

"B"  
**COURT OF APPEAL  
SUPREME COURT OF QUEENSLAND**

CA NUMBER: of 2017  
NUMBER: 2868 of 2015

Appellant: **KATE PETA BELL**  
AND  
First Respondent: **BRISBANE CITY COUNCIL**  
AND  
Second Respondent: **SUNLAND DEVELOPMENTS NO.8  
PTY LTD**  
AND  
Third Respondent: **CHIEF EXECUTIVE ADMINISTERING  
THE *SUSTAINABLE PLANNING  
ACT 2009***

**NOTICE OF APPEAL**

To the First, Second and Third Respondents

And to the Registrar, Planning and Environment Court of Queensland

TAKE NOTICE that the Appellant appeals to the Court of Appeal against the whole the order of the Planning and Environment Court.

**1. THE DETAILS OF THE JUDGMENT APPEALED AGAINST ARE –**

Date of Judgment: 10 May 2017

Description of Proceedings: Planning and Environment Court Appeal Number 2868 of 2015

Description of Parties involved in Proceedings: Kate Peta Bell as Appellant  
AND  
Brisbane City Council as Respondent

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**NOTICE OF APPEAL**

Filed on behalf of the Appellant  
Form 64, Version 4  
Uniform Civil Procedure Rules 1999  
Rule 747(1)

**Connor O'Meara**  
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AND

Sunland Properties No.8 Pty Ltd as Co-Respondent

AND

Chief Executive administering the *Sustainable Planning Act 2009* as the Co-Respondent by Election

Name of Primary Court Judge: Rackemann DCJ

Location of Primary Court: Brisbane

## 2. GROUNDS

1. The primary judge erred in law in interpreting the First Respondent's planning scheme, City Plan 2014 ("CP2014"):

- (a) in failing to conclude that overall outcome (3)(h) of the Toowong-Auchenflower Neighbourhood Plan ("TANP") required an assessment of whether there was a need for the development at the height proposed, rather than at a height which was consistent with community expectations;
- (b) in concluding that overall outcome (3)(h) of the TANP permitted a balancing consideration to take place in respect of all positive and negative attributes of the proposed development;
- (c) in concluding that, for impact assessable development, s.5.3.3(1)(d), when read with (c)(iii), meant that compliance with an applicable code under CP2014 could be demonstrated by adoption of the acceptable solutions or consistency with the corresponding performance outcomes or with the purpose and overall outcomes of the code.

2. The primary judge erred in law in failing to directly address the issue of conflict with overall outcome (5)(a) of the TANP, and by failing to give adequate reasons in respect of that issue.
3. In determining, for the purposes of s.326(1)(b) of the *Sustainable Planning Act 2009*, that there were sufficient grounds to justify an approval of the proposed development, despite its significant conflict with provisions of CP2014, the primary judge erred in law:
  - (a) by usurping the role of the First Respondent as planning authority, and by substituting a planning strategy for the site, in terms of the nature and built form of the development, that was materially different to the one contained in CP2014;
  - (b) by failing to take relevant considerations into account, namely:
    - (i) that development that did not conflict with relevant provisions of CP2014 could achieve the same positive outcomes as were relied upon by the primary judge;
    - (ii) the correct interpretation of overall outcome (3)(h) of the TANP;
    - (iii) the conflict between the proposed development and overall outcome (5)(a) of the TANP;
  - (c) by taking irrelevant considerations into account, namely:
    - (i) that there were provisions of CP2014 with which the proposal was either consistent or which the proposal positively supported or achieved;
    - (ii) his incorrect interpretation of overall outcome (3)(h) of the TANP.

**3. ORDERS SOUGHT -**

1. The application for leave to appeal is granted;
2. The Appeal to this Court is allowed;
3. The decision of the Planning and Environment Court of 10 May 2017 that Appeal No 2868 of 2015 be dismissed, be set aside;
4. In lieu thereof, the Appellant's appeal be allowed and the development application the subject of the appeal be refused;
5. The First, Second and Third Respondents pay the Appellant's costs of and incidental to the application for leave to appeal and the appeal in this Court;
6. Such further orders that the Court deems appropriate.

**4. LEAVE TO APPEAL**

1. This appeal is brought pursuant to leave given by \_\_\_\_\_ on \_\_\_\_\_
2. Leave to appeal was given for the following questions –
  - (a)
  - (b)
3. Leave to appeal was given because \_\_\_\_\_

**7. RECORD PREPARATION**

I/We undertake to cause a record to be prepared and lodged, and to include all material required to be included in the record under the rules and practice directions and any order or direction in the proceedings.

**PARTICULARS OF THE APPELLANT:**

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**PARTICULARS OF THE FIRST RESPONDENT:**

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 Solicitor's name: Mr James Langham  
 and firm name: Brisbane City Legal Practice  
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**PARTICULARS OF THE SECOND RESPONDENT:**

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 Solicitor's name: Ms Rachel Jones  
 and firm name: McCullough Robertson  
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**PARTICULARS OF THE THIRD RESPONDENT:**

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Signed: \_\_\_\_\_

Description: Michael Connor, Solicitor, Connor O'Meara Solicitors

Dated: 21/06/2017

This Notice of Appeal is to be served on:

1.  
BRISBANE CITY COUNCIL  
c/- Mr James Langham  
Brisbane City Legal Practice  
Level 20, Brisbane Square, 266 George Street  
BRISBANE 4000

2.  
SUNLAND DEVELOPMENTS NO. 8 PTY LTD  
C/- Ms Rachel Jones  
McCullough Robertson, Level 11, 66 Eagle  
Street  
BRISBANE 4000

3.  
CHIEF EXECUTIVE ADMINISTERING THE  
*SUSTAINABLE PLANNING ACT 2009*  
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