



## Building and Development Dispute Resolution Committees—Decision

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### *Sustainable Planning Act 2009*

<b>Appeal Number:</b>	15-2011
<b>Applicant:</b>	Alexander Matthews
<b>Assessment Manger:</b>	GMA Certification Group
<b>Concurrence Agency:</b>	Gold Coast City Council (Council)
<b>Site Address:</b>	18 Lindsay Parade, Paradise Point and described as Lot 38 RP 126292 – the subject site

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### Appeal

Appeal under Section 527 of the *Sustainable Planning Act 2009* (SPA) against the decision of GMA Certification Group as the assessment manager to refuse a development application for construction of a deck and roof to the rear of the site. This decision was based on a refusal by Gold Coast City Council as the concurrence agency.

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<b>Date of hearing:</b>	Tuesday 3 May 2011 at 9.00 am
<b>Place of hearing:</b>	The subject site
<b>Committee:</b>	Greg Rust – Chair
<b>Present:</b>	Alexander Matthews – Applicant Belinda Keane– Applicant Tanya Smith – Assessment Manager (GMA Certification) Patrick Giess – Gold Coast City Council representative

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### Decision:

The Committee, in accordance with section 564 of the SPA, **sets aside** the decision of the assessment manager dated 4 February 2011 and replaces it with the following decision:-

The assessment manager, in accordance with Section 564, is **directed** to decide the development application for building works as if the concurrence agency had approved the application, with the following conditions:-

1. The roof structure over the deck shall be cutback from the canal so as to be flush with the supporting posts.
2. The elevation facing the canal shall be modified so no gable end exists rather a barge covering the side of the roof members.

3. No part of the roofed area within the 6 metre waterfront setback is to have enclosing walls; in this regard the section of wall to the southern side of the roofed area shall be removed. Note; this requirement does not apply to lightweight privacy or sun screen devices.
4. The applicant shall provide an Engineer's report confirming the structural adequacy of the work to the assessment manager.

## **Background**

The applicant lodged a development permit for building works with GMA Certification Group for as-constructed building work which the Gold Coast Council had issued an enforcement notice. The application was made in an attempt to legalise the as-constructed building work consisting of a deck and roof at the rear of the subject site. Note the boundary fence was not part of the development permit submitted to GMA Certification therefore is not part of this appeal.

The assessment manager lodged a concurrence agency application for the deck, roof and boundary fence with Council because the as-constructed work was located within the rear setback requirements (6 metres). This requires assessment against the Canal and Waterway Constraint Code under the Gold Coast Planning Scheme.

Council assessed the application for the deck and roof and boundary fence against the planning scheme and the Queensland Development Code and refused both requests on the 2 February 2011. The Council cited that:

1 "Council deem that the siting of the proposed building works would be in conflict with and not comply with Performance Criteria PC 1, 3 and 8 for the Canals and Waterways Constraint Code under Part 3 Division 3 Chapter 3 of the Gold Coast Planning Scheme 2003."

2 "Council deems that the siting of the unlawfully as-constructed building works would be in conflict with and not comply with the performance Criteria PC 2 of MP1.2 of the Queensland Development Code"

On 4 February 2011, GMA Certification Group refused the development application for building work for the deck and roof based on the referral agency's direction.

## **Material Considered**

The material considered in arriving at this decision comprises:

1. Form 10 – Notice of Appeal received by the Registrar on 17 February 2011.
2. Drawing submitted with the appeal.
3. Verbal submissions made by the parties at the appeal hearing.
4. The written submission from Council (Referral Agency response) dated 2 February 2011 refusing the request.
5. The written submission from GMA Certification Group (Assessment Manager) dated 4 February 2011 refusing the application.
6. Canals and Waterways Constraint Code - Gold Coast Planning Scheme.
7. Email and photograph submission received by Registrar 30 May from interested third party.
8. *The Sustainable Planning Act 2009 (SPA)*.
9. *The Sustainable Planning Regulation 2009 (SPR)*.
10. *The Building Act 1975*.
11. The Queensland Development Code (QDC) Part MP 1.2.

12. Observations and photos of the as-constructed work made at hearing taken from the floating pontoon at the rear of the subject site.

## **Findings of Fact**

The Committee made the following findings of fact:

1. There is a dwelling on the site.
2. The rear of the site adjoins a canal waterway.
3. The deck and roof subject of this appeal are as-constructed.
4. The as-constructed roof covering the deck is required by the planning scheme to be setback 6 metres from the high water mark (rear setback) and 1.5 metres from the side boundary by the Queensland Development Code (side setback)
5. The as-constructed deck complies with the Planning Scheme in terms of setbacks.
6. Structures within the canal and waterway setbacks have been approved by both Council and the Committee based on merit in the past.
7. The Committee was aware that interested persons wished to be heard in this appeal therefore the hearing was held in part on the public footway outside the premises to provide opportunity for representations to be made.
8. A written submission and photographs were presented by interested third parties to the appeal, which have been considered in the making of this decision.
9. The boundary fence mentioned in the concurrence agency response is not part of the development permit for building work submitted to GMA Certification and therefore is not part of this appeal.

## **Reason for the Decision**

Gold Coast City Council gave advice during the hearing that the siting of the as-constructed deck is acceptable. Therefore generally the discussion centred around the as-constructed roof in particular its setback and form in respect of the constraint code. PC1 requires that "All buildings and structures must provide for setbacks from the waterway which ensure the efficient use of the site, respond to the waterside location, and have minimal impact on adjoining properties" PC3 & 8 do not have direct relevance as these performance criteria are used for code and impact assessable applications only.

In regard to the Constraint Code PC1 the Committee finds the as-constructed work with changes in accordance with the Committees decision when made which reduce the canal setback and changes to the rear and side elevations will compliment the waterside location. The existing side boundary setback also ensures the impact on adjoining property is minimal. The structure is also required to remain open on the sides so it can be seen through to minimise its bulk.

In terms of the side setback not complying with MP1.2 of the Queensland Development Code, the Committee finds that if the roof is setback the same distance as the existing house, which appears to be 1.5 metres, it will then be compliant with the Code.

Gold Coast City Council's representative at the appeal indicated that Council were not opposed to the modifications discussed. Having regard to the provisions for consideration under both the Gold Coast Planning Scheme and the Queensland Development Code, the reasoning contained in this decision is substantiated.

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**Greg Rust**  
**Building and Development Committee Chair**  
**Date: 7 June 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 Tribunal's decision, but only on the grounds:

- (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**