



Development Tribunal – Decision Notice

Planning Act 2016, section 255

Appeal Number:	22-039
Appellant:	Mr Glenn Cain
Respondent: (Assessment Manager)	Mackay Regional Council
Site Address:	233 Holts Rd, Glenella, Mackay, Qld described as Lot 10 on SP 180189 – the subject site

Appeal

Appeal under Section 229 and Schedule 1, Table 1, Item 1(a) of the Planning Act 2016 (PA) against the Mackay Regional Council decision to refuse the development application to reconfigure a lot (DA 2022-62).

(For clarity, the appeal is lodged against the Council refusal of the proposal to re-configure a rural lot (the subject site) into two lots. After establishment of the Tribunal the Mackay Regional Council questioned the jurisdiction of the Tribunal to hear this matter. The Tribunal considered it appropriate to consider this jurisdictional issue before considering the appeal matters in question).

This decision relates only to the jurisdictional issue raised by the Mackay Regional Council

Date and time of hearing:	Not Applicable
Place of hearing:	Not Applicable
Tribunal:	Derek Kemp – Chair John Bright – Member

Decision:

The Development Tribunal (Tribunal), in accordance with section 252 of the PA, decides that the Tribunal has no jurisdiction for tribunal proceedings.

Background

The proposal

1. The subject site has a site area of 17.35 ha on the corner of Holts Road and Glenella Richmond Road, Glenella, Mackay.
2. The land is substantially flat, vacant rural land, with two small clusters of farm buildings, one of these clusters including the existing dwelling.

3. The proposal is to re-configure the existing 17.36 ha rural lot (the subject land) into two lots. The smaller, Lot 11 of approximately 6,700 sq m is substantially occupied by the existing dwelling and associated sheds. The larger, Lot 12 of approximately 16.68 ha, is substantially vacant agricultural land containing a small cluster of sheds towards the south west corner of the subject land.

Refusal of the application and the appeal

4. On the 27 June 2022, the Mackay Regional Council issued a decision notice refusing the development application (DA 2022- 62) for reconfiguring one rural lot into two lots and provided the required statement of reasons.
5. This 'Decision to Refuse' was appealed by a duly completed Form 10 Notice of Appeal from the appellant dated 25 July 2022 and received by the Registry on 25 July 2022.
6. The Tribunal gave no further consideration to this refusal until the Tribunal determined a jurisdiction issue.

Raising of jurisdictional Issues

7. On the 25 August 2022, the Registry advised all parties that a Development Tribunal had been established in accordance with Section 242 of the Planning Act 2016 (by email from the Registry to all parties).
8. On the 26 August 2022, the Registry advised the Tribunal that it had received a letter from Mackay Regional Council submitting that the Development Tribunal has no jurisdiction to hear this matter. (Referencing email letter to the Tribunal dated 26 August 2022).
9. On 29 August 2022, the Registry provided Council's submission to the appellant and invited the appellant to make submissions in response within 14 days.
10. No further submissions were received.

Materials considered

11. The Appeal Lodgement Documents - including the Town Planning Report prepared by Mackay Surveys (dated 23 April 2021).
12. Letter from the Mackay Regional Council to the Tribunal dated 22 August 2022 (questioning the jurisdiction of the Tribunal).
13. The Planning Act 2016 – including Schedule 1 of the Planning Act and Table 1 in Schedule 1 of the Planning Act

Reasons for the 'no jurisdiction' decision

14. It is agreed by the Tribunal that DA 2022- 62 was a duly made development application for reconfiguring one rural lot into two lots.
15. Section 252 of the Planning Act 2016 states that the Tribunal may decide that the Tribunal has no jurisdiction at the Tribunal's initiative or on application of a party:
16. The Tribunal finds Council's letter to the Tribunal on the 26 August 2022 constituted an application that the Tribunal find it has no jurisdiction.

17. Section 229(1) of the Planning Act 2016 provides that the matters that may be appealed to a tribunal and or the Planning and Environment Court are provided in Schedule 1 of the Planning Act 2016.
18. In determining whether the Tribunal has jurisdiction the Tribunal had regard to Schedule 1 of the Planning Act 2016.
19. Schedule 1 section 1(5) provides that Table 3 states the matters that may be appealed to a tribunal only. The Tribunal considers that table 3 does not apply to this appeal.
20. Schedule 1 section 1(1) provides that table 1 states the matters that may be appealed to the Planning and Environment Court or a tribunal and the Tribunal notes that this is subject to Schedule 1 section 1(2).
21. Of the matters listed in table 1, only item 1(a), refusal of all or part of a development application, is relevant to this appeal.
22. In determining whether the Tribunal may consider this appeal against a refusal of a development application for reconfiguring a lot, the Tribunal has considered the matters listed in schedule 1 section 1(2).
23. This appeal does not concern a material change of use, operational work, an extension application, a matter related to the Building Act 1975, an enforcement notice, infrastructure charges or a conversion application.
24. Accordingly, the Tribunal concluded that the appeal is not about any of the matters listed in schedule 1 sections 1(2)(a) to (j).
25. In relation to schedule 1 section 1(2)(l)—a matter prescribed by regulation—the Tribunal notes that there are no matters prescribed.
26. On this basis the Tribunal decided that it does not have jurisdiction to consider this appeal against the decision of the Council to refuse the development application DA 2022-62 to reconfigure one rural lot into two lots.

Derek Craven Kemp
Development Tribunal Chair

Date: 26 September 2022

Appeal rights:

In accordance with Section 252(1) and (3) of the Planning Act 2016, the period for the starting of proceedings in the Planning and Environment Court against this Tribunal Decision of 'no jurisdiction', or for the appellant to appeal to the Planning and Environment Court against the Mackay Regional Council's Refusal of Development Application DA 2022- 62 starts again when the Tribunal gives this decision notice to the party who started the proceedings.

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

The following link outlines the steps required to lodge an appeal with the Court.

<http://www.courts.qld.gov.au/courts/planning-and-environment-court/going-to-planning-and-environment-court/starting-proceedings-in-the-court>

Enquiries:

All correspondence should be addressed to:

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