



Development Tribunal – Decision Notice

Planning Act 2016, section 255

Appeal number:	23-067
Appellant:	Graham Willis
Respondent: (Assessment manager):	Ipswich City Council
Site address:	82-84 Jones Road, Bellbird Park Qld 4300 – described as Lot 76 on RP114061

Appeal

Appeal under section 229 and schedule 1, section 1, table 1 and item 1(a) of the *Planning Act 2016* against the decision of the Respondent to refusal a development permit to build a bridge to form part of a residential driveway.

Date and time of hearing:	Not applicable
Place of hearing:	Not applicable
Tribunal:	Mark Chapple – Chair Richard Hurl – Member Mark Anderson – Member

Decision:

The Development Tribunal (Tribunal), in accordance with section 252 of the *Planning Act 2016* (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 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.
www.courts.qld.gov.au/courts/planning-and-environment-court/going-to-planning-and-environment-court/starting-proceedings-in-the-court

Background

1. The DA Form 2 - Building work details lodged by the Appellant with the Respondent states that the subject site is owned by Jennifer Willis and Bethany Lawrence.
2. The Appellant applied to the Respondent for a development permit to build a 'bridge to form part of a residential driveway'.

3. By way of Decision Notice dated 15 November 2023, the Respondent refused the Appellant's application stating the following reasons.

1.	The proposed development does not comply with Part 4, Division 5 Residential Low Density Zone Code of the Ipswich Planning Scheme as the following Overall Outcome has not been met:	
	Section 4.5.2(2)(e)(i) & (iii)	The proposed works, as designed by the applicant, are not considered to be compatible with the ordinary use of a residential premises within the Residential Low Density Zone, nor is it considered to be commensurate with the established residential character of the local area.

2.	The proposed development does not comply with Part 11 Overlays Code of the Ipswich Planning Scheme as the following Overall Outcomes and Specific Outcomes have not been met:	
(a)	Section 11.4.7(1)(e)(i)	The proposal involves concrete pillars at five locations to support the bridge across the flow path which reduces the carrying capacity and obstructs the flows through the overland flow path. As a result, higher flow velocities and turbulence conditions are anticipated just downstream of the proposed bridge at the eastern property boundary with probable scouring at downstream adjoining properties.
(b)	Section 11.4.3(2)(d) 11.4.7(1)(e)(v i)	The output mapping contained in the appendices of the 'Flooding and Urban Catchment Flow Path Assessment Report J8945 v 1.2, prepared by Storm Water consulting Pty Ltd and dated 7 August 2023, identifies that there are some impacts created on the adjoining properties. These impacts are in relation to increases in depth, velocity and hazard. These increases may impact on safety and increasing the maintenance burden in the vicinity of the flow path.

3.	Based on the matters set out in points 1 and 2 herein, a decision to approve all of the proposed bridge cannot be supported on the basis that the development cannot be appropriate [sic] conditioned to address the above listed inconsistencies with the Ipswich Planning Scheme. There are insufficient grounds to justify an approval of the proposal having regard to section 60 of the Planning Act 2016.	
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4. By way of Form 10 Notice of Appeal dated 5 December 2023, the Appellant appealed the Respondent's decision to refuse the application to the Tribunal.

Material considered

5. The material considered in arriving at this decision comprises:
- a. Form 10 – Notice of Appeal/Application for a Declaration – 5 December 2023
 - b. Letter of the Respondent to the Appellant of 15 November 2023 with Decision Notice refusing application and reason for refusal
 - c. Letter Appellant to the Respondent – 12 September 2023 requesting information
 - d. Response to Assessment Manager, Information Request – 20 October 2023
 - e. Letter from Respondent to the Appellant – 5 September 2023
 - f. Flooding and Urban Catchment Flow Paths Overlay Code Assessment Report – 82-84 Jones Road, Bellbird Park – 7 August 2023 of Darren Rogers of Stormwater Consulting.
 - g. Soils test – Independent Soils Testing for 82 Jones Road, Bellbird Park – 24 April 2023
 - h. Ipswich City Council Development Application lodgement form of the Appellant.

- i. DA Form 2 – Building work details of the Appellant
- j. Submission of Respondent – 1 February 2024
- k. Memorandum from Acting Development Planning Services Manager, Grant Johnson of the Appellant to Senior Planner – Development (Sean Dickson) of the Appellant – 15 November 2023
- l. Submission of Appellant – 25 January 2024
- m. Submission of Respondent – 23 January 2024
- n. Email from the Respondent of 13 February 2024 and attached report from Water Technology of 13 February 2024.

The Appellant's application

- 6. The detailed survey drawings of K & K Blanchard record the subject site as having a frontage to Jones Road of 35.902 metres and show the northern and southern boundaries running parallel to with the northern boundary having a length of 121.875 metres and the southern boundary having a length of 110.621 metres.
- 7. Contour lines on the detailed survey show the subject site sloping from its eastern and western boundaries towards a low point around the middle of the site. There is a contour line showing a 55 metre height near the eastern boundary and a 53 metre height near the western boundary. There is a 50 metre height contour line running around a pond near the southern boundary near the centre of the site.
- 8. The report from Darren Rogers of Stormwater Consulting states in paragraph 2.2 that it is proposed to subdivide the site from one into two lots with the construction of a bridge proposed along the northern side boundary as shown in *figure 3* in Appendix A to the report. Appendix D to the Stormwater Consulting report contains plans for the proposed bridge.
- 9. In the Appellant's Development Application lodgement form under the heading 'Application Type', the Appellant has ticked the box next to the category 'Other Development (e.g. Building Work not associated with MCU, Advertising Device)'. In the Appellant's DA Form 2 – Building Work Details form, the Appellant has indicated -
 - a. no to the question 'Is the application only for building work assessable against the building assessment provisions?' (see Part 3 – Further details, question 4).
 - b. that the application is not associated with any associated development applications or current approvals (see Part 3, question 8).
 - c. that the application was made for development approval which was code assessable for a new building or structure described as a 'bridge to form part of a residential driveway' (refer Part 5, question 16).
- 10. In a letter of 5 September 2023, Tony Hooiveld, building certifier with the Respondent, wrote to the Appellant and that letter included the following passage –

An assessment of the application and supporting information against the relevant Building Legislation has been carried out. To be able to complete the assessment we require further information.

- 1. *Provide a revised DA Form 2 with items 8, 9, 16(f) and 16(g) completed correctly:*
- 2. *Provide a copy of the receipt of payment of Qleave:*
- 3. *Provide written confirmation from Queensland Building and Construction Commission (QBCC), Campbell Hanson does not require a builder's licence issued by the QBCC to construct the bridge:*

4. *Provide a copy of the Decision Notice and approved plans for 8470/2023/OD issued by the Town Planning section. The building plans are to comply with any conditions and further approvals/referrals that may be required dependant on the town planning conditions imposed:*
 5. *Provide revised plans which include balustrading which complies with the Building Code of Australia requirements, AS1170.1 and other relevant Australian Standards.*
 6. *Provide a Form 15 Design Certificate from a Registered Professional Engineer of Queensland for all submitted structural plans.*
11. By way of letter dated 12 September 2023, Tim Foote, Development Assessment East Manager with the Respondent, wrote to the Appellant requesting that –
- a. further hydrology matters be addressed with a further report.
 - b. a further soil test report be provided including recommendations on bridge foundation design.
 - c. further structural engineering information be provided.
12. The Appellant completed a proforma response to the Assessment Manager of the respondent dated 20 October 2023 indicating that none of the information requested would be provided and asking the Council to proceed with its assessment. The proforma letter included the following passage added by hand –
- I expect to be able to provide responses to all of the items except 1(c). I cannot respond to point 1(c). If you delete 1(c) we would be able to proceed.*
13. By way of letter of 15 November 2023, the Respondent wrote to the Appellant with a Decision Notice refusing the application and included the Assessment Manager’s reasons for refusal.

The appeal

14. The Appellant filed a Notice of Appeal (Form 10) with the Tribunal’s Registrar on 6 December 2023.
15. In Item 4 of the Form 10 Notice of Appeal, the Appellant states:

...the proposed works are designed to be compatible with the ordinary use of residential premises. The proposed development has been designed to not include a flood hazard for other properties. The proposed development has been sited and designed to minimise the velocity of flood waters.

Jurisdiction

The Tribunal identifies the source and nature of its jurisdiction as follows:

16. Section 229(1) of the PA provides that schedule 1 of the PA states the matters that may be appealed to a tribunal or the court and states the matters which may be appealed only to a tribunal.
17. Section 1(1)(b) of schedule 1 provides that the matters stated in table 1 of schedule 1 are the matters that may be appealed to a tribunal. However, section 1(2) of schedule 1 provides that table 1 only applies to a tribunal if the matter involves one of a list of

matters set out in section 1(2). Section 1(5) of schedule 1 provides that matters in table 3 may only be appealed to the tribunal.

18. The schedule 1 sections 1(2)(a) to (k) are reproduced below in the full context in which they appear in schedule 1:

Schedule 1 Appeals

1. Appeal rights and parties to appeals

- (1) *Table 1 states the matters that may be appealed to—*
- (a) *the P&E court; or*
 - (b) *a tribunal.*
- (2) *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*
 - (k) *a matter prescribed by regulation.'*

19. The provisions of schedule 1 sections 1(2)(b), (c), (d), (e), (f), (h), (i) and (j) are on their face not applicable to the decision being considered and the Tribunal finds that those provisions do not give the Tribunal jurisdiction.

20. The Tribunal is not aware of, and the parties have not referred to, any regulation which would result in jurisdiction under schedule 1 section 1(2)(k).
21. In the circumstances, the provisions in schedule 1, section 1(2)(a) and (g) require consideration to determine if they are applicable.
22. Schedule 1, section 1(2)(a) provides:
- (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, retaining wall or a tennis court; ...*
23. The decision of the Respondent does not relate to a material change of use for a classified building under section 1(2)(a)(i). However, the Tribunal needs to decide if the decision relates to 'operational work associated with building work' within the scope of section 1(2)(a)(ii).
24. The Respondent's submission of 23 January 2024 included the following passage –
- The application that was lodged with the Council was for Carrying out building works not associated with a material change of use (Bridge affected by the Development Constraint Overlay (OV- 5 overland flow path). In the Council's opinion, the application that was lodged by the applicant does not comfortably fall into the operational works definition or material change of use definition in the DA.*
25. The Appellant's submission of 25 January 2024 included the following –
- These examples indicate Operational works are generally considered to be secondary works that allow other work to proceed. In our case, even though the bridge is classed as a structure, it will form part of a driveway to allow access to a future house that has no value or function of itself. Its purpose is solely in support of other building work, so therefore the description of Operational Work is appropriate.*
26. The Dictionary in schedule 2 of the PA defines 'operational work' as 'work, other than building work or plumbing or drainage work in, on, over or under premises that materially affects the premises or the use of the premises'.
27. The Dictionary in schedule 2 of the PA provides a definition of building work which includes amongst other matters 'building, repairing, altering, underpinning (whether by vertical or lateral support), moving or demolishing a building or other structure'.
28. Depending on its proposed method of construction and reason for construction a bridge may be 'building work' as defined by the PA as a 'structure' as that word is used in the definition of 'building work'. In this case the Tribunal does not decide if the bridge proposed is building work for the purpose of schedule 1, section 1(2)(a)(ii).
29. The Appellant's submission of 25 January 2024 set out above included the passage with respect to the bridge 'its purpose is solely in support of other building work'. The Tribunal finds that 'building work' within the meaning of schedule 1, section 1(2)(a)(ii) means ascertainable building work, not the possibility of building work. The Tribunal finds this matter relates to the building of a bridge to facilitate future, though currently unspecified, subdivision of the subject land. The Tribunal finds that the proposed bridge is work associated the proposed but not yet ascertainable reconfiguration of a lot. In the

circumstances the proposed bridge is not ‘... work **associated with building work**’ [emphasis added] as contemplated by schedule 1, section 1(2)(a)(ii).

30. The Tribunal notes that in the Appellant’s Development Application lodgement form he indicated that the proposal was ‘other development’ rather than ‘operational works’.

31. In the PA, schedule 1, table 1, section 1(2)(g) provides –

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

32. The Appellant did not make a submission with respect to the applicability of schedule 1, section 1(2)(g).

33. The Respondent made a submission on 1 February 2024, which included the following passage: –

The subject site is identified under the Planning Scheme as being affected by an Urban Catchment Flow Path and under Table 11.4.4 of the Overlays Code the proposed development is identified as Code Assessable Development (An excerpt of Table 11.4.4 is attached for reference). Column 3 of Table 11.4.4 identifies the relevant planning scheme benchmarks which includes the Overlays Code and the Planning Scheme Building Matters Code.

Consequently, the application was assessed to the extent that it relates to the planning scheme benchmarks and did not provide assessment against the building assessment provisions nor did the Council provide the decision pursuant to the Building Act 1975. Consequently, it is the Council’s position that the matter subject to the appeal does not relate to the Building Act and therefore schedule 1, section 1(2)(g) of the Planning Act 2016 does not apply. To this end, please find attached a copy of the Council’s development assessment report.

34. The Tribunal finds the application decided by the Respondent relates to a bridge, in an overland flow path, which is assessable against the Ipswich planning scheme. Council assessed and refused the application under the planning scheme.

35. Considering the Respondent’s reason for refusal of the application, the Tribunal finds that the Respondent’s decision was not one which related to the *Building Act 1975*, but rather related to matters in the Respondent’s planning scheme.

36. Accordingly, the Tribunal decides that pursuant to section 252 of the PA, it has no jurisdiction to hear the appeal.

Mark Chapple
Development Tribunal Chair

Date: 12 March 2024

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, Local Government, Planning and Public Works
GPO Box 2457
Brisbane Qld 4001

Telephone (07) 1800 804 833

Email registrar@epw.qld.gov.au