



## Development Tribunal – Decision Notice

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### **Planning Act 2016, section 255**

<b>Appeal number:</b>	25-012
<b>Appellant:</b>	AHC 1 Development Pty Ltd (ACN 676 733 127)
<b>Respondent:</b>	Brisbane City Council
<b>Site Address:</b>	1454 Wynnum Rd, Tingalpa Qld 4173 and described as Lot 3 on SP 214660

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### **Appeal**

Appeal pursuant to schedule 1, table 1, item 6 of the *Planning Act 2016* (Qld) regarding an enforcement notice dated 22 April 2025 given under section 168 of the *Planning Act 2016*, made pursuant to section 229 of the *Planning Act 2016* (**Enforcement Notice**).

The Appeal is related to the appeal number 25-012. The Tribunal determines that Appeal 25.012, Appeal 25-013 and Appeal 25-025 are to remain as separate proceedings but be heard and decided together, with evidence filed in one proceeding to be relevant evidence in the other proceeding.

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<b>Date and time and place of hearing:</b>	8 August 2025—1.00pm site inspection followed by hearing at Carindale Library  22 October 2025—1.00pm hearing resumed online via Teams with agreement of the parties
<b>Tribunal:</b>	Ross Williams—Chair Don Grehan—Member Michael Yau—Member

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### **Decision:**

The Development Tribunal (**Tribunal**), in accordance with section 254(2)(a) of the *Planning Act 2016* (**PA**) upholds the decision of the Brisbane City Council (**Council**) to issue the Enforcement Notice.

For the reasons and findings outlined in paragraphs 34 to 52, the Appeal is dismissed.

### **Background**

1. This Appeal concerns an enforcement notice issued under section 168 of the PA by Council to the Appellant dated 22 April 2025 with respect to the premises at 1454 Wynnum Rd, Tingalpa QLD 4173 (**Property**).

2. By their notice of appeal, the Appellant argues that:
  - (a) the "*Enforcement Notice claims filling performed under a building approval is operational work and not building work*;
  - (b) *the City Plan 2014 allows for filling as building work in a flood zone as [sic] accepted development where it meets the performance requirements within the relevant tables*"; and
  - (c) "*previously the Council confirmed to the Building Tribunal<sup>1</sup> that filling within 3 metres of the house was accepted building work on this site. The approvals were issued on this basis.*"
3. By way of the Enforcement Notice, Council alleges that:
  - (a) the Appellant committed a development offence in breach of section 163 of the PA in that between 21 July 2024 and 20 September 2024 the Appellant carried out assessable development, without a permit (either as a principal offender or as a party as set out above); or
  - (b) alternatively, another person committed a development offence in breach of section 163 of the PA at the Property in that between 21 July 2024 and 20 September 2024 the Appellant carried out assessable development without a permit and the Appellant is the owner of the Property.

### **Jurisdiction**

4. The Appeal is within the jurisdiction of the Tribunal.
5. The Enforcement Notice the subject of these proceedings was issued under section 168 of the PA.
6. Table 1 of schedule 1 of the PA states that an appeal may be made against the decision to give an enforcement notice.
7. Schedule 1, section (1)(2)(h) of the PA states that table 1 applies to a tribunal if the matter involves a decision to give an enforcement notice in relation to a matter under paragraphs (a) to (g). Section (1)(2)(g) provides for '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'.
8. Here, the Enforcement Notice relates to a development matter pursuant to the PA and whether the work the subject of the enforcement notice was building work under a permit issued under the *Building Act 1975*.
9. Accordingly, table 1 of schedule 1 applies, and the Tribunal has jurisdiction to hear an appeal against the decision to give an enforcement notice pursuant to sections 1(2)(h) and (g) of schedule 1 of the PA.

### **Decision framework**

10. Generally, the Appellant bears the onus of proof to establish the appeal should be upheld.

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<sup>1</sup> The Tribunal takes 'Building Tribunal' to be a reference to the Development Tribunal in Development Tribunal Appeal number 23-070 in relation to an enforcement notice issued in relation to 1456 and 1458 Wynnum Road Tingalpa Qld 4173

11. However, for an appeal by the recipient of an enforcement notice, the authority that gave the enforcement notice must establish that the appeal should be dismissed pursuant to section 253(3) of the PA. Here, Council bears the onus to establish the appeal should be dismissed.
12. 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 pursuant to section 253(4) of the PA.
13. The Tribunal may nevertheless (but need not) consider other evidence presented by a party with leave of the Tribunal or any information provided under section 246 of the PA (pursuant to which the registrar may require information for tribunal proceedings).
14. The Tribunal is required to decide the Appeal in one of the ways mentioned in section 254(2) of the PA.

### **Material considered**

15. The material considered in arriving at this decision was:
  - (a) Form 10 Notice of Appeal, grounds for appeal and correspondence accompanying the Appeal lodged with the Tribunal registrar on 28 April 2025;
  - (b) the Enforcement Notice and accompanying letter of reasons issued by Council on 23 April 2025;
  - (c) Development (Building) Approval – A006575710 issued on 26 July 2024;
  - (d) the PA;
  - (e) the *Building Act 1975*;
  - (f) *City Plan 2014*;
  - (g) *8.2.11 Flood Overlay Code*;
  - (h) submissions made at the initial hearing for the matter, which was adjourned so the Appellant could provide further submissions;
  - (i) written submissions of the Appellant, including:
    - (i) timeline report for the Property;
    - (ii) lodgement confirmation report submitted 26 July 2024 reference no. Q20240980; and
    - (iii) aerial photographs of works on the Property taken 22 August 2024;
  - (j) written submissions of Council, including:
    - (i) building application decision notice dated 26 July 2024; and
    - (ii) Flood Overlay Assessment Report.

### **Findings of fact**

16. The Tribunal makes the following findings of fact:

- (a) The Appellant is the registered owner of the Property and has held this ownership at all times relevant to the alleged development offence described in the Enforcement Notice, having acquired the Property in July 2024.
  - (b) Pursuant to the *Brisbane City Plan 2014 (City Plan)*, the Property is located in a Low-Density Residential Zone and is subject to the:
    - (i) Airport Environs Overlay;
    - (ii) Bicycle Network Overlay;
    - (iii) Coastal Hazards Overlay;
    - (iv) Community Purposes Network Overlay;
    - (v) Critical Infrastructure and Movement Overlay;
    - (vi) Dwelling House Character Overlay;
    - (vii) Flood Overlay;
      - (A) Creek/Waterway Flood Planning Area 3 Sub-Category;
      - (B) Creek/Waterway Flood Planning Area 4 Sub-Category;
    - (viii) Industrial Amenity Overlay;
    - (ix) Potential and Actual Acid Sulphate Soils Overlay;
    - (x) Road Hierarchy Overlay;
    - (xi) Streetscape Hierarchy Overlay;
    - (xii) Transport Air Quality Overlay; and
    - (xiii) Transport Noise Corridor Overlay.
17. On 29 October 2024, an authorised person (**Officer**), as that term is defined in the *City of Brisbane Act 2010*, carried out an external inspection (**Inspection**) of the Property to determine, amongst other things, compliance with provisions of the PA.
18. During the inspection, the Officer observed the following:
- (a) significant operational work in the form of filling had occurred at the Property;
  - (b) the fill had been graded to a level pad across the width and length of the Property; and
  - (c) the depth of fill appeared to exceed one vertical metre above natural ground level (**NGL**) across the Property.
19. Following the Inspection, the Officer:
- (a) reviewed Nearmap imagery and identified that between 21 July 2024 and 20 September 2024:
    - (i) an existing dwelling was demolished and removed from the Property;

- (ii) filling commenced on the Property after the demolition and removal of the dwelling;
  - (b) undertook searches of Council's internal document management systems and development application and approval record system 'Development.i' for the purposes of identifying whether there is a Development (Planning) Approval in effect for the operational work within the Flood Overlay – Creek/Waterway Flood Planning Areas 3 and 4 Sub-Categories. No such Development (Planning) Approval was located;
  - (c) undertook searches of Council's internal document management systems and development application and approval record system 'Development.i' and identified that:
    - (i) on 16 July 2024, Development (Building) Approval – A006569002 was issued by a private certifier for the purpose of demolition of the existing dwelling and associated structures on the Property;
    - (ii) on 26 July 2024, Development (Building) Approval – A006575710 was issued by a private certifier with approved plans for a proposed double storey class 1a dwelling and external double lock up garage (class 10) on the Property.
20. On 17 June 2024, Cyber Soil Testing, issued a site investigation and classification report in response to a site investigation carried out on the Property on 17 June 2024.

Storm Water Consulting report

21. On 12 July 2024, Storm Water Consulting Pty Ltd (**Storm Water**) issued a Flood Overlay Code Assessment Report for the proposed dwelling at 1454 Wynnum Road, Tingalpa. The proposed building works for the dwelling house have therefore been assessed against the requirements of the Council's Flood Overlay Code. Some of the key findings of the Storm Water Report were as follows:
- (a) the impacts plot shows that the proposed works would not result in a material adverse impact to neighbouring properties;
  - (b) Council's FloodWise Property Report (see Appendix D) identifies that the 1% AEP Creek/waterway flood level impacting the site is 3.0m AHD. The minimum habitable floor level for the proposed dwelling is 3.5m AHD and the minimum non-habitable floor level is 3.3m AHD. It is recommended that the rear 5m of the site remains at existing ground levels to account for any potential neighbouring sheet flow;
  - (c) the recommended floor levels meet the minimum flood immunity requirements. The proposed building works would not result in a material increase in flood levels on neighbouring properties during a 1% AEP Bulimba Creek flood event;
  - (d) Appendix C of Storm Water's report identifies the assessment criteria for accepted development 'for a dwelling house including any second dwelling' from Table 8.2.11.3.A of the Flood Overlay Code, and found that:
    - (i) in compliance with AO1.1: the site is not located within the specified Flood Planning Areas;
    - (ii) in compliance with AO1.2: the recommended floor levels comply with Table 8.2.11.3.B;

- (iii) in compliance with AO2c, the proposed building works would not result in a material adverse impact to neighbouring properties.

#### Decision and Information Notice Permit

22. On 22 July 2024, the Appellant received a Decision and Information Notice Permit. The Drainage Plan number is 179605. Council had decided to issue a permit for the scope of work described below:

*Description of Work:*    *Plumbing Installation Class 1a/10*  
                                  *New dwelling house*  
                                  *New Single Storey Dwelling*

*Fixtures:*                        *11*

23. On 25 November 2024, authorised persons, as that term is defined in the *City of Brisbane Act 2010*, in company with Council Survey Officers, carried out an inspection (**Second Inspection**) of the Property to determine the extent and depth of fill at the Property.
24. On 10 December 2024, the Officer received a survey report (**Survey Report**) containing data collected during the Second Inspection which indicated the depth of fill on the Property was between 100mm and 1.4m.

#### Show Cause Notice

25. On 31 January 2025, a Show Cause Notice (Ref. CA164875) was issued to the Appellant seeking representations as to why an Enforcement Notice should not be issued.
26. On 28 February 2025, Council received an email from Brennan Brook as Director of the Appellant requesting further survey information, namely:
- (a) heights recorded from the survey;
  - (b) detailed heights used to determine natural ground.
27. On 12 March 2025, an email response was provided to Brennan Brook advising that no further survey information would be provided and extending the Show Cause Notice representation period until 5:00pm on 19 March 2025.
28. On 12 March 2025, Council received an email response from Brennan Brook stating:
- (a) Council has not provided a survey plan as stated in the Show Cause Notice;
  - (b) a response cannot be provided to Council's Show Cause Notice without further survey information; and
  - (c) Council will likely claim that no representations were provided in response to the Show Cause Notice.
29. On 13 March 2025, an email response was provided to Brennan Brook advising that:
- (a) survey is additional information supporting Council's reasonable belief that assessable development had occurred on the Property; and
  - (b) if the Appellant believed the survey information is insufficient to support Council's position, it may make representations to that effect.

30. On 23 April 2025, the Appellant received an Enforcement Notice from the Council dated 22 April 2025, due to an alleged contravention of section 163 of the PA.
31. Pursuant to the Enforcement Notice, Council required that the Appellant:
- (a) within three (3) months of the Enforcement Notice, lodge a properly made Development (Planning) Application with Council for the operational works carried out;
  - (b) while the application is under assessment:
    - (i) not withdraw it without reasonable excuse;
    - (ii) take all reasonable steps to assist a timely decision; and
    - (iii) if appealing a decision, take reasonable steps to progress the appeal promptly;
  - (c) if the application is approved, complete all approved works and comply with all conditions within three (3) months of approval;
  - (d) If the application is refused, withdrawn, or lapses:
    - (i) within three (3) months remove all fill over 100mm within the Flood Overlay (Creek/Waterway Flood Planning Area 3 and 4) and restore the land to a lawful state;
    - (ii) maintain erosion and sediment control until the soil is permanently stabilised;
  - (e) Within one (1) month of completing restoration works, provide Council with a survey report from a qualified expert confirming the fill has been removed and the land complies with the Flood Overlay requirements.
32. Pursuant to the Enforcement Notice, Council alternatively required that the Appellant:
- (a) within three (3) months of this Notice, remove all fill over 100mm and restore the land to comply with the Flood Overlay (Creek/Waterway Flood Planning Area 3 and 4);
  - (b) maintain erosion and sediment control until the soil is permanently stabilised; and
  - (c) within four (4) months of this Notice, provide Council with a survey report from a qualified expert confirming the fill has been removed and the land complies with the Flood Overlay requirements.
33. The Tribunal must hear and decide the Appeal by way of a reconsideration of the evidence that was before the person who made the decision appealed against.

### **Reasons for the decision**

34. The Tribunal has determined that it has jurisdiction to hear the Appeal.
35. The Tribunal has decided to uphold the decision of Council in issuing the Enforcement Notice to the Appellant.
36. In relation to the findings of fact, the Appellant submits and the Tribunal accepts that:
- (a) the Appellant is the registered owner of the Property;

- (b) on 29 October 2024, an authorised officer carried out an Inspection of the Property;
  - (c) on 25 November 2024, an authorised officer carried out a Second Inspection of the Property under a lawfully sworn warrant to enter to determine the extent and depth of fill at the Property;
  - (d) on 10 December 2024, the authorised officer received a Survey Report containing data collected during the Second Inspection which indicated the depth of fill on Property was between 100mm and 1.4m;
  - (e) on 31 January 2025, the Appellant was issued a Show Cause Notice by Council in light of the Appellant or another person carrying out assessable development without a permit (either as a principal offender or as a party as set out above) in contravention of section 163 of the PA; and
  - (f) on 23 April 2025, the Appellant was issued with an Enforcement Notice from Council dated 22 April 2025.
37. The Appellant seeks an appeal in relation to the Enforcement Notice based on the following grounds:
- (a) the Enforcement Notice claims filling performed under a building approval is operational work and not building work;
  - (b) the City Plan 2014 allows for filling as building work in a flood zone as accepted development where it meets the performance requirements within the relevant tables; and
  - (c) previously, Council confirmed to the 'Building Tribunal'<sup>2</sup> that filling within three (3) metres of the house was accepted building work on the site. The approvals were issued on this basis.

*Whether the work was Operational Work or Building Work*

38. The Tribunal accepts that the entirety of the Property is subject to the Creek/Waterway Flood Planning Areas 3 and 4 Sub-Categories and filling at the Property exceeding 100mm has occurred on the Property.

39. Schedule 2 of the PA defines 'Development' to include the carrying out of operational work. 'Operational work' is defined in the PA as, relevantly:

*Operational work means work, other than building work or plumbing or drainage work, in, on, over or under premises that materially affects premises or the use of the premises.*

40. Under the City Plan 2014, within Table 5.10.11, operational work in the Flood Overlay is assessable development if:

*Operational work for filling or excavation if exceeding:*

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<sup>2</sup> The Tribunal takes 'Building Tribunal' to be a reference to the Development Tribunal in Development Tribunal Appeal number 23-070 in relation to an enforcement notice issued in relation to 1456 and 1458 Wynnum Road Tingalpa Qld 4173

a. *100mm in the Creek/waterway flood planning area 1, Creek/waterway flood planning area 2, Creek/waterway flood planning area 3 or Creek/waterway flood planning area 4 sub-categories;*

41. The Appellant contends that the City Plan 2014 also classes filling and excavation works as 'building work'.
42. The Tribunal considers that the subject works, as it relates to the filling and excavation, *could* be captured as '*building works*' pursuant to Schedule 2 of the PA, if the works were excavating or filling for, or incidental to, the construction of a proposed dwelling.
43. However, the Tribunal is of the view that this would depend upon the nature and extent of the filling undertaken at the Property. The Tribunal finds that the filling, the subject of the enforcement notice, is not for or incidental to the construction of the house. The Tribunal accepts that the subject works are operational work and therefore 'assessable development' for the purposes of the PA under table 5.10.11.
44. Council had determined that the building approval did not comply with Acceptable Outcome 2 in that the Building Approval was not supported by a flood study from a Registered Professional Engineer Queensland certifying that the development in the creek/waterway flood planning area will not result in a material increase in flood level or flood hazard on upstream, downstream or adjacent properties. Subsequently, in submissions, Council accepted that the building approval had been supported by a flood overlay assessment report, however, contended that the extent of filling was beyond what was for or incidental to construction of the dwelling house. Consequently, Council asserted that all fill on the Property was operational work and 'assessable development', requiring Development (Planning) Approval from Council.
45. The Flood Overlay Assessment Report provided by the Appellant addresses the flooding throughout the area and identifies the design requirements for the proposed building works in accordance with Council's Flood Overlay Code, including Table 8.2.11.3.A.
46. The Flood Overlay Assessment Report indicates that the Property was filled prior to the site inspection undertaken by the flood engineering consultants from Storm Water. As such, at the time of the filling, the requirements for compliance with the Flood Overlay Code had been assessed and, in turn, only the self-assessment requirements for the proposed dwelling had been satisfied. In particular, the Flood Overlay Assessment Report certified that the building work for the house in the Creek/waterway flood planning area or Overland flow flood planning area sub-categories would not result in a material increase in flood level.<sup>3</sup> This Report was also subject to the approval of Speedy Building Certifications on 26 July 2024 (**Building Approval**).
47. Although the Tribunal accepts that some filling, for instance a 3m wide zone around the building envelope, could be considered necessary and incidental to the construction of the dwelling house, and the subject of the building approval, the Tribunal finds that this has not occurred in this instance. The Tribunal accepts that, because at the time of the Inspection development had commenced by way of filling exceeding 100mm at the Property, the subject works is more likely to be operational work than building work.

*Absence of development approval*

48. The Tribunal accepts the evidence that a search of Council's records revealed that there was no development planning approval in effect that authorised the carrying out of

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<sup>3</sup> See page 57 and 70 of the Appeal Documentation.

operational works in the Flood Overlay - Creek/Waterway Flood Planning Areas 3 and 4 Sub-Categories at the Property.

49. The Tribunal also accepts that the Building Approval was supported by a Flood Overlay Assessment Report from Storm Water with expertise in undertaking flood studies that certified that the development in the Creek/waterway flood planning area or Overland flow flood planning area sub-categories will not result in a material increase in flood level.<sup>4</sup> This Report was subject of the approval of Speedy Building Certifications on 26 July 2024 (**Building Approval**).
50. However, and as previously mentioned, the Tribunal is of the view that whether or not the Building Approval complied with the Acceptable Outcome 2, is not relevant to whether the work the subject of the enforcement notice is operational work and if so, whether it is assessable.
51. Council submits that a search of Council's records, the carrying out of operational works in the Flood Overlay at the Property was not and will not be carried out:
  - (a) under section 29(10)(a) of the PA;
  - (b) in accordance with an exemption certificate under section 46 of the PA; or
  - (c) under section 88(3) of the PA.
52. The Tribunal accepts that the subject works relating to filling and excavation at the Property would not fall under the exceptions under sections 29(10)(a), 46 or 88(3) of the PA.
53. The Tribunal has determined that:
  - (a) there is no scope to change or set aside the decision to issue the Enforcement Notice on grounds raised by the Appellant;
  - (b) the Appellant, through its submissions and material, does not overcome the key timing issues and requirements in obtaining approval under the PA.
54. Accordingly, the Appeal is dismissed.

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**Ross Williams**  
**Development Tribunal Chair**

**Date: 11 February 2026**

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<sup>4</sup> See page 57 of the Appeal Documentation.

## **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:

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Department of Housing and Public Works  
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Brisbane Qld 4001

Telephone 1800 804 833

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