



## Development Tribunal – Decision Notice

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### *Planning Act 2016, section 255*

<b>Appeal number:</b>	<b>24-052</b>
<b>Appellant:</b>	Jacqueline Morton
<b>Respondent (Enforcement authority):</b>	Sunshine Coast Regional Council
<b>Site address:</b>	62 Fleetwood Road, Belli Park Qld 4562, described as Lot 6 on SP 217280 – (the <b>Subject Site</b> )

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### **Appeal**

Appeal purportedly under s 229 of the *Planning Act 2016 (Qld)* (the **PA**) against the decision to give an Enforcement Notice, which was issued by the Respondent pursuant to s 168 of the PA and dated 12 September 2024.

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<b>Date and time of hearing:</b>	Not applicable – determined on the written materials
<b>Place of hearing:</b>	N/A
<b>Tribunal:</b>	Harry Knowlman—Chair Kim Calio—Member
<b>Present:</b>	N/A

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### **Decision:**

The Development Tribunal (the **Tribunal**), in accordance with section 252 PA, decides that the Tribunal has no jurisdiction to hear or decide the appeal.

Please be advised that you may elect to lodge an appeal/declaration about this matter in the Planning and Environment Court. The Court appeal period starts again from the date you receive this decision notice, which should be attached to the Court appeal lodgement documentation.

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>

### **Background**

1. There has been an ongoing dispute between the Appellant and the Respondent (the **Parties**) as to (a) whether or not unlawful development has taken place on the Subject

- Site, and (b) whether the uses of the Subject Site are lawful, in the absence of relevant approvals.
2. Several Show Cause notices pursuant to s 167 PA were issued by the Respondent as the Enforcement Authority, inviting the Appellant to give reasons why it should not issue an Enforcement Notice under s 168 PA.
  3. In her submitted documents, the Appellant describes Show Cause notices received by her dated 5 April 2022, 13 October 2022, 24 March 2023, 5 December 2023 and 2 May 2024.
  4. The Respondent issued an Enforcement Notice (**EN**), pursuant to s 168 PA, to the Appellant on 12 September 2024.
  5. Generally, all Show Cause Notices, and the EN, assert that unlawful development has been carried out on the Subject Site in contravention of s 163(1)(a) PA, and that the Subject Site is being used for unlawful purposes in contravention of s 165 PA.
  6. In essence, the EN requires the Appellant to decommission and keep unoccupied all accommodation on the Subject Site apart from a single dwelling house, and to cease using the Subject Site for all other forms of residential development.
  7. The Appellant lodged an appeal against the decision to issue the EN with the Registrar (the **Appeal**), on 10 October 2024.
  8. On 17 October 2024, the Respondent, by email to the Registrar, asserted that the Tribunal has no jurisdiction to hear and decide the Appeal.
  9. On 5 November 2024 the Registrar sent an email to the Parties, requesting their submissions on the jurisdiction issue by close of business on 26 November 2024, and advising that the Tribunal would consider and decide on its jurisdiction to hear the Appeal after that date, on the material before it at that time.
  10. Detailed submissions were received from both the Appellant and Respondent before 26 November 2024.

### **Jurisdiction of the Tribunal**

11. The Tribunal is given jurisdiction to decide a restricted subset of planning and development disputes by section 229 PA, with details of the extent of its jurisdiction set out in Schedule 1 PA.
12. Section 229 and Schedule 1 section 1(1) and Table 1 item 6 PA do allow the decision to give an EN to be appealed to the Planning and Environment Court or the Tribunal, but Schedule 1 section 1(2)(h) limits the types of EN decisions that can be appealed to the Tribunal.
13. Schedule 1 section 1(2) states in part:

*However, table 1 applies to a tribunal only if the matter involves—*

.....

*(h) a decision to give an enforcement notice—*

*(i) in relation to a matter under paragraphs (a) to (g); or*

*(ii) under the Plumbing and Drainage Act 2018*
14. The alleged offences do not “relate to” a matter under paragraphs (a) to (g) or the Plumbing and Drainage Act 2018.

15. For completeness, the Tribunal notes that it is not aware of, nor was it taken to, “a matter prescribed by regulation” that would give it jurisdiction under Schedule 1 section 1(2)(l).
16. The Tribunal finds that there is no provision in s 229 and Schedule 1 PA that gives it jurisdiction to hear this Appeal.
17. If section 229 and Schedule 1 PA do not give the Tribunal jurisdiction to hear an appeal against a decision to give an EN, the Tribunal does not have jurisdiction. No alleged defect in the issuing of that EN suddenly gives it jurisdiction. Defects if alleged, and any other disputed matters relevant to the EN, must be argued in an appeal to the Planning and Environment Court.

### **Appellant’s submissions**

18. The Appellant raises two issues, which she asserts permit hearing of the Appeal by the Tribunal.
19. Firstly, she claims that the EN is invalid, because in her view the Respondent cited incorrect PA sections when describing the alleged offences. This is not correct; the Respondent correctly cited sections 163(1)(a) and 165. The Appellant incorrectly quoted sections 164 and 166.
20. Secondly, the Appellant asserts that under Schedule 1 section 1(2)(k) PA the Tribunal may hear “*a matter that, under another Act, may be appealed to the tribunal.*” She asserts that two of the additional dwellings on the Subject Site are properly characterised as caravans, and that they are therefore properly regulated under the Transport Operation (Road Use Management) Act 1995, as caravans, rather than by the PA. This point falls at the first hurdle, as Schedule 1 section 1(2)(k) PA was repealed in 2017, and does not now exist.

### **Respondent’s submissions**

21. The Respondent correctly and in detail analyses the jurisdiction given to the Tribunal by the PA, in relation to EN decision appeals. Its analysis follows very similar lines to that set out under the heading “Jurisdiction of the Tribunal” above.
22. The Respondent even goes so far as to cite judicial consideration of the terms “in relation to” and “matter” which appear in Schedule 1 section 1(2)(h)(i). Whilst grateful for this assistance, the Tribunal considers the meaning of these terms clear in this particular case, and that it is not necessary to descend into that sort of detail here.
23. The Respondent’s submissions must be accepted.

### **Material considered**

24. The material considered in arriving at this decision was:
  - (a) Form 10 Notice of appeal, grounds for appeal and correspondence and other material accompanying the appeal lodged with the Registrar on 10 October 2024;
  - (b) Email from the Respondent to the Registrar on 17 October 2024, asserting that the Tribunal does not have jurisdiction to hear the Appeal;
  - (c) Email from the Registrar to the parties on 5 November 2024 seeking submissions as to the jurisdiction of the Tribunal;

- (d) Respondent's submissions, received by the Registrar on 22 November 2024;
- (e) Appellant's submissions, received by the Registrar on 25 November 2024;
- (f) The Planning Act 2016 (Qld), current as at 2 August 2024 and in force at 12 September 2024 (the date the EN was issued).

**Reasons for the decision**

- 25. No provision of the Planning Act gives the Tribunal jurisdiction to hear an appeal against the decision to give an EN in relation to the alleged offences under the PA.
- 26. The PA does provide an avenue of appeal against such an EN decision; it is by way of appeal to the Planning and Environment Court.
- 27. The Appellant's submissions generally relate to alleged defects in the characterisation of uses and dwellings on her property. Any such defects, if they exist, do not affect whether or not the Tribunal has jurisdiction to hear the Appeal – the proper place to argue these assertions is the Planning and Environment Court.
- 28. The Tribunal finds that it does not have jurisdiction to hear this Appeal, and issues this decision pursuant to section 252 PA.

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**Harry Knowlman**  
**Development Tribunal Chair**

**Date: 20 January 2025**

## **Appeal rights**

Schedule 1, Table 2, item 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.

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:

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

Telephone 1800 804 833

**Email:** [registrar@epw.qld.gov.au](mailto:registrar@epw.qld.gov.au)