



Building and Development Dispute Resolution Committees—Decision

Sustainable Planning Act 2009

Appeal Number:	92- 10
Applicant:	Zbigniew Klej
Assessment Manager:	GMA Certification Group Pty Ltd
Concurrence Agency: (if applicable)	Gold Coast City Council
Site Address:	10 Reserve Street, Burleigh Heads and described as Lot 93 on RP28407 — the subject site

Appeal

Appeal under Section 527 of the *Sustainable Planning Act 2009* against a refusal in part of a development application for building work after the referral agency response to the application for an as-built retaining wall built closer than two metres from the Council's infrastructure.

Date of hearing:	15/03/2011
Place of hearing:	The subject site 10 Reserve Street, Burleigh Heads
Committee:	Greg Rust– Chair
Present:	Zbigniew Klej – Applicant Wendi Wyatt – Allconnex Water Brain Burrows – Allconnex Water Ray Hallgath – Allconnex Water Andrew Bentley – GMA Certification

Decision:

The Committee, in accordance with section 564 of *the Sustainable Planning Act 2009* **dismisses** the appeal due to the Committee not having jurisdiction.

Background

A retaining wall was constructed across the rear yard to cater for the land slope effectively terracing the yard. The lower level of the land furthest from the house contains a swimming pool, the upper level providing level space for recreation. The vertical height difference is supported by the retaining wall. The retaining wall is constructed closer than two metres distance from the Council sewer infrastructure.

At some point after construction the assessment manager (GMA Certification) received an application for building work which in part included the retaining wall. As the retaining wall was closer than 2 metres to the sewerage infrastructure the application was referred to the concurrence agency (Gold Coast City Council) pursuant to Section 83 of the *Building Act 1975*.

The concurrence agency responded to the application on the 9th November 2010 approving the height of a boundary fence which had also been applied for. However it did not directly address the retaining wall being closer than two metres to the sewer other than its advisory note which referred the applicant to Allconnex Water. Extended discussions throughout 2011 to date regarding the retaining wall have transpired between the applicant and Allconnex without approval or agreement being reached

As a result of the concurrence agency not providing its approval for the retaining wall, the assessment manager refused the retaining wall part of the application. This in-part refusal is the subject of the appeal under consideration.

The Committee held an onsite hearing with interested parties on 15 March 2011 to discuss the matter. During the hearing it was decided to adjourn the appeal for both the applicant and Allconnex Water to hold 'without prejudice' discussions. The Gold Coast City Council was not represented at the hearing.

After four months of discussions without resolution being reached by parties the Committee is now obligated to determine the outcome of the appeal.

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 15/12/10.
2. Verbal submissions made at hearing 15/03/2011
3. Correspondence of GMA Certification dated 16 March 2011
4. Correspondence of Allconnex water 30/03/2011
5. Correspondence of Allconnex water 14/06/2011 and attachments
6. The *Sustainable Planning Act 2009*
7. The *Building Act 1975*
8. The Building Regulation 2006
9. *SEQ Water Distribution Act 2009*

Findings of Fact

The Committee makes the following findings of fact:

The as-built retaining wall is closer than two metres to the Gold Coast City Council infrastructure

The Assessment Manager referred the development application for building work for the retaining wall to the concurrence agency as required by the *Building Act 1975*.

The concurrence agency failed in its concurrence agency functions to appropriately respond to the assessment manager's request rather they referred the applicant to Allconnex Water, whose function should have been carried out by the concurrence agency as it had received the application.

The part of the development application for building work for the retaining wall was refused by the assessment manager as the concurrence agency approval had not been given

Reasons for the Decision

The concurrence agency had an obligation to determine the application it had received. Matters regarding building over Council's sewer infrastructure are contained in Gold Coast City Council publications and therefore a process of approval is available. The Council may have an advice body or entity at its disposal and therefore can refer applications to that body itself rather than directing applicants to Allconnex or deal with them itself. Information to hand suggests Allconnex water are not a referral agency but an entity.

In any case the Act for which decisions of building over or near sewerage infrastructure, whether made by Council or Allconnex, lack an appeal provision under the Committee's standing or jurisdiction.

Greg Rust
Building and Development Committee Chair
Date: 29 July 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
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