



Development Tribunal – Decision Notice

Planning Act 2016, section 255

Appeal number: 26-012

Appellant: Capitalink Pty Ltd ACN 602 481 685

Respondent (Assessment manager): Brisbane City Council

Site address: 358 Manly Road, Manly West Queensland 4179

Appeal

Appeal under section 229(1)(a)(i) and schedule 1, Section 1(2)(h)(ii), Table 1, section 7 of the *Planning Act 2016* (PA) against the decision of the respondent to issue an Enforcement Notice under section 143 of the *Plumbing and Drainage Act 2018* (PDA).

Date and time of hearing: Papers

Place of hearing: Submissions

Tribunal: Mr Simon James – Chair
Michael Yau – Member
Ken Crase – Member

Decision:

The Development Tribunal (Tribunal), in accordance with section 254(2)(a) of the PA, confirms the decision of the respondent to issue the Enforcement Notice dated 19 February 2026 in relation to property at 358 Manly Road, Manly West, Queensland, 4178.

Background

1. On 13 March 2026, the appellant lodged an appeal in relation to a decision of the respondent (Brisbane City Council (BCC)) to issue an Enforcement Notice (EN) dated 19 February 2026 in relation to non-compliant drinking water services and the completion of required outstanding works at 358 Manly Road, Manly West, Queensland, 4179 (the property).
2. The grounds for the appeal outlined in section 4 of the Notice of Appeal dated 13 March 2026 are as follows:
 - The non-compliant works are required to be completed within an unreasonable timeframe; and
 - Unsuccessful representations made to the respondent to delay the issuing of the EN until such time as the property can be sold and a new owner equipped for the task can take on the responsibilities of making the works compliant.

3. A review of the material provided by the respondent in support of its decision to issue the EN indicates that there is significant history preceding the decision to issue the EN dated 19 February 2026 (see paragraph 24 below).

Jurisdiction and Time

4. 229(1)(a)(i) and Schedule 1, section 1(2)(h)(ii), Table 1, section 7 of the PA provides for an appeal to the Tribunal against a decision to issue an EN under the PDA.
5. The EN is issued under section 143 of the PDA¹.
6. The Tribunal is satisfied that it has jurisdiction to consider the appeal.
7. Section 229(2) of the PA allows an appeal to be commenced within the legislated appeal period. An appeal with respect to a decision under the PDA, if not falling within one of the matters listed in section 229(3)(g)(i) to (iii), is required to be filed within 20 business days after 'notice' of the decision was given².
8. On this basis, the appellant was required to commence the appeal within 20 business days after the EN was given, that is on or before 19 March 2026. The appellant filed the appeal 13 March 2026.
9. The appellant's appeal is within time.

Decision framework

10. Pursuant to section 253(3) of the PA, the onus rests on an 'enforcement authority' that gives an EN to establish the appeal should be dismissed³.
11. The term 'enforcement authority' is defined in Schedule 2 and section 160A(1)(e) of the PA, to include 'local government'. The respondent is an enforcement authority.
12. The onus rests on the BCC to establish that the appeal should be dismissed.
13. 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 against⁴.
14. The Tribunal may nevertheless, but need not, consider other evidence presented by a party with leave of the Tribunal, or any information provided pursuant to section 246 of the PA in relation to which the Registrar may require information for Tribunal proceedings.
15. The Tribunal is required to decide the appeal in one of the ways mentioned in section 254(2) of the PA.
16. The Tribunal, after considering the material provided by the parties, has determined the appeal is one which is suitable for determination 'on the papers' (submissions) pursuant to section 249(2) of the PA.
17. In cases where appeals are conducted on the papers, section 249(3) of the PA requires that notice be sent to all parties asking for submissions to be made to the Tribunal.

¹ See Enforcement Notice dated 19 February 2026.

² See s 229(3)(g)(iv) of the PDA.

³ See s 253(3) of the PA.

⁴ See section 253(4) of the PA

18. Given the history and technical nature of this works that the central to appeal, the Tribunal sought submissions from the parties at the outset in order to refine and clarify the key issues at hand and determine whether it was appropriate to conduct the appeal of the papers.
19. On 7 April 2026, the respondent was requested to provide written submissions including supporting materials, which were received on 28 April 2026.
20. On 29 April 2026, the respondent's submissions and supporting material was provided to the appellant with an invitation to make submissions to the Tribunal within 2 weeks.
21. On 7 May 2026, the appellant provided it's response to the respondent's submission by way of a letter dated 7 May 2026.
22. On reviewing the submissions provided by both parties, the Tribunal determined that it was appropriate to determine the appeal on the papers.
23. On 15 May 2026, the parties were advised of the Tribunal's intention to conduct the appeal on the papers and invited to provide further submissions in relation to any objections for consideration by the Tribunal with 7 days. Neither party objected to the appeal being determined on the papers.

Material considered

24. The material considered by the Tribunal in arriving at its decision are:
 - (a) Form 10 Notice of appeal, including grounds for appeal and correspondence accompanying the appeal lodged with the Development Tribunals Registrar on 13 March 2026;
 - (b) Submissions of the respondent dated 28 April 2026 attaching the following documents:
 - Approved Hydraulics plan stamped with BCC compliance permit number CP01265179412 dated 4 June 2012;
 - Compliance Permit No. CP01265179412 – plumbing - 358 Manly Road, Manly West, QLD, 4179 dated 19 July 2012;
 - Letter from BCC to The Manly Investment Trust dated 7 December 2022;
 - ASIC Search dated 19 January 2023;
 - Land Titles Search dated 19 January 2023;
 - Show Cause Notice – section 144 PDA dated 30 January 2023;
 - Enforcement Notice - Ms Lorraine Rae Young, as the Director of Capitalink Pty Ltd dated 1 March 2023;
 - Photographs 358 Manly Road – 1st Investigation taken 5 December 2023;
 - Site Map for photos taken 5 December 2023;
 - Show Cause Notice – section 144 PDA dated 5 December 2023;
 - Show Cause Notice – section 144 PDA dated 20 January 2026;
 - BCC Response to show cause representations (same as letter of 19 February 2026);
 - BCC response to Lorraine Young, Director, Capitalink Ltd from Mr Raymond Leitch, Senior Plumbing Officer, Brisbane City Council dated 19 February 2026;
 - Site may for photos taken 18 March 2026;
 - Photographs 358 Manly Road – taken 18 March 2026; and
 - Statement Mr Peter Bryer, Built Environment Officer, BCC dated 12 June 2026.
 - (c) Submissions of the appellant (Mr David Whitting) dated 7 May 2026.

Reasons for Decision and Findings

25. The onus rests on the respondent to establish that the appeal should be dismissed.
26. In doing so, the respondent needs to satisfy the Tribunal that:
- (i) The EN issued and dated 19 February 2026 complies with the relevant machinery provisions of the PDA and/or PA in terms of the required content of the notice and any pre-issuing steps; and
 - (ii) The compliance deadline stated in the EN of 19 March 2026 to complete the alleged non-compliant works is reasonable and/or fair in all the circumstances, that is, the refusal to agree to delay enforcement to allow the property to be sold and a new owner found who can complete the required works, was not unreasonable and/or unfair in all the circumstances (including ill health).

(i) Compliance with relevant machinery and pre-issuing steps

27. Section 143 of the PDA sets out the circumstances for when an EN may be given. In relation to this appeal, where the local government authority reasonably believes that plumbing or drainage which is the subject of a permit is not compliant⁵.
28. In this regard, the respondent provided to the Tribunal copies of an Approved Hydraulics Plan dated 4 June 2012⁶ and Compliance Permit No. CP01265179412 dated 19 July 2012⁷. The appellant does not dispute that this is the relevant compliance permit or that it was not validly issued.
29. Section 146 of PDA sets out the requirements for validly for an EN. In so far as is relevant in this appeal, these are:
- The EN must state the reason in relation to which the EN is given⁸;
 - The details in relation to which any stated action must be taken and the period in relation to which any stated action must be taken⁹;
 - Outline the relevant appeal rights in relation to the decision¹⁰;
 - The respondent has given a show cause notice to the appellant under section 144 of the PDA prior to issuing the EN¹¹; and
 - The respondent has considered any submissions made in response to the show cause notice prior to giving the EN¹².
30. In relation to the requirements in section 146 of the PDA for issuing a show cause notice, it must:
- Be given prior to the issuing of an EN;
 - Outline the facts and circumstances for the basis for the belief that an EN should be issued; and
 - Invite submissions within 20 days after the show cause notice was given¹³.

⁵ See s 143(2)(a)(v) of the PDA.

⁶ See - Approved Hydraulics plan stamped with BCC compliance permit number CP01265179412 dated 4 June 2012.

⁷ Compliance Permit No. CP01265179412– plumbing - 358 Manly Road, Manly West, QLD, 4179 dated 19 July 2012

⁸ See s 146(1)(a) of the PDA.

⁹ See s 146(1)(c)(i) and (ii) of the PDA

¹⁰ See s 146(1)(d) of the PDA

¹¹ See s 146(2)(a) of the PDA

¹² See s 146(2)(b) of the PDA.

¹³ See ss 144(2), (3)(a) and (b) of the PDA.

31. The EN issued on 19 February 2026 outlines the reasons for issuing, being that the drinking water services at the premises are non-compliant with the requirements of the plumbing permit originally issued on 19 July 2012.
32. The EN also outlines the stated works or actions required, the timeframe for action/compliance, being 19 March 2026, and the relevant appeal rights information¹⁴.
33. The respondent provided, as part of its submissions, copies of the following documents issued to the appellant; a show cause notice dated 20 January 2026 and response to submissions made by the appellant which is said to be dated 19 February 2026.
34. The Tribunal notes that the appellant does not dispute that the EN was validly issued, the history leading up to the issuing of the EN and is in 'general agreement' with the respondent's submissions of 28 April 2026¹⁵.
35. On this basis, the Tribunal is satisfied that the that the machinery and pre-issuing steps required for issuing the EN have been met.

(ii) Refusal to agree to delay enforcement to allow the property to be sold and a new owner found to complete the required works

36. The real issue in dispute in the appeal is whether the decision of the respondent to refuse to agree to delay (or stay) the EN to allow the property to be sold and a new owner found who can complete the required works, was unreasonable and/or unfair in all the circumstances.
37. The Tribunal notes that that Show Cause Notice was issued on 20 January 2026 and the EN was issued on 19 February 2026, with a compliance date of 19 March 2026, a period of 1 month.
38. The appellant's grounds of appeal outlined in the Notice of appeal assert that the deadline for compliance of 19 March 2026 was unreasonable. In support of this position the appellant provides an engineering report from DRW Consulting Pty Ltd dated 13 March 2026 (the DRW Report) which suggests a timeframe of between 10 and 20 weeks is required to complete the scope of work to remedy the non-compliant works.
39. The respondent in its submissions identified that the DRW Report does not include a detailed program of work and other interrelated considerations¹⁶. The Tribunal further notes that the DRW Report does not propose a start and/or completion date for the proposed works to be completed.
40. Whilst the absence of a detailed program of work and timeframes for the proposed works to be completed to resolve non-compliant is a relevant consideration, the Tribunal holds more fundamental concerns about the utility of the appellant's reliance on the DRW Report.
41. The appellant's grounds of appeal and subsequent submissions dated 7 May 2026 clearly indicates an intention to sell the property for the purposes of having the new owner take on the responsibility of addressing the non-compliant works. This suggests that the appellant has no intention of completing the works required to remedy the non-complaint works, including the scope of works outlined in the DRW Report.

¹⁴ See Enforcement Notice issued 19 February 2026.

¹⁵ See submissions of the appellant dated 7 May 2026 at para 2.

¹⁶ See BCC Submission dated 28 April 2026 at para 24.

42. The Tribunal notes that the grounds for appeal refer to extenuating circumstances. Whilst no specific information has been placed before the Tribunal by either of the parties in relation to the extenuating circumstances, the Tribunal considers from the information provided in the notice of appeal and the appellant's submissions that the extenuating circumstances relate to the appellant's ill-health.
43. The Tribunal has considered the long-standing and significant history and period of alleged non-compliance of the works which is evident in the documents attached to the respondent's submissions which includes the following:
- The appellant took ownership of the property on 1 July 2016 and has been aware of the non-compliance issue well before March 2019;
 - On 15 March 2019, Capitalink Pty Ltd was prosecuted and fined \$14,000 in the Brisbane Magistrates Court for committing offences against section 164(1) and section 168(1) of the PA in relation to the use of the unfinished development;
 - On 30 January 2023, a Show Cause Notice was given to Ms Lorraine Rae Young as Director of Capitalink Pty Ltd in respect of the non-compliant drinking water services and completion required of outstanding works;
 - On 1 March 2023, an EN was issued to Ms Lorraine Rae Young to bring the non-compliant drinking water services into compliance with the Act the plumbing permit approved on 19 July 2012; and
 - On 5 December 2023, a Show Cause Notice was again issued to Ms Lorraine Rae Young as Director of Capitalink Pty Ltd in respect of the same non-compliant drinking water services and completion required of outstanding works.
44. None of these facts are disputed by the appellant.
45. The respondent argues that the EN is a proportionate and necessary response to the appellant's ongoing failure to address non-compliance. Further, that the appellant has been given multiple opportunities to address the non-compliance and has failed to do so. The appellant also highlights the ongoing risks associated with the defective installation and non-compliance and the broader public interest in maintaining the integrity of the plumbing regulatory framework.
46. The Tribunal agrees with the tenant of the respondent's submissions.
47. The appellant's past behaviour demonstrates an ongoing and consistent unwillingness to complete the required works over a very significant period. Notwithstanding the circumstances that the appellant currently find herself in due to ill-health, the appellant has had ample opportunity since 2016 to address the non-compliance.
48. The Tribunal considers that staying the EN for what would in effect be an indefinite and/or uncertain and open-ended period to allow the property to be sold and a new owner found to complete the required works has the effect of rewarding the appellant for her longstanding unwillingness to complete the required works.
49. Further, staying the EN fails to resolve an issue which has been on foot since 2016, within a timeframe with some certainty.
50. The Tribunal notes that staying the EN whilst the property is being sold allows the appellant to avoid the seller disclosure obligations in s 99 of the *Property Law Act 2023* (PLA) in terms of advising prospective purchasers about the non-compliance issue¹⁷. This

¹⁷ See s 5(1)(e) of the *Property Law Regulation 2024*.

potentially allows the property to be passed to a future owner without their knowledge of the non-complying works and who, with appropriate disclosure, may have chosen not to purchase property in the first instance.

51. The Tribunal notes in the appellant's submissions that it intends to facilitate full disclosure to any future prospective purchaser of the Show Cause and EN and subsequent appeal form via the Form 2 Seller Disclosure Statement. However, given the appellant's long-standing history of non-compliance, the Tribunal lacks confidence that such a disclosure will be made.
52. A valid EN, whilst in effect, ensures prospective purchasers are made aware of the current non-compliant works and the associated risks via the seller disclosure obligations in the PLA.
53. In considering all the circumstances, the Tribunal finds that the respondent's decision to refuse to agree to delay enforcement to allow the property to be sold and a new owner found who can complete the required works, was neither unreasonable or unfair.
54. It follows that the respondent has discharged its onus pursuant to section 253(3) of the PA of establishing that the appeal should be dismissed.
55. The Tribunal confirms the decision of the respondent to issue the EN dated on 19 February 2026.

Simon James
Development Tribunal Chair

Date: 18 June 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