



## Building and Development Dispute Resolution Committees—Decision

---

### *Sustainable Planning Act 2009*

<b>Appeal Number:</b>	43 - 10
<b>Applicant:</b>	Jared Poole Design
<b>Assessment Manager:</b>	Paul McHenry for Gold Coast Building Approvals
<b>Concurrence Agency:</b> (if applicable)	Not applicable
<b>Site Address:</b>	38 Woodgee St, Currumbin and described as Lot 1 on RP 83451— the subject site

---

### **Appeal**

Appeal under section 527 of the *Sustainable Planning Act 2009* (SPA) against the decision of Gold Coast Building Approvals as the assessment manager to refuse a development application for proposed additions and alterations at the subject site.

---

<b>Date of hearing:</b>	10:00 am Monday 19 July 2010
<b>Place of hearing:</b>	The subject site
<b>Committee:</b>	Geoffrey Mitchell – Chairperson
<b>Present:</b>	Jared Poole – Applicant Paul McHenry – Assessment Manager

---

### **Decision:**

The Committee, in accordance with section 564 of the SPA **sets aside** the decision of Gold Coast Building Approvals to refuse the application and **directs** the assessment manager to recommence the application at the information and referral stage.

### **Background**

An application was made to the assessment manager under the *Building Act 1975*, for proposed alterations and extensions to an existing Class 1a dwelling at the subject site. The application before the assessment manager contained a provision for a ceiling height of 2170mm to habitable rooms on the ground floor of the building. The application was refused on the grounds that “the habitable areas of the dwelling do not comply with BCA 3.8.2 room heights”.

## **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 11 June 2010
2. Decision notice from Gold Coast Building Approvals dated 2 June 2010
3. Copies of plans prepared by Jared Poole Design Pty Ltd
4. Verbal submissions by Jared Poole, to the Committee on 19 July 2010
5. Verbal submissions by Paul McHenry, to the Committee on 19 July 2010
6. Building Code of Australia Volume Two (2010)
7. *The Building Regulation 2006*
8. *The Building Act 1975*
9. The SPA
10. *The Sustainable Planning Regulation 2009*

## **Findings of Fact**

The Committee makes the following findings of fact:

1. The Committee has jurisdiction to hear this appeal.
2. The existing dwelling has spaces being used as habitable rooms where the measured ceiling heights are between 2320 and 2350mm.
3. The proposed extensions require the concurrence advice of Gold Coast City Council.

## **Reasons for the Decision**

During the hearing measurements were taken that showed the existing and proposed heights were higher than that as shown on the submitted drawings.

Also during the hearing the applicant advised that he could make a case for an alternate solution for the reduced heights based on the amount of light and ventilation available to the spaces, the height of the spaces and the egress available from the building. The applicant agreed to produce additional plans and to make a formal submission to the assessment manager. The assessment manager agreed with the intent of the proposal.

The assessment manager has made a decision before the information and referral stages of IDAS have been completed which has prevented the applicant from exercising any appeal rights on any possible concurrence conditions.

Both parties to the appeal have agreed to the course of action.

---

**Geoff Mitchell**  
**Building and Development Committee Chair**  
**Date: 18 August 2010**

**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**