



## Building and Development Dispute Resolution Committees—Decision

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### *Sustainable Planning Act 2009*

Appeal Number:	83 - 11
Applicant:	MPS Architects
Assessment Manager:	Coastline Building Certification Group
Concurrence Agency:	Gold Coast City Council
Site Address:	2 Lowanna Court Mermaid Waters and described as Lot 408 on SP 192879 – the subject site

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### **Appeal**

Appeal under section 508 of the *Sustainable Planning Act 2009* (SPA) against the decision of the Assessment Manager to refuse in part a Development Application about design and siting requirements of building work.

The building work is a concrete slab deck approximately 10.8 m wide, 9.5 m long and up to 2.3m in height extending to within 1.26 metres of the canal waterfront boundary.

The building work does not comply with the Acceptable Solutions of the Gold Coast Planning Scheme 2003 Constraint Code – Canals and Waterways Part AS1 and was assessed under Performance Criteria PC1 of the Gold Coast Planning Scheme Constraint Code – Canals and Waterways.

Date of hearing:	4 November 2011 at 11:00 am
Place of hearing:	The subject site
Committee:	David Kay – Chair Diana Glynn – General Referee
Present:	Andrew Charity – Applicant acting on behalf of owner Ian Mclean – Coastline Building Certification Group Adam Hurt – Coastline Building Certification Group Shane Tanner – Builder, Coastal Building Construction Matt Pinder – Builder, Coastal Building Construction Patrick Giess – Gold Coast City Council

### **Decision**

The Building and Development Dispute Resolution Committee (the Committee), in accordance with section 564 of the SPA **sets aside** the decision of the Assessment Manager dated 21 June 2010, and **replaces** it with the following decision:-

The Assessment Manager is directed to amend the Building Development Application Decision Notice if satisfied that the application complies with the following:-

- MPS Architects Drawing 2285 Lowanna Court Site Plan 01-01 amendment D dated 14-09-10
- MPS Architects Drawing 2285 Lowanna Court External Works Plan 01-02 amendment D dated 14-09-10 excluding the feature wall shown in sections 01 and 02.
- MPS Architects Drawing 2285 Lowanna Court External Site Plan 10-01 dated 06-04-10
- MPS Architects Drawing 2285 Lowanna Court External Site Plan 10-02 dated 06-04-10
- An additional landscape plan showing a minimum of 6 Australian native plants along the 10 metre frontage of the deck. The plants are to have a spread of 1 metre and are to be capable of growing to a height of 2.0 metres. The planting and ongoing maintenance of these plants forms part of and is a condition of this decision.

## **Background**

### *Applicant's submission to the Committee*

The applicant submitted reasons in the documents lodged together with the verbal submission at the hearing of the appeal which included:-

- The deck was constructed under the assumption it formed part of the building approval for the dwelling.
- During an inspection the building certifier advised that the deck would require referral approval from the Gold Coast City Council due to the height above natural ground level.
- Other structures in the area over 1m in height appear to have been constructed within the waterway setback line.
- The deck has an open structure underneath and will have minimal flood impact on the waterway.
- The deck is not proposed to be roofed and the use of timber decking, glass balustrade and natural render finishes will minimise visual impact.
- Existing vegetation and proposed vegetation around the base of the structure will help to reduce the scale of the structure.
- The deck is located far enough away to offer a serene environment connecting with the waterway and is an ideal area for the owners to enjoy the canal waterway system without directly impacting upon it.
- Details of other properties that appear to have structures within the canal waterway setback.
- The owner of the adjoining neighbouring property has no objection to the deck.

### *Assessment Managers submission to Committee*

- The deck was observed at the time of an inspection and it was requested that an application be made which required referral to the Gold Coast City Council as a Concurrence Agency as the deck did not comply with the Acceptable Solutions of the Canals and Waterways Constraint Code.
- The deck does not extend along the full canal frontage of the site and does not affect the flood storage component of the waterway.

### *Council's submission to the Committee*

The Council's representative submitted reasons for the refusal which included:-

- The refusal was for the deck only. The covered patio forming part of the house was approved.
- The deck component does not respond positively to the waterside location, would have more than minimal impact on the adjoining waterway properties, and is not efficiently sited to minimise visual impact on the waterway.
- The height of the deck is not appropriate to the site and locality.
- The deck has a negative visual impact on the area.
- The proposal is extending into the waterway setback line and the Council is concerned with building creep into the waterfront setback.
- The proposal is not suitable for the area.
- The height of the deck is not appropriate to the site and Council has a policy Gold Coast Planning Scheme Policy 2003 Policy 11 – Land Development Guidelines including details shown on standard

drawing – Waterway Development Cross Section 05-04-004.

- The blade wall along the western side of the deck was not included as part of the referral agency application and was not assessed or included as part of the response to the Assessment Manager.

## **Material Considered**

The material considered in arriving at this decision comprises:

1. 'Form 10 – Appeal Notice', grounds for appeal and correspondence accompanying the appeal lodged with the Registrar on 19 October 2011.
2. Material submitted by the applicant accompanying the Notice of Appeal;
3. Decision Notice from the Assessment Manager dated 21 June February 2010;
4. Concurrence Agency Response from Council, dated 31 August 2011, on siting matters under Gold Coast Planning Scheme 2003 Canals and Waterways Constraint Code.
5. Verbal submissions from the Applicant at the hearing;
6. Verbal submission from the Building Certifier (acting as the Assessment Manager for this decision) at the hearing;
7. Verbal submissions from the Council representative at the hearing;
8. The *Sustainable Planning Act 2009* (SPA) and associated regulations;
9. The *Building Act 1975* (BA) and associated regulations;
10. The Gold Coast Planning Scheme 2003 Canals and Waterways Constraint Code.
11. Adjoining owner declaration advising they have no objection.

## **Findings of Fact**

The Committee makes the following findings of fact:

- An application for a Concurrence Agency response was made to Council by the Assessment Manager.
- The Council directed the Assessment Manager to refuse part of the application relating to the deck that is above existing ground level and located within the 11.87 metre waterway building setback line.
- The Assessment Manager issued a Decision Notice to the applicant, dated 13 October 2011.
- The appeal to the Building and Development Dispute Resolution Committee was lodged within the required time.
- The Committee has jurisdiction to hear and decide the appeal.
- This appeal relates to the waterway boundary building setback for the concrete deck.
- The waterway boundary building setback of the deck proposed for this site does not comply with the Gold Coast Planning Scheme 2003 Canals and Waterways Constraint Code, Acceptable Solution Part A1 which requires a 11.87 metre setback from the waterway boundary.
- The Performance Criterion PC1 of the Gold Coast Planning Scheme 2003 Canals and Waterways Constraint Code contains the performance requirements for the assessment of the application.

## Reasons for the Decision

During the hearing on site it was established that a previous dwelling had been erected on the site and that existing retaining walls on the site along the canal frontage could be considered as “complying” development.

Based on this, the extent of deck that is regarded as noncompliant with the Acceptable Solutions is that part located approximately 5.0 m from the canal waterfront boundary approximately 0.4m in height above the existing retaining wall and extending to 1.26 m from the canal waterfront boundary where it has a height of approximately 2.3 m above the ground level.

Gold Coast City Council is a referral (concurrence) agency for this application and advised that the extension of this deck should be refused by the Coastline Building Certification Group. Under s. 287 of the *Sustainable Planning Act 2009* a concurrence agency may direct the Assessment Manager to refuse an application.

S.282 of the *Sustainable Planning Act 2009* requires a Concurrence Agency to assess a proposal against an applicable code and against the planning scheme. According to documentation provided at the hearing, Gold Coast City Council assessed the deck against Part 5, Division 2, Chapter 4 of the Gold Coast Planning Scheme – Detached Dwelling Domain. This section deals with detached dwellings in low density residential areas.

One of the purposes of this Detached Dwelling Domain is to seek “to enhance and promote residential lifestyle attributes of privacy and quiet enjoyment of family life, with opportunities for residential based leisure pursuits”.

One key objective of the Domains designation is to provide “for some variety in dwelling size and style, within the context or relatively homogeneous residential environment”.

However, this part of the Planning Scheme also contains a section, Relevant Codes, against which the proposal must be assessed. The particular relevant code is a Constraint Code pertaining to developments in the proximity of Canals and Waterways.

The relevant siting requirements are set out in, Gold Coast Planning Scheme 2003 Canals and Waterways Constraint Code. These are building assessment provisions for the purposes of section 30 of the *Building Act 1975*.

The Gold Coast City Council also considered Planning Scheme Policy 11 for the assessment of this proposal. The Gold Coast Planning Scheme Policy 11, - Land Development Guidelines, valid as at 10 January 2011, has the intention to:

- “provide clearer and simpler guidelines and standards
- enable a more flexible approach by Council in processing and assessing applications
- facilitate creative expression and solutions to achieve quality development.”

Gold Coast City Council also published a Fact Sheet on its website – Advisory Notes: Design and Siting of Buildings and Structures on 24 August 2011. These guidelines contained information that a drawing entitled “Waterway Development Cross Section” was available to planners and designers and contained a standard drawing 05-04-004 to assist designers in developing projects near canals and waterways. A copy of this drawing was provided to the members of the Committee at the hearing and requested the representative of the Gold Coast City Council underline their issues about the project’s non-compliance with the Constraint Code.

An analysis of Drawing 05-04-004 and the drawings presented to Council as part of this application indicate that there are also issues with the height of the load bearing concrete wall on which the deck extension sits. This concrete wall is approximately 2 metres high while the allowable height for walls is 1 metre.

The deck does not comply with the Gold Coast Planning Scheme 2003 Canals and Waterways Constraint Code Acceptable Solution AS1 requiring a 11.87 metre setback from the waterway boundary.

The related relevant Performance Criterion of Gold Coast Planning Scheme 2003 Canals and Waterways Constraint Code is as follows:-

*PC1 - All buildings and structures must provide for setbacks from the waterway which ensure the efficient use of the site, respond to waterway location, and have minimal impact on adjoining properties.*

When assessing the deck proposal against PC1 of the Canals and Waterways Constraint Codes, the issues to be considered are set out below.

Is the deck an “*efficient use of the site*”?

The proposal allows greater use of the site for outdoor living purposes which would promote and enhance the residential lifestyle of the owners. The area of land underneath the deck location is sloping and is not really suitable for use as recreation areas associated with the dwelling. In its current form it would be only able to be used for landscaping. It is considered that the deck would add to the efficient use of the site by increasing the area available for recreation purposes.

Does the deck “*respond to the waterside location*”?

The proposed development is in a location which is favourable to its design. Adjacent to the site, an embankment has been created to allow for the construction of a road bridge across the canal. The deck does not extend beyond the outer limits of this embankment. The proposed deck does not extend along the whole of the waterway frontage of the property. The deck is also indented which lessens the visual impact. The proposal to use glass balustrades above the deck will not impact on the visual appearance of the deck structure.

The site inspection also indicated that the deck would face north-east towards properties on the opposite side of the canal where it opens out to a wider area. This would mean the deck presents a lesser degree of visibility to residents in those properties.

It is conceded that the 2.2m height of the concrete block wall along the waterway front face of the deck may detract from the waterside location but planting of suitable landscape screening along the front of this wall will reduce the impact and will be in keeping with the plantings on properties in the surrounding area that can be viewed from this site.

Does the deck have “*minimal impact on adjoining properties*”?

The adjoining property on the eastern side is designed in such a way as to have very few openings on that side closest to the subject property. This would protect the owners of the adjoining property from any additional noise or visual impacts which might be created through the use of the proposed deck. The proposed deck is also on the opposite side of the subject side to the neighbouring property with the separation providing further attention.

The owner of the adjoining property has provided a written statement advising they have no objection to the deck on the property. The subject site abuts a major local road to the west and there is effectively no adjoining property on this side to impact upon. Even if the road is considered as an adjoining property the extent of the embankment protruding into the canal waterway results in the deck having minimal impact. Also, the deck location, when viewed from the adjacent road to the west is significantly screened and obscured by existing vegetation on the subject site.

**David Kay**  
**Chair**  
**Building and Development Committee**  
**25 November 2011**

**Appeal Rights**

Section 479 of the *Sustainable Planning Act 2009* provides that a party to a proceeding decided by a Committee may appeal to the Planning and Environment Court against the Committee's decision, but only on the ground:

- (a) of error or mistake in law on the part of the Committee or
- (b) that the Committee 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 Committee's decision is given to the party.

## **Enquiries**

All correspondence should be addressed to:

The Registrar of Building and Development Dispute Resolution Committees  
Building Codes Queensland  
Department of Infrastructure and Planning  
PO Box 15009  
CITY EAST QLD 4002  
**Telephone (07) 3237 0403 Facsimile (07) 3237 1248**