



Development Tribunal – Decision Notice

Planning Act 2016, section 255

Appeal number:	23-071
Appellant:	Bernard Kemps
Respondent:	Bundaberg Regional Council
Site address:	37 Charlie Triggs Crescent, Bundaberg and described as Lot 10 on SP157729

Appeal

Appeal under section 229 and Schedule 1, Table 1, Item 4(a)(i) of the *Planning Act 2016* against an infrastructure charges notice given by the Bundaberg Regional Council on the ground the notice involved an error relating to the application of the relevant adopted charge.

Date and time of hearing:	8 February 2024, 1:30pm
Place of hearing:	Online via video
Tribunal:	Travis Schmitt – Chair Michael Pickering – Member

Decision:

The Development Tribunal, in accordance with section 252 of the *Planning Act 2016*, decides it has no jurisdiction to 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. This appeal concerns two infrastructure charges notices issued by the Bundaberg Regional Council (**the Council**) to the Appellant on 17 November 2023 and 6 December 2023, respectively (**the ICNs**). The Appellant says the ICNs have been issued in error by the Council.

Grounds of appeal

2. By his notice of appeal, the Appellant alleges that:
 1. *I purchased the relivant parcel of landin December 2019, paying about the market value after having confirmed in a meeting with council and the building certifier that infrastructure charges do not apply to this state government self assessed development.*
 2. *I planed and built the transport and storage depot over three stages having completed the final stage in June 2023*
 3. *To my suprise i recieved invoices for infrastructure charges totally around \$360,000.00 for stage 2 and 3 of the project.*
 4. *I have contacted council and asked them to review the charges but was informed that a resolution took effect in May 2020 introducing charges to this area.*
 5. *I will now find it difficult to pay this amount, the development is complete, there is no more finance available and the leese agreements are in place.*
 6. *There was no consultation or contact by council with existing land holders of the changes.*
 7. *I find it difficult to understand that these changes could affect projects already in the construction stage. [sic]*

Conduct of appeal

3. The Tribunal convened to hear the appeal via video link on 8 February 2024. The Appellant represented himself. The Council was represented by Richard Jenner (a Council employee).
4. At the commencement of the hearing, the Tribunal confirmed it had received the following material:
 - a. Form 10 – Notice of Appeal and attachments:
 - (i) Letter from the Appellant (titled Attachment 2.0) dated 20 December 2023
 - (ii) Letter from the Council to the Appellant dated 8 December 2023 (in duplicate)
 - (iii) Amended Infrastructure Charges Notice dated 6 December 2023 (in duplicate)
 - (iv) Infrastructure Charges Notice dated 17 November 2023 (in duplicate)
 - (v) Map titled “Event Locations”
5. The parties confirmed no other materials had been filed with the registry.
6. The Appellant provided oral submissions to the Tribunal in which he elaborated on his grounds of appeal. The Appellant outlined that he had met with the Council in 2019 and was told that infrastructure charges would not apply to his proposed development. It was only after he completed the development that he received the ICNs. He was unaware that the Council had made a charges resolution in 2020 and that he would be required to pay infrastructure charges. He submitted that the Council had not informed affected landowners about the charges resolution. He submitted that as the development did not require a development approval (the Tribunal understands it was accepted development), he had not engaged with a town planner (who may have brought the existence of the charges resolution to his attention).
7. Ultimately, the Appellant’s grievance was that it was unfair for the Council to inform him in 2019 that no infrastructure charges were payable, to then introduce such charges in 2020, without notice to him, and issue the ICNs in 2023.
8. There is support for the Appellant’s allegations as to the meeting in 2019 within the Council’s letter of 8 December 2023. It states that:

A review of the minutes from the pre-lodgement meeting held on the 12th December 2019 shows that it was stated that infrastructure charges are not payable for development that was Building Works only (i.e. the Material Change of Use was Accepted development). This was correct at the time of the meeting.

9. That the Council had passed an infrastructure charges resolution in 2020 was not in dispute.¹ The Tribunal therefore sought submissions from the Appellant as to whether there was dispute that the charges resolution applied to impose infrastructure charges on his development. The Appellant responded that he did not submit one way or the other (that is, whether the charges resolution applied to the development or not). When submissions were sought from the Council, Mr Jenner submitted that the charges resolution did apply to the development.
10. After inquiry from the Tribunal, the Appellant did not agitate in oral submissions that there had been any error in the application of the adopted charge (by the Council's charges resolution) or calculation of the infrastructure charges contained in the ICNs.

Jurisdiction

11. The Tribunal has limited jurisdiction. Only those matters prescribed by s 229 and Schedule 1 of the *Planning Act 2016* may be appealed to the Tribunal. Pursuant to Schedule 1, Table 1, Item 4, an appeal may be made against an infrastructure charges notice on the limited grounds contained therein. Relevantly, pursuant to Item 4(a)(i), an appeal may be made against an infrastructure charges notice if "it involved an error relating to ... the application of the relevant adopted charge".²
12. Moreover, s 229(6) of the *Planning Act 2016* relevantly provides that an appeal against an infrastructure charges notice must not be about the adopted charge itself.

Findings & Reasons

13. The Appellant's grounds of appeal and oral submissions do not disclose that the ICN's involved an alleged error relating to the application of the relevant adopted charge.
14. The Appellant is aggrieved that he was not informed that the Council proposed to, and did later, pass a charges resolution that would impose infrastructure charges on his development. That this did not come to his attention until after the development was complete, he says, is unfair. Such matters are not within the Tribunal's jurisdiction.

Disposition

15. The Tribunal has no jurisdiction to decide the appeal.

Travis Schmitt
Development Tribunal Chair

Date: 14 February 2024

¹ Mr Jenner for the Council confirmed the 2020 resolution was replaced by a new resolution in 2021. That is consistent with references made in the ICNs to Charges Resolution (No. 1) 2021.

² The Tribunal notes the Appellant's reference to "Schedule 1 of the Planning Act 2016 referencing (4)(a)(i)" in his letter of 20 December 2023.

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.

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

Telephone 1800 804 833

Email: registrar@epw.qld.gov.au