



## Building and Development Dispute Resolution Committees—Decision

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### *Sustainable Planning Act 2009*

<b>Appeal Number:</b>	<b>80-11</b>
<b>Applicant:</b>	Mariza Josefa McDonald
<b>Assessment Manager:</b>	Gold Coast City Council (Council)
<b>Concurrence Agency:</b> (if applicable)	Not Applicable
<b>Site Address:</b>	11 Yamba Street, Pacific Pines, Queensland and described as Lot 284 on SP 167602 – the subject site

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### **Appeal**

Appeal under section 533 of the *Sustainable Planning Act 2009* (SPA) against the decision of Gold Coast City Council to issue an Enforcement Notice requiring that a Development Approval for building works be obtained for the construction of an unroofed deck.

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<b>Date of hearing:</b>	10:00 am – Tuesday, 1 November 2011
<b>Place of hearing:</b>	The subject site
<b>Committee:</b>	Mr Greg Rust - Chair Mr Philip Bell – General Referee
<b>Present:</b>	Mr Stan Spyrou - Applicant's Representative Ms Anna D'Arcy - Council Mr Martin Roberts - Council Ms Mariza McDonald - Applicant Mr David English – Applicant's partner

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### **Decision:**

The Building and Development Dispute Resolution Committee (Committee), in accordance with Section 564 of the SPA, **confirms** the decision of Council to issue the Enforcement Notice dated 30 August 2011 (Ref No. PN268017/16(P1) and the Applicant is to comply only with the requirements addressed in the Enforcement Notice which require the deck to be submitted for a Development Permit by an accredited licensed building certifier by no later than 4.00pm on 8 February 2012. No other requirements of the Enforcement Notice shall have effect.

## **Background**

An unroofed deck of approximately 44 square metres has been constructed on the subject site.

Council believes the size of the deck is such that its construction constitutes assessable development and that a Development Approval for building work is required to authorise the structure..

Council's records indicate no such approvals are in place and, accordingly, an Enforcement Notice requiring a Development Approval for building works has been issued to the Applicant.

The Applicant, believes that the deck constitutes an exempt development, and is dissatisfied with Council's enforcement action and appeals the issue of the Enforcement Notice.

## **Material Considered**

The material considered in arriving at this decision comprises:

1. Form 10 – Appeal Notice and Applicant's correspondence accompanying the appeal lodged with the Registrar on 28 September 2011.
2. Council's Enforcement Notice 30 August 2011 (Ref No. PN268017/16(P1)).
3. Verbal submissions from the Applicant's representative at the hearing.
4. Written submissions from the Applicant's representative presented at the hearing.
5. Verbal submissions from Council's representatives at the hearing.
6. Written submissions from Council's representative presented at the hearing.
7. Further submissions by the parties received by email on 28 November 2011.
8. The *Sustainable Planning Act 2009* (SPA).
9. The *Building Act 1975* (BA).
10. The Building Regulation 2006 (BR).
11. The Building Code of Australia, 2011 (BCA).
12. Brisbane City Council advisory note in respect of decks, (Ref – [www.brisbane.qld.gov.au/planning-building/common-building-projects/common-improvement-projects/decks](http://www.brisbane.qld.gov.au/planning-building/common-building-projects/common-improvement-projects/decks)).
13. Department of Infrastructure and Planning correspondence of July 2009 which provided a general interpretation of the conditions when decks may be assessable.
14. Growth Management Queensland, Building Newsflash Number 453 – classifying domestic patios, verandahs, shade structures, decks and similar structures, issued 16 November 2010.

## **Findings of Fact**

The Committee makes the following findings of fact:

An isolated, freestanding unroofed deck of approximately 44m<sup>2</sup> has been constructed on the

subject site.

Council's records indicate that there is no record of a Development Approval for the unroofed deck in question.

On 2 February 2011 Council issued a Show Cause Notice to the Applicant for the carrying out of assessable development without a Development Approval in relation to the construction of the unroofed deck.

On 9 March 2011 Council received correspondence from Redcall Development Services, represented by Mr Spyrou, a private certifier, addressing the Show Cause Notice, on behalf of the Applicant and advising the matters would be addressed in four to six weeks.

On 9 May 2011, Mr Spyrou of Redcall Development Services wrote to Council advising that in his opinion the Show Cause Notice was invalid as the deck was not classified as prescribed works within the meaning of the BA and the SPA. The letter further offered to discuss this with Council officers in the spirit of agreeing to a resolution of the matter.

On 2 June 2011, Council wrote to Mr Spyrou advising they had read his correspondence of 9 May 2011, but pointed out Council's interpretation of Schedule 1 section 13(2) of the BR that the deck was a class 10 structure greater than 10 square metres and longer than 5 metres and as such would need a Development Permit.

On 18 July 2011, Council wrote to the Applicant advising they had not received a Development Application and requested the Applicant contact Council to provide an update on the progress. The correspondence advised the Applicant that failure to contact Council within 7 days would result in further enforcement action being taken.

On 30 August 2011, Council dissatisfied with the response to the Show Cause Notice and following periodic discussions with the Applicant and her representatives, issued an Enforcement Notice (Ref No. PN268017/16(P1) requiring the Applicant to:

1. Refrain from committing the offence by obtaining a Development Permit for the deck that is greater than 10m<sup>2</sup>; or
2. Remove the deck that is greater than 10m<sup>2</sup> if it is not possible or practical to make it comply with a Development Permit.
3. The Applicant was required to comply by 28 September 2011.

In response to the Enforcement Notice and in support of this appeal, the Applicant, on the advice of Mr Spyrou contends that the unroofed deck constitutes exempt development and therefore does not require a Development Approval for building work and that the deck is "garden furniture" and falls within the scope of Schedule 2(1) of the BR, which provides garden furniture as an example of exempt development.

To support this claim, Mr Spyrou made the following observations about the deck:

1. It could reasonable be classified as a Class 10b structure being a fence, mast, antenna, retaining or free-standing wall, swimming pool, or the like;
2. It is a free standing structure with no physical connection to the dwelling;
3. It is located within the garden.

Additionally, Mr Spyrou cites the deck's similarity to concrete or paved areas which could have been formed and constructed in the same position without the need for a Development Approval for Building Works.

The key terms "deck" and "garden furniture" are not defined in the SPA, BA, BR or the BCA. In

the absence of specific definitions, these key terms are taken in the context of their common use or meaning and to this end the Macquarie Dictionary provides the following definitions:

*Deck – an unenclosed, elevated platform or verandah, usually of wood.*

*Garden – a piece of ground, or other space, commonly with ornamental plants, trees, etc., used as a place of recreation;*

*Furniture – the movable articles, as tables, chairs, beds, desks, cabinets, etc., required for use or ornament in a house, office, or the like.*

Section 5 of the BA provides that the Applicant's proposal constitutes Building Work by definition.

Section 20 of the BA provides that all Building Work is assessable development, unless it constitutes self-assessable or exempt development.

Section 238 of SPA provides that a Development Permit is necessary for all assessable development.

Schedule 1 of the BR defines work that may be considered self-assessable building work for the purposes of the BA. This definition provides that decks may be considered self-assessable where they are less than 10 square metres in plan area, less than 1 metre above ground level and where no one side exceeds 5 metre in length.

Schedule 2 of the BR defines work that may be considered exempt building work for the purposes of the SPA. This definition includes Class 10b and special structures such as playground and sporting equipment, garden furniture, temporary market stalls, minor plant and equipment covers that are no more than 3 metre above their natural ground surface, sunhoods, tents and certain class 10 buildings and structures on land used for agricultural, floricultural, horticultural or pastoral purposes.

### **Reasons for the Decision**

The Committee, having considered both the definitions provided by the Macquarie Dictionary and Schedule 2 of the BR, is satisfied that the structure, while located within a garden area, is not consistent with the definition of furniture. Nor is it consistent with any other element contained within Schedule 2 to constitute exempt development.

The Committee, having considered both the definitions provided by the Macquarie Dictionary and Schedule 1 of the BR, is satisfied that the structure is a deck. However, the structure does not constitute self-assessable building work because it is both greater than 10 square metre in area and exceeds 5m in length on at least one side.

The Committee is satisfied that the deck constitutes assessable building work in accordance with Section 20 of the BA and that a Development Approval for Building Works is required as per Section 238 of the SPA.

While the Committee acknowledges the similarities between the deck and a concrete or paved area used for comparable purposes, the legislation does not include a specific reference to such alternatives. Thus, any commentary as to the apparent inconsistency would be speculative.

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**Greg Rust**  
**Building and Development Committee Chair**  
**Date: 11 January 2012**

### **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  
PO Box 15009  
CITY EAST QLD 4002  
**Telephone (07) 3237 0403 Facsimile (07) 3237 1248**