



## Building and Development Dispute Resolution Committees—Decision

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### *Sustainable Planning Act 2009*

<b>Appeal Number:</b>	77 - 11
<b>Applicant:</b>	Mr Brett Mc Fall
<b>Assessment Manager:</b>	GMA Certification
<b>Concurrence Agency:</b> (if applicable)	Gold Coast City Council
<b>Site Address:</b>	7 Alma Street, Broadbeach Waters and described as Lot 87 on RP139722 — the subject site

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### Appeal

Appeal under section 541 of the *Sustainable Planning Act 2009* against the Decision Notice issued by GMA Certification Group to refuse a development application for building work, namely an aluminium fence. The refusal was based on advice from Gold Coast City Council as the concurrence agency, where they reasonably believed the application did not comply with Performance Criteria PC1 of the Canals and Waterways Constraint Code under Part 7, Division 3, Chapter 3 of the Gold Coast Planning Scheme 2003.

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<b>Date of hearing:</b>	28 October 2011
<b>Place of hearing:</b>	The subject site, 7 Alma Street, Broadbeach Waters.
<b>Committee:</b>	Simon Forsyth      Chair Massimo Ficca      General Referee
<b>Present:</b>	Brett Mc Fall      Owner Kate Henderson      Owner Brian Gobie      Gold Coast City Council Tanya Smith      GMA Certification David Whitaker      The CADD Company

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### Decision:

The Committee, in accordance with section 564 of the SPA, **sets aside** the decision of the Assessment Manager dated 24 August 2011, based on a Concurrence Agency refusal and replaces it with the following decision –

The Assessment Manager, in accordance with Section 564(1) of the SPA, is directed to decide the

Development Application for building works as if there were no Concurrence Agency requirements.

The subject fence may be constructed 5000mm (in two parts) along the existing block wall fence as shown on drawing no. 2522A-04 (attached).

## **Background**

The applicant lodged a Development Application with the Assessment Manager for approval of building works consisting of an aluminium frame and slat fence on top of an existing block work fence.

The Assessment Manager lodged a Concurrence Agency application with Council as these works encroached within the canal and waterway setback and required assessment against the Canal and Waterways Constraints Code.

Council refused the application on the grounds that –

1. Council deems that the siting of the proposed building works would be in conflict with and not comply with Performance Criteria PC1 for the Canals and Waterways Constraint Codes under Part 7 Division 3 Chapter 3 of the *Gold Coast Planning Scheme 2003*.

The development does not provide for setbacks from the waterway which ensures the efficient use of the site, and is considered to have a more than minimal impact on the adjoining waterside properties, and does not respond positively to the waterside location.

Council representatives at the hearing did not offer any further justification for the decision to refuse the application.

The applicant at the hearing explained in detail the reasons why the proposed extension of the existing fence has been pursued. These included security, pool fencing compliance and general amenity outcomes for the premises.

It was noted that the pool fencing compliance was not a consideration in the hearing, and that the fence in question was refused on the grounds of non-compliance with PC1 in the Canals and Waterways Constraints code.

## **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 20 September 2011.
2. Verbal submissions from those attending the appeal hearing
3. Site inspection undertaken by the Committee.
4. The *Sustainable Planning Act 2009* (SPA).
5. The *Sustainable Planning Regulation 2009* (SPR)
6. The *Gold Coast Planning Scheme 2003* – specifically the *Canals and Waterways Constraint Code*.



## **Findings of Fact**

The Committee makes the following findings of fact:

1. The proposed fence extension is to be on top of an existing approved fence structure extending into the canal setback area.
2. The proposed fence extension involves installation of an aluminium panel approx 4000mm long x 610mm high and a separate panel 1260mm long x 1160mm high as shown on Drawing No. 2522A-04 (attached).
3. The question of pool fencing compliance was not considered as part of this appeal and is a separate matter that will require Mr Mc Fall to demonstrate compliance.

## **Reasons for the Decision**

Council's refusal was based on determination that the proposed aluminium fence extension did not comply with PC1 of the Canals and Waterways Constraints Code, and that it –

*The development does not provide for setbacks from the waterway which ensures the efficient use of the site, and is considered to have a more than minimal impact on the adjoining waterside properties, and does not respond positively to the waterside location.*

The Committee considered the reasons put forward in Council's Concurrence Agency response and responds as follows –

PC 1 of the Canals and Waterways Constraints Code is intended to ensure that the waterway in question is not crowded or compromised by built form, and that there is appropriate response to adjoining land.

In their decision, Council have stated that the proposed fence extension is not an efficient use of the site and is considered to have a more than minimal impact on the adjoining waterside properties. The committee has considered the matter and directs the Assessment Manager to decide the matter as if there were no Concurrence agency requirements due to the following –

- The proposed fence is an extension of an existing approved structure already located within the setback area;
- The construction of the fence extension is from a light weight aluminium material that contrasts with the existing block wall and does not add or take away visually from the canal corridor.
- The proposed fence extension retains a stepped nature evident in many fences along the canal corridor;
- The proposed fence extension is minor in its nature and responds directly to the needs of the existing owner without causing a negative impact on the waterside location.

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**Simon Forsyth**  
**Building and Development Committee Chair**  
**Date: 15 November 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 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.

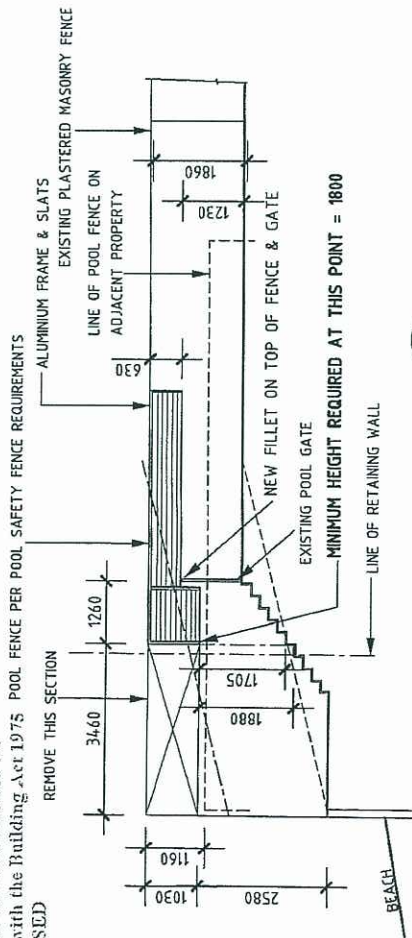
## **Enquiries**

All correspondence should be addressed to:

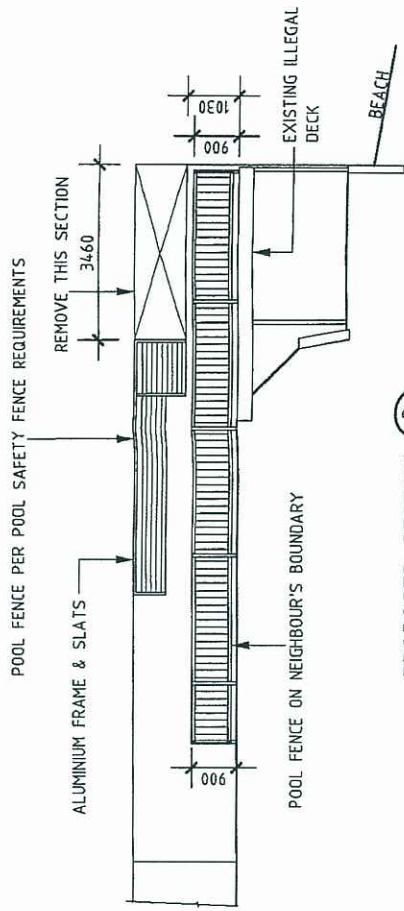
The Registrar of Building and Development Dispute Resolution Committees  
Building Codes Queensland  
Department of Local Government and Planning  
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CITY EAST QLD 4002  
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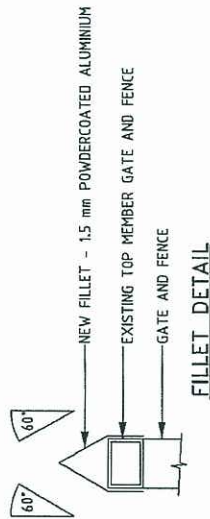
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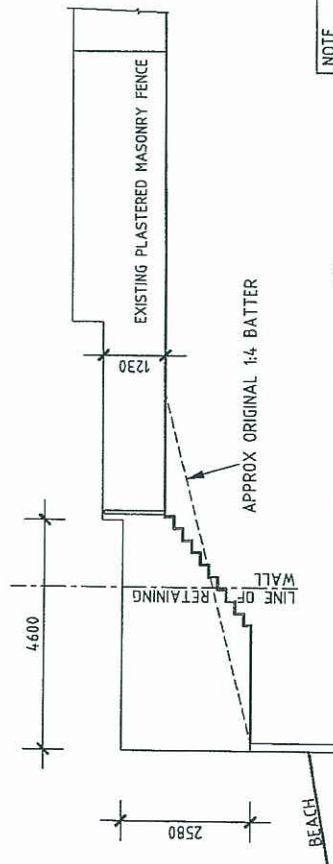
PROPOSED SECTION A 02



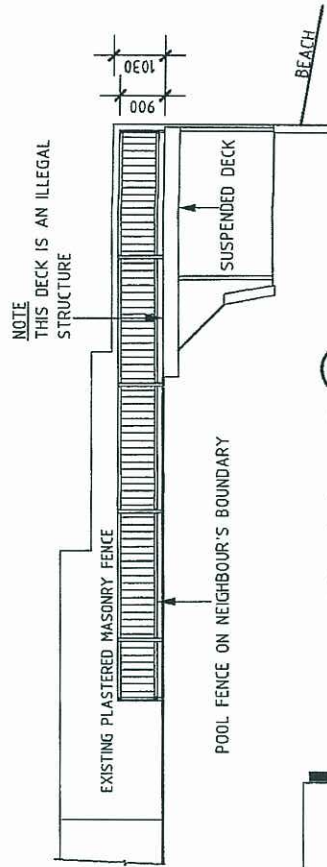
PROPOSED SECTION B 02



FILLET DETAIL



ORIGINAL SECTION A 02



ORIGINAL SECTION B 02

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 Queensland, Australia

**Mr BRETT MCFALL**  
**AS CONSTRUCTED FENCE**  
**7 ALMA STREET**  
**BROADBEACH WATERS 4218**

REVISIONS

**ORIGINAL AND  
 PROPOSED SECTIONS**

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	DWG. No.	2522A-04	