



**APPEAL**  
*Integrated Planning Act 1997*

**File No. 03-08-025**

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

**Assessment Manager:** Fastrack Building Certification

**Referral Concurrence Agency:** Gold Coast City Council

**Site Address:** *withheld*–‘the subject site’

**Applicant:** *withheld*

### **Nature of Appeal**

Appeal under section 4.2.9 of the *Integrated Planning Act 1997* against the decision of Fastrack Building Certification to refuse an application about design and siting requirements of building work. The building work is for a patio attached to the dwelling approximately 2.4m in height sited within the prescribed 14m canal boundary clearance under Part PC1 of Council’s Planning Scheme Canals and Waterways Constraint Code Overlay Map OM13.

**Date and Place of Hearing:** 4.00 pm Wednesday 30 April 2008 at ‘the subject site’

**Tribunal:** David Kay – Tribunal Chairperson  
Stan Spyrou – Tribunal Member

**Present:** Altec the Spacemakers Representatives  
Owner  
Jonathon Lee – Gold Coast City Council Representative  
Patrick Giess – Gold Coast City Council Representative

### **Decision**

The Tribunal, in accordance with section 4.2.34 (2) (c), **sets aside** the decision of Fastrack Building Certification dated 4 April 2008, and replaces it with the following decision:-

**The Assessment Manager is directed to decide the Building Development Application if satisfied that the application complies with:-**

- 1. the patio having dimensions of approximately 16m in length and 2.4m to 3m in height;**
- 2. the patio having a flat roof profile above the existing deck;**
- 3. the flat roof profile extending to just beyond the line of the existing timber deck approximately 3.3m at the closest point to the canal boundary line; and**
- 4. all other relevant building assessment provisions applicable to the Building Development Application.**

## **Background**

### *Applicant's submission to the tribunal:*

The owners submitted reasons in the documents lodged with the appeal which included that due to summer heat and western sun they find that they can not use the existing deck for eight to nine months of the year. The direct sunlight also causes deterioration of the deck surface as well as blinds, flooring and furniture inside the dwelling. The provision of a cover above the deck will reduce their use of air conditioning and have resulting environmental benefits. The curvature of the existing deck above which the proposed roof is to be constructed will look visually pleasing when viewed from the canal frontage.

The applicants submitted that the relaxation requested is a minimum setback of 3.3m. A series of photographs have been submitted. Given the reasons proposed by the owner and the nature of existing canal frontages in the area shown by the photographs, the proposed patio should be considered as within the standards of canal frontage setbacks in the locality. The proposed patio has a flat roof profile with the centre section being an opening slat roof area. This flat roof profile will be less obtrusive than some of the constructions in the submitted photographs.

It was also advised that the use of columns as downpipes would give the proposed structure a neater profile.

### *Council's submission to the tribunal:*

Council did not have an issue with the design of the roof over the deck, but did have concerns with the setback encroaching into the 14m canal boundary setback. A written submission was provided and included advice that when the original deck was constructed the canal setback line was 9m. The current planning scheme now provides for a 14m setback. This increased setback demonstrates a clear intent to not allow further encroachment on the water front boundary. The submission requested that the intent of the planning scheme overlay Map OM13 be acknowledged by the Tribunal.

## **Material Considered**

- 'Form 10 – Notice of Appeal' lodged with the Registrar 11 April 2008;
- Material submitted by the applicant with the Notice of Appeal;
- Decision Notice, dated 4 April 2008, from Fastrack Building Certification;
- Concurrence Agency Response, dated 5 March 2008, on siting matters under Part PC1 of Council's Planning Scheme Canals and Waterways Constraint Code Overlay Map OM13;
- Material submitted by Council at the on-site hearing;
- Verbal submissions from Representatives of Altec the Spacemakers at the hearing;
- Verbal submissions from the Gold Coast City Council Representatives at the hearing;
- Verbal submission from the owner at the hearing;
- The *Integrated Planning Act 1997*;
- The *Integrated Planning Regulation 1998*;
- The *Building Act 1975*;
- The *Building Regulation 2006*;
- Part PC1 of Council's Planning Scheme Canals and Waterways Constraint Code Overlay Map OM13.

## **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 the application for the patio canal boundary clearance.
- The Assessment Manager issued a Decision Notice to the applicant, dated 4 April 2008.
- The appeal to a Building and Development Tribunal was lodged within the required time.

- The Tribunal has jurisdiction to hear the appeal.
- This appeal relates only to the canal boundary clearance for the patio.
- The canal boundary setback of the patio proposed for this site does not comply with the Acceptable Solutions which requires a 14m canal boundary clearance.
- The Performance Criterion “PC-1” of Council’s Planning Scheme Canals and Waterways Constraint Code contains the performance requirements for the assessment of the application.

### **Reasons for the Decision**

- The relevant siting requirements are set out in Council’s Planning scheme Canals and Waterways Constraint Code. These are building assessment provisions for the purposes of section 30 of the *Building Act 1975*.
- The proposed roofed area over the deck does not comply with the acceptable measure requiring a 14m setback from the canal boundary.
- The related relevant Performance Criterion of Council’s Planning scheme Canals and Waterways Constraint Code is as follows:-  
*“PC 1 – All buildings and structures must provide for setbacks from the waterway which will ensure the efficient use of the site, respond to waterside location, and have minimal impact on adjoining properties.”*

The plans submitted to the Tribunal and Council showed insufficient detail to establish clearly the roof profile. During the Tribunal hearing it was established that the proposed roof over the deck area will be of a flat profile.

The existing deck has a setback encroaching into the previous 9m and current 14m setbacks. In the normal use of the deck, objects such as furniture, shade umbrellas and barbeques would be placed on the deck. In the normal use of the deck there would be obtrusions above the surface level of the deck.

It is the opinion that the provision of a roofed area over the existing deck would provide a more “efficient use” of the site and allow the deck area to be used more regularly throughout the year.

From the site inspection it is the opinion of the Tribunal that the proposed roof over the existing deck would have minimal impact on the outlook of adjoining properties due to the curvature of the deck and also the general curvature of the canal frontage at this locality.

The use of the deck and the desire to utilise this area in a various range of climatic conditions is a response to take advantage of the waterside location.

The convex curvature of the canal frontage at this locality means that the outlook and line of sight from adjoining properties along the side boundary projection does not intrude into adjacent properties. Had the property been on a concave canal boundary curvature the outlook aspect could be obtrusive. It is also considered that the view from the canal itself would be less obtrusive due to this curvature.

It is the Tribunal’s view that the proposed patio satisfies the relevant performance criteria of PC-1.

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**David Kay**  
**Building and Development Tribunal Chairperson**  
**Date: 29 May 2008**

## **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 Infrastructure and Planning  
PO Box 15009  
CITY EAST QLD 4002  
**Telephone (07) 3237 0403 Facsimile (07) 3237 1248**