



Building and Development Dispute Resolution Committees—Decision

Sustainable Planning Act 2009

Appeal Number:	03-17
Applicant:	Mark Green
Assessment Manager:	GMA Certification Pty. Ltd. – Geoffrey Mitchell
Concurrence Agency: (if applicable)	Gold Coast City Council (Council)
Site Address:	84 Leyte Ave Palm Beach, Lot 370 on RP86633 (the subject site)

Appeal

Appeal under section 527 of the *Sustainable Planning Act 2009* (SPA) against the decision of GMA Certification Pty. Ltd as the Assessment Manager to refuse a Development Application (Application) for habitable alterations to a dwelling with a finished floor level less than the prescribed 2.77m AHD. Gold Coast City Council as the Concurrence Agency directed the refusal.

Date and time of hearing:	Monday 6 March 2017, 12:30pm – 1:00pm
Place of hearing:	Meeting Rooms, Building Codes Queensland Level 16, 41 George St Brisbane
Committee:	James Dunstan – Chair John Panaretos – General Referee
Present:	Mark Green – Applicant Wayne Clark – WC Designs Martin Giles – WC Designs Geoff Mitchell – Assessment Manager Brian Gobie – Council representative Mehran Sadegh-Vaziri – Council representative

Decision:

The Building and Development Dispute Resolution Committee (Committee), in accordance with section 564 of the SPA ***Sets Aside*** the decision of the Assessment Manager on 22 December 2016 to refuse the Application for the proposed alterations/additions located below the required finished floor level of 2.77m AHD and approves the reduction to the required freeboard to 220mm, permitting a finished floor level of 2.69m AHD.

Background

The site is a 506m² lot located at 84 Leyte Avenue in Palm Beach.

The site is located within the Council flood overlay mapping and designated as flood prone land for the purposes of the Building Regulation 2006 by Council resolution

A Development Application (Application) was submitted for a building approval for construction of enclosed habitable additions at the rear of the building. As part of this application process, a Concurrence Agency referral was lodged with the Council for design and siting.

Council granted the Concurrence Agency approval with a condition that in order to comply, the minimum finished floor level was to be 2.77m AHD, which was based on the flood level of 2.47m AHD plus a minimum freeboard of 300mm.

During construction, it was determined that the finished floor level of the additions was less than the required 2.77m AHD, and had been constructed at 2.69m AHD (80mm below the required minimum freeboard).

The Applicant made an Application to the Assessment Manager requesting to amend a condition of the approval as imposed by Council and reduce the finished floor level and reduce the freeboard requirement. The Assessment Manager, upon reviewing the Council condition, issued a decision notice dated 22 December 2016 refusing the amended Application.

The Applicant then lodged an Application for appeal (form 10) with the Committee registrar on 16 January 2017. Initially, all parties agreed to have the appeal decided by written submissions.

As part of the submissions period, the Applicant was asked to provide a written assessment from an engineer addressing the performance criteria of the Queensland Development Code MP3.5 Construction of buildings in flood hazard areas (QDC MP3.5) and the referenced Australian Building Codes Board Construction of buildings in flood hazard areas standard V2012.2 (ABCB Flood Code).

After initial submissions had been made however, on 22 February 2017, the Assessment Manager requested a face to face hearing be held off site. The Committee and remaining appeal parties also agreed to a face to face hearing.

The Applicant and consultants engaged by the Applicant, Assessment Manager, and Council representatives made the following written and oral submissions:

Applicant submissions:

- The dwelling is located within an existing, well established area, with the extensions located at the rear of the building away from any frontages;
- The subject site is located near the edge of the Council mapped flood plain, and is not near any major waterways that would cause concern;
- During construction it was determined the floor level was less than the required 2.77m AHD as per the Council condition of approval;
- The as-constructed floor level of the building is 2.69m AHD providing 220mm freeboard;
- The only likely source of any wave actions would be from moving vehicles, however as the depth of flood waters is very shallow, any actions from these would be negligible and absorbed by existing fencing and surrounding structures;
- In the event existing fencing, or other building sites surrounding the subject dwelling, were to be re-developed, the impacts of any wave actions caused by moving vehicles would still be negligible;

Council submissions:

- The land is designated as flood prone by resolution of Council and is subject to a minimum freeboard of 300mm;
- Council officers have no mechanism to allow variations to the required freeboard under this resolution and as such cannot approve a variation;
- Council has no objections or issues with the assessment documentation and submissions provided by the Applicant at the hearing;

During the hearing, the Committee asked Council if they would like additional time to review and respond to the additional submissions provided. Council advised they were satisfied with the documentation and did not require further time to review and provide a response.

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 Committees Registrar on 16 January 2017
2. Decision Notice – Refusal issued by GMA Certification dated 22 December 2016
3. Plans and specifications provided by the Applicant for the extension works
4. Written submissions provided prior to the hearing from the Applicant
5. Written submissions provided prior to the hearing from the Council
6. Written engineering assessment by WC Designs reference WCD-303_L004 dated 2 March 2017 provided at the hearing
7. The *Sustainable Planning Act 2009* (SPA)
8. The Sustainable Planning Regulation 2009 (SPR)
9. The Building Regulation 2006 (BR)
10. Queensland Development Code MP3.5 – Construction of buildings in flood hazard areas (QDC MP3.5)
11. Australian Building Codes Board Construction of buildings in flood hazard areas standard V2012.2 (ABCB Flood Code)
12. Verbal representation by the Applicant at the hearing;
13. Verbal representations by Council at the hearing;

Findings of Fact

The Committee makes the following findings of fact:

1. The subject site is within an existing established area of Palm Beach in the Gold Coast area;
2. The subject site is not directly backing onto a waterway, and is surrounded by existing established dwellings;
3. A detailed review was provided by WC designs (Wayne Clark – RPEQ 16580) documenting the impacts of a Q100 flood event on the surrounding area;

4. Based on this review, it is documented that there is to be negligible effect from flood actions that would cause a localised increase in the flood level above 2.47m AHD;
5. The detailed review documented that the anticipated flow velocities are minor (0.1m/s) and would have negligible impact that would cause a localised increase of the flood level above 2.47m AHD;

Reasons for the Decision

Under the ABCB flood code, it defines freeboard as follows:

Freeboard: *the height above the defined flood level (DFL) as determined by the appropriate authority, typically used to compensate for effects such as wave action and localised hydraulic behaviour.*

The Applicant engaged the services of an RPEQ registered engineer to review the flood actions likely to be experienced at the site.

Based on the submissions provided by the parties, and the detailed review undertaken by WC designs (Wayne Clark – RPEQ 16580), the Committee is satisfied that the 220mm freeboard provided is adequate to meet the definition of freeboard required under the ABCB Flood code and satisfies the performance criteria of the Queensland Development Code MP 3.5 – Construction of buildings in flood hazard areas (QDC MP 3.5)

James Dunstan
Building and Development Committee Chair
Date: 10 March 2017

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 Housing and Public Works
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