



Building and Development Tribunals – Decision

Integrated Planning Act 1997

Appeal Number:	3–08–055
Applicant:	<i>Withdrawn</i>
Assessment Manager:	Sunshine Coast Regional Council
Concurrence Agency:	n/a
Site Address:	<i>Withdrawn</i> – the subject site

Appeal

Appeal under section 4.2.9 of the *Integrated Planning Act 1997* (IPA) against the decision of the Assessment Manager issued 22 July 2008.

Date of hearing:	9.30am – Friday, 22 August 2008
Place of hearing:	The Riverside Room at the offices of Sunshine Coast Regional Council
Tribunal:	Mr Paul Smith - Chair
Present:	Mr Shane Adamson – Ken Hicks & Associates' representative Mr Liam Pinese – Ken Hicks & Associates' representative Ms Zara McFadzean – Sunshine Coast Regional Council representative Ms Nicole Joyce – Sunshine Coast Regional Council representative Mr Marc Cornell – Sunshine Coast Regional Council representative Mr Sam Cunningham – Sunshine Coast Regional Council representative

Decision:

The Tribunal **dismisses** the appeal as it does not have jurisdiction to hear the matter.

Background

Ken Hicks and Associates acting as agents for the Applicant lodged an appeal with the Registrar on 15 August 2008.

The development application, the subject of the appeal, is an application for a Material Change of Use of premises.

Material Considered

The material considered in arriving at this decision comprises:

1. 'Form 10 – Notice of Appeal' received by the Registrar on 15 August 2008 including grounds for appeal and correspondence accompanying the appeal application.
2. Copies of plans showing details of the proposed development.
3. Development Application Decision Notice from the Assessment Manager dated 22 July 2008.
4. Verbal submission from the Applicant's representatives at the hearing.
5. Council's verbal submission at the hearing.
6. The *Integrated Planning Act 1997*.
7. The Integrated Planning Regulation 1998.
8. Council's planning scheme.

Findings of Fact

The Tribunal makes the following findings of fact:

- The Assessment Manager provided a copy of the incorrect appeal provisions on the decision notice advising the applicant to lodge an appeal with the Building and Development Tribunals. The correct advice would have been to lodge an appeal with the Planning and Environment Court.

Reasons for the Decision

The application made to the council was for:

- a Material Change of Use of premises
- preliminary approval for building work

for a single detached dwelling. The only right of appeal is to the Planning and Environment Court.

The issues in dispute in this appeal relates only to the application for Material Change of Use of premises.

The jurisdiction of the Tribunal, provided for in s. 4.2.7 of the IPA, does not include jurisdiction to decide this matter.

Paul Smith
Building and Development Tribunal Chair
Date: 25 August 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
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