



Development Tribunal – Decision Notice

Planning Act 2016, section 255

Appeal number: 24-050

Appellant: WJM1 Pty Ltd (A.C.N. 677 304 773)

**Respondent/
Assessment manager:** Sunshine Coast Regional Council

Site address: 7 Palkana Drive, Warana Qld 4575 and described as Lot 355 on W95525 – the subject site

Appeal

Appeal under section 229 and schedule 1, section 1, table 1 of the *Planning Act 2016* with respect to conditions of a Development Approval.

The Assessment Manager, Respondent made a decision to give a Development Permit for material change of use for a Multiple dwelling (5 units) and Developments Permit Operational Works - Engineering Works (Driveway, Parking, Stormwater, Earthworks) and Landscaping with conditions.

The Appellant made an appeal with respect to conditions of the Development Permits.

Date and time of hearing: Not applicable

Place of hearing: Not applicable

Tribunal: Mark Chapple - Chair
Neil de Bruyn - Member
Catherine Brouwer- Member
Richard Prout - Member

Present: Not applicable

Decision:

The Development Tribunal (Tribunal), in accordance with section 252 of the *Planning Act 2016* (PA) decided that it 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). 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. On 12 September 2024, the assessment manager decided to give approval for a Development Permit for material change of use for a Multiple dwelling (5 units) and Development Permit Operational Works - Engineering Works (Driveway, Parking, Stormwater, Earthworks) and Landscaping with conditions at the subject site and gave a Decision Notice of 19 September 2024.
2. The Decision Notice contains conditions 1 to 43 under the heading 'Development Permit for a Material Change of Use to Establish a Multiple Dwelling (5 Units) – MCU 23/0172' and conditions 44 to 80 under the heading 'Development Permit for Operational Works - Engineering Works (Driveway, Parking, Stormwater, Earthworks) and Landscaping – OPW 24/0260.
3. On pages 15 and 16 of the Decision Notice there are schedules listing plans described as 'Approved Plan' and 'Plans Requiring Amendment'.
4. The Decision Notice includes condition 2 which provides:

*Development authorised by this approval must be undertaken generally in accordance with the Approved Plans listed within this development approval. The Approved Plans must be amended to incorporate the amendments listed within this development approval and approved by the council prior to the issue any development permit for building works**

**(Refer to Advisory Note)'*

The advisory note includes –:

7 - The conditions of this development approval require resubmission of plans to council with amendments. Please address the amended plans to council's Planning Assessment Unit with the reference no. MCU24/0171.

5. The Decision Notice includes condition 44, which provides:

Prior to requesting a pre-start meeting:

(a) Amended plans must be submitted to and approved by Council to satisfy the Table of Plans Requiring Amendment'.
6. The amendments set out in the schedule for Plans Requiring Amendment relate to:
 - (a) relocating the visitor car space to the eastern side of the driveway where car space 5 is;
 - (b) replacing the bin store with landscaping and placing the bin behind landscaping where car space 9 is;
 - (c) providing a motor cycle parking space;
 - (d) updating landscaping plans to reflect the updated architectural plans.
7. In a submission with the appeal documents the appellant sought changes relating to conditions 2, 8, 17, 19, 25, 37, 42, 44, 45, 46, 49 and 57.

8. In its submission of 10 November 2024, the appellant withdrew the appeal with respect to conditions 44, 45, 46, 49 and 57.
9. In general terms, the conditions appealed relate to matters summarised below:
 - (a) Condition 2 – submission of further plans with amendments to be approved by the council
 - (b) Condition 8 – fencing to be set back behind landscape strip and maximum fence height
 - (c) Condition 17 – type of driveway access, including provision that the driveway be in accordance with OWP 24/0260.
 - (d) Condition 19 – that a motorcycle or scooter parking space be provided.
 - (e) Condition 25 – that underground reticulated electricity be provided.
 - (f) Condition 37 – waste management including bin location and collection access.
 - (g) Condition 42 – Landscaping Works

Jurisdiction

10. Section 229(1) of the PA provides that schedule 1 of the PA ('the Schedule') states the matters where there may be an appeal to the Tribunal.
11. Section 1(1)(b) of the Schedule provides that the matters stated in table 1 of the schedule ('Table 1'), are matters that may be appealed to the Tribunal. However, section 1(2) of the Schedule provides that Table 1 only applies to the Tribunal if the matter involves one of a list of matters set out in subsection 1(2).
12. Subsection 1 (2) provides

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

- (a) *the refusal, or deemed refusal of a development application, for—*
 - (i) *a material change of use for a classified building; or*
 - (ii) *operational work associated with building work, a retaining wall, or a tennis court; or*
- (b) *a provision of a development approval for—*
 - (i) *a material change of use for a classified building; or*
 - (ii) *operational work associated with building work, a retaining wall, or a tennis court; or*
- (c) *if a development permit was applied for—the decision to give a preliminary approval for—*
 - (i) *a material change of use for a classified building; or*
 - (ii) *operational work associated with building work, a retaining wall, or a tennis court; or*
- (d) *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; or*
 - (e) *a decision for, or a deemed refusal of, an extension application for a development approval that is only for a material change of use of a classified building; or*
 - (f) *a decision for, or a deemed refusal of, a change application for a development approval that is only for a material change of use of a classified building; or*
 - (g) *a matter under this Act, to the extent the matter relates to the [Building Act](#), other than a matter under that Act that may or must be decided by the Queensland Building and Construction Commission; or*
 - (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](#); or*
 - (i) *an infrastructure charges notice; or*
 - (j) *the refusal, or deemed refusal, of a conversion application; or*
 - (l) *a matter prescribed by regulation.*
- 13. The tribunal finds that it is plainly apparent, upon reading the provisions in subsections 1(2)(a), (b)(ii), (c), (e), (f), (g), (h), (i), (j) and (l) of the Schedule that they do not give the Tribunal jurisdiction. Closer consideration of subsections 1(2)(b)(i) and (d) is required.
- 14. The Schedule 1(2)(b) gives jurisdiction with respect to a provision of a development approval for a material change of use for a '*classified building*'. The Dictionary in Schedule 2 of the PA defines a '*classified building*' as a building classified under the Building Code as a class 1 building or a class 10 building other than a building that is incidental or subordinate to the use or proposed use of a building classified under the Building Code as a class 2, 3, 4, 5, 6, 7, 8 or 9 building.
- 15. Considering the drawings with the appeal documents the Tribunal finds that if constructed the building the subject of the approval would be a class 2 building and as a result would not be a '*classified building*.' In the circumstances the Schedule subsection 1(2)(b)(i) does not give the tribunal jurisdiction.
- 16. With respect to the Schedule subsection 1(2)(d), there are three limbs set out in subsections (i), (ii) and (iii), which must be satisfied before there is jurisdiction. The Tribunal finds that if built, the proposed building would be a class 2 building of not more than 3 storeys and there would not be more than 60 sole occupancy units. The Tribunal finds that for the purposes of Schedule section 1(2)(d) the Material Change of use and Operational Works aspects of the Decision Notice should be treated as separate approvals. The Tribunal notes and has considered the Council's decision to the contrary. The Tribunal notes that administratively the applications have been treated separately as evidenced by the different application numbers, numbers MCU24/0171 and OPW24/0260. The Tribunal finds that although contained in the same document as the Operational Works Approval, the Material Change of Use Approval can be understood and carried out with reference to the Material Change of Use Approval as a separate approval. Accordingly, conditions 2, 8, 17, 19, 25, 37 and 42 should be regarded as part of a development approval '*only for a material change of use*'. In the circumstances, the Tribunal finds the requirements of subsections (i), (ii) and (iii) are satisfied, however it needs to be decided whether or not the appeal relates to a '*development condition*'. The

Tribunal considered that condition 19 does not say where the required motorcycle parking space must go and condition 25 does not say where the underground reticulated electricity should be placed and the Tribunal finds that none the less these matters cannot be considered in isolation from the amendments to the plans required by condition 2.

17. Condition 2 requires that '*approved plans*' be amended and '*approved by the council*'. The substance of the matters dealt with by conditions 2, 8, 17, 19, 25, 37 and 42 either relate to the amendments required by condition 2 or will be impacted by or relevant to the amendments. The Tribunal finds because the amendments required by condition 2 and because of the requirement that the amendments be '*approved by the council*' any consideration of conditions 2, 8, 17, 19, 25, 37 and 42 requires consideration of substantive parts of the approval going beyond consideration of a 'development condition'.
18. The Tribunal finds that is plainly apparent that the schedule 1 table 1 does not give the Tribunal jurisdiction.
19. Accordingly, the Tribunal decides pursuant to section 252 of the PA that it has no jurisdiction to hear or decide the Appeal.

Material considered

20. The material considered in arriving at this decision was:
 - (a) Form 10 Notice of appeal, grounds for appeal and correspondence accompanying the appeal lodged with the Tribunals registrar on 3 October 2024
 - (b) Appellants document in support of appeal
 - (c) Council Decision Notice 19 September 2024
 - (d) Drawing Sheets 242507 – CO1 to 242507 – CO6 from *ingeniir*
 - (e) Drawings Valentine Building Design S01-01_C, S01-01_D, SO1_E, S02-02_E, SO4.01_D, S04-02_D, S04-10_B,
 - (f) Drawings Anembo Associates LD 1-3 and LP 4
 - (g) Council Information Request 31 July 2024
 - (h) Approved Drawings 19 Millwell Road
 - (i) Council Decision Notice 19 Millwell Road
 - (j) Approved Drawing 20 Minkara Street
 - (k) Email to self - Michael Capper 4 September 2020
 - (l) Council Decision Notice 20 Minkara Street
 - (m) Council submission 6 November 2024
 - (n) Appellant's submission 10 November 2024
 - (o) Council submission 6 January 2024
 - (p) Appellant's submission 6 January 2024

Findings of fact

21. The tribunal makes the following findings of fact:

- (a) That if constructed the building the subject of the development approval:
 - i. would be a class 2 building under the Building Code;
 - ii. would not be more than 3 storeys;
 - iii. would not contain more than 60 sole occupancy units.

Reasons for the decision

22. The Tribunal based upon the analysis set out in paragraphs 10 to 19 above and in accordance with section 252 of the *Planning Act 2016* (PA), decided that it has no jurisdiction to hear or decide the appeal.

Mark Chapple
Development Tribunal Chair

Date: 3 February 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