundary is a comfortable 31.6 meters in length whereas the western boundary is only 23.7 meters in length.
4. Council has already agreed to a general relaxation of the street boundary set backs within this subdivision and some lots are as small as 483 square meters in area, a further relaxation. This lot is 562 square meters in area, which is 38 square meters less than the usual 600 square meters minimum requirement in other subdivisions. This further restricts the area available on the lot for useable recreation areas.
5. The set back relaxation requested only affects about 4 meters of the front boundary; the rest of the set back is considerably in excess of the requirements.
6. The original application was lodged with Brisbane City Council during the month of December, 2003, probably about the 22<sup>nd</sup>., as a *Siting Variation (Relaxation) Application* form issued by Brisbane City Council for *Neighbours Statement* was completed and signed on that day, and was assessed under *The Standard Building Regulations*. On the 14<sup>th</sup>. November, 2003 *The Standard Building Code* was amended to the *Queensland Development Code*. This appeal has been re-assessed under Part 12 of the *Queensland Development Code*, which allows variation to set back requirements under certain conditions. In this case the Performance Criteria has been assessed taking into account the enhanced amenity of the poolside area and the way it relates to the proposed residence.

### **Reasons for the Decision**

1. Adjoining future residences to the east will face the street to the east of the proposed house. It is possible that balconies off the rear to the west might be considered by the future residents of lot 84, but the positioning of the house on lot 67 as proposed, would not obstruct any views, as the views are to the north-west across Jubilee Close.
2. As this is the last residence in Jubilee Close to the Southern side it does not interfere in any way with any other residents views or amenity.
3. A statement signed by neighbour dated 22-12-2003 states that the neighbours on lot 66 had no objection to the siting of the house as shown in the plans.
4. The design of the house recreation area would be severely compromised if the relaxation was not granted, as the design allows a clear and unobstructed view of the poolside area from the main day time living areas of the proposed residence. If the set back were increased the pool area would need to be shifted to a less appealing position in the rear yard.

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**PETER JOHN NELSON**  
**Building and Development Tribunal**  
**Date: 19<sup>th</sup>. February, 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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