



HIGH COURT OF AUSTRALIA

NOTICE OF FILING

This document was filed electronically in the High Court of Australia on 25 Jun 2026 and has been accepted for filing under the *High Court Rules 2004*. Details of filing and important additional information are provided below.

Details of Filing

File Number: B24/2026
File Title: Redland City Council v. Burns
Registry: Brisbane
Document filed: Form 27E - Appellant's Reply
Filing party: Appellant
Date filed: 25 Jun 2026

Important Information

This Notice has been inserted as the cover page of the document which has been accepted for filing electronically. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties and whenever the document is reproduced for use by the Court.

IN THE HIGH COURT OF AUSTRALIA
BRISBANE REGISTRY

BETWEEN:

REDLAND CITY COUNCIL
Appellant

and

DARREN BURNS
Respondent

APPELLANT'S REPLY

Part I: PUBLICATION

1. These submissions are in a form suitable for publication on the internet.

Part II: REPLY TO THE ARGUMENT OF THE RESPONDENT

2. The appellant respectfully adopts the intervener's submissions dealing with both whether s 162 of the *Planning Act 2016* (Qld) (***Planning Act***) is an '*offence relating to property*', and whether the respondent's decision to procure a contractor to utilise an excavator to clear 2,400 m² of native vegetation on State land on North Stradbroke Island was done '*in the exercise of an honest claim of right*'.

An 'offence relating to property'

3. The appellant maintains that, upon a proper construction, for s 22(2) an '*offence relating to property*' must be discernible on the face of the offence provision, and the gravamen of the offence must proscribe the infringement of proprietary rights of others, or cause another to part with property.
4. As to the first requirement, the respondent's submission that s 162 of the *Planning Act* may be discerned as an offence relating to property on its face should be rejected.¹ The gravamen of the offending is the carrying out of '*development*'—this is not a form or type of property, but rather is an activity.
5. To support its contention, the respondent sets out the taxonomy of development types (or aspects) before observing that each of them comprises '*conduct in relation to property*'.²

¹ Respondent's Submissions (RS), [12].

² RS, Footnote [9].

But this description is no more than a variation of the balance part of s 22(2), which requires impugned conduct to be done ‘*with respect to any property*’. As to the respondent’s reliance on the definition of ‘premises’ as including land,³ the submission fails to confront the fact that not all aspects of development relate or refer to ‘premises’ (or property) —‘*plumbing work*’, ‘*building work*’ and ‘*drainage work*’ are other types of development that are examples of this.

40

6. As to the respondent’s reliance on the words ‘*relating to*’, while authority confirms they are capable of wide import⁴ they must still be considered in the context of s 22(2) and the *Code*. Indeed, the respondent’s description of the remarkably broad property types captured by the *Code*’s defined term, which includes items not capable of ownership, and other items as broad as ‘*electricity or other energy*’, provides strong support for the narrow view advanced by the appellant. If ‘relating to’ was to be given the broadest meaning possible in conjunction with the range of types of property defined in the *Criminal Code*, absurd outcomes would follow,⁵ and could establish a scope of s 22(2) well beyond that recognised by the common law, and upon which it was intended to reflect.

50

7. The appellant’s argument is strengthened by the respondent’s explanation of the evolving definition of property in the *Code*.⁶ When s 22(2) was enacted the word property was defined as meaning ‘*every thing, animate or inanimate, capable of being the subject of ownership*’: this sits comfortably with Brennan J’s ‘narrow approach’. Further amendment of the definition of the word ‘property’ after the Code was enacted would not, with respect, be taken to be an intention of the legislature to fundamentally change or evolve the scope of s 22(2), which appears to be the argument now advanced by the respondent.⁷

60

8. The respondent’s criticism that the range of offences included within Part 6, *Offences relating to property and contracts* include some that do not include, as an essential element, the infringement of proprietary rights of others, or causing others to part with property, does not diminish the intervener’s argument. Of the offences within Part 6 that do have a clear nexus with property, many of them have the character recognised by Brennan J in *Walden*. Further, that s 36 provides that Chapter 5 (which includes s 22(2)) applies to all persons charged with any criminal offence against the statute law of Queensland does not derogate from the requirement to construe s 22(2) in the context of the *Code* as a whole.

³ *Ibid.*

⁴ *O’Grady v Northern Queensland Co Ltd* (1990) 169 CLR 356, per Brennan J at 365, Dawson J at 367.

⁵ Including of the type recognised by Doyle JA: COA RJ [151]; CAB 124.

⁶ RS, [20].

⁷ See, e.g., RS, [36].

9. Further, the respondent accepts that the s 22(2) requirements that the offence ‘*relat[e] to property*’, and that the impugned acts (or omissions) be done ‘*with respect to ... property*’, must each be given separate work to do,⁸ but goes on to rely on the reasoning of Doyle JA that any offence relating to property must necessarily be done with respect to property.⁹
- 70 But that reasoning ignores the corollary—not all acts done with respect to property must necessarily relate to offences relating to property, such as going armed so as to cause fear.¹⁰ It is only on the narrow approach advanced by the appellant (and intervener) that the two limbs do not subsume, a fact not addressed in the respondent’s submission.

Honest claim of right

10. The respondent’s accept, as it must, that a claim that engages s 22(2) must be a claim of right, and not a claim to a freedom from prohibition, and that it must be a claim to a private right arising under the civil law.¹¹ But after making that concession, the respondent’s submission focuses on the nature of native title rights, and elides the nature and operation of the Cultural Activity exemption.
- 80 11. Whether the evidence at trial was sufficient to prove that the respondent exercised an honest claim of right in the context of native title rights has already been asked and answered. The District Court judge determined, adversely to the respondent, that the evidence did not raise any belief of an honest claim of right to clear the land because of the Determination.¹² Beyond the Determination, and in the context of native title rights more generally, the District Court judge held that ‘*a belief that he was entitled by native title rights to clear land would rise no higher than an ignorance of the law because even if he had such native title rights, they would not have provided any answer to the specific prohibition on clearing native vegetation.*’.¹³ This was accepted by Doyle JA,¹⁴ with whom Bond JA agreed.¹⁵ Paragraph [45] of the respondent’s submissions does not confront these findings, and
- 90 instead appears to seek to reargue the issue.
12. In the circumstances of those findings and determinations, the respondent’s extensive submissions about the extent and nature of native title rights, and whether they are a ‘private right’, are irrelevant to the question at hand.

⁸ RS, [30].

⁹ COA RJ [130], CAB 119.

¹⁰ COA RJ [151], CAB 124.

¹¹ RS, [28].

¹² DC RJ [217], CAB 79.

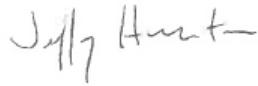
¹³ DC RJ [233], CAB 83.

¹⁴ COA RJ [173], CAB 127.

¹⁵ COA RJ [98], CAB 113.

13. Instead, the '*honest claim of right*' identified as determinative by the District Court judge was founded on the Cultural Activity exemption.¹⁶ Doyle JA accepted this as so.¹⁷ But, critically, the respondent's submissions on the exception¹⁸ do not engage with the nature and operation of it, instead focusing upon its words as including '*traditional ... cultural activity*',¹⁹ and going on to essentially repeat previous submissions about native title rights generally. What is not confronted are the parts of the appellant's submissions that explain that the Cultural Activity exemption does not establish any private right and sits apart from the civil law. To the extent that the respondent appears to draw a distinction between the exemption 'giving effect' to private rights rather than creating them,²⁰ this is, with respect, an artificial distinction without an operative difference.

Dated 25 June 2026



J. R. Hunter KC

(07) 3211 0040

jhunter@qldbar.asn.au

110 **Counsel for the Appellant**

K.W. Wylie

(07) 3210 8580

wylie@qldbar.asn.au

¹⁶ DC RJ [233], CAB 83.

¹⁷ COA RJ [174]-[175]; CAB 127.

¹⁸ RS [46] –[50].

¹⁹ RS [50].

²⁰ RS [41].