



## Building and Development Tribunals—Decision

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### *Integrated Planning Act 1997*

**Appeal Number:** 3—09—033  
**Appellant:** Daniel Chivers  
**Assessment Manager:** Sunshine Coast Regional Council (Council)  
**Site Address:** 23 Orungal Court Marcoola, and described as Lot 45 on CP891757

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### **Appeal**

Appeal under section 4.2.13 of the *Integrated Planning Act 1997* (IPA) against the issuing of an Enforcement Notice by the Assessment Manager. The notice relates to an alleged development offence pursuant to section 4.3.1 of IPA (carrying out assessable development without a permit) which includes the erection of structures over a sewer without permission on the subject site.

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**Date of hearing:** 9.00am – Monday 11 May 2009  
**Place of hearing:** 44 Petrie Avenue Marcoola  
**Tribunal:** Debbie Johnson – Chair  
Chris Harris – Referee  
**Present:** Daniel Chivers – Appellant  
Scott Buchanan – Council Representative

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### **Decision:**

The Tribunal **dismisses** the appeal as it does not have jurisdiction to hear the matter, for the following reasons:

- Section 4.2.7 of the IPA states an appeal to a tribunal under this act may only be about a matter relating to *Building Act 1975* (BA).
- The BA is the relevant legislation designed to deal with incidences relating to building applications and a subsequent decision notice.
- The Enforcement Notice in this instance was issued under section 4.3.11 of IPA and it was not related to a permit or decision issued under the BA. The Tribunal therefore considers this is a matter for the Planning and Environment Court in accordance with section 4.1.32 of IPA. The Tribunal also considers that it does not have the jurisdiction to hear that part of the appeal that relates to building over a sewer as this is a matter for Council pursuant to the *Water Supply (Safety and Reliability) Act 2008* (Water Supply Act).

## **Background**

The appellant purchased his home on the subject site in August 2007. The home already contained a double garage however the appellant needed to erect a carport to provide additional covered car parking on the site. The appellant made appropriate enquiries with Council to determine if approvals were required. Similarly he also contacted several local carport and shade sail suppliers to determine what was available on the market.

In February 2008 the appellant himself proceeded to erect a substantial light weight steel framed carport structure which was modelled on others that were readily available on the market. The appellant believed that the carport was deemed a temporary structure and therefore was exempt from requiring any development approvals.

Unfortunately the carport was built directly over an existing sewer line and entirely within the 4.5M street setback which is determined by Maroochy Plan 2000. Subsequently Council became aware that the carport structure had been erected and after visiting the site issued a Show Cause Notice to the appellant.

The Show Cause Notice advised the appellant to remove the carport from the premises unless all the necessary development approvals were obtained and effective. The notice also advised that the siting of the carport was not in accordance with the Maroochy Plan 2000.

In December 2008 when the appellant subsequently sought to lodge a preliminary building application for a siting concession, Council on further investigation, established that an existing sewer ran through the property and under the structure. This caused the appellant to instead, apply for permission to build over the sewerage infrastructure.

In March 2009 Council refused the appellant request to allow the carport to be built over the sewer and went further issuing an Enforcement Notice stating that the notice had been issued as the result of this application being refused.

The appellant lodged an appeal against the Enforcement Notice with the Building and Development Tribunals.

## **Material Considered**

The material considered in arriving at this decision comprises:

1. 'Form 10 – Notice of Appeal' lodged with the Building and Development Tribunals on 15 April 2009.
2. Council's Enforcement Notice, dated 31 March 2009.
3. Council's Advisory Letter, dated 24 March 2009.
4. Council's Decision Notice, dated 17 March 2009 refusing the appellant's request to build over the sewerage infrastructure.
5. The appellant's letter, dated 10 December 2008, in response to Council's Advisory Letter
6. Council's Advisory Letter, dated 4 December 2008.
7. The appellant's letter, dated 18 November 2008, in response to Council's Show Cause Notice.
8. Council's Show Cause Notice, dated 5 November 2008.
9. Property details, including mapping and the Maroochy Plan available through Council's website.
10. Supporting material being photographs of other homes in the vicinity of the subject site and hand drawings prepared by the appellant, illustrating the carport structure and the site layout.
11. The appellant's written grounds for appeal against the Enforcement Notice and a prepared chronological list of events.

12. Verbal submissions made by the appellant at the hearing.
13. Verbal submissions made by the Council representative at the hearing.
12. IPA.
13. BA.
14. *Building Regulation 2006* (BR).
15. The Queensland Development Code (QDC).
16. The Building Code of Australia (BCA).

## **Findings of Fact**

The Tribunal makes the following findings of fact:

1. The existing single storey dwelling is setback from the road approximately 6m and is situated on a level site which has an area of 600sq/m. The site is basically rectangular and has a westerly aspect to the roadway. The existing sewer line runs parallel to the front boundary approximately 1.5m inside the fence line, directly under the existing carport structure.
2. The carport is approximately 5.5m deep and measures 9m in width across the street frontage. The carport is effectively built between the existing dwelling and up to the front alignment for the site. As such, the sewer line runs for a length of 9M under the carport. The carport is made with steel framing, and light weight steel roof sheeting. The steel posts which support the roof line, are bolted down to a concrete slab which effectively is the driveway.
3. Prior to erecting the carport, the appellant did make contact with Council and discussed his intentions to clarify what he was required to do. Subsequently the appellant erected the carport in good conscious, considering it to be a temporary structure and as such, did not require building or other Council approvals. The appellant was unaware that there was any issue with erecting a structure over or within the vicinity of a sewerage line.
4. Approximately 8 months after the carport was erected, Council's representative arrived on site to view the carport. He advised the appellant that the carport did require Council approvals. Subsequently Council issued a Show Cause Notice to the appellant under the provisions of section 4.3.9 of IPA.
5. The appellant was informed that to allow the carport structure to remain and to remedy the offences he must seek the relevant development approvals retrospectively.
6. The appellant made application to Council to allow the carport to be built over the existing sewer and this application was subsequently refused.
7. As a result, Council issued an Enforcement Notice under the provisions of section 4.3.11 of IPA which stated the appeal rights under the provisions of section 4.2.13 of IPA.

## **Reasons for the Decision**

The Enforcement Notice was issued in consideration that the appellant was issued with a Notice of Refusal with respect to construction over Council's sewer. Section 4.2.7 of IPA states that an appeal to a Building and Development Tribunal may only be about a matter relating to the BA.

Relevantly, IPA provides that:

IPA Part 1 Planning and Environment Court

Section 4.1.32 Appeals against enforcement notices states:

- (1) A person who is given an enforcement notice may appeal to the court against the giving of the notice.*
- (2) The appeal must be started within 20 business days after the day notice is given to the person.*

IPA Part 2 Building and Development Tribunals

4.2.13 Appeals against enforcement notices states:

- (1) A person who is given an enforcement notice may appeal to a tribunal against the giving of the notice.*
- (2) The appeal must be started within 20 business days after the day the notice is given to the person.*

4.2.7 Jurisdiction of tribunals

- (1) A tribunal has jurisdiction to decide any matter that under this or another Act may be appealed to it.*
- (2) However, an appeal to a tribunal under this Act may only be about—*
  - (a) a matter under this Act that relates to the Building Act 1975...*

IPA Part 3 Development Offences, Notices and Orders

Division 1 Development offences

Section 4.3.11 Giving enforcement notice states in part:

- (1) If an assessing authority reasonably believes a person has committed, or is committing, a development offence, the authority may give a notice (an enforcement notice) to the person requiring the person to do either or both of the following—*
  - (a) to refrain from committing the offence;*
  - (b) to remedy the commission of the offence in the way stated in the notice.*

It is the opinion of the Tribunal that the Enforcement Notice does not relate to a permit or a Decision Notice issued under the provisions of the BA and therefore the Tribunal does not have the jurisdiction under section 4.2.7 of IPA to decide this appeal.

In addition, the Tribunal considers that it does not have the jurisdiction to hear that part of the appeal that relates to building over a sewer. Section 83(1)(f) of the BA provides that a private certifier must not grant an approval if the building work is over or adjacent to a sewer or water main until consent is given under section 192 of the Water Supply Act. This section creates an offence for not obtaining consent and provides an avenue for enforcement under section 475(2)(c) of the Act, but no rights of appeal to the Building and Development Tribunals.

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**Debbie Johnson**  
**Building and Development Tribunal Chair**  
**Date: 13 November 2009**

## **Appeal Rights**

Section 4.1.37 of the *Integrated Planning Act 1997* provides that a party to a proceeding decided by a Tribunal may appeal to the Planning and Environment Court against the Tribunal's decision, but only on the ground:

- (a) of error or mistake in law on the part of the Tribunal or
- (b) that the Tribunal had no jurisdiction to make the decision or exceeded its jurisdiction in making the decision.

The appeal must be started within 20 business days after the day notice of the Tribunal's decision is given to the party.

## **Enquiries**

All correspondence should be addressed to:

The Registrar of Building and Development Tribunals  
Building Codes Queensland  
Department of Infrastructure and Planning  
PO Box 15009  
CITY EAST QLD 4002  
**Telephone (07) 3237 0403 Facsimile (07) 3237 1248**