



APPEAL
Integrated Planning Act 1997

File No. 3/07/053

BUILDING AND DEVELOPMENT TRIBUNAL – DECISION
BY CONSENT OF THE PARTIES

Assessment Manager: Gold Coast City Council
Site Address: *withheld*–“the subject site”
Appellant: *withheld*

Nature of Appeal:

Appeal under Section 4.2.9 of the *Integrated Planning Act 1997* against the decision of the Gold Coast City Council to refuse a Development Application for Preliminary Approval for Building Works, namely a roofed suspended deck on ‘the subject site’.

Date and Place of Hearing: The appeal was conducted by way of written submissions.

Tribunal: Mr Paul R Smith – Chairperson

Decision:

The Tribunal **sets aside** the decision of the Gold Coast City Council, dated 20 August 2007 to refuse a Development Application for Preliminary Approval for Building Works, and with the consent of the parties approves the application subject to:

- a. obtaining all necessary approvals, including a development permit to carry out building work; and
- b. compliance with conditions 1 to 15 as referred to in the letter from Gold Coast City Council, dated 22 November 2007 (including the plans titled Job No 07 45 with amendments marked in red and referred to in condition No 1). A copy of the letter from Gold Coast City Council, dated 22 November 2007 and the plans referred to therein are attached to this decision.

Material Considered

The material considered in arriving at this decision include:

1. ‘Form 10 - Notice of Appeal’ lodged with the Registrar on 18 September 2007 and supporting information and documentation;

2. Decision Notice from Gold Coast City Council, dated 20 August 2007, refusing the Development Application;
3. Photographs of the subject site and surrounding properties;
4. Letters from Gold Coast City Council and supporting plans, dated 29 October 2007 & 22 November 2007;
5. Emails from Applicant, dated 1 November 2007 and 5 December 2007;
6. Gold Coast City Council Planning Scheme; and
7. The *Integrated Planning Act 1997*.

Background and Reasons for decision

The subject site is a roughly triangular residential parcel of land with a direct frontage to a canal on which there is an existing residence.

The Appellant first obtained a preliminary approval from the Council in November 2003 for the erection of a roofed deck overlooking the canal and has since then been progressively building the structure.

During the course of the construction changes were made to the size of the deck bringing it closer to the canal than originally approved on 2003. A lower level timber walkway was also commenced.

In response to Council issuing an Enforcement Notice requiring the demolition of the work, the applicant sought a preliminary approval from Council to erect the deck and lower walkway generally as constructed. Council refused to give that approval. The Appellant then filed this appeal.

Following the filing of the appeal, the parties have met, on a without prejudice basis, to seek to resolve the matter without the need for a hearing of the appeal.

That meeting resulted in the compromise, acceptable to both parties, that was expressed in writing in the letter from the Council dated 22 November 2007 and the plans that were attached to that letter.

I complement the parties for their helpful approach to this matter and have decided the appeal as agreed to by them.

Paul Smith
Building and Development Tribunal Chairperson
Date: 17 December 2007

Appeal Rights

Section 4.1.37. of the *Integrated Planning Act 1997* provides that a party to a proceeding decided by a Tribunal may appeal to the Planning and Environment Court against the Tribunal's decision, but only on the ground:

- (a) of error or mistake in law on the part of the Tribunal or
- (b) that the Tribunal 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 Tribunal's decision is given to the party.

Enquiries

All correspondence should be addressed to:

The Registrar of Building and Development Tribunals
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