



Development Tribunal – Decision Notice

Planning Act 2016, section 255

Appeal number:	25-027
Appellant:	Trevor Bruger and Ara Jo
Respondent (Assessment manager):	Glenn Murrant
Site address:	64 North Quay Circuit, Hope Island, Queensland, 4212 and described as Lot 1013 on SP 272922 – the subject site

Appeal

Appeal under section 229(1)(a)(ii) and schedule 1, section 1(5), table 3, section 2 and/or 3(a) of the *Planning Act 2016* (PA) against the decision of the Respondent to refuse to provide final certification of building work undertaken pursuant to a development approval for the construction of a pool deck (Class 10a) and swimming pool (Class 10b) including a pool safety fence.

Date and time of hearing:	Not Held
Place of hearing:	Submissions
Tribunal:	Mr Simon James - Chair Mr Mitchell Osborne – Referee Mr Andy Rowley - Referee

Decision:

The Development Tribunal (Tribunal), in accordance with section 252(1)(a) of the PA determines that it does not have jurisdiction to hear the appeal as:

- The appeal was filed outside the required timeframe pursuant to section 229(3)(h) of the PA; and
- The circumstances relating to the appeal are not an appropriate case in relation to which the Tribunal should exercise its discretion to waive the appeal period.

Appeal rights

Any appeal period for an appeal in the Planning and Environment Court (the Court) about this matter 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. On 4 August 2021, the Appellant, Mr Trevor Bruger engaged Murrant Building Certification to provide building certification services. The building certification services related to the construction of a Class 10a deck and Class 10b swimming pool and pool safety fence. The certificate of engagement was signed on 4 August 2021¹.
2. On 11 September 2021, Murrant Building Certification issued two Decision Notices, one in relation to the Class 10a deck and a second in relation to the Class 10b swimming pool and pool safety fence². A requirement of the Decision Notice in relation to the Class 10a deck was compliance with the approved plans³ accompanying the Decision Notice.
3. On 19 August 2024, a representative building certifier of Murrant Building Certification (Mr Martin Ruffle) undertook an inspection of the building works for the purposes of a final inspection and approval. Mr Ruffle subsequently issued a Form 61 Noncompliance Notice in relation to both the Class 10a deck and the Class 10b swimming pool (including pool safety fence). The reasons for non-compliance cited on the Form 61 were:

19/08/2024

Pool barrier

Right side boundary fence does not maintain 1200mm height horizontally or in radius

The pontoon must be isolated from the pool enclosure⁴

4. On 20 August 2024, the Appellant corresponded with Murrant Building Certification by email advising that the issue with the right boundary fence had been fixed, however requested a reconsideration of the requirement to isolate the pool from the pontoon⁵.
5. A further email was sent by the Appellant to Murrant Building Certification on 19 September 2024 following up on the initial email of 20 August 2024⁶.
6. On 20 September 2024, Murrant Building Certification sent a reply email to the Appellant advising that his decision remained the same. The Respondent stated as follows:

. . . . As per the original inspection the pontoon must be isolated form (from) the pool enclosure. If you wish to challenge our decision and take it to the tribunal this is your right and we will not challenge their decision⁷.

¹ Murrant Certification Engagement Agreement dated 04 August 2021.

² Decision Notice - Class 10a deck dated 11 September 2021; Decision Notice – Swimming Pool and Fence - Class 10b dated 11 September 2021.

³ Approved Plans dated 11 September 2021 – Martin Ruffle, Certifier.

⁴ Form 61 Noncompliance notice dated 20 August 2024 signed by Martin Ruffle.

⁵ Email dated 20 August 2024 at 7.35 am from the Appellant to the Respondent.

⁶ Email dated 19 September 2024 at 11.08 am from the Appellant to the Respondent.

⁷ Email of 20 September 2024 from a representative of Murrant Building Certification.

7. On 21 August 2025, approximately 11 months later, the Appellant corresponded with Murrant Building Certification by email requesting the Respondent 'revisit' his decision to refuse to certify the building works⁸. A representative of Murrant Building Certification provided the following in response:

*Please be advised that our decision stands. I have attached a form 22 if you wish to disengage.*⁹

8. On 21 August 2025, the Appellant, Trevor Bruger, and Ara Jo, who also appears at section 1 of the Form 10 - Notice of Appeal, both signed a completed Form 10 – Notice of Appeal under the PA¹⁰.

Jurisdiction

9. Section 229 and schedule 1, section 1(5), table 3, section 2 of the PA provides for an appeal against a decision made by a certifier about the inspection of building work that is the subject of a building development approval under the *Building Act 1975* (BA).
10. The Tribunal notes from the context of the communications between the Appellant and Murrant Building Certification, that Mr Glenn Murrant, on behalf of (or as a delegate of) Murrant Building Certification Pty Ltd is a person who made the decision dated 20 September 2024 for the purposes of schedule 1, section 1(5), table 3, section 2 of the PA¹¹.
11. Section 229 and schedule 1, section 1(5), table 3, section 3(a) of the PA also provides for an appeal against a decision made under the BA, where an *information notice* about the decision was given or required to be given, under the BA. The giving of information notices is addressed further at Appeal Period, Form and Standing, of this decision.
12. Pursuant to schedule 1, section 1(5), table 3, section 3(a) and under column 1, the Appellant must be the applicant for the development approval, and under column 2, the Respondent must be the 'entity' that who made the decision in relation the inspection of the subject building work.
13. The Applicant for the decision notice is Mr Trevor Bruger, one of the persons listed as an Appellant in section 1 of the Form 10 Notice of Appeal. The person who made the decision in dispute, that is, the refusal to issue the final inspection certificate, as nominated by the Appellant, is Mr Glenn Murrant, of Murrant Building Certification Pty Ltd.
14. The Tribunal notes that the Appellant has nominated Mr Glenn Murrant as the Respondent. The Decision Notice and decision for the approved development application was made by Mr Martin Ruffle, on behalf of Murrant Building Certification Pty Ltd¹². However, the context of the communications between the appellant and Murrant Building Certification suggests that Glenn Murrant is the author of the decision dated 20 September 2024.

⁸ Email dated 21 August 2025 at 2.57 pm from the Appellant to the Respondent.

⁹ Email of 21 August 2025 at 3.34 pm from a representative of Murrant Building Certification

¹⁰ Form 10 Notice of Appeal signed and dated 21 August 2025 (received by the Registrar 22 August 2025).

¹¹ See paragraph 7 below.

¹² See paragraph 3 above.

15. This is consistent with section 138 of the BA which allows a person who employs private certifiers to enter into a contract to provide the services of any of the private certifiers to perform private certifying functions for others¹³. The Tribunal notes also the Engagement Agreement executed between Murrant Building Certification Pty Ltd and the Appellant dated 4 August 2021.
16. The term 'entity' is not defined in the PA. Schedule 1 of the *Acts Interpretation Act 1954* defines 'entity' to include both a person and an 'incorporated body'.
17. The Tribunal is satisfied that it has jurisdiction to consider the appeal in so far as section 229(1)(a)(ii) and schedule 1, section 1(5), table 3, sections 2 and/or 3(a) of the PA is concerned.

Decision framework

18. The onus rests on the Appellant to establish that the appeal should be upheld, unless the matter relates to the issuing of an enforcement notice¹⁴.
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 against¹⁵.
20. 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.
21. The Tribunal is required to decide the appeal in one of the ways mentioned in section 254(2) of the PA. If the decision is to substitute another decision, the Tribunal can replace the decision with another decision under section 254(2)(c) of the PA¹⁶.
22. 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.
23. 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.
24. On 4 November 2025, the parties were advised of the Tribunal's intention to conduct the appeal on the papers and invited to provide further submissions for consideration by the Tribunal.
25. Submissions by the Appellant were received on 11 November 2025 which addressed the substantive issues only and raised no issue with the Tribunal's approach. No submissions were provided by the Respondent.

Material considered

26. The material considered by the Tribunal in arriving at its decision are:

¹³ See section 138 of the *Building Act 1975*.

¹⁴ See sections 253(2) and (3) of the PA

¹⁵ See section 253(4) of the PA

¹⁶ Consistent with the principles in *Capuano v QComp* [2004] QSC 333.

- (a) Form 10 Notice of appeal, including grounds for appeal and correspondence accompanying the appeal lodged with the Development Tribunals Registrar on 22 August 2025;
- (b) Murrant Certification Engagement Agreement dated 04 August 2021;
- (c) Decision Notice - Class 10a deck dated 11 September 2021;
- (d) Decision Notice – Swimming Pool and Fence - Class 10b dated 11 September 2021;
- (e) Approved Plans dated 11 September 2021 – Martin Ruffle, Certifier;
- (f) Form 61 Noncompliance notice dated 20 August 2024 signed by Martin Ruffle;
- (g) Extension Agreement Notice dated 20 August 2024;
- (h) Email dated 20 August 2024 at 7.35 am from the Appellant to the Respondent;
- (i) Email dated 19 September 2024 at 11.08 am from the Appellant to the Respondent;
- (j) Email of 20 September 2024 at 1.27 pm from a representative of Murrant Building Certification;
- (k) Email dated 21 August 2025 at 2.57 pm from the Appellant to the Respondent;
- (l) Email of 21 August 2025 at 3.34 pm from a representative of Murrant Building Certification;
- (m) Form 22 Notice of Discontinuance of engagement completed by the Appellant unsigned and undated;
- (n) Photo of pontoon with arrow pointing to stairs and words written '*direct access to pool from pontoon*' undated;
- (o) Submissions of the Appellant dated 11 November 2025; and
- (p) Submissions of the Appellant (by email) dated 24 December 2025.

Appeal Period, Form and Standing

27. Section 124(1)(a) and (2) of the BA provides that where a building certifier under part 1, chapter 5 of the BA, in relation to a class 10 building or structure, decides not to issue a final certificate in relation to relevant 'building work' because of non-compliance with a development approval, the certifier must give the applicant (or client) an 'information notice' about the decision.
28. The Tribunal considers that the email sent by the Respondent on 20 September 2024, constitutes a decision made by the Respondent to not issue a final certificate in relation to the relevant 'building work' because of non-compliance with the development approval of 11 September 2021.

29. Section 124(2) of the BA then required to Respondent to give an 'information notice' to the Appellant, as defined in schedule 2 of the BA, which states the details of the decision, reasons, appeal rights and how those appeal rights may be exercised¹⁷.
30. The term 'notice' is defined in schedule 2 of the BA to mean a 'written notice', with the term 'written notice' not otherwise defined. The Tribunal is not aware of any specific formal 'notice' form issued by government for the purposes of section 124(2) of the BA. Whilst brief in nature, the Respondent's email of 20 September 2024 contained the information required by schedule 2, - Definition '*information notice*' section (a)(i) to (iii) of the BA.
31. The email correspondence provided to the Tribunal by the Appellant indicates that the Respondent made a final decision not to issue a final approval certificate due to non-compliance with the building development approval, on 20 September 2024¹⁸.
32. The Tribunal is satisfied that on an ordinary reading (and meaning)¹⁹, of section 124(2) of the BA, the email sent to the Appellant on 20 September 2024 constituted a written notice given to the Appellant.
33. 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 PA, if not falling within one of the matters listed in section 229(3)(a) to (g), is required to be filed within 20 business days after 'notice' of the decision was given²⁰.
34. On this basis, the Appellant was required to commence his appeal within 20 business days after he was given notice, that is on or before 18 October 2024. The Appellant filed his appeal 21 August 2025, some 47 weeks and 6 days later.
35. The Tribunal notes the email sent by the Appellant to the Respondent on 21 August 2025²¹ and his request to the Respondent to 'revisit' the previous decision. The Tribunal finds that this email constitutes no more than a restatement of the Respondent's original email and decision of 20 September 2024.
36. The Appellant's application for appeal is therefore prime facie out of time.
37. The Tribunal considered whether it has discretion to, and if it can of its own initiative, waive the appeal period prescribed by section 229(3)(h) of the PA.
38. Section 258 of the PA provides that the Tribunal 'may' extend a period of time to take an action. The Explanatory Notes to section 258 of the PA suggest that taking an action includes waiving the timeframe for commencing an appeal, in appropriate circumstances, after the Tribunal has been formed²².
39. Consistent with section 237(2) of the PA and the Tribunal's statutory requirement to make its decisions in a timely way, and given that there is unlikely to be disadvantage to the

¹⁷ See definition of 'information notice' in schedule 2, section (a)(i) to (iii) of the BA.

¹⁸ Email of 20 September 2024 from a representative of Murrant Building Certification.

¹⁹ *R v A2* (2019) 269 CLR 507 at [32].

²⁰ See section 229(3)(h) of the PA

²¹ Email of 21 August 2025 at 3.34 pm from a representative of Murrant Building Certification

²² Explanatory Note to the Planning Bill introduced on 12 November 2015 at p. 177.

parties in doing so, the Tribunal finds that it has the authority to exercise its own initiative to waive the appeal period, if, and only if, the Tribunal considers it appropriate to do so in the circumstances.

40. The term 'may' is discretionary. Consequently, the Tribunal must first turn its mind to whether it is appropriate to exercise its discretion to waive the timeframe required under section 229(3)(h) of the PA for the Appellant to lodge his appeal.
41. In considering whether the circumstances of this appeal are an appropriate case in relation to which to waive the required timeframe to commence the appeal, the Tribunal considered a number of factors which are outlined below.
42. As addressed later in this decision, on 8 December 2025 the Tribunal sought further submissions from the parties via Directions in relation to a number of factors which the Tribunal identified may weigh against an exercise of discretion to waive the required timeframe to commence the appeal. In particular, the Tribunal must consider whether the appeal was lodged in time in accordance with section 229(3)(h) of the PA and whether the Tribunal has the requisite statutory power to amend the development 'approval' of 11 September 2021, as distinct from an 'application', in light of section 254(3) PA.

Delay

43. The Tribunal notes from the material provided that the Appellant took no further action in relation to the Respondent's decision of 20 September 2024, until 21 August 2025 when he requested the original decision be revisited, approximately 46 weeks later and well outside the appeal period.
44. The Parties were provided with an opportunity to make submissions to the Tribunal about whether the appeal had been lodged in time in accordance with section 229(3)(h) of the PA. No further written submissions were received by the Tribunal on this point by the Respondent.
45. The Appellant submitted that the collapse of the original pool builder placed him in an unusual situation and which required him to personally finalise the works undertaken. Further, there would be no prejudice to the Respondent in extending the appeal period.
46. Given the absence of written submissions from the Respondent on the issue of delay, including in relation to any potential prejudice, the Tribunal finds that on the issue of delay alone it would be appropriate to extend the appeal period.

Status of the development approval in place

47. The Tribunal cannot amend a development approval which has lapsed and is no longer current. This being the case there would be no practical utility in extending the appeal period.
48. The development approval issued on 11 September 2021 included a condition that the work must be completed within 6 months unless in conjunction with a new home, in which case the period is 2 years, consistent with section 85(c)(ii) of the PA.

49. However, section 95 of the BA overrides section 85 PA, with the approval (completion) condition only lapsing following the issuing of a reminder notice²³. The Tribunal issued formal directions to the parties to provide any documents which suggest that a reminder notice was issued to the Applicant pursuant to section 95 of the BA. The Tribunal was not provided with any information in this regard. The Tribunal has no evidence before it to indicate that a reminder notice was issued under section 95 of the PA, and on that basis, finds that the development approval remains current.

Undated and unsigned disengagement notice

50. The Tribunal was provided a copy of an unsigned and undated Form 22 - Disengagement Notice²⁴. The Form 22 reflects the email sent by the Respondent to the Appellant on 21 August 2025 enclosing a copy of the Form 22.
51. Whilst the disengagement by the parties would not affect the status of the development approval, the disengagement, if effected properly, would have required another certifier or local government to inspect and certify the building work. In practical terms, this means that the decision process for the certification of building works would be required to start afresh and a new decision required to be made by another certifier or the local council²⁵, and consequently, there would be no utility in extending the appeal period.
52. The Appellant provided an email to the Registry on 7 October 2025²⁶ indicating that he had considered disengaging, however, had made no final decision to do so. The Respondent provided no submissions on this point. On this basis, the Tribunal finds that neither party has 'disengaged', and consequently, the current development approval remains current.

Power to amend an existing development approval – section 254(3) of the Planning Act

53. The Tribunal considered whether if it exercised its discretion to waive the appeal period, it would have jurisdiction (power) to change the development approval of 11 September 2021 should it choose to do so, such that it would be in a position to provide the Appellant with the remedy sought (if appropriate) in his notice of appeal.
54. Doing so would necessarily require the Tribunal to, in the first instance, amend the original development approval to reflect the remedy sought by the Appellant, that is, remove the existing requirement in the approved plans for a pool gate (and fencing) such that the pool and the boat pontoon are no longer physically separated, or to reflect the words of the Respondent in his email dated 20 September 2024, so that the pontoon is no longer isolated from the pool enclosure.
55. Section 254(3) PA, which regulates how the Tribunal makes its decisions, states that the tribunal must not make a change, other than a minor change, to a development application. Section 254(3), and the PA more broadly, is silent on whether the Tribunal

²³ See section 95(1)(a) to (c) of the BA.

²⁴ See section 144 of the BA.

²⁵ See section 145(1)(a) and (b) of the BA.

²⁶ Email of Appellant to Development Tribunal Registry dated 7 October 2025 at 12.23 pm.

has the power to make a change to a development approval, as distinct from an application.

56. It is therefore necessary for the Tribunal to consider the proper statutory construction of section 254(3) of the PA and examine it's 'statutory text, context and purpose'²⁷ to determine if (i) the decision notice issued to the Appellant on 11 September 2021 constitutes a development approval (as opposed to an application) and (ii) whether the Tribunal is empowered to make a change to a development approval.

57. In doing so the Tribunal has considered the recent restatement of the key principles of statutory interpretation and construction by the Court of Appeal as outlined in *Hayes*²⁸:

1. The duty of a court is to give the words of a statutory provision the meaning that the legislature is taken to have intended them to have. The constructional task is to expound the meaning of the statutory text, not to divine unexpressed legislative intention or to remedy perceived legislative inattention. Construction is not speculation and it is not repair.

2. The task of statutory construction must begin with a consideration of the text itself. So must the task of statutory construction end.

3. The statutory text must be considered in its context. Context should be regarded at the first stage, not at some later stage, and should be regarded in its widest sense.

4. The context and purpose of a provision are important to its proper construction because the primary object of statutory construction is to construe the relevant provision so that it is consistent with the language and purpose of all the provisions of the statute.

5. The interpretation that will best achieve the purpose of the Act is to be preferred to any other interpretation: Acts Interpretation Act 1954 (Qld) s 14A.

6. The purpose of a statute resides in its text and structure. Purpose must be derived from what the legislation says and not from any assumption about the desired or desirable reach or operation of the relevant provisions. In considering purpose it is necessary to identify the purpose of the specific provision rather than the purpose of the enactment as a whole.

7. Inconvenience or improbability of result may assist the court in preferring a construction other than a literal interpretation which is reasonably open and more closely conforms to the legislative intent.

8. A court construing a statutory provision must strive to give meaning to every word of the provision.

58. In relation to (i) and whether the decision notice issued on 11 September 2021 is an approval for the purposes of section 254(3) of the PA, schedule 2 of the PA defines 'development application' to mean an application for a development approval. Schedule 2 defines 'development approval' in the context of section 49(1) of the PA, which includes a *preliminary approval, a development permit, or a combination of a preliminary approval*

²⁷ *Hays Specialist Recruitment (Australia) Pty Ltd v Carey Schofield; Civeo Pty Ltd v Carey-Schofield* [2025] QCA 161 at p. 265

²⁸ *Hays Specialist Recruitment (Australia) Pty Ltd v Carey Schofield; Civeo Pty Ltd v Carey-Schofield* [2025] QCA 161 at p. 264-265.

and development permit²⁹. Section 49(2) and (3) of the PA respectively (and schedule 2) define these three terms in a way which indicates that they are linked to and form part of a decision notice.

59. It follows that on an ordinary reading of the text of section 254(3), an application happens prior to and is distinct from the issuing of a decision notice and approval. Once the decision notice of 11 September 2021 was issued to the Appellant in relation to a development application and all relevant appeal periods had ended, the application became, or took on, the character of a development approval.
60. When considering the broader context of section 254(3), this interpretation is consistent with section 71 (when development approval has effect) of the PA which provides that a development 'approval' has effect when it is given to the applicant and there has been no appeal or other submission made in relation to the approval³⁰.
61. In relation to (ii) and whether the Tribunal is empowered to make a change to a development approval, the Tribunal considers that the text of section 254(3) is unambiguous with an ordinary reading leading to the conclusion that the Tribunal's decision-making power is limited to making minor changes to a development application only.
62. This view is further supported when considering the broader context of the PA and the scheme contained in chapter 3, part 5, division 2, subdivision 2 of the PA, which regulates the way in which changes to development approvals can be made after all appeal periods relating to the approval have ended³¹. Section 78(2) of the PA provides that an application for a change to a development approval must be made to the responsible entity for the application, which is either the relevant referral agency or the assessment manager, in relation to which the Tribunal is neither^{32, 33}.
63. The Tribunal also considered the Explanatory Notes to the originating legislation (Planning Bill 2015) that created section 254 (then section 253) once assented to by the legislature to identify the original purpose and intent behind the provision. The Explanatory Notes go no further than restating the text of section 253(3), as it then was, and provide no further assistance.
64. The Parties were provided with an opportunity to make submissions to the Tribunal on the limitations in section 254(3) of the PA before making its final decision. In this regard, the Appellant submitted that such an interpretation would be a narrow and technical interpretation of the powers of the Tribunal, lead to an unjust outcome and undermine the practical purpose of the appeal process. The Respondent provided no submissions on the issue.
65. The Tribunal does not agree with the Appellant's submissions. Tribunals are a creature of statute and therefore, must operate and make decisions within the scope of powers conferred on them under their governing statute. In the case of the Tribunal, its powers

²⁹ See section 49(1)(a) to (c) of the PA.

³⁰ See section 71(2) of the PA.

³¹ See section 77 of the PA.

³² See section 78A(1), schedule 2, section 54(2) of the PA in relation to the definition of 'referral agency'.

³³ See section 78A(1), schedule 2, section 48 of the PA and section 21 of the *Planning Regulation 2017* in relation to the definition of 'assessment manager'.

are conferred on it under the PA. If the legislature had intended that the Tribunal deal with matters beyond that relating only to a minor change to an 'application' it would have provided the Tribunal with clear statutory powers to do so.

66. Further, the Tribunal considers that limiting the Tribunal's power to make a minor change to a development application, and at the same time allowing the opposite effect once an application is finalised (approved) is inconsistent with and would undermine the intent and operation of section 254(3) of the PA which expressly limits the powers of the Tribunal.
67. On this basis, the Tribunal finds that its powers under the PA are limited to making a change to an existing development application only.

Minor change - section 254(3) Planning Act

68. If the Tribunal is wrong with respect to its interpretation of section 254(3) of the PA and it was within its powers to consider a change to an existing building approval, the Tribunal considers that any change would, for consistency, be limited to a minor change. Any remedy sought that constitutes more than a 'minor change' is therefore beyond the power of the Tribunal to provide.
69. In relation to this point, the Appellant submitted that the remedy or relief he seeks is not a substantive alteration to the approved development but recognises that the constructed and rectified works achieve compliance with the relevant statutory framework for pool barriers, would be characterised as minor and not depart from the intent of the original approval³⁴.
70. The Tribunal does not agree with the Appellant's submissions for the following reasons.
71. The term "minor change" is defined in schedule 2 of the PA to mean a change that:
- (1) *does not result in a "substantially different development"; and*
 - (2) *would not cause the application as amended by the proposed change to:*
 - (i) *include prohibited development; or*
 - (ii) *trigger referral to any additional referral agencies; or*
 - (iii) *trigger public notification.*
72. Relevantly, what constitutes a "substantially different development" is set out in schedule 1 of the Development Assessment Rules³⁵, and in particular, a change which:
- *involves a new use; or*
 - *results in the application applying to a new parcel of land; or*
 - *dramatically changes the built form in terms of scale, bulk and appearance; or*
 - *changes the ability of the proposed development to operate as intended; or*
 - *removes a component that is integral to the operation of the development; or*

³⁴ See email dated 24 December 20254 at p. 2, para 8.

³⁵ Development Assessment Rules Version 2.0 as at 22 July 2024 at p. 26.

- *significantly impacts on traffic flow and the transport network, such as increasing traffic to the site; or*
- *introduces new impacts or increase the severity of known impacts; or*
- *removes an incentive or offset component that would have balanced a negative impact of the development; or*
- *impacts on infrastructure provisions.*

73. Determining whether a proposed change is substantially different requires a comparative exercise³⁶, and requires the development approval, including the approved plans, to be compared, in this case, with the proposed change sought by the Appellant in his application for appeal.

74. Further, whether a change is considered a ‘minor change’ is to be considered:

...broadly and fairly, turning on matters of fact, degree and impression. The point of focus is the ‘*result*’ of the change proposed as distinct from the significance of the change. Qualitative and quantitative considerations are relevant to the result of the change, as is Schedule 1 of the Development Assessment Rules: *Cleanaway Solid Waste Pty Ltd v Ipswich City Council & Ors* [2021] QPELR 809 and *427 Beckett Rd Pty Ltd v Brisbane City Council* [2024] QPEC 4³⁷.

75. The Tribunal notes from photos supplied by the Appellant, that the final form of construction does not reflect the approved plans attached to the development approval of 11 September 2021. The approved plans require a full pool safety fence including a pool gate to run the entire length of and separating the upper and lower deck. Further, the stairs and pool safety gate are located at the western end of the top of the stairs, again, separating the upper and lower decks. The approved plans provide for a full separation between the upper deck and pool, and the lower deck and boat pontoon.

76. The final building form as constructed differs. There is no pool fence separating the upper and lower decks and the pool, with the pool fencing continuing down and around the front of the pontoon until it reaches the pontoon gangway. There is no pool fence along the side western side of the gangway, no pool safety gate separating the gangway/pontoon from the lower deck, and no pool fence along the remaining eastern end of the pontoon joining the side pool fence to the eastern boundary of the property. The development as constructed does not appear to provide a physical separation (or barrier) between the pool enclosure, including upper and lower decks, and the pontoon, in the way that the development approval and approved plans require.

77. On this basis, the Tribunal finds that the final construction is a *substantially different development* to that contained in the development approval and approved plans and consequently, is not a minor change for the purposes of section 254 of the Planning Act.

³⁶ *Beckdev Coolangatta Pty Ltd v Council of the City of Gold Coast* [2025] QPEC 15; at para 22.

³⁷ *Beckdev Coolangatta Pty Ltd v Council of the City of Gold Coast* [2025] QPEC 15; at para 23.

Final decision

78. The Tribunal's power to change the development approval of 11 September 2021 in a way which delivers the outcome sought by the Appellant is a key consideration of the Tribunal in deciding whether to exercise discretion to waive the appeal period.
79. Notwithstanding the Appellant's significant delay in lodging his appeal, waiving the appeal period will make no practical difference to the final outcome as fundamentally, the Tribunal does not have the statutory power to make the change sought by the Appellant via the appeal process.
80. In deciding the appeal, the Tribunal is limited in this case to the specific actions listed in section 254(2)(a) to (d) of the PA, that is, to confirm, change, replace or set aside a decision, none of which can apply in the current case.
81. In the circumstances, the Tribunal finds that it this is not an appropriate to case to exercise its discretion to waive the appeal period, and consequently, pursuant to section 252(1) of the PA has no jurisdiction to consider the appeal.

Simon James
Development Tribunal Chair

Date: 22 January 2026