



## Development Tribunal – Decision Notice

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### *Planning Act 2016, section 255*

<b>Appeal Number:</b>	<b>21-003</b>
<b>Appellant:</b>	Dubs Pty Ltd (ACN 081 062 026)
<b>Respondent (Enforcement Authority):</b>	Whitsunday Regional Council ( <b>Council</b> )
<b>Site Address:</b>	29-31 Main Street, Proserpine, in the State of Queensland being Lot 17 on RP724069 ( <b>Premises</b> )

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### **Appeal**

An appeal under section 229 and Item 6 of Table 1 of Schedule 1 of the *Planning Act 2016* against the decision of Council to give an enforcement notice under section 248 of the *Building Act 1975* dated 5 January 2021, requiring either repairs or rectification works to the building, or demolish/remove the building on the Premises.

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<b>Date and time of hearing:</b>	19 April 2021 11.00am to 12.15pm
<b>Place of hearing:</b>	Whitsunday Regional Council office, Main Street, Proserpine
<b>Tribunal:</b>	Stafford Hopewell – Chair Michael Moran - Member
<b>Submissions provided by:</b>	Appellant – Thomas Dunne and Audrey Dunne Whitsunday Regional Council – Neil McGaffin and Les Frederick Almos

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### **Decision:**

The Development Tribunal (**Tribunal**), in accordance with section 254(2)(b) of the *Planning Act 2016 (PA)*, decides to change the decision to give the enforcement notice given by Council under section 248 of the *Building Act 1975 (BA)* dated 5 January 2021 (**Enforcement Notice**) by changing the 'Required Action' to the following:

### **REQUIRED ACTION**

To remove the danger posed by the building by:

1. Repairs or rectification to ensure the general structural integrity of the building, including tie-down and support to:
  - a. flooring members;
  - b. roof structure;

- c. veranda over Main Street;
  - d. flooring;
  - e. roof sheeting; and
  - f. barriers preventing falls.
2. Repairs to the secure the building against wind damage caused by internal pressures, including windows and doors and similar external openings.
  3. Repairs to the external fabric and any attachments to the building, to ensure that they remain structurally connected to the building during the relevant design wind event.
  4. Repairs or rectification to the following building elements to prevent water ingress damaging structural elements:
    - a. roof sheeting;
    - b. fascias;
    - c. flashings; and
    - d. rainwater goods.

You are required to comply with the requirements of this Enforcement Notice within 60 days of the decision of the Tribunal, or such longer timeframe agreed in writing by Council.

### **Background**

1. The Appellant is the owner of the Premises, upon which is constructed a two storey building that is currently unoccupied but was formerly used as a hotel (including accommodation), most recently trading as O'Duinns Irish Pub. The building is also commonly known as the Palace Hotel.
2. The building is a substantial structure and at the time of the hearing of the Appeal was listed in Council's local heritage register which described the building as follows:

*The Palace Hotel is located in the centre of Proserpine's commercial's district, on the northern side of Main Street. The two storey hotel has a masonry façade with a stepped parapet and art deco motif. There is sufficient room on the parapet front for a name plate 'Palace Hotel'.*

*The façade wall extends around each side of the building, incorporating an open veranda with timber balustrading on the upper level to the front and to the west, and large, stop chamfered posts at street level which support the upper veranda and posts. The veranda is enclosed by board to the south east. The lower storey of the main street elevation comprises modified windows and aluminium entrance doors. Rooms on the second floor open onto the veranda via French-style timber doors.*

*The eastern elevation of the building comprises a wall with upper storey windows with tin window hoods. From the eastern elevation the former double square hipped roofline is apparent, as are building additions, one including an open veranda, the other comprising a large gabled roof structure.*

3. In March 2017 the building suffered extensive damage during Cyclone Debbie losing part of its rear roof structure and sustained significant water damage internally.
4. Subsequent to the damage of the building by Cyclone Debbie, the owner of the Premises being Dubs Pty Ltd was placed into receivership by its financier and a receiver and manager was appointed.
5. Some works were carried out to the building but were not completed, resulting in the ground level of the building essentially being stripped back to an empty shell. The damage caused to the building by Cyclone Debbie, including to the building's roof, has not been repaired. As a consequence, the building has continued to experience further damage due to water intrusion and exposure to the elements.

6. The building has been unoccupied since being damaged by Cyclone Debbie and is not currently being used.
7. Council provided a written submission at the Tribunal hearing on 19 April 2021 setting out some of the history of the matter. This includes:
  - (a) In 2016, Council received a complaint raising concerns over the structural integrity of the building, in particular the Main Street balcony, and the potential for safety of the community to be comprised. Council wrote to Dubs Pty Ltd in October 2016 requesting a structural engineer inspect the Premises and determine if the veranda posts should be replaced.
  - (b) Council issued a show cause notice to Dubs Pty Ltd in October 2017 raising issues including:
    - (i) Dangerous structure;
    - (ii) Roof damage;
    - (iii) Framing;
    - (iv) General dilapidated condition.
  - (c) In June 2018, Council was advised that a receiver and manager was appointed. A further investigation was undertaken by Council and a report prepared in December 2018. A show cause notice was issued to the receiver and manager addressing the following:
    - (i) Roofing – loose, missing and defective;
    - (ii) Gutters, fascia and trims loose and defective;
    - (iii) General dilapidated condition of the premises;
    - (iv) Premises represent a dangerous hazard and potential risk to people.
  - (d) In January 2019, Council received correspondence on behalf of the financier to Dubs Pty Ltd advising that control of the company had been handed back to the directors of the company, Thomas and Audrey Dunne.
  - (e) An enforcement notice dated 5 September 2019 was issued by Council to Dubs Pty Ltd.
  - (f) STP Consultants were engaged by Council to inspect and review the structural integrity of the building based on an exterior inspection which was undertaken on 20 September 2019. Findings from this inspection included:
    - (i) Problems with floor;
    - (ii) External deck support posts;
    - (iii) Balustrade and flooring to be replaced;
    - (iv) No pedestrians to use the upper deck;
    - (v) Problems with roofing;
    - (vi) Potential asbestos issues;
    - (vii) Need for termite protection.

- (g) Council issued an enforcement notice to Dubs Pty Ltd dated 2 October 2019 requiring a need to comply by 31 October 2019.
- (h) Council received a report from STP Consultants dated 26 October 2020. The report identified issues including ceiling structure under the veranda, advising it was in danger of collapse, and recommending that area be fenced off or protective overhead screening to be installed until the structure can be removed. Scaffolding was installed by Council along the Main Street frontage along the full length of the veranda in November 2019. Council has been paying for the scaffolding since its installation.
- (i) In February 2020, Council received notice that the Australian Securities and Investment Commission (**ASIC**) were now the owners of the Premises. Council wrote to ASIC in July 2020 advising of issues in relation to the Premises and seeking consent for Council to enter the Premises to undertake further investigations. ASIC responded in August 2020 advising the effect of deregistration of Dubs Pty Ltd was that ASIC would not take any responsibility for the condition of the Premises nor any rectification but agreed for Council to access the Premises.
- (j) STP Consulting was engaged by Council to undertake an engineering feasibility investigation report to ascertain the structure integrity of the building.
- (k) An enforcement notice was issued to Dubs Pty Ltd dated 5 January 2021.
- (l) At the Ordinary Meeting of Council on 10 March 2021, it was resolved that the Premises be removed from the Local Heritage Register under the Whitsunday Regional Council Planning Scheme.

### **Site Inspection**

- 8. A site inspection of the Premises was carried out on 19 April 2021 prior to the hearing. All of the parties' representative present at the hearing attended the site inspection.
- 9. The site inspection commenced around 10.00am and finished by about 10.40am. During the site inspection, the Tribunal and the parties proceeded through the ground floor and first floor of building followed by an inspection of the rear and sides of the building.

### **Hearing**

- 10. The hearing was held in a meeting room at the Council office in Proserpine immediately following the site inspection on 19 April 2021 commencing at approximately 11.00am.
- 11. By way of general observation and background to the Appeal, the Tribunal notes that the issues in relation to the building have been on-going for several years and primarily relate to damage caused by Cyclone Debbie in March 2017.
- 12. For the directors of the Appellant, Thomas and Audrey Dunne, the damage caused by Cyclone Debbie to the building (and loss to the associated business) has been exacerbated by subsequent actions of their financier and insurer which have resulted in them being removed from control of the Premises at various times and suffering further economic loss and hardship through the cessation of their business whilst the building has remained unrepaired. This has adversely affected their wellbeing with Thomas Dunne also experiencing ill health.
- 13. Development tribunals under the PA have a defined statutory jurisdiction and in this Appeal is confined to the review of the decision of Council to give the Enforcement

Notice to the Appellant. The Tribunal does not have jurisdiction to hear or decide other matters and in accordance with the principles of administrative law is required to confine its decision to relevant considerations and exclude irrelevant matters.

14. At the hearing, Thomas Dunne sought to raise a broad range of issues concerning various parties, including Council, that he believes have affected the situation and the circumstances of the building. However, many of these issues are outside of the scope of the Appeal (for example, concerning other legal review and actions against various parties) and the Tribunal advised it was unable to deal with these issues.
15. As the Tribunal indicated to all of the parties at the hearing, the jurisdiction of the Tribunal is limited to deciding the appeal against the Enforcement Notice.
16. In this decision, the Tribunal wishes to re-iterate it has confined its decision making to its jurisdiction under the PA and has disregarded any irrelevant issues or considerations and its reasons are those as set out in the decision.

### **Enforcement Notice**

17. Council has given Dubs Pty Ltd as the owner of the Premises the Enforcement Notice alleging that the building is in a dangerous condition having regard to inspections carried out by authorised Council officers on 15 October 2020 and attached Structural Integrity Engineering Report prepared by STP Consulting dated 26 October 2020 (**STP Report**).
18. Based on Council's inspections and the STP Report, Council asserts:
  - (a) The building is generally in a dilapidated condition;
  - (b) Timber posts supporting the front deck exhibit severe water damage;
  - (c) Support posts under the eastern deck of the building were observed to have water damage;
  - (d) Generally, the existing windows and doors are not cyclone rated and present a risk;
  - (e) The steel roof coverings are loose, missing, and defective and are reasonably believed to present a dangerous hazard. Some areas of the roof structure are exposed to the elements;
  - (f) Gutter's, fascia's flashing, ridge & hip trims are loose and defective and are reasonably believed to present a dangerous hazard;
  - (g) The veranda canopy to the front of the building has loose timber and roof sheeting noted at high level above the public footpath, with missing glazing noted at high level and defective /rotten doors and as such may present a dangerous hazard;
  - (h) Loose debris, tarpaulins, rainwater pipes, gas bottles and equipment are noted generally which could present a dangerous hazard;
  - (i) The lot and building are unsecure, with open access to the public through side and front doors.
19. Council also states that pursuant to section 248(4) of the BA, the Enforcement Notice is given as the Council reasonably considers issuing of a show cause notice is not appropriate in circumstances because the matter is not minor. The Enforcement Notice further states that Council reasonably believes that the building is dangerous in that the dilapidated condition overall presents major risks to the public and environment.

## Required Action

20. The Enforcement Notice requires the following:
1. *Either:*
    - a. *Undertake repairs or rectification works to the building, roof structure, coverings, facias, flashings and rainwater goods etc to make the Premises safe and secure; or*
    - b. *Demolish/remove the building.*
  2. *Apply for any required building or demolition permits;*
  3. *Undertake asbestos and termite inspections if required;*
  4. *Secure the Premises by securing openings and fencing off the Premises to protect persons from entering.*
  5. *Remove all loose debris and obsolete equipment (including pipes) from the Premises;*
  6. *Ensure the Premises are safe and clean; and*
  7. *Comply with the Building Act for any particular matter.*
21. The date for compliance with the requirements of the Enforcement Notice is 1 Mach 2021

## The Appeal

22. The Appellant filed a Notice of Appeal (Form 10) with the Tribunal's Registrar on 7 January 2021.
23. The Appellant's Form 10 sets out the Appellant's grounds of appeal. This states:
1. *The Enforcement Notice is invalid and issued without power because the Local Government did not comply with s248(3) by giving a Show Cause Notice when it was required to do so.*
  2. *There are no reasonable grounds for the stated belief that the building was in a dangerous condition and the Enforcement Notice does not identify any hazard that would reasonably be considered dangerous.*
  3. *There were no grounds for issue of the Enforcement Notice as there is no offence or any evidence of any offence being committed against the Building Act 1975 as stated in the Enforcement Notice. As such the Enforcement Notice is invalid and ought not to have been issued.*
  4. *In the alternative to Grounds 1, 2 and 3 the timeframe specified in the Enforcement Notice is manifestly unreasonable.*

## Jurisdiction

24. Schedule 1 of the PA governs the matters that may be appealed to a tribunal.<sup>1</sup>
25. 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 a matter set out in sub-section (2).

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<sup>1</sup> Section 229(1)(a) of the PA.

26. Section 1(2)(h)(i) 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) of section 1(2).
27. The Appeal is against the decision to give an enforcement notice about a matter that relates to the BA, being section 1(2)(g), and accordingly satisfies section 1(2)(h)(i) of Schedule 1 of the PA.
28. The Tribunal is therefore satisfied that it has jurisdiction to decide the Appeal.

### **Decision framework**

29. The appeal is a PA appeal, commenced after 3 July 2017 under section 229 of the PA. As such, the Appeal is to be heard and determined under the PA.
30. The Appellant is the recipient of the Enforcement Notice and accordingly, Council, being the enforcement authority that gave the Enforcement Notice, must establish that the Appeal should be dismissed.<sup>2</sup>
31. The Tribunal is required to hear and decide the Appeal by way of a reconsideration of the evidence that was before Council when it decided to give the Enforcement Notice.<sup>3</sup>
32. The Tribunal may (but need not) consider other evidence presented by a party with leave of the Tribunal<sup>4</sup>.
33. The PA provides the Tribunal with broad powers to inform itself in the way it considers appropriate when conducting a tribunal proceeding and may seek the views of any person<sup>5</sup>.
34. The Tribunal may consider other information that the Registrar asks a person to give to the Tribunal.<sup>6</sup>
35. The Tribunal may decide that the Tribunal has no jurisdiction to decide the tribunal proceedings.<sup>7</sup> Otherwise, the Tribunal is required to decide the appeal in one of the following ways set out in section 254(2) of the PA:
  - (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; or*
  - (e) *for a deemed refusal of an application:*
    - (i) *ordering the entity responsible for deciding the application to decide the application by a stated time and, if the entity does not comply with the order, deciding the application; or*
    - (ii) *deciding the application.*

### **Documentary Material Considered**

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<sup>2</sup> Section 253(3) of the PA.

<sup>3</sup> Section 253(4) of the PA.

<sup>4</sup> Section 253(5)(a) of the PA.

<sup>5</sup> Section 249 of the PA.

<sup>6</sup> Section 253 and section 246 of the PA.

<sup>7</sup> Section 252(1) of the PA.

36. The material considered in arriving at this decision comprises:
- (a) 'Form 10 – Appeal Notice', grounds for appeal and information accompanying the appeal lodged with the Development Tribunals Registrar on 7 January 2021;
  - (b) Structural Integrity Engineering Report – 29-31 Main Street, Proserpine for Whitsunday Regional Council, REV A, 26 October 2020;
  - (c) Submission on behalf of Dubs Pty Ltd provided by email from Macrossan & Amiet Solicitors sent by email dated 16 April 2021.
  - (d) Council submission provided at the hearing on 19 April 2021.
  - (e) Council Draft submission from Neil McGaffin sent by email dated 30 April 2021;
  - (f) Council Submission from Neil McGaffin sent by email dated 4 May 2021;
  - (g) Further submissions on behalf of Dubs Pty Ltd provided by email from Macrossan & Amiet Solicitors sent by email dated 11 May 2021.

### **Findings of Fact**

37. The Tribunal finds that the building is dangerous as per section 248(4) of the BA. Accordingly, the Tribunal is satisfied that Council was empowered to give the Enforcement Notice without having to first give a show cause notice.
38. With respect to the condition of the building, the Tribunal finds it is dangerous in the following aspects:
- (a) Damage to the roof structure, veranda over Main Street, flooring and balustrades compromise the structural integrity of the building;
  - (b) Damage to and missing roof sheeting, fascias, flashings and rainwater goods are a safety risk to persons on the subject and adjoining properties;
  - (c) The building, including windows and doors is not secure to limit wind damage and is a safety risk to persons on the subject and adjoining properties.

### **Reasons for the Decision**

39. The Appellant's first ground of appeal is that the Enforcement Notice is invalid as it was given without a show cause notice first being given in accordance with section 248(3) of the BA.
40. Council in its submission of 4 May 2021 refers to show cause notices sent to Dubs Pty Ltd in October 2016 and 2017.
41. The Tribunal accepts that the show cause notices referred to above relate to the building on the Premises and raise concerns about the condition of the building.
42. Neither the PA nor BA impose any timeframe within which an enforcement notice must be given after a show cause notice is issued.
43. However, the Tribunal does not accept that the show cause notices referred to by Council constitute show cause notices in respect of the Enforcement Notice.
44. This is because the earlier show cause notices were issued in respect of differing works and issues of concern to those that formed the subject matter of the Enforcement Notice.



45. Importantly, the Enforcement Notice is stated to be based on Council inspections conducted on 15 October 2020 and the STP Report dated 26 October 2020 which post-dated the earlier show cause notices by approximately 4 and 3 years respectively.
46. The Tribunal therefore considers that the earlier show cause notices cannot fairly be characterised as being in relation to the Enforcement Notice. This is also supported by the fact that other enforcement notices were given by Council after the earlier show cause notices and before the Enforcement Notice was given on 5 January 2021.
47. The Tribunal also notes that the earlier show cause and enforcement notices were issued to Dubs Pty Ltd. While Dubs Pty Ltd has remained the registered owner of the Premises at all relevant times, its control has varied during the period over which the show cause and enforcement notices have been issued.
48. Initially, Dubs Pty Ltd was under the control of its directors, Thomas and Audrey Dunne. However, the appointment of the receiver and manager had the effect of vesting control of the company in the receiver and manager. While the receivership was later terminated by the financier and control of the company returned to its directors, the company was subsequently deregistered with its assets vested in ASIC. Only after the company was re-registered did control again vest in its directors.
49. Thomas and Audrey Dunne as the directors of the company have therefore not had control of the company or the ability to respond to the earlier show cause and enforcement notices issued whilst the receiver and manager was appointed and the company was deregistered.
50. However, on the facts and circumstances of this matter, it is not evident that Thomas and Audrey Dunne as the directors on the company have been materially prejudiced by their inability to respond on behalf of the company to Council's earlier show cause and enforcement notices and the Tribunal considers that the Enforcement Notice should not be set aside due to the changes in control of the company.
51. In any event, the Enforcement Notice expressly asserts that it is given pursuant to section 248(4) of the BA on the basis that it is not necessary to give a show cause notice because the building is dangerous.
52. While the Tribunal concurs with the Appellant's further submissions that past issue of show cause and enforcement notices in respect of the Premises does not satisfy section 248 of the BA, the relevant issue is whether the building is dangerous such that a show cause notice was not required to be given.
53. His Honour Judge Rackemann DCJ in *Brisbane City Council v Erlbaum* [2015] QPEC 46 (*Erlbaum*) considered the meaning of dangerous in the context of section 248 of the BA.
54. The question to be determined by the Tribunal is whether the building is in fact dangerous, rather than simply whether Council could lawfully and reasonably have believed the building to be dangerous.<sup>8</sup>
55. As noted by the Planning and Environment Court, the expression 'dangerous' is not defined in the BA or PA and has no special meaning for the purposes of section 248 of the BA. The ordinary meaning of the term is involving or causing danger. Danger refers to a liability or exposure to harm.<sup>9</sup>
56. The Planning and Environment Court stated in *Erlbaum*:

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<sup>8</sup> At [17].

<sup>9</sup> At [22].

*[23] The term 'dangerous' is a relative one involving matters of degree. No particular degree of danger is expressly required in order to justify the issue of an enforcement notice without a show cause process. The risk constituting the danger would have to be current and more than trivial but, beyond that, no particular level of danger is required. It is sufficient that the building is dangerous.*

*[24] The question of whether a given circumstance is dangerous is one of fact. ...*

57. Council in its submission of 4 May 2021 has relied upon the STP Report and professional opinion of its former Building and Plumbing Manager to establish that the building is dangerous. While the Tribunal is not bound by the rules of evidence, it is considered that no weight can be attributed to the opinion professed to be held by Council's former Building and Plumbing Manager. This is for the following reasons:

- (a) No reports or other evidence of the professional opinion of the former Building and Plumbing Manager has been provided;
- (b) No evidence or information in relation to the qualifications, experience and expertise of the former Building and Plumbing Manager has been provided;
- (c) The relevance of the professional opinion of the former Building and Plumbing Manager to the Enforcement Notice given in January 2021 has not been established.

58. Council has however obtained an independent structural integrity report being the STP Report.

59. Council has the onus of proof to establish that the Appeal should be dismissed. The Appellant has made submissions about the state of the building and whether it is dangerous addressing legal considerations. The Appellant has however not provided any expert report or submissions in support of its position that the building is not dangerous.

60. The Tribunal therefore relies on the STP Report in terms of the condition of the building together with its inspection of the Premises.

61. The STP Report describes the building as follows:

*The existing building is a two storey former hotel. The lower storey consists of a slab on ground, brick veneer walls and timber internal walls and was used primarily as a bar and bistro area. The upper levels were constructed using timber framed floors, walls and roofs and include the accommodation wings including shared kitchens, laundries and amenity facilities for guests.*

*The building had been damaged during cyclone Debbie in early 2017 and had been unoccupied since.*

*The building is in a state of disrepair.<sup>10</sup>*

62. The STP Report contains the following conclusions:

*6.2.1. Existing building is in a state of disrepair and significant measures are required to prevent sections of the building from becoming dislodged during a cyclone and damaging neighbouring properties. Extent of remedial measures are as detailed in section 8 below.*

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<sup>10</sup> At section 2.1, page 2.

6.2.2. A number of other structural issues were identified which did not need to be [sic] immediately present a hazard to neighbouring sites. These have been denoted as (NC) in the observations section above and have not been included in the recommended rectifications. It is noted, however, that these items would need to be addressed prior to re-occupation of building.<sup>11</sup>

63. The STP Report identifies a broad range of matters that need repair or rectification. As noted in the STP Report, the building is in a generally dilapidated condition and is not currently fit for occupation. However, it is important to distinguish between those (if any) elements or conditions of the building that are dangerous as opposed to merely dilapidated.
64. The Enforcement Notice is given on the basis that the building is dangerous and the Tribunal considers that the subject matter of the Enforcement Notice is required to be limited to addressing the danger posed by the building.
65. If Council wished to address issues in relation to the dilapidation of the building in the Enforcement Notice, it was required to first issue a show cause notice.<sup>12</sup>
66. Based on the material provided to the Tribunal, including the STP Report, the Tribunal finds as a matter of fact that the building is dangerous as follows:
  - (a) Damage to the roof structure, veranda over Main Street, flooring and balustrades compromise the structural integrity of the building;
  - (b) Damage to and missing roof sheeting, fascias, flashings and rainwater goods are a safety risk to persons on the subject and adjoining properties;
  - (c) The building, including windows and doors is not secure against wind damage and is a safety risk to persons on the subject and adjoining properties.
67. The Appellant did not provide any expert evidence contradicting the STP Report. In essence, the Appellant's position is that the building has basically been in its current state since being damaged by Cyclone Debbie in March 2017 and the fact that it has not caused any damage to other property or persons is evidenced that it is not dangerous.
68. While the Tribunal accepts that the condition of the building has generally been unchanged since March 2017 and has not caused injury or damage, this does not mean that the building is not dangerous.
69. The fact that the risk posed by the building has not been realised is not evidence that the building is not dangerous. Furthermore, this ignores that since November 2019 Council has implemented and maintained, at public expense, scaffolding works to secure pedestrian access along Main Street under the veranda structure.
70. The Tribunal accepts the Appellant's submissions that the building as a whole is structurally sound and is not at imminent risk of collapse. However, for the building to be dangerous, it does not need to be at risk of total failure. It is sufficient if any part or element of the building is dangerous.
71. In this case, the Tribunal is satisfied that the veranda and roof elements pose a risk that constitutes a danger that is current and more than trivial. As such, the Tribunal is satisfied that the building is dangerous.

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<sup>11</sup> At page 42.

<sup>12</sup> Section 248(3) of the BA.

72. At the hearing, Council properly conceded that demolition of the building is not required to remedy the danger posed. The Tribunal concurs with this view and considers that any requirement for demolition of the building is excessive and not warranted.
73. As the Tribunal is satisfied that the building is dangerous, it is appropriate to require action to remedy the danger posed by the building.
74. In regard to the required action nominated by Council in the Enforcement Notice, the Tribunal finds that this is excessive. The Tribunal therefore directs that the required action be changed to the following:
- (a) That repairs or rectification be carried out to ensure the general structural integrity of the building, including tie-down and support to:
    - (i) flooring members;
    - (ii) roof structure;
    - (iii) veranda over Main Street;
    - (iv) flooring;
    - (v) roof sheeting; and
    - (vi) barriers preventing falls.
  - (b) That repairs be carried out to secure the building against wind damage caused by internal pressures, including windows and doors and similar external openings.
  - (c) That repairs be carried out to the external fabric and any attachments to the building, to ensure that they remain structurally connected to the building during the relevant design wind event.
  - (d) That repairs or rectification be carried out to the following building elements to prevent water ingress damaging structural elements:
    - (i) roof sheeting;
    - (ii) fascias;
    - (iii) flashings; and
    - (iv) rainwater goods.
75. With respect to the timeframe required to comply with the Enforcement Notice, the Tribunal considers that 60 days is reasonable having regard to the scope of required works.
76. The Tribunal further notes that the key risk posed by the building is from storm damage during cyclone season which is officially from 1 November to 30 April. The timeframe for compliance therefore gives the Appellant a reasonable time to take the necessary action whilst also ensuring works are completed without significantly extending into the heightened risk of cyclone season.



**Stafford Hopewell**

**Development Tribunal Chair**

**Date: 21<sup>st</sup> September 2021**

## **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@hpw.qld.gov.au](mailto:registrar@hpw.qld.gov.au)**