



Development Tribunal – Decision Notice

Planning Act 2016, section 255

Appeal Number:	26 - 18
Appellant:	Coeur de Lion Investments Pty Ltd ACN 006 334 872
Respondent (Assessment Manager):	Sunshine Coast Regional Council
Site Address:	93 Toolga Street, Yaroomba and described as BUP 8856 – the subject site

Appeal

Appeal by Coeur de Lion Investments Pty Ltd ACN 006 334 872 (Appellant) against the decision of the Assessment Manager to give a Plumbing Compliance Permit dated 25 May 2018 to the Presidents Club Golf CTS 6445 care of Archers Body Corporate Management (Body Corporate). The Plumbing Compliance Permit approved the installation of a water sub-meter on the water main that supplies water to the Body Corporate.

Date and time of hearing:

Place of hearing: N/A (appeal decided on submissions)

Tribunal: Samantha Hall – Chairperson
Amelia Prokuda – Member
Kelvin Slade - Member

Submissions provided by: Kane Jones – Appellant’s representative
Steven Tucker – Assessment Manager’s representative
Peter James – Body Corporate’s representative

Decision:

The Development Tribunal (Tribunal), in accordance with section 252 of the *Planning Act 2016* (PA) decides that the Tribunal has **no jurisdiction** to decide the tribunal proceedings.

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 or about 18 May 2018 the Body Corporate lodged a development application by way of a *Form 1 – Compliance assessment application for plumbing, drainage and on-site sewerage work* with the Assessment Manager seeking a development approval for the installation of a water sub-meter on the water main that supplies water to the Body Corporate (Proposed Development).
2. On 25 May 2018, the Assessment Manager issued a Plumbing Compliance Permit (Permit) to the Body Corporate approving the Proposed Development subject to conditions under section 85 of the *Plumbing and Drainage Act 2002* (P&D Act).
3. On or about 22 June 2018, the Appellant filed the Form 10 – Application for appeal/declaration with the Tribunal’s Registrar, appealing against the Assessment Manager’s approval of the development application for the Proposed Development.
4. The Appellant’s Form 10 contained an Annexure which identified the grounds for its appeal.
5. While it is not necessary to reproduce the Appellant’s grounds for the appeal, which are lengthy, for the purposes of this decision, the following summary identifies those aspects of the Appellant’s grounds for the appeal which the Tribunal considered relevant to its consideration of this appeal:
 - a. The Appellant contended the following:
 - i. the Assessment Manager had not notified the Appellant about the Proposed Development and therefore the Appellant had no opportunity to provide submissions to the Assessment Manager about the Proposed Development and this was a breach of natural justice;
 - ii. the plumbing and drainage infrastructure on which the Proposed Development was to be carried out was the property of the Appellant;
 - iii. it did not agree to the Proposed Development being carried out on its plumbing and drainage infrastructure;
 - iv. the resolutions and actions of the majority of the committee of the Body Corporate caused the Body Corporate to interfere with the contractual rights of the Appellant;
 - v. the Proposed Development would constitute an unlawful conversion by the Body Corporate of the Appellant’s plumbing and drainage infrastructure;
 - b. The Appellant sought:
 - i. an urgent preliminary order from the Tribunal staying the Assessment Manager’s decision to issue the permit pending the hearing and determination of this appeal; and
 - ii. an order overturning the Assessment Manager’s decision to grant the Permit.
6. To support the allegation with respect to the Body Corporate’s interference with the contractual rights of the Appellant, the Appellant’s Form 10 contained a number of annexures.
7. The Appellant’s Form 10 did not contain a copy of the development application that was made to the Assessment Manager for the Proposed Development and by way of email dated 17 July 2018, the Tribunal’s Registrar requested a copy of that application from Mr Peter James of the Body Corporate.
8. Mr James provided a copy of the development application by return email to the Tribunal’s Registrar on 23 July 2018.

9. Following the establishment of this Development Tribunal, the Tribunal members reviewed the Appellant's Form 10, along with the email correspondence between the parties and the Tribunal's Registrar and identified a concern with respect to the jurisdiction of the Development Tribunal to hear this appeal.
10. The concern was with respect to whether, for the purposes of Item 3(b) of Table 3 of Schedule 1 of the PA, the Appellant was "a person who received or was entitled to receive, an information notice about the decision".
11. Accordingly, the Chairperson of the Development Tribunal caused an email to be sent by the Tribunal's Registrar to the parties to this appeal to create a timetable for the provision of written submissions by the parties with respect to the jurisdiction of the Development Tribunal to hear this appeal.
12. In accordance with that timetable, the parties¹ provided the following written submissions to the Tribunal's Registrar:
 - a. By email dated 12 November 2018, the Appellant provided written submissions which alleged that the Appellant was the owner of the plumbing and drainage infrastructure on which the Proposed Development was to be carried out and was therefore the water service provider for the purposes of the P&D Act and therefore a "person who was entitled to receive an information notice about the decision".
 - b. By email dated 16 November 2018, the Assessment Manager provided written submissions which alleged that the Appellant was not the "water service provider" for the purposes of the P&D Act because that term was defined to mean the registered water service provider under the *Water Supply (Safety and Reliability) Act 2008* (WS (S&R) Act), which is Unitywater and not the Appellant. Accordingly, the Appellant was not "a person who was entitled to receive an information notice about the decision".
 - c. By email dated 19 November 2018, the Body Corporate provided written submissions which echo those of the Assessment Manager's and allege that Unitywater and not the Appellant is the registered water service provider under the WS (S&R) Act.
 - d. By email dated 23 November 2018, the Appellant provided reply submissions to those of the Body Corporate which alleged that as an owner of a lot within the community titles scheme, the provisions of the *Body Corporate and Community Management Act 1997* (BCCMA) stipulated that the Appellant was also an owner of the common property in the Body Corporate and therefore an owner of the premises to which the Compliance Permit related.
 - e. By email dated 29 November 2018, the Body Corporate provided reply submissions to the Appellant's reply submissions in which the Body Corporate refuted the Appellant's interpretation of the BCCMA and instead alleged that pursuant to the provisions of the BCCMA and also an interpretation of the definitions of the P&D Act and the *Building Act 1975*, the Appellant was not an owner of the premises to which the Compliance Permit related.
 - f. By email dated 13 December 2018, the Appellant provided further reply submissions to the Body Corporate's reply submissions, in which the Appellant provides argument

¹ The Tribunal understands that the Body Corporate was not a party to this appeal, nevertheless it had a clear interest in the appeal as it was the applicant for the Permit and the recipient of it. The Tribunal accordingly allowed the Body Corporate to make submissions and this course was not objected to by the Appellant or the Respondent. The Tribunal notes that section 249(6)(a), (c) and (d) of the PA, clearly empowers it to take such an approach.

refuting the Body Corporate's interpretation of the BCCMA and related case law and reiterates its contention that the Appellant was an owner of the premises to which the Compliance Permit related.

- g. By email dated 21 December 2018, the Tribunal's Registry advised the Tribunal that the Body Corporate had sent the Registry an email earlier that day making a further submission in purported reply to the Appellant's submission of 13 December 2018. The Tribunal's chairperson advised the Registry that the Tribunal did not consider it necessary to consider the Body Corporate's further submission and accordingly the Tribunal has not seen the submission and is not aware of its contents.

Jurisdiction

13. Schedule 1 of the PA states the matters that may be appealed to the Tribunal.²
14. Under item 3 of table 3 of Schedule 1 of the PA, an appeal may be made against a decision under the P&D Act, part 4 or 5, if an information notice about the decision was given or required to be given under the P&D Act. Under column 1 of item 3, the appellant for such an appeal is identified as being a person who received, or was entitled to receive, an information notice about the decision.
15. Only a person who received, or was entitled to receive, an information notice about a decision under part 4 or 5 of the P&D Act has a right to appeal the decision to the Tribunal.

Decision framework

16. The onus rests on the Appellant to establish that the appeal should be upheld.³
17. The Tribunal is required to hear and decide the appeal by way of a reconsideration of the evidence that was before the Assessment Manager which decided to give the Plumbing Compliance Permit the subject of this appeal.⁴
18. The Tribunal may (but need not) consider other evidence presented by a party with leave of the Tribunal or any information provided under section 246 of the PA.
19. The Tribunal may decide the proceedings on submissions and if so, the Tribunal must give all parties a notice asking for the submissions to be made to the tribunal within a stated reasonable period.⁵
20. The Tribunal may decide that the Tribunal has no jurisdiction to decide the tribunal proceedings⁶. Otherwise, the Tribunal is required to decide the appeal in one of the ways set out in section 254(2) of the PA.

Material Considered

The material considered in arriving at this decision comprises:

21. 'Form 10 – Appeal Notice', grounds for appeal and correspondence accompanying the appeal lodged with the Tribunals Registrar on 22 June 2018.

² Section 229(1)(a) of the PA.

³ Section 253(2) of the PA.

⁴ Section 253(4) of the PA.

⁵ Section 249(2) and (3) of the PA.

⁶ Section 252(1) of the PA.

22. An email dated 22 June 2018 from Simon Hart, the Acting Manager, Development Tribunals to Kane Jones of the Appellant regarding jurisdiction of the Development Tribunals.
23. An email dated 25 June 2018 from Kane Jones to Simon Hart regarding jurisdiction of the Development Tribunals.
24. An email dated 27 June 2018 from Rachel Groessler, the Acting Registrar, Development Tribunals to Peter James of Archers Body Corporate Management (Archers), the representative of the Body Corporate, providing a copy of the Form 10 – Appeal Notice, grounds for appeal and accompanying materials pursuant to section 230(3)(g) of the PA.
25. An email dated 23 July 2018 from Peter James to Simon Hart, attaching a copy of the development application to the Assessment Manager that resulted in the Permit that was given.
26. An email dated 3 September 2018 from Peter James to Simon Hart (and others) attaching supporting documents and materials for the Tribunal's consideration.
27. An email dated 12 November 2018 from Kane Jones to the Tribunals Registrar attaching the Appellant's first submissions (Appellant's first submissions).
28. An email dated 16 November 2018 from Chris Stothart, Plumbing Inspector of the Assessment Manager to the Tribunals Registrar attaching the Assessment Manager's first submissions (Assessment Manager's first submissions).
29. An email dated 19 November 2018 from Peter James to the Tribunals Registrar attaching the Body Corporate's first submissions (Body Corporate's first submissions).
30. An email dated 23 November 2018 from Kane Jones to the Tribunals Registrar attaching the Appellant's reply submissions (Appellant's second submissions).
31. An email dated 29 November 2018 from Peter James to the Tribunals Registrar attaching further submissions on behalf of the Body Corporate (Body Corporate's second submissions).
32. An email dated 13 December 2018 from Kane Jones to the Tribunals Registrar attaching further submissions on behalf of the Appellant (Appellant's third submissions).
33. The *Planning Act 2016* (PA).
34. The *Planning Regulation 2017* (PR).
35. The *Plumbing and Drainage Act 2002* (P&D Act).
36. The *Body Corporate and Community Management Act 1997* (BCCMA).
37. The *Building Act 1975* (BA).
38. The *Water Supply (Safety and Reliability) Act 2008* (WS (S&R) Act).

Findings of Fact

Information notice

39. The grounds for appeal set out in the annexure to the Form 10 – Application for Appeal/Declaration indicate that the appeal is about a decision under the P&D Act relating to an application for the compliance assessment of plans for regulated work under section 85 (in part 4) of the P&D Act.
40. Section 85 of the P&D Act sets out the process for assessing a request for compliance assessment.
41. After proceeding through an assessment process, section 85(6) of the P&D Act provides that the local government must, in deciding the compliance request:
- a. give the person making the request a compliance permit; or
 - b. refuse to give a compliance permit.
42. Pursuant to section 85(8) of the P&D Act, if the local government gives a compliance permit, the local government must also give a copy of the permit to:
- a. the owner of the premises to which the permit relates; and
 - b. if the permit is for a plan for work involving the installation of water meters on premises—the water service provider for the premises, if the water service provider is not the local government.
43. The Plumbing Compliance Permit somewhat confusingly identifies the lot and plan details of the site as ‘Lot 4 on RP224934 S/P 8856’ however, it is apparent from the plan attached to the development application (reference no. 1788-01, sheet 1 of 2 dated 13 April 2018) that the premises the subject of the Proposed Development comprises land on BUP8856 and specifically, common property for that land, including three of the buildings within BUP8856. The Tribunal therefore finds that the premises to which the Plumbing Compliance Permit relates is BUP8856 and as such, it is subject to the BCCMA.
44. “Owner” is defined in the Schedule of the P&D Act to mean for premises comprising a building or structure – the owner of the building or structure within the meaning of the BA.
45. In Schedule 2 of the BA, ‘owner’ of a building or structure is defined, in circumstances where the building or structure is, under the BCCMA, on scheme land for a single community titles scheme, as:
- a. for a single lot in the building or structure – the registered proprietor; or
 - b. for two or more lots in the building or structure – the body corporate for the scheme⁷.
46. The Tribunal finds that the premises the subject of the Proposed Development comprises buildings that are subject to the BCCMA and that there are two or more lots in the building

⁷ See Schedule 2 (Dictionary) of the BA, paragraph (d) of the definition of “owner”. The Tribunal also notes that paragraph (e) would instead apply if the building or structure is, under the BCCMA, on scheme land for two or more community titles schemes. The Tribunal hasn’t been provided with evidence that this is the case and has therefore proceeded on the basis that the Permit relates to scheme land for a single community titles scheme. In any event, if in fact paragraph (e) of the definition of “owner” in the BA is the pertinent definition, section 85(8)(a) of the P&D Act would, in effect, have required a copy of the Permit to be given to the body corporate for the principal scheme, rather than to the Appellant.

or structure the subject of the Proposed Development. Accordingly, the Assessment Manager was correct in giving a copy of the Plumbing Compliance Permit to the Body Corporate, as the 'owner' as defined in the P&D Act.

47. Section 85(10) of the P&D Act states:

'If the local government ... gives a compliance permit on conditions, the local government must give the person who made the request an information notice about the decision.'

Note –

For appeals against the decision, see the Planning Act, chapter 6.'

48. In the schedule to the P&D Act, an 'information notice' is defined to mean, insofar as a decision of the chief executive or a local government under part 4 or 5 of the P&D Act is concerned, a notice stating the following:

- a. the decision;
- b. the reasons for the decision;
- c. that the person to whom the notice is given may appeal against the decision to a development tribunal under the PA within 20 business days;
- d. how the person may appeal against the decision.

49. In this case, the Assessment Manager gave the Body Corporate a compliance permit and pursuant to section 85(10) of the P&D Act, the Assessment Manager was therefore required to give the person who made the request, being the Body Corporate, an information notice about the decision.

50. Section 85(10) of the P&D Act does not require an information notice to be given to any person other than the person who made the request.

51. Section 229 of the PA identifies, amongst other things, that Schedule 1 of the PA states the matters that may be appealed to the Development Tribunal and the person who may start the appeal.

52. In item 3 of table 3 of schedule 1 of the PA, only the person who received, or was entitled to receive, an information notice about the Assessment Manager's decision has a right of appeal to a Development Tribunal.

53. On 25 May 2018, the Assessment Manager issued a document identified as a "Plumbing Compliance Permit" to Archers. This document contained the information required to be contained in an information notice.

54. It is unclear from the material before this Tribunal as to whether the "Plumbing Compliance Permit" is also the information notice required to be given to the Body Corporate in accordance with section 85(10) of the P&D Act. However, even if the "Plumbing Compliance Permit" is not an information notice for the purpose of the P&D Act, the only person with a right of appeal under section 229 of the PA is the person who is entitled to receive an information notice, namely the Body Corporate.

55. The Appellant's first submissions about whether the Development Tribunals had jurisdiction to hear and decide the appeal made reference to section 85(8)(b) of the P&D Act and contended that the Appellant was a "water service provider" for the purposes of the P&D Act.

56. Section 85(8) of the P&D Act is not relevant to the issue of whether the Appellant has a right of appeal against the decision.⁸ An information notice is different to a copy of the compliance permit. In item 3 of table 3 of Schedule 1 of the PA, it is only persons who received, or were entitled to receive, an information notice about the decision who have a right of appeal against the decision.

57. In accordance with section 85(10) of the P&D Act, the person who made the request is entitled to receive the information notice. In this case, that person was the Body Corporate.

Reasons for the Decision

58. Schedule 1 of the Planning Act does not identify any rights of appeal for a person who received, or was entitled to receive, a compliance permit, or a copy thereof.

59. The Appellant was the builder and developer of the Palmer Coolum Resort and neighbouring community title schemes, including the President's Club Golf CTS 6445.

60. The Appellant did not receive, nor was it entitled to receive, an information notice about the Assessment Manager's decision to grant the compliance permit.

61. In accordance with section 85(10) of the P&D Act, the person who made the request is entitled to receive the information notice. In this case, that person was the Body Corporate.

62. In the circumstances, the Appellant does not have a right of appeal and the Tribunal accordingly, pursuant to section 252 of the PA, decides that it does not have jurisdiction to hear the Appellant's appeal.

Samantha Hall
Development Tribunal Chair
Date: 8 February 2019

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 (07) 1800 804 833 Facsimile (07) 3237 1248
Email: registrar@hpw.qld.gov.au

⁸ For the sake of completeness, the Tribunal agrees with the Assessment Manager's submission as summarised in paragraph 12(b) of this Decision Notice that the Appellant was not the "water service provider" for the purposes of the P&D Act because that term was defined to mean the registered water service provider under the WS (S&R) Act, which is Unitywater and not the Appellant. Despite this, the granting of the Permit evidently came to the attention of the Appellant in some manner as it commenced this appeal purporting to challenge the Permit.

