



Development Tribunal – Decision Notice

Planning Act 2016, section 255

Appeal number: 25-036

Appellant: JAJB Properties Pty Ltd A.C.N. 684 306 527 Trustee

Enforcement Authority: Mackay Regional Council (**Council**)

Site Address: 217 Shakespeare Street, Mackay Qld 4740, described as Lot 2 on RP711418 (**Premises**)

Appeal

Appeal under section 229 and schedule 1, section 1(2)(h)(ii) of the *Planning Act 2016* (**Planning Act**) against the decision of Council to give the Appellant an enforcement notice under section 143 of the *Plumbing and Drainage Act 2018* (**Plumbing and Drainage Act**) dated 8 September 2025 (**Enforcement Notice**) alleging contravention of sections 66 and 69 of the Plumbing and Drainage Act.

Date and time of hearing: 5 November 2025 at 10:00 AM

Place of hearing: Online (Microsoft Teams)

Tribunal: Stafford Hopewell—Chair
Amy Adamson—Member
Ken Crase—Member

Present: Jeff Boyle (Director of JAJB Properties Pty Ltd)—Appellant
Jamie Lee, Vanessa Gilgrist and Troy Sander—Council

Decision:

The Development Tribunal (**Tribunal**), in accordance with section 254(2)(c) of the Planning Act, decides as follows:

- (a) the appeal is allowed;
- (b) decision to give the Enforcement Notice is replaced with the decision to set aside the Enforcement Notice.

Background

1. This is an appeal about Council's decision to give an enforcement notice concerning a water-based cremation (aquamation) system called the "The Gentle Way" (**System**) that was installed on the Premises.
2. The Appellant is the owner of the Premises, having become the registered owner on 15 May 2025. Prior to that date, JA & JB Boyle Pty Ltd was the owner of the Premises.
3. The use of the Premises for a crematorium (aquamation) is approved under a development permit for material change of use of premises dated 20 March 2024 given by Council under the Planning Act (**Development Approval**).
4. JA & JB Boyle Pty Ltd was the applicant for the Development Approval and owner of the Premises when the Development Approval was given by Council.
5. On 4 December 2024, Council issued a show cause notice pursuant to section 144 of the Plumbing and Drainage Act to JA & JB Boyle Pty Ltd alleging contraventions of sections 56, 66 and 68 of the Plumbing and Drainage Act in relation to the installation and use of the System (**Show Cause Notice**).
6. Following the consideration of representations made on behalf of JA & JB Boyle Pty Ltd in response to the Show Cause Notice, Council proceeded to give the Enforcement Notice to the Appellant.
7. The Enforcement Notice is attached as Appendix 1 to this decision and is not reproduced in full here. However, the primary grounds for Council giving the Enforcement Notice are:
 - (a) JAJB Properties Pty Ltd as the owner of the Premises is alleged to have carried out plumbing and drainage works on the Premises;
 - (b) JAJB Properties Pty Ltd has contravened / is contravening sections 66 and 69 of the Plumbing and Drainage Act by:
 - i. carrying out permit work without a permit; and
 - ii. using plumbing or drainage that is the result of permit work without an inspection certificate or final inspection certificate.
8. The Enforcement Notice directed JAJB Properties Pty Ltd to remedy the alleged contraventions by:
 - (a) engaging a suitably qualified QBCC licenced plumber to assist in completing the documents required to be submitted with a plumbing application to obtain a plumbing permit for the disconnection of the plumbing and drainage works on the Premises;
 - (b) submit a Plumbing and Drainage Form 7 – Notification of a responsible person to Council's Plumbing Department;
 - (c) submit a fully completed Form 1 Plumbing Application for the disconnection of the plumbing and drainage works at the Premises to Council's Plumbing Department.
9. The Appellant's grounds for appeal are:
 - (a) the Appellant did not carry out the impugned plumbing and drainage works;
 - (b) Council did not give the Appellant a show cause notice before giving the Enforcement Notice;
 - (c) Council does not describe or particularise the impugned permit work;

- (d) it is impossible to comply with the requirements of the Enforcement Notice;
- (e) there is no utility in the Enforcement Notice.

Jurisdiction

10. Under section 229 of the Planning Act, the matters prescribed in accordance with schedule 1 may be appealed to a tribunal.
11. Table 1, item 7 and section 1(2)(h)(ii) of schedule 1 of the Planning Act 2016 provide that a matter about a decision to give an enforcement notice under the Plumbing and Drainage Act may be appealed to a tribunal.
12. As the appeal is about Council's decision to give the Appellant the Enforcement Notice under the Plumbing and Drainage Act, the Tribunal is satisfied it has jurisdiction to decide the appeal.
13. Neither party took any issue to the Tribunal's jurisdiction.

Decision framework

14. This is an appeal against the decision to give an enforcement notice and in accordance with section 253(3) of the Planning Act, Council as the enforcement authority has the onus to establish that the appeal should be dismissed.
15. Pursuant to section 253(4) of the Planning Act, the Tribunal is required to hear and decide the appeal by way of reconsideration of the evidence that was before Council when the decision was made to give the Enforcement Notice.
16. The Tribunal may however consider other evidence presented by a party with leave or as provided under section 246 of the Planning Act.
17. The Tribunal must decide the appeal in accordance with section 254(2) of the Planning Act by:
 - (a) confirming the decision; or
 - (b) changing the decision; or
 - (c) replacing the decision with another decision; or
 - (d) setting the decision aside and ordering the person who made the decision to remake the decision by a stated time.

Statutory framework

18. Under section 66 of the Plumbing and Drainage Act, a person must not carry out permit work unless:
 - (a) a permit has been issued for the work; and
 - (b) the person carries out the work in compliance with the permit and any conditions of the permit.
19. Permit work is plumbing or drainage work prescribed by regulation as permit work pursuant to section 6(2) of the Plumbing and Drainage Act.
20. Under section 69 of the Plumbing and Drainage Act, a person must not use plumbing or drainage that is the result of permit work, unless an inspection certificate or final inspection certificate have been issued.
21. 'Plumbing or drainage work' means plumbing work or drainage work (schedule 1 of the Plumbing and Drainage Act).

22. 'Drainage work' is defined in schedule 1 of the Plumbing and Drainage Act to include:
'installing, changing, extending, disconnecting, taking away and maintaining—
- (a) drainage; or
 - (b) a greywater use facility; or
 - (c) an on-site sewage facility.'
23. For the purposes of the Plumbing and Drainage Act:
'drainage means:
- (a) an apparatus, fitting or pipe, either above or below ground level, that carries—
 - i. sewage to a sewerage system;
 - ii. sewage to, within or from an on-site sewage facility; or
 - iii. greywater from a greywater treatment plant or greywater diversion device; or
 - (b) an on-site sewage facility.' [examples omitted]
24. 'Plumbing work' is defined in schedule 1 of the Plumbing and Drainage Act as:
'includes—
- (a) installing, changing, extending, disconnecting, taking away, maintaining and testing plumbing; and
 - (b) installing a water meter, as part of a water service provider's infrastructure, to measure the volume of water supplied from the infrastructure to premises.'
25. 'Plumbing' is defined in schedule 1 of the Plumbing and Drainage Act as:
'means:
- (a) an apparatus, fitting or pipe for—
 - i. supplying water to premises from a water service provider's infrastructure or a water storage tank; or
 - ii. carrying water within premises; or
 - (b) an apparatus, fitting, fixture or pipe, above ground level, that carries sewage on premises to drainage; or
 - (c) a greywater treatment plant or greywater diversion device.'
26. Under section 143(1) of the Plumbing and Drainage Act, a local government may give an enforcement notice to a person who carried out plumbing or drainage work requiring the person to take stated action if the local government reasonably believes the work does not comply with the Plumbing and Drainage Act.
27. Under section 143(2) of the Plumbing and Drainage Act, a local government may give an enforcement notice to the owner of premises requiring the owner to take stated action if the local government reasonably believes plumbing or drainage on the premises (if amongst other things):
- (a) is in a condition, or functions in a way, that constitutes a danger or health risk to occupiers of the premises or the public; or
 - (b) is defective and should be altered, repaired or replaced; or

- (c) for plumbing or drainage the subject of permit work—was installed without, or not in compliance with, a permit.
28. Under section 146 of the Plumbing and Drainage Act, an enforcement notice must state:
- (a) the reason the person is given the notice;
 - (b) if the notice requires a person not to take stated action:
 - i. the period for which the requirement applied; or
 - ii. that the requirement applies until further notice; and
 - (c) if the notice requires a person to take stated action:
 - i. the details of the action; and
 - ii. the period within which the action must be take; and;
 - (d) that the person may appeal to a tribunal or the Planning and Environment Court against the giving of the notice.

Material considered

29. The material considered by the Tribunal was:
- (a) Form 10 Notice of Appeal, grounds for appeal, and correspondence lodged with the Tribunal's registrar;
 - (b) Changed Decision Notice and development approval documents;
 - (c) Show Cause Notice dated 4 December 2024;
 - (d) Enforcement Notice dated 8 September 2025;
 - (e) Planning Act;
 - (f) Plumbing and Drainage Act;
 - (g) Form 1 and Form 7 made under the Plumbing and Drainage Act.
30. The Appellant and Council each made submissions via the Registry on the evening before the hearing which were provided to the Tribunal on the date of the hearing. The Tribunal grants leave and accepts these submissions.
31. Prior to the conclusion of the hearing, the parties were asked whether they wished to have the opportunity to make any further written submissions to the Tribunal and both parties stated that they did not want to make any further submissions and wished for the Tribunal to decide the appeal on the material provided.

Findings of fact

32. The Premises is approved for use as a crematorium pursuant to the Development Approval.
33. Under the Development Approval, by way of conditions, the cremation / incineration of bodies on the Premises is prohibited and the crematorium use is limited to aquamation with the use of a single aquamation chamber.
34. The Development Approval, by way of conditions, further requires wastewater associated with the aquamation process must not discharge to Council's sewer or stormwater system and waste from the aquamation process must be managed in accordance with a waste management plan approved by Council, including being taken off-site for disposal.
35. The Tribunal finds that the System comprised:

- (a) 'The Gentle Way' aquamation machine;
 - (b) filtration area;
 - (c) a five stage filtration system / holding tank;
 - (d) installed pipework across the ceiling and out to the ceiling vent of the building on the Premises.
36. The System was installed on the Premises with the aquamation machine (essentially being the chamber in which the deceased is placed) in a viewing area which is connected to pipework that runs into a 'back-of-house' area to the filtration system, including holding tank.
37. The System is supplied with water from a rainwater tank on the Premises and uses an alkaline hydrolysis process to dispose of deceased human bodies involving the recycling of water and chemicals within the system until the point where it can no longer be re-used and is then disposed off-site.
38. The Tribunal finds that the System as described by the Appellant did not discharge to Council's stormwater or sewerage system and was not connected to Council's water supply system, and wastewater was stored on-site for removal and disposal off-site.

Reasons for the decision

39. The following set out the Tribunal's reasons for the decision addressing the grounds of appeal raised by the Appellant.

Did the Appellant carry out the impugned plumbing and drainage works?

40. The Appellant's first ground of appeal is that the Appellant did not carry out the impugned works.
41. Section 66(1) of the Plumbing and Drainage Act provides that a person must not carry out permit work unless a permit has been issued for the work and the person carries out the work in compliance with the permit and any conditions of the permit.
42. The parties agree that no permit has been issued in relation to the System, either for its installation on or disconnection and removal from the Premises.
43. Putting aside whether the System involved permit work (which is disputed by the parties and considered later in this decision), the offence applies to the person who carried out the permit work (section 66(1)) or directed another person to carry out the permit work (section 66(2)).
44. As the Enforcement Notice has been given to JAJB Properties Pty Ltd, the critical question is whether JAJB Properties Pty Ltd carried out or directed another person to carry out the permit work.
45. Although the Enforcement Notice lacked details about the alleged permit work and when this is alleged to have been carried out, the Tribunal finds that any work involved in the installation of the System occurred before JAJB Properties Pty Ltd was established or became the owner of the Premises.
46. This is on the basis that Council's original inspection of the System was carried out in November 2024 before the Show Cause Notice was given on 4 December 2024.
47. According to the ASIC company extract attached to the Enforcement Notice, JAJB Properties Pty Ltd was registered on 6 February 2025. As the company did not legally exist at the time of the Council inspection in November 2024, the company is legally

incapable of having carried out any work in relation to the installation of the System and any work carried out before the company's registration cannot be attributable to JAJB Properties Pty Ltd.

48. Noting that Council was advised of the disconnection of the System in March 2025 in response to the Show Cause Notice, and Council appears to rely on this event as triggering the need for a permit to disconnect the System, JAJB Properties Pty Ltd could have theoretically carried out or directed permit work to be carried out after its registration and before it became the owner of the Premises on 15 May 2025, but there is no evidence to support this.
49. On the material before the Tribunal, there is no evidence that JAJB Properties Pty Ltd carried out the impugned work or directed another person to carry out the work (noting that the substance of the Enforcement Notice is the disconnection of the System in about March 2025).
50. Council has therefore failed to establish on the balance of probabilities (noting that the Briginshaw principle applies to the standard of proof, whereby the more serious the allegation, the more substantial is the evidence required to prove the allegation on the balance of probabilities) that the Appellant carried out or caused to be carried out the impugned work, and on this basis, Council has failed to discharge its onus to show that the appeal should be dismissed.
51. As Council has not established that JAJB Properties Pty Ltd carried out or caused to be carried out the impugned work, it is not necessary to consider whether the impugned work was permit work.
52. However, if it was necessary for the Tribunal to form a view on this, the Tribunal would not be satisfied that the impugned work was permit work.
53. The Enforcement Notice is materially deficient in the description of the alleged permit work carried out in relation to the System. As noted above, the scope of plumbing or drainage work is broadly defined under the Plumbing and Drainage Act, and a wide range of activities fall within that ambit. However, there are still limits on what constitutes plumbing or drainage work and additional qualifications apply to what is permit work.
54. The Enforcement Notice is however unfortunately vague and non-specific as to the alleged permit work. The Enforcement Notice interchangeably refers to plumbing work and drainage work and does not give the recipient of the notice any clear explanation or direction as to what exactly is alleged to be the permit work that has been carried out without a permit.
55. The language used by Council in the Enforcement Notice is often generic and inconsistent with the Plumbing and Drainage Act. For example:
 - (a) there are multiple references to 'plumbing and drainage work' which is not a defined term and disregards that plumbing work and drainage work are separate and discrete aspects of work;
 - (b) references are made to 'regulated wastewater' and 'regulated works' which are not defined terms in the Plumbing and Drainage Act.
56. Requirements of the Enforcement Notice to submit a Form 1 and Form 7 do not assist in identifying the alleged permit works as these forms apply to a wide range of plumbing, drainage and on-site sewerage works.

57. Having regard to the definitions of 'drainage' and 'drainage works' set out above, the Tribunal does not consider that any works associated with the System are drainage works within the meaning of the Plumbing and Drainage Act.
58. This is because drainage is defined to relate to the conveyance of sewage or greywater, and the aquamation process is not considered to constitute or involve either sewage or greywater as defined under the Plumbing and Drainage Act.
59. Noting the definitions of 'plumbing' and 'plumbing works', given the System is not connected to Council's water supply system, most of this scope is not relevant but part (a)(ii) of the definition of 'plumbing' is potentially applicable as the System involves carrying water within premises.
60. This however still raises an issue whether the System is properly characterised as plumbing for the purpose of the Plumbing and Drainage Act. The Appellant submits the System is a 'stand-alone' system that is properly characterised as a self-contained processing unit.
61. Whilst it has water input and wastewater discharge, this is submitted by the Appellant to be akin to an industrial process, and the System only carries water and wastewater within a closed system for processing, which is distinguishable from plumbing that conveys water within premises for use within the premises.
62. The Tribunal accepts that the water / wastewater is contained in a closed system and is not otherwise used on the Premises and does not have any connection to Council's infrastructure.
63. The Tribunal is not satisfied that Council has established that the System involves plumbing work as defined under the Plumbing and Drainage Act and on this basis has failed to discharge its onus to show that the appeal should be dismissed.
64. However, if the System (or any part of it) does constitute plumbing work within the meaning of the Plumbing and Drainage Act, sections 66 and 69 of the Plumbing and Drainage Act are only engaged if the plumbing work is permit work.
65. Under section 6 of the Plumbing and Drainage Act, plumbing or drainage work may be categorised as:
 - (a) unregulated work; or
 - (b) minor work; or
 - (c) notifiable work; or
 - (d) permit work.
66. Unregulated work doesn't need to be carried out by a licensed plumber but must meet minimum standards and comply with any codes and legislation.
67. Minor work must be carried out by a licensed plumber.
68. Notifiable work must be carried out by a licensed plumber and notified to the Queensland Building and Construction Commission (**QBCC**).
69. Only permit work requires a permit from a local government.
70. Whilst Council asserts that the impugned work is permit work, it has not provided sufficient grounds to satisfy the Tribunal that this is correct. For example, what is the basis upon which a permit was required to 'disconnect' the System as part of its decommissioning and

removal from the Premises when it was not connected to Council's water supply or sewerage systems?

71. Therefore, even if it had been established that JAJB Properties Pty Ltd was responsible for the impugned work, the Tribunal would nevertheless find that the Enforcement Notice was deficient and would set aside the Enforcement Notice because Council has not established the impugned works is permit work.

Did the Appellant use the impugned permit work?

72. Under section 69 of the Plumbing and Drainage Act a person must not use plumbing or drainage that is the result of permit work, unless an inspection certificate or final inspection certificate has been issued for the permit work.
73. It is common ground that no inspection certificate or final inspection certificate has been issued in relation to the System.
74. The offence under section 69 relates to the use of plumbing or drainage that is the result of permit work and is not concerned with who carried out the work. As such, the Appellant is subject to section 69 of the Plumbing and Drainage Act if it has used the plumbing or drainage that is the result of permit work.
75. In this case, the Tribunal is not satisfied that Council has established that the Appellant has contravened section 69 of the Plumbing and Drainage Act because the evidence does not show that the Appellant has or is using the System.
76. This is for the following reasons:
- (a) the Appellant has submitted:
 - i. the Whitsunday Funerals and Crematorium business was acquired by Law Family Enterprises Pty Ltd in or about May 2024;
 - ii. Law Family Enterprises Pty Ltd leased the Premises from JA & JB Boyle Pty Ltd and had a licence to use the System;
 - iii. in November 2024, Law Family Enterprises Pty Ltd were directed to cease using the System pursuant to the licence and the System was decommissioned in November 2024;
 - (b) in March 2025, Council was advised on behalf JA & JB Boyle Pty Ltd in response to the Show Cause Notice that the System was removed from the Premises.
 - (c) The Appellant did not become the owner of the Premises until 15 May 2025;
77. Even if the plumbing or drainage work for the System is permit work, the Tribunal is not satisfied that Council has discharged its onus to show that the Appellant has or is using the plumbing or drainage work because the evidence shows that the System was removed before the Appellant became the owner of the Premises and there is no evidence that the Appellant was otherwise involved in the use of any plumbing or drainage in relation to the System on the Premises prior to it becoming the owner of the Premises .
78. Further, the Tribunal considers that the alleged offence in relation to section 69 of the Plumbing and Drainage Act is not supported by the facts particularised by Council and is inconsistent with the Enforcement Notice requirements.
79. This is because the Enforcement Notice is based on the System being disconnected in March 2025 and this disconnection founding the alleged offence under section 66 of the Plumbing and Drainage Act (i.e. the Enforcement Notice concerns the disconnection of the System in March 2025, not its prior installation).

80. Accordingly, given that Council relies on the disconnection of the System in March 2025 as the foundation for the alleged contravention of section 66 in relation to carrying out permit work without a permit, there can be no use of plumbing or drainage that is the result of permit work (i.e. disconnection of plumbing or drainage work).
81. Alternatively, if Council is submitting that there is residual plumbing or drainage work on the Premises or otherwise has issue with the use of any remaining plumbing or drainage work on the Premises, Council has failed to adequately particularise this and has not discharged its onus to show that the appeal should be dismissed.

Was a show cause notice required to be given before giving the Enforcement Notice?

82. Noting the findings of the Tribunal in relation to the first ground of appeal, there is strictly no need for the Tribunal to consider the further grounds of appeal.
83. But if the Tribunal is wrong about the Appellant's responsibility for the impugned works and the categorisation of the works under the Plumbing and Drainage Act, the Tribunal has considered the further grounds of appeal.
84. Under section 144 of the Plumbing and Drainage Act, unless the Enforcement Notice relates to plumbing or drainage that Council reasonably believes is a danger to persons or a risk to public health, Council must give a show cause notice to the Appellant before giving the Enforcement Notice.
85. The Enforcement Notice given to the Appellant references the Show Cause Notice, but this was given to JA & JB Boyle Pty Ltd, not to JAJB Properties Pty Ltd.
86. At the hearing, Council properly conceded that no show cause notice was given to the Appellant before it was given the Enforcement Notice, and that the Show Cause Notice was given to a different entity. Council also did not press that the different companies should be treated as the same person for the purpose of the Enforcement Notice.
87. On the face of the Enforcement Notice it is apparent that Council recognised that there was a change of ownership of the Premises in May 2025 and different entities were given the Show Cause Notice and Enforcement Notice.
88. Although Council did not seek to explain its approach at the hearing, based on the Enforcement Notice, it appears Council believed it was effectively dealing with the same 'person' and that the different corporate entities were irrelevant or immaterial.
89. For example, under the Particulars heading of the Enforcement Notice at section 12, the statement is made:

'Please note; Transfer of this property from JA & JB Boyle Pty Ltd A.C.N 684 306 527 Trustee 102 765 435 to JAJB Properties Pty Ltd A.C.N is the same person.'
90. Somewhat similarly, the Enforcement Notice and Show Cause Notice have repeated references to Mr Jeff Boyle being the 'owner'.
91. Whilst Mr Boyle represented the Appellant at the hearing in his capacity as a director of JAJB Properties Pty Ltd, and Mr Boyle also represented JA & JB Boyle Pty Ltd in relation to the Show Cause Notice (presumably as a director of that company although that is not clear on the material before the Tribunal), neither the Enforcement Notice nor Show Cause Notice were issued to Mr Boyle personally or as an executive officer of the relevant corporate entities.

92. Whilst at a practical level, Council has been dealing with Mr Boyle as the representative of the different corporate entities, this does not make the corporate entities the same or interchangeable.
93. Each corporate entity has its own distinct and separate legal identity, and no material has been provided to the Tribunal to submit that the corporate entities were legally related or jointly liable for the alleged offences.
94. Further, while the Enforcement Notice and Show Cause Notice have a degree of commonality in that they both relate to plumbing or drainage work concerning the System, they do not rely on the same facts and circumstance and do not concern the same alleged offences.
95. The Tribunal therefore finds that Council has failed to give a show cause notice to JAJB Properties Pty Ltd before giving the Enforcement Notice.
96. However, pursuant to section 144(2) of the Plumbing and Drainage Act, a show cause notice was not required to be given to JAJB Properties Pty Ltd if Council reasonably believed that the plumbing or drainage was a danger to persons or a risk to public health.
97. While Council did not submit that this exception applied and Council did not seek to rely on this at the hearing, the Tribunal notes under the 'Grounds' heading of the Enforcement Notice at section 1(a), it is stated that Council reasonably believes the plumbing and drainage works is in a condition, or functions in a way, that constitutes a danger or health risk to occupiers of the Premises or public.
98. However, read as a whole, section 1(a) of the Enforcement Notice is simply a recital of (most of) section 143(2)(a) of the Plumbing and Drainage Act which sets out the circumstances in which a local government may give an enforcement notice.
99. When the whole of the Enforcement Notice is considered, no basis is disclosed for Council to reasonably believe that the impugned works pose a danger or public health risk. Further, the substance of the Enforcement Notice is the alleged permit work which relates to section 143(2)(a)(v) of the Plumbing and Drainage Act.
100. The Enforcement Notice clearly records that the System has been decommissioned, and Council's concerns are limited to the disconnection (and not the installation or on-going use of the System).
101. Whilst the Show Cause Notice raised concerns about discharge from the System to Council's sewerage system which could have posed a danger or health risk (although the Appellant disputes that any discharge from the System ever posed a danger or public health risk), this is not an issue relevant to the Enforcement Notice.
102. At the hearing, whilst Council raised it has concerns about the state of the Premises following the removal of the System (including the state of residual pipework), Council did not dispute that the System had been decommissioned and removed from the Premises as asserted by the Appellant (and the disconnection of the System is the foundation of the alleged contravention of section 66 of the Plumbing and Drainage Act).
103. In circumstances where Council's concerns were confined to what could fairly be described as procedural compliance and formalities associated with decommissioning of the System, there is no material before the Tribunal exhibiting any concerns about a danger to persons or a risk to public health.
104. Further, noting the System was expressly prohibited from discharging to Council's stormwater or sewerage system under the Development Approval and was not connected

to Council's water supply system (having its own rainwater tank supply), it is not evident as to how the disconnection of the System (even if it constituted permit work) could pose a danger or risk to public health.

105. The Tribunal therefore finds that Council failed to give the Appellant a show cause notice before giving the Enforcement Notice contrary to section 144 of the Plumbing and Drainage Act, and pursuant to section 146(2) of the Plumbing and Drainage Act, the Enforcement Notice is of no effect and should be set aside.

Did the Enforcement Notice adequately describe or particularise the alleged permit work?

106. Again, having regard to the findings above, it is not strictly necessary to consider this ground of appeal, but if the Tribunal had been satisfied the Enforcement Notice complied with the above statutory requirements, the Tribunal would nevertheless set aside the Enforcement Notice because it has not sufficiently particularised the alleged permit work.
107. Section 146(1)(a) of the Plumbing and Drainage Act requires an enforcement notice must state the reason the person is given the notice.
108. Under the 'Particulars' heading of the Enforcement Notice at section 15, it is stated:
'Having regard to the above, Council is of the view that JAJB Properties Pty Ltd A.C.N 684 306 527 Trustee has contravened, or is contravening Sections 66 & 69 of the Plumbing and Drainage Act 2018, because:
- (a) All regulated works carried out have been done without obtaining the necessary Plumbing Permits under a Form 1 Application for disconnection of services; and
 - (b) No record to Council of a licensed Plumber completing the plumbing works carried out for the "The Gentle Way" system at 217 Shakespeare Street, Mackay or a Form 7 submitted to Council.'
109. Whilst the Enforcement Notice in the 'Requirements' section more specifically refers to disconnection, read as a whole, the Tribunal considers that the Enforcement Notice is vague and uncertain as to the alleged permit works that require an application to Council.
110. The Planning and Environment Court in relation to appeals against enforcement notices under the Planning Act has emphasised the importance and need to particularise the alleged offence. Whilst there are differences in drafting of the relevant provisions in the Planning Act and Plumbing and Drainage Act, the Tribunal considers that the statements of principle made by the Planning and Environment Court are relevant to enforcement notices under the Plumbing and Drainage Act.
111. This is highlighted in this appeal where there is fundamental disagreement between Council and the Appellant as to the characterisation and categorisation of the works undertaken and the existence of permit works is central to the alleged offences.
112. The Enforcement Notice does not adequately describe or particularise the alleged permit work the subject of the requirements. Given contravention of the Enforcement Notice is itself an offence and triggers powers for an administering entity to take further action and recover costs, it is incumbent on Council to provide sufficient clarity to inform the recipient as to the action required.
113. In this case, the Tribunal considers the requirement to submit a Form 1 for the 'disconnection of the Plumbing & Drainage Works at the premises' is too vague and uncertain.

Can the Enforcement Notice be complied with?

114. If the Enforcement Notice was otherwise valid, the Appellant submits that compliance with the requirements of the Enforcement Notice cannot be achieved.
115. In summary, the Enforcement Notice requires the Appellant to:
 - (a) engage a suitably qualified QBCC licensed plumber;
 - (b) submit a Plumbing and Drainage Form 7 – Notification of a responsible person;
 - (c) submit a Form 1 Plumbing Application for the disconnection.
116. As discussed above, the Tribunal is not satisfied that Council has demonstrated that the decommissioning and removal of the System involved permit work. Accordingly, the Tribunal is not satisfied that the requirements of the Enforcement Notice are capable of being complied with by the Appellant.
117. The Appellant in its pre-hearing submission and at the hearing submitted that multiple attempts had been made to engage a licenced plumber, but these had been unsuccessful as none of the persons contacted could identify permit work that required approval.
118. Whilst the Appellant did not provide any documentation or specific details about these discussions, Mr Boyle was not challenged on this and the Tribunal has no reason not to accept his statements.
119. More importantly, Council has not demonstrated to the Tribunal's satisfaction what aspect(s) of the System involved permit work and what approval(s) were required under the Plumbing and Drainage Act to disconnect the System.
120. For example, having regard to the Form 1—Permit work application for plumbing, drainage and on-site sewerage work, it is unclear what aspect of the disconnection would need to be disclosed.
121. Similarly, the Form 7—Notification of responsible person, lists alternative descriptions of work at Item 3, with none of sub items 1 to 10 considered relevant. Sub item 11 is 'Other (not mentioned above including installations of any apparatus or other appliances)', which provides a catchall, but it is difficult to identify how the 'disconnection' of a System that was not connected to Council infrastructure or discharged on-site fits with the requirements for approval and notification for permit work.
122. The content of forms is clearly not determinative of the legal characterisation or categorisation of the System and work to disconnect the System but is considered consistent with the submissions of the Appellant.
123. Based on the material before the Tribunal, the System was operated as a 'stand-alone' process with no connection to Council's water supply or sewerage system. Whilst the system involved internal circulation of water and wastewater as part of the water cremation process which is arguably 'plumbing work', without any connection to Council's water supply or sewerage system, it is unclear whether this is permit work and what approval was required for disconnection of the System.
124. Council as the enforcing authority has the onus to demonstrate that the requirements of the Enforcement Notice are reasonable and appropriate which the Tribunal finds has not been satisfactorily discharged.

Does the Enforcement Notice have any utility?

125. Finally, the Appellant submits that the System has been removed in its entirety from the Premises. As such, the Appellant submits that there is no utility in the Enforcement Notice requirements.
126. Prior to the hearing, Council in its pre-hearing submission expressed concerns that it had no verification as to the status of the disconnection of the System and state of the Premises following the stated removal of the System.
127. At hearing, it was accepted that the System (comprising the aquamation chamber and filtration system and holding tank) had been removed from the Premises but some residual pipework remained in-situ. Based on discussion with the parties, this appeared to be limited to plastic piping and venting in the building.
128. The Appellant submitted that the residual pipework was inconsequential as it had no connections to Council's water supply or sewerage systems and posed no hazard or risk. The Appellant further submitted that the cost of removal was prohibitive and not warranted (for example, removal of piping from the roof structure would require the hire of a scissor lift).
129. Council submitted that as it considered the work to be permit work, it required approval and the fact that the System had been disconnected, did not negate the need for the necessary permits and documents to be submitted to Council. In relation to the residual pipework, Council maintained this should not be left in-situ and should be fully removed.
130. Again, there is no need for the Tribunal to express a final view on this aspect of the appeal given the findings already made, but the Tribunal has reservations about the utility of removing any residual pipework that has no connection to Council's infrastructure nor serves any plumbing or drainage function on the Premises.

Summary

131. Having considered all the material, the Tribunal finds that Council has not discharged its onus that the appeal should be dismissed.
132. The Tribunal therefore changes the Council's decision to give the Enforcement Notice and decides that the Enforcement Notice should be set aside.

Stafford Hopewell
Development Tribunal Chair

Date: 2 December 2025

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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