



Development Tribunal – Decision Notice

Planning Act 2016, section 255

Appeal number:	25-005
Appellant:	John Andrew Moore
Enforcement authority:	Sunshine Coast Regional Council
Site address:	15 Sugar Bag Road, Little Mountain Qld 4551 and described as Lot 3 on SP246942— the subject site

Appeal

Appeal under section 229(1)(a)(i) and item 6 of table 1 of schedule 1 and section 1(1)(b) and section 1(2)(h)(i) of schedule 1 of the *Planning Act 2016* (PA) against the issue of an enforcement notice by Sunshine Coast Council pursuant to section 248 of the *Building Act 1975* (BA) in relation to the repair of a retaining wall on the subject land; and section 250 of the BA

The appeal is to be made by the person given the enforcement notice, who in this case was the Appellant and the respondent to the appeal is the enforcement authority, who in this case is Sunshine Coast Regional Council.

The Appellant filed a Notice of Appeal (Form 10) with the Development Tribunal (Tribunal) registry on 21 March 2025.

Date and time of hearing:	N/A
Tribunal:	John O'Dwyer—Chair Peter Rowell—Member Thomas Bayley—Member

Proposed withdrawal

1. On the eve of the proposed hearing, the Appellant's agent advised the registry that the Appellant wished to withdraw the appeal.
2. The Tribunal noted that based on the available information, it would not be practicable for the appellant to complete the necessary repairs within the timeframes in the original Enforcement Notice dated 24 February 2025. In the circumstances, the Tribunal invited the appellant to reconsider withdrawing, and invited the parties to advise of new dates that the Tribunal could consider to impose under the PA section 254(2)(b)-(d) and requested their submissions on which sub-section may be most suited to re-set the timeframes for compliance with the requirements of the Enforcement Notice.
3. The parties agreed that the original Enforcement Notice with amended dates for the compliance with the requirements would be satisfactory and requested the Tribunal use section 254(2)(b) of the PA.

4. Subsequently, the Council prepared an Amended Enforcement Notice which was signed and dated 29 April 2025, predating the decision of the Tribunal. At the Tribunal's request, Council provided a further draft Amended Enforcement Notice with the amended signing date of 29 April 2025 removed.
5. The Tribunal has accepted the wording of the Amended Enforcement Notice and has amended the dates of the Amended Enforcement Notice to reflect the passing of time since the Amended Enforcement Notice has been developed. Accordingly, the Tribunal considers that it would now be more appropriate to use section 254(2)(c) of the PA to dispose of the appeal.

Decision

6. In the circumstances The Tribunal's decision is:
 - (a) the appeal be allowed in part on the following limited ground; and
 - (b) in accordance with section 254(2)(c) of the *Planning Act 2016*, the Council's decision to give an enforcement notice dated 24 February 2025 is replaced with another decision, namely with a decision to give an enforcement notice in terms of the Amended Enforcement Notice submitted to the Tribunal on 29 April 2025 as agreed by the parties and attached as Annexure 1 with the dates, amended to add a further 10 business days to each date in the Amended Enforcement Notice.
7. The Tribunal's decision takes the place of the decision appealed against (section 254(4) of the PA).

Jurisdiction

8. The Tribunal is satisfied that it has jurisdiction in respect of the subject appeal, being an appeal against a decision to give an enforcement notice under the BA section 248 in relation to repair of a structure.
9. Schedule 1 of the PA states the matters that may be appealed to the Tribunal.
10. Section 1(1) of schedule 1 of the PA provides that table 1 states the matters that may be appealed to a tribunal. However, pursuant to section 1(2) of schedule 1 of the PA, table 1 only applies to a tribunal if the matter involves one of a list of matters set out in sub-section (2).
11. Section 1(2)(h) of schedule 1 of the PA, relevantly refers to a decision to give an enforcement notice in relation to a matter under paragraphs (a) to (g). Paragraph (g) refers to a matter under the PA, to the extent the matter relates to the BA, other than a matter under the BA that may or must be decided by the Queensland Building and Construction Commission.
12. Section 248(5) of the BA, relevantly provides that an enforcement notice given under that section is taken to be an enforcement notice given under section 168 of the PA.
13. The matter is not one which may or must be decided by the Queensland Building and Construction Commission.

14. Accordingly, an enforcement notice given under section 248 of the BA, would come within section 1(2)(g) of schedule 1 of the PA and consequently, also section 1(2)(h) of schedule 1 of the PA.
15. So, table 1 of schedule1 of the PA applies to this appeal.

Reasons for the decision

16. As the Appellant wanted to withdraw the appeal, the Tribunal considered the dates in the original Enforcement Notice were no longer practical.
17. At the request of the Tribunal, the parties agreed to the form of a new enforcement notice with new practical dates for compliance. The Tribunal considered that the form of the Amended Enforcement Notice is acceptable and has set new dates to reflect the passage of time since the Amended Enforcement Notice was prepared and has therefore replaced the Council's original decision to issue the Enforcement Notice dated 24 February 2025, with a decision to give an enforcement notice in terms of the Amended Enforcement Notice as agreed by the parties and attached as Annexure 1.

Material considered

18. The material considered in arriving at this decision comprises:
 - (a) 'Form 10 – Appeal Notice', grounds for appeal and correspondence accompanying the appeal lodged with the Tribunal's Registrar on 21 March 2025
 - (b) *The Planning Act 2016*
 - (c) *The Building Act 1975*
 - (d) Correspondence from the Appellant seeking to withdraw the appeal and responding to the Tribunal's request on options for the proceedings and the new Enforcement Notice
 - (e) Correspondence from the Assessment Manager in response to the Tribunal's request on options for the proceedings and the new Enforcement Notice
 - (f) Document marked as Amended Enforcement Notice signed and dated 29 April 2025.

John O'Dwyer
Development Tribunal Chair
Date: 6 June 2025

Appeal rights

Schedule 1, table 2 (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 (07) 1800 804 833

Email: registrar@epw.qld.gov.au

Appendix 1

Amended Enforcement Notice ***Building Act 1975, Section 248***

Sunshine Coast Regional Council (**Council**) reasonably believes that a structure owned by you, the person identified in **Section 1** below, is in a dilapidated condition.

The structure the subject of this notice is the retaining wall described in **Section 2** below.

As a result, Council has decided to give this Enforcement Notice to you pursuant to section 248(1) of the *Building Act 1975* (**the Act**).

Council has had regard to the representations made by your solicitors given in response to the Show Cause Notice given to you and dated 30 July 2024, and none of the matters set out in that response has altered Council's decision to give you this notice. In particular, your representations have not persuaded the Council that:

- a. the impugned retaining wall structure is not in a dilapidated condition; or
- b. it would be inappropriate to require you to undertake repairs to the impugned retaining wall structure.

You are required to take the required actions (**Required Actions**) specified in **Section 3** below, in accordance with the timeframe stated in **Section 4** below.

You have a right to appeal against the giving of this enforcement notice to the Development Tribunal in accordance with section 250 of the Act.

FAILURE TO COMPLY with this enforcement notice **is an offence** and may result in council taking further action against you, including:

- (a) commencing a prosecution or other proceedings against you;
- (b) serving a further enforcement notice on you; or
- (c) entering upon the premises identified in **Section 2(b)** below to perform the Required Actions, and subsequently taking action to recover from you any reasonable costs and expenses incurred by Council in doing so.

If you have any questions about this enforcement notice, please contact Neil Messinbird, Building Technical / Compliance Officer on 0437 938 327 or via email at neil.messinbird@sunshinecoast.qld.gov.au

Section 1		Details of recipient
(a)	Name	Mr John Andrew Moore
(b)	Address	C/- Crazy Skate Company PO Box 3330 CALOUNDRA DC, QLD, 4551
Section 2		Details of the impugned structure
(a)	Building Act provision/s	Section 248(1)(c) of the Act states— “A local government may give a notice (an enforcement notice) to the owner of a building, structure or building

	<i>work if the local government reasonably believes the building structure or building work is in a dilapidated condition”.</i>
(b) Location of structure	15 Sugar Bag Road, LITTLE MOUNTAIN, QLD, 4551, (Lot: 3, SP: 246942)
(c) Description	1 A retaining wall is located on property located at 15 Sugar Bag Road, Little Mountain, more particularly described as Lot 3 on Survey Plan 246942 (Property). 2 In particular, the retaining wall is located at the northern corner of the property adjoining Mon Terre Drive and Vaymont Place, Little Mountain 3 The retaining wall comprises a galvanized steel post and concrete sleeper retaining wall (the Retaining Wall). 4 You are the registered owner of the Property and, as a fixture improving the property, you are also the owner of the Retaining Wall. 5 Council reasonably believes that sections of the Retaining Wall are in a dilapidated condition, because multiple concrete sleepers have released at one end of the supporting galvanized steel posts, and sections of the Retaining Wall are leaning outwards. 6 Images of the Retaining Wall that are marked up to identify the issues described in Item 5 above are annexed to this Notice. 7 Council believes that it is appropriate to require you to repair the dilapidated retaining wall because, unless and until that occurs, it is unsafe to permit members of the public to utilise the footpath in the road reserve adjoining the Retaining Wall. 8 Council also believes that the dilapidated condition of the Retaining Wall makes it dangerous, because it could fail without further warning, resulting in the wall rotating and falling onto the northern footpath with associated landslide material, causing injury or death to persons standing below the wall, or atop the edge of the wall, at the time of failure. 9 In view of the facts and circumstances outlined above, Council is giving you an enforcement notice which requires you to undertake urgent repair and or replacement works of the failing section of Retaining Wall.
Section 3	Required actions
1. Before 5:00 pm on Friday, 21 March 2025 <u>Monday, 9 June 2025</u> - Engage the services of a Registered Professional Engineer Queensland (RPEQ civil / structural) to inspect the Retaining Wall and prepare a permanent design solution to remedy the defects described in Section 2, Item 5 above, and which complies with the <i>Building Act 1975</i>, the National Construction Code and AS 4678—2002. <u>AND</u>	

2. **Before 5:00 pm on ~~Friday, 11 April 2025~~ Monday, 30 June 2025** - provide Council with a copy of:

- (a) the details of the RPEQ engaged pursuant to item 1 above, and evidence of their retainer prior to the date prescribed by item 1 above;
- (b) a copy of the RPEQ's proposed permanent design solution;
- (c) a completed Form 15 design compliance certificate for the proposed permanent design solution; and
- (d) a development permit for building work given by a private building certifier to authorise the proposed permanent design solution, but this approval is only required if the proposed work would affect more than 20% of the retaining wall's structural components of the same type.

AND

3. **Before 5:00 pm on ~~Friday, 6 June 2025~~ Monday, 25 August 2025** - arrange for an appropriately licensed QBCC contractor to carry out the RPEQ's proposed permanent design solution.

Note: A council permit is required before any works or machinery may be carried out or placed on the council footway / council land. (Details and requirements council permits to perform works on the council footway may be found via the following Council website link <https://www.sunshinecoast.qld.gov.au/pay-and-apply/parking-roads-and-footpaths/road-and-footpath-permits>).

AND

4. If a development permit is required to be provided pursuant to Item 2(d) above, **before 5:00 pm on ~~Friday, 20 June 2025~~ Monday, 8 September 2025** - provide to Council a private building certifier's *Building Act 1975* Form 21 inspection compliance certificate for the repaired Retaining Wall;

OR

5. If a development permit is not required to be provided pursuant to Item 2(d) above, **before 5:00 pm on ~~Friday, 20 June 2025~~ Monday, 8 September 2025** - provide to Council a *Building Act 1975* Form 12 Aspect Inspection Certificate for the Retaining Wall repairs signed by the RPEQ civil / structural engineer engaged pursuant to Item 1 above.

Section 4	Timeframes for compliance
As stated in Section 3 of this Enforcement Notice above.	

Signed:		Date:	<u>24 February 2025</u>
Name:	Neil Messinbird – Building Technical / Compliance Officer		

Appeal Rights

BUILDING ACT 1975

The following are extracts from the *Building Act 1975* (Chapter 9).

Chapter 9 - Show cause and enforcement notices

250 Appeals against enforcement notices

- (1) A person who is given an enforcement notice under Section 248 may appeal to the Queensland Government Development Tribunal as if the appeal were an appeal under the *Planning Act 2016* (Qld).
- (2) The appeal must be started within -
 - (a) If the notice is given in relation to a dangerous building or structure - 5 business days; or
 - (b) If the notice is given for any other purpose - 20 business days after the enforcement notice is given to the person.

Queensland Government Development Tribunal

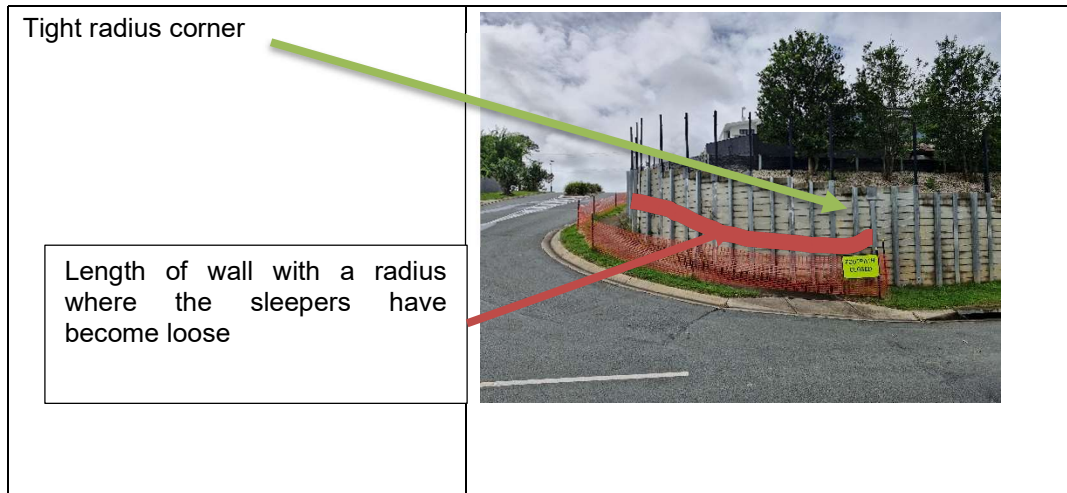
Telephone: 1800 804 833
Email: registrar@epw.qld.gov.au
Postal Address: GPO Box 2457
BRISBANE QLD 4001.

Annexure A

Retaining Wall at the corner of Mon Terre Drive and Vaymont Place

1. Loose Sleepers

Sleepers have become loose in the length of wall that has a radius at the corner.



2. Section of wall leaning outwards/bulging

A length of the wall behind the kerb drainage pit in Vaymont Place is leaning outwards.

