



## Building and Development Dispute Resolution Committees—Decision

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### *Sustainable Planning Act 2009*

<b>Appeal Number:</b>	<b>22-16</b>
<b>Applicant:</b>	Gordon Heelan (certifier, Coastal Building Approval Service)
<b>Assessment Manager:</b>	Coastal Building Approval Service
<b>Concurrence Agency:</b> (if applicable)	Mackay Regional Council (Council)
<b>Site Address:</b>	23 Grevillea Drive Glenella QLD 4740 and described as Lot 11 on RP 738124 – the subject site

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### Appeal

Appeal under section 527 of the *Sustainable Planning Act 2009* (SPA) against the decision of the Assessment Manager to refuse an Application for building works for an as constructed Gazebo. Mackay Regional Council as Concurrence Agency directed the refusal under building over or near relevant infrastructure provisions of the Queensland Development Code MP1.4 (QDC MP1.4).

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<b>Date and time of hearing:</b>	Friday 5 August 2016 at 12:00 PM
<b>Place of hearing:</b>	Chair and Member Meeting room, Level 16, Mineral House, 41 George Street Applicant – By Teleconference from Mackay Council – By Teleconference from Mackay
<b>Committee:</b>	Geoffrey Mitchell – Chair Bradley Hodgkinson – Member
<b>By Teleconference:</b>	Gordon Heelan – Applicant Rene Vandenberg – Council representative Linda Pearson – Council representative

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### Decision:

The Building and Development Dispute Resolution Committee (Committee), in accordance with section 564 of the SPA, **Sets Aside** the decision of the Assessment Manager of 8 July 2016 refusing the Application; and **replaces** the decision approving the Application with the following conditions:

- The existing sewer maintenance cover is to be raised to be equal to the finished floor level of the gazebo (Note: work on the maintenance cover can only be performed by Council);
- Install an inspection shaft as near as practical to the point of connection terminated with a removable airtight cap at the finished floor level of the gazebo which will provide future access for inspection, location and clearing of the sanitary drain ;

- Comply with the conditions of the Concurrence Advice CON-2016-72 of Mackay Regional Council dated 29 June 2016;
- All components and connections including bracing and tie down to be of a standard not less than that required in a C2 wind classification;
- All materials and building products are to be installed in accordance with the *Building Act 1975*, Building Code of Australia 2015 Volume 2 - Housing Provisions, relevant Australian Standards and the manufacturers' recommendation;
- All roof water is to be collected and discharged to a legal point of discharge;
- Required Inspections by the Building Certifier:
  - Final Inspection; and
- Unless otherwise extended by the Certifier, the development approval shall lapse if the development has not been completed within 6 (six) months of the day of this appeal decision.

## Background

The owner of the property applied to the Assessment Manager for a Development Approval for Building Works (the Application). The Application was for an as constructed gazebo at the subject site.

The Structure is an open gazebo comprising of a metal sheet roof supported by four timber posts which are set into a ground slab that covers the entire area, apart from a small section around an infrastructure maintenance cover. This small section of slab has been formed up in a semi-circular manner around the profile of the maintenance cover, and has a rebate formed to take a lid to conceal the metal maintenance cover below.

The roof structure is sited over Council infrastructure including a maintenance cover and the connection point to the residence. The structure meets the definition of "light-weight class 10" as defined in QDC MP1.4.

In accordance with the Queensland Development Code (QDC) and Sustainable Planning Regulation 2009 (SPR), Schedule 7, table 1 the proposal was referred to Council as the service provider.

Council's response requested the Application be refused because it could not be conditioned to comply with certain requirements, namely for the building to be sited a minimum of 1.5 meters from the sewerage maintenance cover and 1.0 meter from the connection point.

On 8 July 2016 the Assessment Manager refused the Application. There are no "reasons for refusal" on the Decision Notice, however under Concurrence Agency conditions under the heading "PERMIT TO BUILD OVER AND ADJACENT TO SEWER" the following was included;

*"The REFUSAL of the Permit to Build Over & Adjacent to Sewerage Infrastructure (Prior to Building Work Permit Being Issued Application – SCON-2016/1 was issued by Mackay Regional Council on the 04<sup>th</sup> July 2016, form part of the Building Development conditions".*

On 13 July 2016, the Applicant lodged a Notice of Appeal (Form 10) with the Committees Registrar as representative of the property owner under a signed Authority to Act provided by the property owner.

The parties agreed a site inspection by the Committee was not necessary as both parties presented extensive written submissions and detailed site photographs. Given a site inspection was not required, all parties also agreed to the appeal hearing being conducted via

teleconference with the Committee members based in Brisbane and the appeal parties based in Mackay. The hearing was held on 5 August 2016 at 12.00 midday and both parties made verbal submissions to the Committee during the teleconference.

### **Material Considered**

The material considered in arriving at this decision comprises:

1. 'Form 10 – Application for appeal/declaration', grounds for appeal and correspondence accompanying the appeal lodged with the Committees Registrar on 13 July 2016;
2. Mackay Regional Council response as Concurrence Agency dated 4 July 2016;
3. Decision Notice dated 8 July 2016 by the Assessment Manager;
4. Written submissions from the parties received before the off-site hearing;
5. Photographs of the site provided before the off-site hearing;
6. Verbal representations during the teleconference hearing;
7. The *Sustainable Planning Act 2009* (SPA);
8. The Sustainable Planning Regulation 2009 (SPR);
9. The *Building Act 1975* (BA);
10. The Queensland Development Code MP1.4 – Building over or near relevant infrastructure (QDC MP1.4);
11. Department of Housing and Public Works – Building Codes Queensland – Building over or near relevant infrastructure – Fact Sheet: Information for local governments December 2014 (Fact Sheet);
12. The National Construction Code, Volume 3 – The Plumbing Code of Australia (PCA);
13. AS/NZS 3500.2 -2015 Sanitary plumbing and drainage.

### **Findings of Fact**

The Committee makes the following findings of fact:

- Under section 14 of the BA, building work complies with the QDC only if it complies with all the relevant performance requirements under the QDC.
- The QDC MP1.4 is the relevant Code applicable to the Application because it involved work over or adjacent to Council Infrastructure.
- QDC MP1.4 makes Council a Concurrence Agency for any proposal that does not comply with the Acceptable Solutions of the QDC to enable an assessment against the Performance requirements.
- The Assessment Manager referred the Application to Council who requested it be refused on 4 July 2016.
- On 8 July 2016 the Assessment Manager refused the Application based on the advice from Council as Concurrence Agency.
- On 13 July 2016, the Applicant lodged an appeal against the Assessment Manager's Decision Notice with the Committees Registrar.
- On 5 August 2016 the hearing was held via teleconference.
- Light-weight class 10 structures are defined in QDC MP1.4 as:

*A building or structure is a light-weight class 10 if—*

*(a) it is a class 10 building or structure; and*

*(b) all of the walls, columns and roofs of the building or structure are constructed from materials other than concrete and masonry.*

*Examples— - Steel-framed shed, carport or garage with a slab - timber patio, deck or gazebo*

- The structure in this appeal meets the definition of light-weight class 10.
- P1 of QDC MP1.4 provides:

*A building or structure—*

*(a) does not adversely affect the operation of relevant infrastructure; and*

*(b) does not place a load on the infrastructure that adversely affects its structure; and*

*(c) is constructed and located so its integrity is unlikely to be affected as a result of the infrastructure—*

*(i) being maintained or replaced; or*

*(ii) failing to function properly.*

- Non-compliance with P1 has not been raised by Council as an issue in the appeal.
- P2 of QDC MP1.4 provides:

*When completed, a building or structure allows—*

*(a) gas that builds up in relevant infrastructure to escape in a way that ensures individuals in close proximity to the maintenance cover for the infrastructure are not harmed by the gas; and*

*(b) the relevant service provider the access above the infrastructure required for inspecting, maintaining or replacing the infrastructure.*

- Note 2 to P2 however provides:

*Less access will be required if the building or structure is a light-weight class 10 than if it is not a light-weight class 10.*

- Council has based its refusal on non-compliance with the Acceptable Solution A2.1 (2)(c) (i) (A) which provides:

*(c) for any maintenance cover for the infrastructure—*

*(i) a clear zone having the following dimensions is maintained—*

*(A) a circular base with a radius of 1.5m along the horizontal plane from the centre of the cover at finished surface level;*

and A2.2 (2)(c) which reads:

*(c) the light-weight 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 finished surface level.....*

- The December 2014 Building Codes Queensland Fact Sheet on QDC MP1.4 states:

*Concurrence agencies should not assess the application on restrictive criteria or internal technical standards. If the applicant can demonstrate that the relevant performance criteria have been met, the concurrence agency should approve the application without any necessary conditions.*

## Reasons for the Decision

Given the above findings of fact, the Committee is of the view that Council have not fully considered other options or considered imposing relevant conditions that could allow the Application to satisfy the Performance Requirements of QDC MP1.4.

The Committee notes there is an anomaly in QDC MP1.4 in that Clause A2.1(2)(c) appears to be inconsistent with Figure 13 which diagrammatically depicts this clause. Figure 13 states it applies to a Class 1 or 10 building or structure "*not a light-weight class 10*". There are no explanatory notes accompanying QDC MP1.4 however it could be concluded that the text in A2.2(2)(b) was amended to provide for enclosed light-weight class 10 structures in addressing the performance requirement in P2(a) because if the structure is not enclosed there is no possibility of gas build up.

In support of the Committee's conclusion above, the concessions in QDC MP1.4 for light-weight class 10 structures is evidenced in P2(b) which requires that access to the infrastructure is required for inspecting, maintaining or replacing the infrastructure. Note 2 that follows P2(b), states that '*less access*' is required for a light-weight class 10 than if it is not a light-weight class 10.

Based on the description of the structure and the detailed photographs provided prior to the hearing, the Committee considers that apart from the four timber columns and the concrete slab, the balance of the structure is capable of being easily removed should this be required for access purposes.

The concrete slab has been constructed in such a manner as to have a section omitted, following roughly the circular pattern of the concrete support ring of the maintenance cover. In this omitted section of the slab, the maintenance cover is located approximately 200mm below the slab finished surface. The clearance between the actual metal maintenance cover and the slab edge would appear to be approximately 150mm.

However, the Committee considers that the slab construction as it currently exists will obstruct access to the maintenance cover and therefore not allow the safe removal of the metal lid or access into the chamber and as such, the current construction does not satisfy P2(b). In addition, the slab construction completely covers access to the connection point.

Therefore, to enable compliance with P2(b) the Committee considers that:

- The existing sewer maintenance cover should be raised to be equal to the finished floor level of the gazebo to provide safe access to the maintenance chamber; and
- An inspection shaft should be installed as near as practical to the point of connection, terminated with a removable airtight cap at the finished floor level of the gazebo which will provide future access for inspection, location and clearing of the sanitary drain

Given the above, the Committee sets aside the Decision Notice of the Assessment Manager and replaces that Decision as stated on page 1 of this decision.

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**Geoffrey Mitchell**  
**Building and Development Committee Chair**  
**Date: 30 August 2016**

## **Appeal Rights**

Section 479 of the *Sustainable Planning Act 2009* provides that a party to a proceeding decided by a Committee may appeal to the Planning and Environment Court against the Committee's decision, but only on the ground:

- (a) of error or mistake in law on the part of the Committee or
- (b) that the Committee 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 Committee's decision is given to the party.

## **Enquiries**

All correspondence should be addressed to:

The Registrar of Building and Development Dispute Resolution Committees  
Building Codes Queensland  
Department of Housing and Public Works  
GPO Box 2457  
Brisbane QLD 4001  
**Telephone (07) 1800 804 833 Facsimile (07) 3237 1248**