



Development Tribunal – Decision Notice

Planning Act 2016

Appeal Number:	21-008
Appellant:	Body Corporate for 31 Oakwal Terrace CTS 52499
Respondent (Enforcement Authority):	Brisbane City Council
Site Address:	31 Oakwal Terrace, Windsor, in the State of Queensland, and described as Lot 0 on SP306897 (Premises)

Appeal

An appeal made pursuant to section 229(1) and Item 6 of Table 1 of Schedule 1 of the *Planning Act 2016* (the **Act**) against the decision of the Respondent to give an enforcement notice under section 168(1) of the Act dated 28 January 2021 (**Enforcement Notice**) requiring compliance with conditions of a development approval given for the Premises, comprising development permit for a material change of use for multiple dwelling, a development permit for carrying out building work for a multiple dwelling, and a preliminary approval for carrying out building work for a dual occupancy and demolition, dated 8 February 2019 (**Approval**).

Date and time of hearing:

Place of hearing: Not applicable – appeal decided on submissions

Tribunal: Victor Feros – Chair
Danielle Sibenaler – Member
Julie Brook – Member

Submissions provided by: Peter Grigg – Appellant
Morgan Pratt - Council representative

Decision:

The Development Tribunal (**Tribunal**) has decided that it has no jurisdiction to hear the proceedings due to the failure of the Appellant to obtain a special resolution pursuant to section 312(1) of the *Body Corporate and Community Management Act 1997* which authorises the start of the proceeding. The Appeal is dismissed.

Background

1. A development application was lodged on or about 8 February 2016 in respect of the Premises seeking a development permit for a material change of use for multiple dwelling, a development permit for carrying out building work for a multiple dwelling, and a preliminary approval for carrying out building work for a dual occupancy and demolition (the **Application**).

2. This Application was approved on or about 13 September 2016. A change application was subsequently lodged on or about 4 October 2018 pursuant to section 81 of the Act. The decision made by the Respondent as the responsible entity for the change application gave rise to the Approval.
3. The Premises has since been developed reliant upon the Approval. The Appellant is the Body Corporate for the Premises, which accommodates a two-storey multiple dwelling in the form of a pre-1946 dwelling which has been converted into two townhouse units at the front of the Premises, and three townhouse units located to the rear.
4. Amongst other things, the Enforcement Notice states that the Respondent had received a complaint regarding first floor balcony screening and ground floor deep planting areas of townhouse units 3 and 4 located at the rear of the Premises, which was alleged to have contravened conditions 21(b), 21(c) and 22(d) of the Approval.
5. Subsequent to an inspection of the Premises being undertaken by representatives of the Respondent, a show cause notice was issued to the Appellant on or about 22 October 2020. Written representations were made on behalf of the Appellant on or about 10 December 2020 in response to the matters raised therein.
6. Upon consideration of the written representations and a further inspection of the Premises by representatives of the Respondent, the Enforcement Notice was issued.
7. The Enforcement Notice states that Townhouse 3 and Townhouse 4 within the Premises do not comply with conditions 21(b), 21(c) and 22(d) of the Approval, in contravention of section 164 of the Act – Compliance with a development approval.
8. In response to the Enforcement Notice, Mr Peter Grigg commenced the current proceeding on behalf of the Appellant.

Matters occurring subsequent to the appeal being filed

9. At the request of the Tribunal, under cover of email to Mr Grigg dated 31 May 2021, the Registrar raised the following questions:
 - (a) has the Body Corporate for 31 Oakwal Terrace Community Titles Scheme 52499 formally resolved to commence the Appeal, and if so could you please provide evidence of the resolution in confirmation; and
 - (b) are you authorised to represent the Body Corporate in the proceedings, and if so, could you please provide a copy of the relevant authorisation (or other suitable evidence).
10. Although not directly relevant to the questions put to Mr Grigg by the Tribunal, under cover of email correspondence dated 1 June 2021, Mr Pratt, the representative on behalf of the Respondent, advised as follows:

'Since being notified of the appeal and reasons for the appeal, I have sort (sic) advice internally about the conditions within the Development Approval (A005035006) specifically around the screen requirements.

The advice I've received indicates screening would not be required for the rear unit in question and therefore condition 21 of Development Approval (A005035006) is compliant.

This therefore means the outstanding requirement for the Enforcement Notice (CA137050) is condition 22(d) Maintain Landscaping Work, which I understand is not being disputed.

I would like to invite the Development Tribunal to consider the above and request the Development Tribunal consider varying the Enforcement Notice (CA137050) to reflect the outstanding landscaping requirement.'

11. A copy of the email from Mr Pratt was provided by the Registry to Mr Grigg on the same date. On 1 June 2021, Mr Grigg sent an email to the Registry as follows:

"...thank you for the update - would I be correct in assuming that if the Tribunal accepts the request from Council that the Tribunal process effectively ceases?"

For your information we have complied with condition 22(d) subject to confirmation with BCC."

12. By email to the Registrar dated 14 June 2021, Ms Judith Akins of Body Corporate Management Queensland provided a copy of the minutes arising from 'voting held outside committee meeting' which was held electronically on 31 May 2021. Relevantly, the motion that was identified in the minutes as having been passed by the committee was as follows: *That the Body Corporate is authorised to participate in the proposed Tribunal meeting (details below) and that Peter Grigg and Judith Akins are authorised to act jointly on behalf of and represent the Body Corporate and are authorised to make decisions on behalf of the Body Corporate.*

13. At the request of the Tribunal, by email dated 24 June 2021, the Registrar contacted the parties and stated as follows:

'The Tribunal has requested the Registry to communicate the following to the parties.

- 1. The Tribunal is considering whether it has jurisdiction to hear this appeal, given that the Appellant body corporate seemingly did not pass a special resolution authorising the commencement of this appeal until after the appeal was commenced (in apparent contravention of section 312(1) of the Body Corporate and Community Management Act 1997).*
- 2. Accordingly, the Tribunal hereby vacates the proposed hearing that was scheduled for Monday 28 June 2021.*
- 3. The Tribunal invites a written submission (maximum 3 pages) from each party regarding the jurisdiction issue. The Appellant's written submission is requested by 5pm on 1 July 2021 and the Respondent's (Council's) submission is requested by 5pm on 8 July 2021.*
- 4. The Tribunal is aware that section 312(1) of the Body Corporate and Community Management Act 1997 was considered in the case of Body Corporate for Aleutian at Seaforth & Ors v The Lot Owners for Each of the Applicant Bodies Corporate & Ors [2009] QDC 52 and cases cited therein.'*

14. Under cover of email correspondence dated 1 July 2021, Mr Grigg provided the following submissions on behalf of the Appellant:

'31 Oakwal Terrace, Windsor (Community Titles Scheme 52499) is a small complex consisting of 5 townhouses which are predominantly owner-occupied. We have in place an administration agreement with Body Corporate Management Queensland which only covers co-ordinating AGMs, collection of levies and the routine management of body corporate matters, it does not cover complex advice on all matters related to the Body Corporate and Community Management Act 1997 nor cover other matters such as the Planning Act 2016.

There is no information available online for the Development Tribunal appeals process, on Form 10 - Notice of appeal (including the attached guidance for completing that form) or in the Body Corporate or Planning Acts that applying for an appeal to the Development Tribunal constitutes a 'proceeding' under the Body Corporate and Community Management Act. Most references within the Body Corporate and Community Management Act to proceeding are in relation to either QCAT or to a Court eg Magistrates. All references to the word Tribunal appear to be related to QCAT – the Queensland Civil and Administrative Tribunal.

Given that hearings by the Tribunal are conducted in an informal manner and that parties cant be represented by a lawyer it seems unreasonable for a lay person to be able to ascertain that Appealing under Section 229 of the Planning Act, requires a special resolution to be made by the body corporate under Section 312 of the Body Corporate and Community Management Act prior to lodging the appeal.

*A special resolution would have needed to be considered at a general meeting – our annual general meeting (AGM) was due to be held in May 2021. To consider a special resolution before the AGM an extraordinary general meeting (EGM) would need to be called – as per the following: **Calling an extraordinary general meeting** <https://www.qld.gov.au/law/housing-and-neighbours/bodycorporate/committeesmeetings/general-meetings/extraordinary/calling>*

Giving lot owners notice

- *each lot owner has to be given written notice of an extraordinary general meeting at least 21 days before the meeting.*

The enforcement notice received from Brisbane City Council included that an appeal must be started within 20 business days after the notice had been served. Due to the limited time to lodge the appeal (20 days) it would not have been possible to convene an extraordinary general meeting given that the notice period to convene an EGM (21 days) exceeded the time available to lodge the appeal.

Furthermore I contacted the Registrar by phone to discuss the enforcement notice, the appeal process, my role on the body corporate committee and the cost to lodge the appeal. During that conversation I specifically enquired as to whether I could lodge the appeal on behalf of the body corporate as I am one of the 2 lot owners directly impacted by the enforcement notice and also a member of the Body Corporate Committee (Secretary). At no point in that conversation was there any mention of requiring a special resolution from the body corporate authorising me to submit the appeal on behalf of the body corporate. My understanding after that discussion was the process was to submit Form 10 with the required information (enforcement notice, grounds for appeal etc), pay the appeal fee and preferably submit a couple of days earlier than the 20 days timeframe to allow time for Registrar staff to check all the required information was provided to ensure the application was validly lodged. It would appear that if a special resolution authorising the commencement of this appeal was a requirement to ensure that application was lodged validly then this should have been checked when the application form was received by the Registrar.

As per Appeal process and hearings (<https://www.qld.gov.au/housing/building-home/buildingcomplaints/appealing-development-tribunals/appeal-process-and-hearings>): When the Registrar of the Development Tribunals receives an application for an appeal or declaration, they decide whether the application has been lodged correctly. The Registrar then:

1. *gives the appeal parties written notice of the appeal or declaration, including a copy of the application and related documents*

The Registrar accepted the application as being correctly lodged as on 24 February 2021 the Registrar advised all parties of the appeal as per the above process.

A summary of my conversation with the Registrar was provided to the other members of the Body Corporate prior to submission of the application form with the Registrar, as per the attached email. As part of that email I clearly showed my intent to appeal the enforcement notice on behalf of the Body Corporate, provided copies of all of the relevant material that was to be submitted as part of the appeal and whether there were any objections from the other lot owners to me submitting on behalf of the Body Corporate.

Whilst my communication with the other lot owners may not have taken the exact format required of a special resolution, in my lay person's opinion it covered most of the elements:

- Conveyed the intent for myself to lodge an appeal on behalf of the body corporate*
- Received responses from other members of the body corporate - owners of unit 1 (attached-15 Feb) and 3 (15 Feb) prior to submission, unit 2 (20 Feb) post submission with no dissenting votes*
- which meets the threshold for voting on special resolutions of:
 - o at least two-thirds of the votes cast are in favour of the motion; and*
 - o that the number of votes against the motion are not more than 25% of the number of lots in the scheme**
- response of owners prior to submission of the appeal was as per the subsequent response to the VOC (Vote outside a committee meeting) whereby all owners confirmed that the committee could lodge the appeal and that myself and Judith were authorised to act jointly on behalf of the Body Corporate.*

Had we been made aware of the requirement to approve a special resolution and been able to deal with the problems around not having sufficient time to convene an EGM prior to submission of the appeal and considering the responses are the same to both my email communication prior to submission and the subsequent VOC I am of the opinion that the outcome of the special resolution would have approved the appeal to proceed and for myself and Judith to be authorised to act on behalf of the Body Corporate.

Based on my lay person's understanding of the Body Corporate and Community Management Act 1997 and information I had knowledge of at the time of the application I believe I have met my statutory obligations to act 'reasonably' as per S94 of the Act.

Putting aside the jurisdiction matter my understanding is that Brisbane City Council has since advised the Development Tribunal on 1 June 2021 that screening is not required and requested the Development Tribunal consider varying the Enforcement Notice. This effectively removes the condition of the enforcement notice subject to our appeal and it appears that the appeal does not need to proceed and the appeal could be finalised. This doesn't necessarily deal with the jurisdictional matter, but could bring this particular appeal to a conclusion.

The Registrar would still need to give consideration as to how any future appeals by a Body Corporate to an enforcement notice under the Planning Act 2016 could be submitted to the Development Tribunal when it appears that the objection period (20 days) does not allow sufficient time for obligations to be met to convene an EGM (21 days).'

15. Under cover of email correspondence dated 8 July 2021, Mr Pratt provided the following submissions on behalf of the Respondent:

Summary

- 1 The Development Tribunal of Queensland (**the Tribunal**) has conducted a preliminary review of the appeal and requested that the parties provide submissions as to the jurisdiction of the Tribunal to decide the appeal.*
- 2 The Tribunal can take the following submissions filed on behalf of the Respondent to be in accordance with Direction [3].*

Background

- 3 This matter relates to the common property situated at 31 Oakwal Terrace, Windsor OLD 4030; more particularly described as Lot 0 on SP 306897 in the Parish of Enoggera (the **premises**).
- 4 On 29 April 2021, Brisbane City Council (**Council**) issued to the Body Corporate for 31 Oakwal Terrace, Community Titles Scheme 52499, an enforcement notice pursuant to section 168 of the Planning Act 2016 (Old), in respect of the following alleged development offence: a section 164—contravention of a development approval.
- 5 On 16 February 2021, an appeal of the enforcement notice was filed in the Registry of the Tribunal.
- 6 On 1 July 2021, the Tribunal wrote to the parties requiring submissions in respect of the Tribunal's jurisdiction to hear and determine the matter citing potential non-compliance with the Body Corporate and Community Management Act /977 (Old) (**BCCM Act**).

Jurisdiction

- 7 Section 168(1) of the Planning Act 2016 (**Old**) (**the Act**) provides if Council believes a person has committed, or is committing a development offence, they may issue an enforcement notice to the person.
- 8 Section 229 of the Act enables matters to be appealed, including an enforcement notice, to the Planning and Environment Court and, for certain matters, the Tribunal.
- 9 Schedule 1 of the Act guides the proper jurisdiction for such appeals.
- 10 The Tribunal is only able to hear and determine an appeal against a decision to give an enforcement notice if the subject matter falls within any of the prescribed categories outlined in Schedule 1, section 1(2)(a)-(g) of the Act.'
- 11 The matter falls within Schedule 1, section 1(2)(d) as the development approval given by Council was for a material change of use for a multiple dwelling (Class 2 building) that is no more than three storeys and is for not more than 60 sole-occupancy units.
- 12 The Tribunal does have jurisdiction to hear and determine the appeal in accordance with Schedule 1 of the Act.

Have proceedings been lawfully commenced under the BCCM Act?

- 13 Section 312 of the BCCM Act provides:
- "(1) The body corporate for a community titles scheme may start a proceeding **only if the proceeding is authorised by...special resolution of the body corporate...**". (emphasis added)
- 14 This proceeding is not a prescribed proceeding under the BCCM.
- 15 Section 106 of the BCCM provides:

"...

- (2) *One vote only may be exercised for each lot included in the scheme, whether personally, by proxy or in writing.*
- (3) *The motion is passed by special resolution only*
- (a) *for a meeting notice of which is given—*
- (i) ---
- (ii) *after the commencement of this subparagraph---at least two-thirds of the votes cast are in favour of the motion; and*
- (b) *the number of votes counted against the motion are not more than 25% of the number of lots included in the scheme; and*
- (c) *the total of the contribution schedule lot entitlements for the lots for which are countered against the motion is not more than 25% of the total of the contribution schedule lot entitlements for all lots included in the scheme.*
- 16 *At present, and on the material filed on behalf of the Appellant, the proceeding before the court has not been formally authorised by a special resolution.'*
- 17 *Putting aside the above, Mr Peter Grigg on behalf of the Appellant advances the following:*
- a *on 15 February 2021, communicated via email to the other members of the body corporate, an intention to file a notice of appeal in the Tribunal to the enforcement notice;*
- b *on 15 February 2021, obtained consent from at least another member of the Body Corporate (Mr Michael Mitchell);*
- c *on 15 February 2021 and 20 February 2021, although having not seen any formal evidence, purportedly obtained the consent from another two members of the Body Corporate;*
- d *although having not seen any formal evidence, purportedly did not receive any dissenting votes to the proposed appeal action;*
- e *the above would meet the threshold for a special resolution vote in accordance with the BCCM; and*
- f *ultimately, that, all owners confirmed the committee could lodge an appeal notice and Mr Grigg was authorised to act jointly on behalf of the Body Corporate.*
- 18 *The case of the Body Corporate for Aleutican at Seaforth & Ors v The Lot Owner for Each of the Applicant Bodies Corporate & Ors [2009] QDC 52 (**Seaforth**) cited a number of authorities between paragraphs [40]-[47] confirming that a proceeding not authorised by a special resolution, **may be ratified by a special resolution at a later time**, but before the matter comes on for hearing thus authorising the proceeding.*
- 19 *In Seaforth, the court decided on balance it was appropriate to grant an adjournment to allow the applicant to cure the defect and hold a special resolution to obtain authorisation to commence the proceeding.'*

20 *Currently, the Appellant has not complied with the requirement posed by section 312 of the BCCM. The Tribunal does not have jurisdiction to hear and decide the matter as the Appellant has not lawfully commenced a proceeding in accordance with the BCCM.*

21 *Despite the current status of the matter, in line with Seaforth and the authorities cases cited therein, the Respondent does not oppose a reasonable adjournment to allow the Appellant an opportunity to cure the defect. However, this is a discretionary matter for the Tribunal to consider.*

Conclusion

22 *If an adjournment is allowed for a special resolution to be held and the conduct of Mr Grigg on behalf of the Appellant **is ratified**, Council refers to its correspondence to the Tribunal, dated 1 June 2021. Council acknowledges the Appellant is now compliant with condition 21 of the development approval. Council only seeks the enforcement notice be amended to coerce compliance with condition 22(d) of the development approval, that is, to maintain landscape work at the premises, which is not disputed by the Appellant.*

23 *If a further adjournment of the matter is not permitted or a special resolution is held and the conduct of Mr Grigg on behalf of the Appellant **is not ratified**, the Tribunal should dismiss the appeal on the basis it has no jurisdiction to hear and determine the appeal as the proceeding was not lawfully commenced.'*

16. There has been no further correspondence from the parties subsequent to the submissions that were received.

Material Considered

17. The material considered in arriving at this decision comprises:

- (a) 'Form 10 – Appeal Notice', grounds for appeal and correspondence accompanying the appeal lodged with the Tribunals Registrar on or about 16 February 2021, incorporating the Enforcement Notice and the Approval.
- (b) Email correspondence sent on behalf of the Tribunal to Mr Grigg dated 31 May 2021.
- (c) Correspondence sent by Mr Pratt on behalf of the Respondent dated 1 June 2021.
- (d) Email correspondence sent by Ms Judith Akins dated 14 June 2021.
- (e) Email correspondence sent on behalf of the Tribunal to the parties dated 24 June 2021.
- (f) Written submissions prepared by Mr Grigg on behalf of the Appellant, dated 1 July 2021 and attachments.
- (g) Written submissions prepared by Mr Pratt on behalf of the Respondent, dated 8 July 2021.
- (h) *Body Corporate and Community Management Act 1997 (BCCMA)*
- (i) The Act.

Findings of Fact

The Tribunal makes the following findings of fact:

18. Section 229(1) of the Act confirms that Schedule 1 states the matters that may be appealed to a tribunal.¹
19. Reference to section 1(1) of Schedule 1 of the Act confirms that Table 1 states the matters that may be appealed to a tribunal. However, Table 1 only applies to a tribunal if the matter involves a decision to give an enforcement notice in relation to a matter under paragraphs (a) to (g).²
20. Relevantly, Schedule 1 Table 1 Section 1(2)(d) refers to a matter involving a development condition if:
 - (i) the development approval is only for a material change of use that involves the use of a building classified under the Building Code as a class 2 building; and
 - (ii) the building is, or is proposed to be, not more than 3 storeys; and
 - (iii) the proposed development is for not more than 60 sole-occupancy units.
21. The proceeding was correctly commenced in the Tribunal. It is not a matter that must have been commenced in the Planning and Environment Court pursuant to Table 1 or Table 2 of Schedule 1 of the Act.
22. Given that the appeal is about the giving of an enforcement notice, the Respondent must establish that the appeal should be dismissed.³
23. Although the Tribunal is required to hear and decide the appeal by way of a reconsideration of the evidence that was before the Respondent when it decided to give the Enforcement Notice,⁴ the Tribunal may (but need not) consider other evidence presented by a party with leave of the Tribunal or any other information provided pursuant to section 246.⁵
24. Pursuant to section 246(1) of the Act, the Registrar may, at any time, ask a person to give the Registrar any information the Registrar reasonably requires for the proceedings.
25. The emails from Mr Pratt and Mr Grigg dated 1 June 2021 were not requested by the Registry pursuant to section 246(1) of the Act, however, they have been considered by the Tribunal pursuant to section 253(5)(a) of the Act.
26. The consequence of the emails dated 1 June 2021 is that the scope of the Enforcement Notice is limited to the alleged non-compliance with condition 22(d) of the Approval. To this end, the Respondent has invited the Tribunal to issue an amended enforcement notice to replace the Enforcement Notice that is the subject of the proceeding.
27. The email response from Judith Akins of Body Corporate Management Queensland on 14 June 2021 was provided in response to a request from the Registrar pursuant to section 246(1) of the Act. This response may be considered by the Tribunal pursuant to section 253(5)(b) of the Act.

¹ Section 229(1)(a) of the Act.

² Schedule 1 Table 1 Section 1(2)(h).

³ Section 253(3) of the Act.

⁴ Section 253(4) of the Act.

⁵ Section 253(5) of the Act.

28. Subject to section 237 of the Act, the Tribunal may decide the proceedings on submissions⁶ made on behalf of the Appellant on 1 July 2021, and on behalf of the Respondent on 8 July 2021. There was no hearing in this matter.
29. The submissions were directed at the jurisdiction of the Tribunal to hear the appeal given the purported non-compliance with section 312(1) of the BCCMA with respect to the requirement for the Appellant to pass a special resolution which authorised the start of the proceeding.
30. Section 312(1) of the BCCMA states as follows:
- (1) *The body corporate for a community titles scheme may start a proceeding only if the proceeding is authorised by—*
- (a) *if the scheme is a specified two-lot scheme—a lot owner agreement for the scheme; or*
- (b) *otherwise—special resolution by the body corporate.*
31. The appeal is not a prescribed proceeding under the BCCMA.⁷
32. There is nothing before the Tribunal which demonstrates compliance by the Appellant with section 312(1) of the BCCMA.

Reasons for the Decision

33. The communication to members of the Body Corporate on 15 February 2021, as described in the submissions made by Mr Grigg on 1 July 2021 and attached to his email, are insufficient for the purpose of section 312(1) of the BCCMA. They do not constitute a special resolution of the Body Corporate which authorises the commencement of the appeal.
34. Furthermore, the Committee resolution attached to the email correspondence from Ms Akins of Body Corporate Management Queensland on 14 June 2021 fell short of the requirements of section 312(1) of the BCCMA to the extent that it did not authorise the starting of the proceeding.
35. Rather, the motion sought only to authorise the continued participation of Ms Akins and Mr Grigg in the ‘Tribunal meeting’ (being the scheduled hearing of the appeal, which was subsequently vacated), as well as providing Ms Akins and Mr Grigg with the authority to ‘...represent the Body Corporate and [be] authorised to make decisions on behalf of the Body Corporate.’
36. Consequently, due to the absence of the necessary authorisation in the form of a special resolution by the Body Corporate as required by section 312(1) of the BCCMA, the Tribunal does not have the jurisdiction to determine the proceeding.
37. Even if the Tribunal had the authority to adjourn the matter to facilitate the passing of an appropriate resolution by the Appellant in compliance with section 312(1) of the BCCMA (which is not a matter of determination in this decision), there would appear to be little utility to this in circumstances where the non-compliances identified in the Enforcement Notice appear to have been resolved between the parties.
38. The Respondent has acknowledged that the Appellant is now compliant with condition 21 of the Approval.⁸ The remaining condition, being condition 22(d) of the Approval,

⁶ Section 249(2) of the Act.

⁷ Section 312(4) BCCMA.

⁸ Paragraph 22 of the submissions made on behalf of the Respondent dated 8 July 2021.

requires the Appellant to “...*Maintain the landscape generally in accordance with the detailed plans.*” This is purportedly not disputed by the Appellant⁹ and remains an ongoing obligation under the Approval.

39. In the circumstances, there appears to be no basis for the Tribunal to provide any further opportunity to the Appellant to ratify the decision to start the appeal in accordance with section 312(1) of the BCCMA, even if the Tribunal had the power to do so. Based on the material before the Tribunal, it appears that the alleged non-compliances identified in the Enforcement Notice which were the subject of the appeal have since been resolved.
40. Consequently, it is the decision of the Tribunal that the appeal should be dismissed on the basis that the Tribunal does not have jurisdiction to hear it in the absence of the necessary authorisation by the Appellant pursuant to section 312(1) of the BCCMA.
41. Relevantly, section 252(1)(a) of the Act states that a tribunal may decide that the tribunal has no jurisdiction for tribunal proceedings at any time before the proceedings are decided on the tribunals' initiative.
42. The consequence of a decision being made under section 252(1)(a) of the Act is that any period for starting proceedings in the Planning and Environment Court, for the matter that is the subject of the tribunal proceedings, starts again when the tribunal gives the decision notice to the party who started the proceedings.¹⁰
43. Although section 252 of the Act expressly refers to a tribunal deciding that it has no jurisdiction for tribunal proceedings, as is the decision of the Tribunal in this appeal, section 252 does not appear to extend to a lack of jurisdiction arising from non-compliance with section 312(1) of the BCCMA.
44. Rather, the scope of section 252 of the Act appears directed at a lack of jurisdiction due to an appeal being incorrectly commenced in the tribunal instead of the Planning and Environment Court pursuant to Table 1 or Table 2 of the Act.
45. This interpretation is consistent with the recommencement of the appeal period as identified in section 252(3) of the Act, which states that any period for starting proceedings in the Planning and Environment Court, for the matter that is the subject of the tribunal proceedings, starts again when the Tribunal gives the decision notice to the party who started the proceedings.
46. It is therefore difficult to reconcile the nature of the appeal rights identified in section 252(3) of the Act with a decision about a lack of jurisdiction arising from non-compliance with section 312(1) of the BCCMA.
47. The distinction is an important one, given that the right of appeal pursuant to section 252(3) of the Act facilitates a new appeal to the Planning and Environment Court about the matter that was the subject of the tribunal proceedings. However, an appeal made pursuant to section 229 and schedule 1, item 1(4) and table 2, item 1 of the Act confers judicial power to only examine the decision of the Tribunal for legal or jurisdictional error.¹¹
48. In circumstances where the Tribunal lacks jurisdiction due to the absence of the necessary authorisation required under section 312(1) of the BCCMA, it would appear to fall outside the scope of section 252 of the Act. Rather, section 252 of the Act, and

⁹ Ibid. Email correspondence from Mr Grigg to the Registry dated 1 June 2021.

¹⁰ Section 252(3) of the Act.

¹¹ *Southern Downs Regional Council v Homeworthy Inspection Services (as Agents for Robert and Cheryl Newman)* [2020] QPEC 61 at 67.

more specifically, section 252(3) of the Act, would more appropriately apply to appeals for which the Tribunal lacked jurisdiction pursuant to section 229(1)(a) and Schedule 1 Tables 1 and 3.

49. Consequently, in deciding that the appeal should be dismissed due to the failure of the Appellant to obtain the necessary authorisation required pursuant to section 312(1) of the BCCMA, any right of appeal to Planning and Environment Court should be on the grounds of an error or mistake in law or a jurisdictional error by the Tribunal,¹² as distinct from being about the subject matter of the tribunal proceedings.

Victor Feros

Development Tribunal Chair
Date: 27 August 2021

¹² Section 229(1)(a)(iii) and Schedule 1, Item 1(4) and Table 2 Item 1 of the Act.

Appeal Rights

Schedule 1, Table 2 (1) of the *Planning Act 2016* provides that an appeal may be made against a decision of a Tribunal to the Planning and Environment Court, other than a decision under section 252, on the ground of -

- (a) an error or mistake in law on the part of the Tribunal; or
- (b) jurisdictional error.

The appeal must be started within 20 business days after the day notice of the Tribunal decision is given to the party.

Enquiries

All correspondence should be addressed to:

The Registrar of Development Tribunals
Department of Housing and Public Works
GPO Box 2457
Brisbane QLD 4001

Telephone (07) 1800 804 833