



## Development Tribunal – Decision Notice

---

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

<b>Appeal number:</b>	<b>24-024</b>
<b>Appellant:</b>	Brian Houghton
<b>Assessment manager:</b>	Branden Ross
<b>Co-respondent (Concurrence agency):</b>	Unitywater
<b>Site Address:</b>	41 Kendall Road Bellmere Qld 4510 and described as Lot 170 on RP 857767 – the subject site

---

### **Appeal**

Appeal under section 229 and schedule 1, sections 1(1)(b) and 1(2)(g), and table 1 item 1 of the Planning Act 2016 (“the PA”) against the assessment manager’s decision to refuse a development application for building work for an open carport at the direction of the concurrence agency on the grounds that the building work would not comply with the acceptable solutions of the Queensland Development Code MP1.4

---

<b>Date and time of hearing:</b>	6 September 2024 at 10am
<b>Place of hearing:</b>	Unitywater Level 2, 1737 Anzac Avenue, Mango Hill
<b>Tribunal:</b>	Kelvin Slade—Chair Jill Lee—Member
<b>Present:</b>	Brian Houghton—Appellant Mick Powell for SEQ Patio Group—Support to Appellant Mark Kettley for Unitywater—Co-respondent Ashley Radbourne for Unitywater—Co-Respondent Jamie Soden-Taylor (observer only) for Unitywater
<b>Not attending</b>	Branden Ross – Respondent

---

### **Decision:**

The Development Tribunal (Tribunal), in accordance with section 254(2)(a) of the *Planning Act 2016* (PA) confirms the decision of the Assessment Manager.

The Appellant has not proven that the proposed building work does comply with the acceptable solutions of the Queensland Development Code MP1.4 (QDC MP1.4)

## Background

1. The Tribunal's decision is based on the following non-compliance with QDC MP1.4.
2. The purpose of QDC MP1.4 is to provide Performance Requirements and Acceptable Solutions for the construction of building work over or near relevant infrastructure.
3. The Appellant has stated in the Form 10 Notice of Appeal that the proposed building works comply with MP1.4 Acceptable Solution A2.2(2)(c).
4. QDC MP 1.4 Acceptable Solution A1(2)(a)  
Acceptable Solution A1(2)(a) requires the footings for the building or structure to be installed at least 1m from all parts of the connection.
5. QDC MP 1.4 Acceptable Solution A1(2)(b)(i)  
Acceptable Solution A1(2)(b)(i) requires the footings for the building or structure to be located so the invert level for a pipe forming part of the infrastructure is at least 300mm above the point of the zone of influence of the building or structure that intersects with the vertical plane along the centreline of the infrastructure.
6. QDC MP 1.4 Acceptable Solution A2.2(2)(c)  
Acceptable Solution A2.2(2)(c) requires that the lightweight class 10 provides a **clear zone** for the connection having the following dimensions:
  - (i) a horizontal base extending 1m clear of all parts of the connection at the finished surface level and
  - (ii) a height of 2.4m from the finished surface level.
7. Definition of a **clear zone** - QDC MP1.4 Chapter 2(7) Definitions  
The definition of a **clear zone** is as follows:

***Clear zone**, for relevant infrastructure, means a three dimensional space, free of -*

  - (a) *overhanging parts of a building or structure; and*
  - (b) *other objects that would impede access to the relevant infrastructure required by the relevant service provider for the purpose of inspecting, maintaining, or replacing the infrastructure as required.*
8. Location of the connection point  
Sewer mapping provided by Unitywater and the 1300 Locate Pty Ltd pipe location report dated 29 January 2024 provided by the Appellant, have established the approximate location of the connection point.
9. Proposed building work location  
The proposed building work as detailed in the application is located within the **clear zone** for the connection point and does not comply with Acceptable Solution A2.2(2)(c).

## Jurisdiction

10. The Tribunal has jurisdiction in this appeal as specified in schedule 1 section 1 table 1 item 1(a) of the *Planning Act 2016*.

## Decision framework

11. The onus rests on the appellant to establish that the appeal should be upheld (section 253(2) of the PA).
12. The tribunal is required to hear and decide the appeal by way of a reconsideration of the evidence that was before the person who made the decision appealed against (section 253(4) of the PA).
13. The tribunal may nevertheless (but need not) consider other evidence presented by a party with leave of the tribunal or any information provided under section 246 of the PA (pursuant to which the registrar may require information for tribunal proceedings).
14. The tribunal is required to decide the appeal in one of the ways mentioned in section 254(2) of the PA.

## Material considered

15. The material considered in arriving at this decision was:
  - (a) Form 10 Notice of appeal, grounds for appeal and correspondence accompanying the appeal lodged with the Tribunals registrar on 10 May 2024
  - (b) Decision Notice Refusal dated 9 May 2024
  - (c) SEQ Patio Group Pty Ltd - Site Plan, Structural Design Plans and Form 15
  - (d) Unitywater Asset Web Map printed 9 June 2024
  - (e) 1300 locate Pty Ltd Pipe Location Report dated 29 January 2024

## Findings of fact

16. The Tribunal makes the following findings of fact:
  - (a) In the absence of an alternative solution that complies with the performance requirements, all criteria of the Acceptance Solution must be met in order for building work to comply.
  - (b) The proposed building works are classified under QDC MP1.4 as a lightweight class 10 structure.
  - (c) The proposed building works do not comply with Acceptable Solution A2.2(2)(c), which requires that the lightweight class 10 provides a **clear zone** for the connection, having the following dimensions:
    - i. a horizontal base extending 1m clear of all parts of the connection at the finished surface level and
    - ii. a height of 2.4m from the finished surface level.
  - (d) The definition of a **clear zone** is provided in QDC MP1.4 Chapter 7 Definitions as follows:

***Clear zone**, for relevant infrastructure, means a three dimensional space, free of -*

- (a) *overhanging parts of a building or structure; and*
- (b) *other objects that would impede access to the relevant infrastructure required by the relevant service provider for the purpose of inspecting, maintaining, or replacing the infrastructure as required.*

- (e) QDC M1.4 Chapter 7 Definitions must be read together with Acceptable Solution A2.2(2)(c) and they define the interpretation and intent of the establishment of a **clear zone**.
- (f) The approximate location of the connection point has been established in the Unitywater Asset Web Map as provided by Unitywater and also the 1300 locate Pty Ltd Pipe Location Report dated 29 January 2024 provided by the Appellant.
- (g) The proposed building work is located within the clear zone of the connection point and does not comply with Acceptable Solution A2.2(2)(c).
- (h) The site plan supplied by SEQ Patio Group indicates two footings adjacent to the Darter Road boundary. The site plan indicates these footings to be within 825mm of the Unitywater sewer infrastructure. The design depth of the footings is 650mm. The position and depth of these footings do not comply with Acceptable Solutions A1(2)(b)(i) or A1(2)(a).

### **Reasons for the decision**

17. The Tribunal has considered the following in its decision:

- (a) The Appellant's Form 10 Notice of Appeal reasoning has been considered against the QDC MP 1.4 Acceptable Solution A2.2(2)(c) criteria to ascertain whether compliance of the proposed building works can be established.
- (b) The Appellant claim that the proposed building structure complies with Acceptable Solution A2.2(2)(c) and provides a **clear zone** for the connection point could not be established as the Appellant did not consider in the grounds for appeal, the definition of **clear zone** as stated in QDC M1.4 Chapter 7 Definitions.
- (c) QDC M1.4 Chapter 7 Definitions must be read together with the Acceptable Solution A2.2(2)(c) and define the interpretation and intent of the establishment of a **clear zone**.
- (d) The Unitywater Asset Web Map dated 9 June 2024 and 1300 Locate Pty Ltd Pipe Location Report dated 29 January 2024 identify the approximate location of the sewer connection and establish that the proposed building work is located within the **clear zone**.
- (e) The position of the footings adjacent to the Darter Court Boundary for the class lightweight class 10 structure does not satisfy Acceptable Solutions A1(2)(b)(i) or A1(2)(a).

---

**Kelvin Slade**  
**Development Tribunal Chair**  
**Date: 23 September 2024**

## **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:

The Registrar of Development Tribunals  
Department of Housing, Local Government, Planning and Public Works  
GPO Box 2457  
Brisbane QLD 4001

Telephone 1800 804 833

**Email:** [registrar@epw.qld.gov.au](mailto:registrar@epw.qld.gov.au)