

**APPEAL**  
*Integrated Planning Act 1997***BUILDING AND DEVELOPMENT TRIBUNAL - DECISION****Assessment Manager:** Queensland Building Approvals**Concurrency Agency:** Gold Coast City Council**Site Address:** *withheld* – “the subject site”**Applicant:** *withheld***Nature of Appeal**

Appeal under Section 4.2.9 of the *Integrated Planning Act 1997* against the deemed refusal by the Gold Coast City Council (as a concurrence agency) of a Development Application for Preliminary Approval for Building Works – siting provisions for relaxation of the waterfront setback for a dwelling house on “the subject site”.

**Date and Place of Hearing:** 1:30 pm on Tuesday 15<sup>th</sup> January 2008  
at “the subject site”**Tribunal:** Mr Chris Schomburgk – Chairperson**Present:** Builder for the applicant;  
Engineer for the applicant  
Applicant’s representative  
Designer for the applicant  
Mr Darren Wright – Certifier (Queensland Building Approvals)Mr Andrew Powell – Gold Coast City Council  
Mr Bob Clowes – Gold Coast City Council (Building)  
Mr Dale Schroeder – Gold Coast City Council (Planning)  
Mr Brian Gobie – Gold Coast City Council (Building)  
Mr Martin Roberts – Gold Coast City Council – Compliance  
Ms Susie Douglas – Gold Coast City Council – Councillor**Decision:**

The deemed refusal appeal against the concurrence agency response by the Gold Coast City Council of a development application for Preliminary Approval for siting variation for a dwelling house on “the subject site” is **dismissed**.

## Material Considered

The material considered in arriving at this decision comprises:

- The application, including “Form 10 – Notice of Appeal”, supporting plans and documentation;
- Plans and documents provided on behalf of both the applicant and the Council at the hearing;
- The relevant provisions of the Town Planning Scheme for Gold Coast City Council;
- Part 12 of the Queensland Development Code Part 12 (QDC);
- The *Integrated Planning Act 1997*; and
- The *Integrated Planning Regulation 1998*.

## Findings of Fact

I make the following findings of fact:

- The site has water frontage to a canal, the setback to which is the subject of this appeal.
- The subject application seeks approval for relaxation of the waterfront setback for parts of the proposed dwelling house – namely a cantilevered deck and a small part of the dwelling house proper.
- The application arises from a Show Cause Notice and Enforcement Notice process by the Council with respect to the cantilevered deck. The subject application was lodged on 20<sup>th</sup> September 2007. That application included a request for relaxation of the road setback and the waterfront setback (see part 2 of the Application Form). The Council, as a Concurrence Agency, responded by letter dated 10<sup>th</sup> October 2007, in which it approved the plans and made specific reference in its response to only the portico. The plans, which were stamped as approved, clearly show the proposed waterfront setback as sought.
- Whether it can be properly construed as approving the waterfront setback is a matter for a separate appeal (see Appeal 03-07-085). This appeal is against a “deemed refusal” by the concurrence agency. This appeal was received by the Registrar of the Building and Development Tribunal on 19<sup>th</sup> December, 2007. The Integrated Planning Act 1997 (“IPA”) provides that an appeal must be instituted within 20 business days of the decision/response which is the subject of the appeal. This appeal was clearly filed well outside of that time frame.
- In any event, this appeal is against a deemed refusal, which suggest that the concurrence agency did not decide the application within the statutory time frame. In this case, the Council did decide the application, and it was done within the statutory time frame.

Based on an assessment of these facts, it is the Tribunal’s decision that **the appeal is dismissed.**

### **Reasons for the Decision**

- The appeal was filed outside of the statutory time frame within which an appeal must be lodged.
- The appeal is against a deemed refusal, whereas the Council did provide a concurrence agency response within the statutory time frame. The substance of that concurrence agency response is the subject of a separate appeal.
- For these reasons, it is the opinion of the Tribunal that the appeal is invalid and must be dismissed.

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**Chris Schomburgk**  
**Building and Development Tribunal Chairperson**  
**Date: 23<sup>rd</sup> January 2008**

## **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  
Building Codes Queensland  
Department of Infrastructure and Planning  
PO Box 15031  
CITY EAST QLD 4002  
**Telephone (07) 3237 0403 Facsimile (07) 32371248**