



Development Tribunal – Decision Notice

Planning Act 2016, section 255

Appeal number:	25-029
Appellant:	Jetty Boy Pty Ltd - CAN 609 001 265
Assessment manager:	Sunshine Coast Council
Site Address:	52 Expectation Circuit, Nambour Qld 4560 and described as Lot 411 on SP235750— the subject site

Appeal

Appeal under section 229(1)(a)(i) and Item 6 of Table 1 of Schedule 1 and section 1(1)(b) and section 1(2)(h)(i) of Schedule 1 of the *Planning Act 2016* (PA) against an Enforcement Notice issued by Sunshine Coast Council (Council) on 27 August 2025 (Enforcement Notice) pursuant to section 248 of the *Building Act 1975* (BA) in respect of the failure of a retaining wall on the western boundary of the subject site; and section 250 of the BA.

The Appeal is to be made by the person given the Enforcement Notice, who in this case was the Appellant and the Respondent to the Appeal is the enforcement authority, who in this case is Sunshine Coast Council.

Date and time of hearing:	15 October 2025. Site inspection held at 11.00am and the Hearing commenced at 12.15pm at the Council's office at Maroochydore
Place of hearing:	The subject site and Sunshine Coast Council City Hall Level 4, 54 First Avenue, Maroochydore QLD 4558
Tribunal:	John O'Dwyer —Chair Peter Rowell —Member Thomas Bayley —Member
Present:	Penelope Williams —Appellant Roy Saint —Civil Engineer advising Appellant Greg Roberts —Respondent Council representative Chris Fahey—Respondent Council representative

Decision:

The Development Tribunal (Tribunal), in accordance with section 254(2)(d) of the PA sets aside the decision of Council to issue an Enforcement Notice COM2025/0939 and orders the Council as the enforcement authority to issue a new Enforcement Notice on or before the 28th of July 2026 on the same terms as the Enforcement Notice save and except that:

- (a) the new dates for compliance in Section 3 headed “Required Actions” of the new enforcement notice must be consistent with the time frames as set out in Section 3 of the Enforcement Notice but reset from the date the new enforcement notice is issued to the Appellant;
- (b) that the Required Actions in section 3.3 are to be limited to the western boundary retaining wall only.

Background

1. Between 3 November 2013 and 5 May 2014 work was carried out to provide a level construction pad on the subject site and retaining walls were constructed on the western and northern boundaries of the subject site. These retaining walls are over two metres high for much of their length.
2. The building certifier in approving the building work noted the need for, but did not ensure that, the retaining walls were properly designed and constructed.
3. On 27 May Council received a concern relating to stormwater discharges and a failing retaining wall along the western boundary.
4. On 22 July 2025, A Council officer made an inspection of the adjacent property to the west and identified a section of the retaining wall had fallen out and another section was cracked and potentially leaning towards the lower property.as a result the retaining wall was confirmed as dangerous.
5. Between 29 July and 14 August 2025 in correspondence between Council and the Appellant, the Council requested access to the subject site to conduct further investigations and advising that the retaining walls on the western and northern boundaries were assessable building work that had been constructed without a planning and/or building development approval according to Council records.
6. On 14 August an inspection of the subject site was undertaken. No roof water concerns were noted, however, there was soil subsidence/erosion was noted between the dwelling and property boundary.
7. On 27 August 2025, Council issued the Enforcement Notice (Council Ref: COM25/0939) that is the subject of this Appeal.
8. The appellant filed a Notice of Appeal (Form 10) with the Tribunal registry on 3 September 2025.

Jurisdiction

9. The Tribunal is satisfied that it has jurisdiction in respect of the subject Appeal, being an appeal against a decision to give an enforcement notice under the BA section 248 in relation to the repair of a structure.
10. Section 229(1) of the PA provides that Schedule1 of the PA states the matters that may be appealed to the Tribunal.
11. Section 1(1)(b) of Schedule 1 of the PA provides that Table 1 states thee matters that may be appealed to a tribunal. In Table 1, one of the matters that may be appealed is a decision to give an enforcement notice (Item 6).

12. However, pursuant to section 1(2) of Schedule 1 of the PA, Table 1 only applies to a tribunal if the matter involves one of a list of matters set out in sub-section (2).
13. Section 1(2)(h)(i) of Schedule 1 of the PA relevantly refers to a decision to give an enforcement notice in relation to a matter under paragraphs (a) to (g). Paragraph (g) refers to a matter under the PA, to the extent the matter relates to the BA, other than a matter under the BA that may or must be decided by the Queensland Building and Construction Commission (QBCC).
14. Section 248(5) of the BA relevantly provides that an enforcement notice given under that section is to be taken as an enforcement notice under section 168 of the PA.
15. The matter is not one which may or must be decided by the QBCC.
16. Accordingly, an enforcement notice given under section 248 of the BA, would come within section 1(2)(g) of Schedule 1 of the PA and consequently, also section 1(2)(h)(i) of Schedule 1 of the PA.
17. So, Table 1 of Schedule 1 of the PA applies to this Appeal.

Decision framework

18. The onus rests on the respondent as the enforcement authority that gave the enforcement notice to establish that the Appeal should be dismissed (section 253(3) of the PA).
19. The tribunal is required to hear and decide the appeal by way of a reconsideration of the evidence that was before the person who made the decision appealed against (section 253(4) of the PA).
20. However, the Tribunal may, but need not, consider –
 - (a) other evidence presented by a party to the appeal with leave of the Tribunal; or
 - (b) any information provided under section 246 of the PA (section 253(5) of the PA)
21. The Tribunal has determined to consider evidence presented by the Appellant and the Respondent Council under section 246 of the PA at the hearing and as a result of Directions issued by the Registrar on 4 December 2025 subsequent to the Hearing which the Tribunal is entitled to do under section 253(5)(b) of the PA.
22. The tribunal is required to decide the appeal in one of the ways mentioned in section 254(2) of the PA.

Material considered

23. The material considered in arriving at this decision was:
 - (a) Form 10 Notice of appeal, grounds for appeal (noting the lack of particularity thereof in section 4 of the Form 10) and correspondence accompanying the appeal lodged with the Tribunals registrar on 3 September 2025.
 - (b) Responses to Directions
 - (c) The *Planning Act 2016*
 - (d) The *Building Act 1975* and the *Building Regulation 2021*.
 - (e) The Direction issued to the Parties on 4 December 2025

- (f) The response to the Direction from the Appellant on 13 January 2026 (namely the Saint Consulting Engineers Report dated 1 October 2025 received by the Tribunal on 13 January 2026).
- (g) The Council's Prepared Bundle of Documents provided to the Tribunal on 7 October 2025, a further copy of which was provided to the Tribunal at the Hearing.
- (h) A site inspection was conducted on 15 October 2025 which assisted the Tribunal in an understanding of the evidence.

Findings of fact

24. The tribunal makes the following findings of fact:

- (a) The finding by Council that the wall was dangerous is supported by the evidence of the Respondent Council and observations during the site inspection prior to the Hearing.
- (b) The Enforcement Notice needed to be issued due to the dangerous condition of the western retaining wall.
- (c) The Enforcement Notice was reasonable and relevant in the circumstances.
- (d) The Parties to the Appeal have agreed in principle to the steps that need to be taken, namely:
 - i. There is a need for an assessment of the stability of the western retaining wall and the works needed to make the retaining wall safe.
 - ii. Identification of a date by when the proposed make safe works and repair works in respect of the retaining wall would be completed
 - iii. There is a need for a detailed report that sets out an action plan to undertake the works needed to ensure the long-term stability of the retaining walls.
- (e) A building approval needs to be obtained for the design for the repair of the retaining wall, together with the provision of a final inspection certificate (Form 21) to the Council prior to the expiry of the currency period of the requisite building approval.

25. So far as is relevant to this decision, section 248 of the BA provides:

- (1) *A local government may give a notice (an **enforcement notice**) to the owner of a building, structure or building work if the local government reasonably believes the building, structure or building work-*
 - (b) is dangerous: or*
 -*
- (2) *A local government may also give an enforcement notice to a person who does not comply with a particular matter in this Act.*
- (3) *However, before a local government gives a person an enforcement notice, the local government must give the person a show cause notice.*
- (4) *Subsection (3) applies only if the matter, about which the local government is proposing to give the enforcement notice, is not of a dangerous or minor nature.*

(5) *An enforcement notice given under this section is taken to be an enforcement notice given under the Planning Act, section 168.*

26. At the Hearing, the Appellant did not claim that:

- (a) She was not the “owner” of the western retaining wall for the purposes of section 248 of the BA.
- (b) The western retaining wall was not a “structure” for the purposes of section 248 of the BA.
- (c) The Council did not hold the requisite belief for the purposes of section 248 of the BA.
- (d) The western retaining wall was not “dangerous” for the purposes of section 248 of the BA.
- (e) There was a need for the Council to first give a show cause notice to the Appellant before giving the Enforcement Notice or that the Enforcement Notice was in any way not compliant with section 248 of the BA.
- (f) The western retaining wall or any part thereof was not within the property boundary of Lot 411 on SP235750.
- (g) Council’s allegation that the Council held no record of the retaining wall being approved for the purposes of the BA and the PA.
- (h) The retaining wall along the western boundary was not “assessable building work” as that term is defined in the Dictionary Schedule 10 of the *Building Regulation 2021* and therefore assessable development for which a development approval is required under the PA and the BA, particulars of which were set out by the Council in Attachment “A” to the Enforcement Notice.

Reasons for the decision

The Tribunal has considered all the material presented at the filing stage of the Notice of Appeal, at the site inspection, at the Hearing and subsequently, and based on the findings of fact:

- 27. The Tribunal considers that the dangerous situation resulted in the need for the Enforcement Notice.
- 28. The Tribunal notes the failure of the original building certifier to ensure the retaining wall was certified has resulted in a situation that impacts on the current owner. However, the Tribunal considers the need to protect the residents of adjoining properties is paramount in its consideration of the Appeal.
- 29. The Appellant has indicated a preparedness to take appropriate actions and has submitted a report dated 1 October 2025 (which was prepared prior to the Hearing) Tribunal and provided to the as the response to the Directions. The Tribunal considers that that report does not adequately address the Required Actions as set out in Section 3 of the Enforcement Notice dated 27 August 2025. It discusses issues more in a general context and contains general observations, although it does contain useful background material.
- 30. For the reasons set out in this decision notice, the Tribunal finds that the Council has discharged its onus under section 253(3) of the PA.

31. However, the Enforcement Notice needs to be reissued with appropriate dates reset and as amended as set out in this decision notice.
32. Accordingly, the Appeal is upheld to the extent that the Council decision to issue an Enforcement Notice is set aside and a new Enforcement Notice is to be issued by Council in accordance with the decision of the Tribunal as is set out on page two of this decision notice.
33. Finally, the Tribunal suggests that the Council may wish to give consideration as to how it should proceed in respect of the northern retaining wall having regard to this decision notice.

John O'Dwyer
Development Tribunal Chair

Date: 7 July 2026

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.

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 Housing and Public Works
GPO Box 2457
Brisbane QLD 4001

Telephone 1800 804 833

Email: registrar@hpw.qld.gov.au