



Development Tribunal – Decision Notice

Planning Act 2016, section 255

Appeal number:	24-047
Appellant:	Make a Wish Holdings Pty Ltd ATF EADC Trust ABN 12 470 210 150
Respondent:	Council of City of Gold Coast
Site address:	114 Smith Street, Southport Qld 4215 and described as Lot 2 on RP 88140 (the Property)

Appeal

Appeal under schedule 1, table 1, item 6 of the *Planning Act* regarding an Enforcement Notice dated 13 September 2024 issued pursuant to section 248 of *Building Act 1975* by the Council of City of Gold Coast (**'Enforcement Notice'**), on grounds of a significant delay in receiving the notice and being unable to meet the prescribed deadline of complying with the notice.

Date and time of hearing:	10.00am, Thursday 10 April 2025
Place of hearing:	Microsoft Teams
Tribunal:	Ross Williams—Chair Chris Finch—Member Samuel Le Noble—Member
Present:	Cristiane Dias—Council representative Sean Gallagher—Council representative

Decision

The Development Tribunal (**'Tribunal'**), in accordance with section 254 of the *Planning Act 2016* (PA), sets aside the decision of the Council of City of Gold Coast to issue the Enforcement Notice. For the reasons set out in paragraphs 10(c) and 10(d) the appeal is set aside.

Background

1. This appeal concerns an Enforcement Notice issued under section 248 of the *Building Act 1975* (Qld) by the Council of City of Gold Coast (the **'Council'**) to Make a Wish Holdings Pty Ltd (the **'Appellant'**) and received on 13 September 2024.
2. By their notice of appeal, the Appellants argue that they are persons conducting a business or undertaking at 114 Smith Street, Southport, Queensland (the **'Property'**).

3. By way of issuing the Enforcement Notice, the Council alleges that:
 - (a) the Property at the Site Address is non-compliant with the health, safety and amenity of the community; and
 - (b) it has duly notified the Appellant for the purpose of remedying the non-compliance outlined in 3(a).
4. The Council and the Appellant have continued to engage in relation to the Enforcement Notice.

Jurisdiction

5. This is an appeal under section 229(1)(a)(i) and schedule 1, table 1, item 6 of the PA against the decision of the Council to issue an Enforcement Notice received 13 September 2024 on grounds of a significant delay in receiving the notice and being unable to meet the prescribed deadline of complying with the notice. The appeal is within the jurisdiction of the Tribunal.

Decision framework

6. This appeal is being conducted in accordance with section 254 of the PA.
7. This is an appeal against an Enforcement Notice and in accordance with section 253(3) of the PA, Council who gave this notice must establish the appeal should be dismissed.
8. The Tribunal also may consider other evidence presented by both the Appellant and the Council, with leave of the Tribunal.
9. The Tribunal is required to decide the appeal in one of the ways mentioned in section 254(2) of the PA.

Findings and reasons for the decision

10. The Tribunal makes the following findings:
 - (a) the hearing of this appeal proceeded at 10.00am on Thursday 10 April 2025 via Microsoft Teams with the parties indicated above present;
 - (b) both parties have been provided with notice of the hearing of the appeal;
 - (c) the hearing proceeded notwithstanding the non-appearance of the Appellant;
 - (d) Council made submissions that they had been engaging with the Appellant and that a significant portion of their Enforcement Notice had been remedied and further that they had withdrawn the Enforcement Notice. Accordingly, the appeal is rendered nugatory and ought not proceed.
11. Accordingly, the Tribunal orders that the Enforcement Notice the subject of this appeal be set aside.

Ross Williams
Development Tribunal Chair

Date: 24 April 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