



Development Tribunal – Decision Notice

Planning Act 2016, section 255

Appeal Number: 22-031
Appellants: Australian Daisy Pty Ltd
Respondent: Brisbane City Council
Site Address: 24 Beatty Road, Rocklea, described as Lot 112 on RP37397

Appeal

Appeal under section 229 and Schedule 1, Table 1, Item 6 of the *Planning Act 2016* against the Brisbane City Council's decision to give Enforcement Notice CA146286 dated 14 June 2022.

Date of decision: 7 March 2023
Date and time of hearing: On the papers
Tribunal: Michelle Pennicott Chair
Michael Moran Member

Decision:

The appeal is allowed and Enforcement Notice CA146286 is withdrawn, on the limited basis that Brisbane City Council has notified the Tribunal and the Appellant of its decision to withdraw it.

Reasons for decision

1. The appeal is against the Council's decision to give an enforcement notice dated 14 June 2022, reference CA146286 ('Enforcement Notice CA146286').
2. Enforcement Notice CA146286 alleges that the Appellant have committed and/or are committing a development offence under section 163 of the Planning Act (carrying out assessable development without permit) and a development offence under section 165 of the Planning Act (unlawful use of premises).
3. Enforcement Notice CA146286 alleges the use of the premises is not a Rooming Accommodation use because each the rooms are self-contained units and it is therefore an undefined use for which a development approval is required.
4. Enforcement Notice CA146286 requires the Appellant to ensure the Rooming accommodation use accommodates only the limited facilities itemised in the Enforcement Notice.
5. On 20 June 2022, the Appellant appealed against the requirements in Enforcement Notice CA146286.
6. On 30 August 2022, the Council brought to the attention of the Registry that it had commenced two appeals in the Planning and Environment Court (Appeal No. 300 of 2022 and Appeal No. 301 of 2022) in relation to the Development Tribunal's jurisdiction for enforcement notice appeals similar to the subject appeal.
7. On 27 September 2022, the Planning and Environment Court dismissed Appeal No. 300 of 2022 and Appeal No. 301 of 2022.
8. The Tribunal has jurisdiction for the subject appeal, being an appeal against a decision to give an enforcement notice in relation to a material change of use of a classified building.
9. On 13 December 2022, the Council provided copies of the evidence before the original decision maker in response to directions to enable the appeal to be heard and decided. The Council also foreshadowed that, subject to confirming the effect of recent legislative changes regarding rooming accommodation, the Council intended to withdraw Enforcement Notice CA146286.
10. On 17 January 2023, the Council notified the Registry that it had contacted the Appellant on 11 January 2023 and subsequently withdrew Enforcement Notice CA146286.
11. In reply, on 17 January 2023, the Appellant emailed the Registry requesting a decision in writing.
12. On 31 January 2023, the Council provided the Tribunal with copies of its earlier email communications directly with the Appellant dated 11 and 18 January 2023, advising of the Council's decision to withdraw Enforcement Notice CA146286 due to *Planning Regulation 2017* amendments in relation to the rooming accommodation uses.
13. The communications also made reference to there being a need for development approval due to the premises being located in the Flood Overlay.

14. Enforcement Notice CA146286 and this appeal do not relate to the Flood Overlay.
15. Therefore, on the limited basis of the Council's notification of its withdrawal of Enforcement Notice CA146286, the appeal is allowed and Enforcement Notice CA146286 is withdrawn.

Michelle Pennicott
Development Tribunal Chairperson

Date: 7 March 2023

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.

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 Energy and Public Works
GPO Box 2457
Brisbane QLD 4001

Telephone: 1800 804 833

Email: registrar@epw.qld.gov.au