

Between: **TOWNSVILLE DEMOLITIONS PTY LTD** Appellant
And: **TOWNSVILLE CITY COUNCIL** Respondent

NOTICE OF APPEAL

Filed on 27 / 07 / 2016.

Filed by: Katrina Statoes
Service address: Townsville Demolitions Pty Ltd, 13-21 Carmel St Garbutt
 QLD 4814, PO Box 8060 Garbutt QLD 4814
Phone: 4728 2971
Fax: 4755 2858
Email: katrina@tdpl.com.au or info@tdpl.com.au

Townsville Demolitions Pty Ltd of 13-21 Carmel St Garbutt Q 4814 appeals to the Planning and Environment Court at Townsville against the refusal of a development application seeking a development permit for a Material Change of Use – Warehouse – open storage (the 'Development Application') and seeks the following orders or judgement:

1. that the appeal be allowed;
2. that the Development Application be approved subject to appropriate conditions;
3. That the Respondent pay the Appellant's costs of and incidental to the appeal;
4. Such other orders as the Court deems appropriate.

The grounds of appeal are:

1. The land the subject of this appeal (the 'Land'):
 - (a) is located at 142 Glenn Road Woodstock in the State of Queensland particularly described as Lot I on CP 850681;
 - (b) is owned by the Appellant;
 - (c) has three (3) street frontages of Glenn Road, Flinders Highway and (unconstructed) Field Road.

.....
Appellant

2. The Land is a rural property of 14.65 ha and is adjoined by one other property of a similar size. The property is isolated by the State Highway to the east, and the railway line to Mount Isa and the Old Flinders Highway to the west. The property has a dwelling, but due to its limited size, poor soil quality and ephemeral access to water, provides no potential for rural use other than occasional agistment for horses.
3. The property has been used for the temporary placement of “exceptional loads” as defined and controlled by the Transport Operations (Road Use Management — Mass, Dimensions and Loading) Regulation 2005. The loads comprise two former dwellings and two former classroom buildings.
4. The above regulation requires approval from State agencies and service providers, local Councils, and Queensland Police, before an exceptional load can be moved. Each load is required to be accompanied by, and under the control of a police escort.
5. All the above movements were carried out in accordance with the Transport Operations (Road Use Management - Mass, Dimensions and Loading) Regulation. It was therefore assumed that no agency, including the Council, had any objection to movement. The Council subsequently determined that the storage of the loads constituted assessable development, and issued an enforcement notice under the Act.
6. This notice was appealed to the Building and Development Dispute Resolution Committee. The Committee found that the Enforcement Notice was improper because it required actions that could not be taken without approval by State and local agencies, namely the removal of the structures, and the committee issued a decision which deferred the notice pending the lodgement and processing of a development application for the activity.
7. This was acceptable to the appellant, but the Council’s legal department refused to accept the decision of the BDDRC, and stated that they would continue to pursue the matter in the Magistrates Court. For this reason, it was necessary for the enforcement notice to be further appealed to the Planning and Environment Court.
8. At the P & E Court, it was agreed that a development application would be lodged. Lodgement was undertaken, and acknowledged by the Council on 10 September 2015. The application was referred to North Queensland State Assessment and Referral Agency as Concurrence Agency, as the Flinders Highway is a State-controlled road.
9. On 3 November 2015, the Department of Infrastructure, Local Government and Planning issued a Concurrence agency “response - with conditions”, that was an approval and an endorsement of the application as submitted, eg it did not impose any conditions other than those proposed in the application.
10. Following an information request from the Council and a full response to the latter, public notification under the Act was undertaken. No properly made representations were submitted. On 6 July 2016 the Council refused the application on the following grounds:

The proposal conflicts with the Strategic Framework of the Townsville City Plan, in particular themes Shaping Townsville, Strong, Connected Community and Sustaining Economic Growth;

The proposal conflicts with the Rural zone code, 6.6.1.2 Purpose (1) – (3);

The proposal conflicts with the Rural zone code, 6.6.1.2 (4) overall

outcomes for the Mixed Farming Precinct;

The proposal conflicts with the relevant Performance Outcomes and Acceptable Outcome of the Rural zone code, as relevant to the Purpose and Overall outcomes above; and

The applicant has not provided suitable justification to approve the use despite the identified conflicts with the Townsville City Plan.

10. The above reasons for refusal are largely based on alleged conflict with generalised aims and themes within the City Plan. Adverse effects such as traffic, noise, environmental impacts and visual effects cannot be given as reasons, because the proposal has **no** adverse effects. The loads are placed on the property away from boundaries, and to the casual viewer are simply seen as a typical small grouping of buildings that commonly occurs on rural properties. The use area of the property is no more than 3.4% of the total area. The level of activity is very low. The development application proposes a maximum of six objects being stored at any one time, and a maximum of 10 load transactions (eg a movement in and out) per year.
11. In order to comply with the Act, the planning scheme claims to promote sustainable development. One of the best examples of sustainability is the recycling of older buildings, many of which are of historical or architectural interest. The most of the embodied energy in the structure can be retained. The Council promotes the redevelopment of inner urban areas, which frequently involves the replacement of older structures which are still serviceable, built of materials such as “Maryborough hardwood” that is naturally termite resistant and has an unlimited life if protected from damp. It costs around \$30,000 to demolish a typical structure. The Council is in conflict with its own declared aims.
12. The cost of storing these objects on urban industrial land would be cost-prohibitive. The cost of a movement is in the order of \$15,000. The Queensland Police support the storage location because it is outside the urban area, and the access point provides clear visibility of about 2km in each direction, which never occurs in urban situations.
13. The assertion above, that the proposal is in conflict with the Rural Zone Code is blatantly false. Section 6.6.1.2 (1) (b) of the code allows for “ ... *opportunities for non-rural uses that are compatible with agriculture, the environment, and the landscape character of the rural area where they do not compromise the long - term use of the land for rural purposes.*” Similarly, under (2)(b) the requirement for “*the character and landscape values of non-urban land are maintained*” is complied with. The proposal does not prejudice the longer term use of the land under section (4), as it does not affect the capacity of the property for accommodating any rural small-scale agistment.
14. A further reason for overturning the Council’s decision arises from the principle of “equitable estoppel”. The four buildings currently located on the site were ALL removed from public land; two from a property owned by the Queensland Department of Education, one from land owned by the Department of Transport and Main Roads, and the fourth from Jezzine Barracks. While the latter was formerly owned by the Federal government, the Council was a partner in the consortium for the future use of Jezzine at the time when the building was removed, and the property is now under the trusteeship of the Council, so the Council has presumably directly benefitted from the removal, indirectly if not directly. Furthermore, the Council acquiesced in the removal of all these buildings, and all were accompanied and supervised by a police escort. It was therefore reasonable to assume that the process was lawful. [end of summary of grounds]

If you are named as a respondent in this notice of appeal and wish to be heard in this appeal you must:

- (a) within 10 business days after being served with a copy of this Notice of Appeal, file an Entry of Appearance in the Registry where this notice of appeal was filed or where the court file is kept; and**
- (b) serve a copy of the Entry of Appearance on each other party.**

The Entry of Appearance should be in Form PEC – 5 for the Planning and Environment Court.

If you are entitled to elect to be a party to this appeal and you wish to be heard in this appeal you must:

- (a) within 10 business days of receipt of this Notice of Appeal, file a Notice of Election in the Registry where this Notice of Appeal was filed or where the court file is kept; and**
- (b) serve a copy of the Notice of Election on each other party.**

The Notice of Election should be in Form PEC – 6 for the Planning and Environment Court.