



Development Tribunal – Decision Notice

Planning Act 2016, section 255

Appeal number:	25-045
Appellant:	Jason Burnett
Respondent (Enforcement Authority):	City of Moreton Bay Council
Site address:	25 View Street, Woody Point Qld 4019, described as Lot 7 on RP 97437—(the Subject Site)

Appeal

Appeal purportedly under section 229 of the *Planning Act 2016 (Qld)* (the **PA**) against the decision to give an enforcement notice, which was issued by the Respondent pursuant to section 168 of the PA and dated 2nd December 2025.

Date and time of hearing:	Not applicable—Determined on the written materials
Place of hearing:	N/A
Tribunal:	Harry Knowlman—Chair Neil de Bruyn—Member
Present:	N/A

Decision:

The Development Tribunal (the **Tribunal**), in accordance with section 252 PA, decides that the Tribunal has no jurisdiction to hear or decide the appeal.

Please be advised that you may elect to lodge an appeal/declaration about this matter in the Planning and Environment Court. The Court appeal period starts again from the date you receive this decision notice, which should be attached to the Court appeal lodgement documentation.

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>

Background

1. The Subject Site is a corner block some 400m² in size, approximately 40m long to its Blakeney Street frontage (North-South), and 10m wide to its View Street frontage (east-west). Under the City of Moreton Bay Council (the **CMBC**) Planning Scheme, it is located

in the General Residential Zone, the Next Generation Precinct, and, amongst others, the Flood Hazard Overlay.

2. At all times relevant to this appeal, the owner of the Subject Site was The Burnett Show Pty Ltd (the **Owner**). The parties agreed that the Appellant was and is a director of that company.
3. On 15th October 2024, a Development Permit (the **DP**), subject to conditions, was issued by private certifier Mr Trevor Gerhardt (QBCC licence number A80404) to the Owner, for a Secondary Dwelling and Patio on the Subject Site. The DP makes no mention of a driveway crossover extension.
4. It is alleged by the CMBC that at some time prior to 16th April 2025, the works the subject of the DP were carried out. There being no submissions to the contrary, the Tribunal accepts that the works were carried out, generally in accordance with the approved plans which formed part of the DP.
5. It is further alleged by the CMBC, and accepted by the Tribunal in the absence of contrary submissions, that at some time prior to 16th April 2025, a driveway crossover extension (the **Driveway Extension**) was constructed to the Blakeney Street frontage of the site.
6. On 16th April 2025, a Show Cause Notice pursuant to section 167 PA was issued to the Owner by the CMBC, alleging the carrying out of assessable development without a development permit, in contravention of section 163 PA, and inviting the owner to show cause as to why an enforcement notice should not be issued pursuant to section 168 PA.
7. On 2nd December 2025, following written submissions by Mr Gerhardt on behalf of the Owner, an enforcement notice (the Enforcement Notice) was issued, as envisaged by the Show Cause Notice.
8. On 23rd December 2025, an appeal purportedly pursuant to section 229 PA against the decision to issue the Enforcement Notice was lodged with the Registrar. The appeal documents make no mention of the Driveway Extension, other than by an indirect reference in the grounds of appeal (which consisted of a reference to Mr Gerhardt's response to the Show Cause Notice), in which it is noted that the DP made no mention of driveways.
9. By section 229(3)(h) PA, the appeal period is 20 business days after a notice of the disputed decision is given. The appeal appears to have been made within time, and no submissions were made by either party suggesting otherwise.

Jurisdiction of the Tribunal

10. The Tribunal is given jurisdiction to decide a restricted subset of planning and development disputes by section 229 PA, with details of the extent of its jurisdiction set out in schedule 1 PA.
11. Section 229 and schedule 1 section 1(1) and table 1 item 6 PA do allow a decision to give an enforcement notice to be appealed to the Planning and Environment Court or the Tribunal, but schedule 1 sections 1(2)(h) limits the types of enforcement notice decisions that can be appealed to the Tribunal.
12. Schedule 1 section 1(2) states in part:

However, table 1 applies to a tribunal only if the matter involves—

.....

(h) a decision to give an enforcement notice—

(i) in relation to a matter under paragraphs (a) to (g); or

(ii) under the Plumbing and Drainage Act 2018

13. The Tribunal is satisfied that the Secondary Dwelling is properly characterised as Building Work, and the Driveway Extension as Operational Work, for the purposes of section 229 PA.
14. In relation to the Secondary Dwelling, the only applicable paragraph referred to by schedule 1 section 1(2)(h) appears to be paragraph (g) which reads

(g) a matter under this Act, to the extent the matter relates to the Building Act, other than a matter under that Act that may or must be decided by the Queensland Building and Construction Commission;
15. In relation to the Driveway Extension, paragraphs (a) to (c) specifically mention Operational Work, but variously in relation to applications and/or approvals rather than more generally.
16. The Tribunal formed a preliminary opinion that it does not have jurisdiction to hear the appeal, and by email from the Registrar it sought submissions on the question from the parties, to be received at the Registry by 6th March 2026.
17. The Appellant's submissions were received at the Registry on 5th March 2026. The Respondent's submissions were received at the Registry on 6th March 2026. These will be referred to here as the First Submissions of each party.
18. On 11th March 2026, Mr Gerhardt made further submissions to the Registrar. Pursuant to section 253(5)(a) PA, the Tribunal gave leave for this material to be forwarded to it, and gave the Respondent leave to make further submissions in reply. The further Respondent submissions were received on the 18th March 2026; together these will be referred to here as the Second Submissions of each party.
19. On 19th March 2026, in response to the Respondent's Second Submissions, Mr Gerhardt sent a further email with submissions to the Registrar. In circumstances where two rounds of submissions as to the Tribunal's jurisdiction or otherwise had already been received from each party, leave was not given to provide this third Appellant submission to the Tribunal, and it was therefore not considered.

Appellant's First and Second Submissions as to Jurisdiction

20. In its First Submissions, the Appellant only addresses the Secondary Dwelling, and asserts that that work was Building Work, carried out lawfully under the DP. It does not appear to address the jurisdiction question, and in particular the provisions of section 229 and schedule 1 PA, in any detail, beyond an assertion that section 229 is engaged. A number of cases are cited which support the proposition that work carried out under a valid Development Permit cannot be illegal – this issue is addressed below.
21. In its Second Submissions, the Appellant cites advice from a Julie Stockman at the CMBC, that "a secondary dwelling complying with all the RADs of the zone code does not require any further town planning applications.". Whilst the position is relevant to the issues here and in broad terms correct, this advice goes to the merits of the matter, and is essentially irrelevant to whether or not the Tribunal has jurisdiction under section 229 to decide the merits or otherwise of the decision. Nevertheless, its relevance to this particular set of facts is discussed below.
22. The Appellant also cites Table 1.7.7.1 in the CMBC Planning Scheme, and asserts it categorises the Secondary Dwelling as Accepted Development, requiring no assessment

against the Planning Scheme. Again, this is relevant to the merits of the decision and unrelated to the question of jurisdiction; nevertheless it too will be discussed below.

Respondent's First and Second Submissions as to Jurisdiction

23. In its First Submissions, the Respondent makes a number of merit-based assertions under a "Background" heading, but from paragraph 7 onwards it analyses in detail the jurisdiction given to the Tribunal by the PA, in relation to enforcement notice decision appeals. Its analysis follows very similar lines to that set out under the heading "Jurisdiction of the Tribunal" above.
24. Its main assertion, underlying the Enforcement Notice, is that a Development Approval under the PA was required before work could commence. It asserts that there is a PA issue here.
25. The Respondent examines each paragraph, from (a) to (g), referred to in paragraph (h), which could be the basis for Tribunal jurisdiction, and gives its reasons why none apply. It also notes that the Enforcement Notice was not given under the Plumbing and Drainage Act 2018.
26. In relation to the Driveway Extension, it submits that this work is properly categorised as operational work, and likewise asserts there is no basis for jurisdiction in relation to this matter.
27. In conclusion, the Respondent asserts that there is no basis in schedule 1 of the PA for the Tribunal's jurisdiction to hear an appeal against the decision to issue the Enforcement Notice.
28. In its Second Submissions, after setting out a brief background, the Respondent notes its objection to the Appellant's Second Submissions, on the grounds that they were "out of time" and did not address whether or not the Tribunal has jurisdiction to hear the appeal. It goes on to submit that the question is not addressed in the Appellant's first submissions either, apart from paragraph 2 of those submissions. It then submits that that paragraph 2 is incorrect at law.
29. Later in its Second Submissions, the Respondent expresses concern that the Appellant's submissions contain multiple assertions which go to the merits of its appeal, and requests that if indeed the Tribunal finds that it does have jurisdiction, it should be given further opportunity to make its own submissions as to merit before any decision is finalised.

Material considered

30. The material considered in arriving at this decision was:
 - (a) The DP issued by Trevor Gerhardt dated 15th October 2024;
 - (b) The Show Cause Notice issued by CMBC to the Burnett Show Pty Ltd dated 16th April 2025;
 - (c) A written response to Show Cause Notice including 9 appendices,, submitted by Trevor Gerhardt of Sunshine Coast Building Approvals on behalf of the Appellant, dated 30th April 2025;
 - (d) The Enforcement Notice issued by CMBC to the Burnett Show Pty Ltd dated 2nd December 2025;
 - (e) The Form 10 Notice of appeal, grounds for appeal, correspondence and other material accompanying the appeal lodged with the Registrar on 23rd December 2025;

- (f) An email from the Registrar to the parties on 6th February 2026 seeking submissions as to the jurisdiction of the Tribunal;
- (g) The Appellant's First Submissions, received by the Registrar on 5th March 2026;
- (h) The Respondent's First Submissions, received by the Registrar on 6th March 2026;
- (i) The Appellant's Second Submissions, received by the Registrar on 11th March 2026;
- (j) The Respondent's Second Submissions, received by the Registrar on 19th March 2026;
- (k) The Planning Act 2016 (Qld), current as at 18th July 2025 and in force at 2nd December 2025 (the date the Enforcement Notice was issued);
- (l) The Planning Regulation 2017 (the **PR**), current as at 28th November 2025 and in force at 2nd December 2025; and
- (m) The Building Act 1975 (the **BA**), current as at 18th July 2025 and in force at 2nd December 2025.

Discussion as to Jurisdiction

31. The Tribunal notes that both the owner of the Subject Site and the recipient of the Enforcement Notice the subject of this appeal are The Burnett Show Pty Ltd, a legal entity that is the only person with standing to lodge an appeal to the Tribunal pursuant to section 229 and schedule 1 table 1(6) PA. The appeal has been made by Jason Burnett, who although a director of The Burnett Show Pty Ltd is a separate legal entity with no standing to lodge the appeal. Whilst this by itself would appear to be grounds for a finding that the Tribunal does not have jurisdiction to hear the appeal, this is a somewhat technical defect as the appeal could simply be re-lodged, naming the correct Appellant. This discussion will therefore proceed as if the correct Appellant had been named.
32. The grounds for appeal accompanying the Notice of Appeal, and the balance of the material supplied with the Form 10 Notice of Appeal, did not consider the question of jurisdiction in any detail (if at all). This material is relevant mainly by way of providing the factual background. The four submissions, along with the PA, the PR, and the CMBC Planning Scheme, will be the focus here.
33. For completeness, the Tribunal notes that
 - It is not aware of, nor was it taken to, "a matter prescribed by regulation" that would give it jurisdiction under schedule 1 section 1(2)(l);
 - Table 3, Appeals to the Tribunal Only, is not relevant to any of the matters raised in the appeal;
 - Schedule 1 section 1(3), which carves out certain matters from Tribunal jurisdiction, is not relevant to the appeal; and
 - Schedule 1 section 1(2)(h)(ii) is not relevant to the appeal – the decision to give the Enforcement Notice was unrelated to the Plumbing and Drainage Act 2018.
34. As a result, the only possible basis for jurisdiction of the Tribunal is to be found in schedule 1 section 1(2)(h), referring to preceding paragraphs (a) to (g).

The Development Permit

35. In the Appellant's First Submissions, Mr Gerhardt argues that the Owner had received a DP for the Secondary Dwelling (putting the Driveway Extension to one side for now), and was therefore entitled to proceed with its construction, without risk of future complication. He cited a number of cases supporting this proposition. Although the Appellant's submissions did not directly address how this point might bear on the jurisdiction question, the Tribunal notes that if the proposition were true, schedule 1 section 1(2)(h)(i) might be engaged through paragraph (g) quoted above (i.e. a Building Act - related matter), giving the Tribunal jurisdiction. However, for reasons that follow, the Tribunal finds that it does not.
36. Section 72 PA states, in part:
- 72 *When development may start*
- (1) *Development under a development approval may start when—*
- (a) *all development permits for the development have started to have effect; and*
- (b) *all development conditions of the permits that are required to be complied with before development starts have been complied with.*
37. The DP given by Mr Gerhardt clearly states that the DP is issued subject to conditions, and in the first line of the decision text appears the phrase *The development application for building works is issued subject to the requirements of the Planning Act ...* Further, under a main heading of *Development Permit No. 231014 (Building) - Conditions* and a sub-heading of *Local Planning Scheme Conditions*, the DP states that *1. All development must comply with the relevant local government planning scheme codes and related approvals and this approval must not be taken as town planning approval being complied with.* (underlining added)
38. Mr Gerhardt has argued, in the Appellant's Second Submissions (and elsewhere) that, by Table 1.7.7.1 of the CMBC Planning Scheme, the Secondary Dwelling is classified as Accepted Development, requiring no development approval or further assessment against the Planning Scheme. The Tribunal disagrees with Mr Gerhardt's position in this respect.
39. Table 1.7.7.1, in setting out what Building Work (not associated with a material change of use) qualifies as Accepted Development, lists five pre-conditions for that classification, denoted *a.* to *e.* The five pre-conditions are linked by the word "and", indicating they must all be satisfied for Building Work to be classified as Accepted Development.
40. By Mr Gerhardt's construction of this table, the "and" following pre-condition *a.(vi)* includes precondition *b.* as part of pre-condition *a.(vi)*, leaving the table with no precondition *b.* at all, whilst pre-condition *a.(vi)* is said by Mr Gerhardt to include a sub-paragraph *b.*, with no sub-paragraph *a.* The Tribunal cannot agree with this construction.
41. The Tribunal finds that Table 1.7.7.1 is quite clearly worded, and that the Secondary Dwelling fails pre-condition *b.* – it is "associated with" a secondary dwelling – nothing could be more so – and it is therefore not Accepted Development by this table.
42. For reasons set out below, the Tribunal finds that code assessment by the CMBC against the Dwelling House Code was required, and that therefore (at least) one of the conditions of the DP was not satisfied. As a result, the DP was not valid, and by section 72(1)(b) the Appellant was not entitled to start the development.

43. For completeness, the Tribunal notes that section 73A PA provides that a development permit given by a private certifier does, of itself, not authorise the carrying out of any part of the works requiring assessment against any matter that is not a building assessment provision. The Tribunal considers that this is entirely consistent with the conclusion in the paragraph above.

The Secondary Dwelling

44. The Respondent has argued that the matter in dispute is a planning matter, unrelated to the Building Act. It would seem that to delve too much further into this risks going to questions of the merits of the matter – perhaps the allegation of a planning-related development offence is enough to decide the jurisdiction question.
45. Nevertheless, in case it is not, and for reasons related to the DP above, the Tribunal has satisfied itself that there was code-assessable approval required for the Secondary Dwelling. At the very least, table 5.7.1 Of the CMBC Planning Scheme, *Level of Assessment for Building Work* sends us to the Dwelling House Code, requiring compliance with all applicable RADS (Requirements for Accepted Development) for the Building Work to be classified as Accepted Development. The Tribunal considers that RAD 18 (and probably others) is not complied with (site area only 400m²), and so the Secondary Dwelling is not Accepted Development. Code assessment by the CMBC is required.
46. Digging deeper into the details of this analysis is properly a job for the ultimate decisionmaker in this appeal, after receiving any/all further submissions on the merits of the decision to issue the Enforcement Notice.
47. For now, having previously found that the only possible basis for jurisdiction in relation to the Secondary Dwelling is schedule 1 section 1(2)(h), referring to paragraph (g) cited above, the Tribunal further finds that the matter is unrelated to the Building Act, and that paragraph (g) is not satisfied. This position is supported by the CMBC specifically stating in its Planning Scheme that RAD 18 is (amongst others) a “planning scheme matter”. Schedule 1 section 1(2)(h) does not give the Tribunal jurisdiction to decide this appeal, in respect of the Secondary Dwelling.

The Driveway Extension

48. As noted earlier, the Tribunal is satisfied that the Driveway Extension is properly categorised as Operational Work under the PA.
49. Section 5.8 of the CMBC Planning Scheme, Levels of Assessment for Operational Work, categorises “Works, for access and parking, not associated with a material change of use”, if not in the Limited Development Zone, as Code Assessable, with Assessment Benchmarks being the relevant zone code and relevant precinct.
50. On the information before the Tribunal, no development approval was obtained for the Driveway Extension, nor was an application even made.
51. As a result, the only possible bases for Tribunal jurisdiction which specifically mention operational work, namely schedule 1 section 1(2)(a) to (c), do not apply, as all three relate to either an application, a refusal, or an approval. In any case the Tribunal finds that this operational work is not sufficiently “associated with” building work, a retaining wall or a tennis court to engage paragraphs (a) to (c). Paragraphs (d) to (f) are simply not relevant here.
52. The only remaining possible basis for jurisdiction to hear an appeal against the decision to issue an Enforcement Notice relating to the Driveway Extension is again paragraph (g).

However, the Tribunal finds that this matter involves operational work and does not relate to the Building Act at all - as submitted by the CMBC it is a planning matter, namely a missing code assessable approval. Paragraph (g) does not apply, and there is again no basis for jurisdiction.

Conclusion, and Reasons for the Decision

53. The Tribunal finds that it does not have jurisdiction to hear this appeal, because there is no provision in section 229 and schedule 1 PA, nor elsewhere in the PA, that gives it jurisdiction.
54. The PA does provide an avenue of appeal against such an enforcement notice decision; it is by way of appeal to the Planning and Environment Court.
55. The Tribunal issues this decision pursuant to section 252 PA.

Harry Knowlman
Development Tribunal Chair

Date: 14 May 2026