



Building and Development Dispute Resolution Committees—Decision

Sustainable Planning Act 2009

Appeal Number:	19-16
Applicant:	Andrew and Tracey Taylor (Applicant):
Assessment Manager:	Professional Certification Group - Chris Williams (PCG)
Concurrence Agency: (if applicable)	Gold Coast City Council (Council)
Site Address:	35 Acanthus Avenue Burleigh Heads and described as Lot 7 on RP 84727 – the subject site

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 a new dwelling. Gold Coast City Council as Concurrence Agency directed the refusal under building over or near relevant infrastructure under the Queensland Development Code MP1.4 (QDC).

Date and time of hearing:	Tuesday 21 June 2016 at 10:30 AM
Place of hearing:	Meeting room 1 Level 16 , Mineral House , 41 George Street
Committee:	Geoffrey Mitchell – Chair Ian MacDonald - Member
Present:	James Dunstan – Applicant’s Representative Tim Neilson – Applicant’s Representative Kelvin Lanning – Applicant’s Representative Chris Williams – Assessment Manager Brian Burrows – Gold Coast City Council

Decision:

The Building and Development Dispute Resolution Committee (Committee), in accordance with section 564 of the SPA, **Sets Aside** the Decision Notice of the Assessment Manager; and **replaces** the Decision with the following:

- (a) The Development Application Decision Notice of Professional Certification Group Pty Ltd dated Tuesday, 31 May 2016 is amended to read:
 - (i) Page 1 of 6 under ‘Development Application Decision Notice ‘The Development Application was Assessed and: Refused; to “*The Development Application was Assessed and: **Approved***”
 - (ii) Page 2 of 6 under “BUILDING CONDITIONS – “REASONS FOR REFUSAL” – “1 – Refusal BASED ON RESPONSE FROM Gold Coast City Council as concurrence agency under QDC MP1.4. Council does not support the proposed development. Refer to attached written correspondence”. to “1. *Not Applicable*”

(iii) Page 4 of 6 under “APPLICATION SPECIFIC CONDITIONS” add the following point 7:

- 7 *“The Applicant is required to replace the section of Infrastructure under the proposed building to the satisfaction of the Gold Coast City Council in accordance with:*
- a. *A design that satisfies the requirements of the SEQ Code; and*
 - b. *Such design is prepared by a Registered Professional Engineer QLD in accordance with the SEQ Water Supply and Sewerage Design & Construction Code (SEQ Code); and*
 - c. *Such design nominates the replacement sewer with materials selected from the available options in the SEQ Code”.*

Background

The Applicants applied to PCG for a Development Approval for Building Works. The proposed works comprised of a two storey residence. The proposed residence was to be sited over Council infrastructure which comprised a 150mm diameter vitreous clay sewer.

The Service in question is a 150mm Vitrified Clay sewerage line that extends from an access chamber on the adjoining property (No 37) and services No 35, 33 and 31 Acanthus Avenue.

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 stated that the Application did not comply with the acceptable solutions of the QDC and that it must comply with the requirements of Council’s Network Modifications, Extensions and Connection Policy (NMEC). The NMEC at Appendix E, Number 7 provides:

“Residences are not permitted to be constructed over sewers. (Except in exceptional circumstances ...)”.

On 31 May 2016 PCG refused the Application based on the above advice from Council. The reasons for refusal on the Decision Notice were given as:

“Refusal based on response from Gold Coast City Council as a concurrence agency under QDC MP1.4. Council does not support the proposed development....”.

On 31 May 2016, the Applicant lodged this appeal with the Committees registry.

An appeal hearing was held off site on 21 June 2016 at 10.30am. Both the Applicants Representatives and the Council Representatives made verbal submissions at the hearing.

Submission by the Applicant:

- The Proposal with the accompanying engineers design complies with P1 of the QDC.
- The Proposal includes a requirement to replace the existing vitreous clay sewer with a more durable product.
- There are also retaining walls on each side of the development over the infrastructure to facilitate filling to achieve the required floor levels due to flooding.
- There is adequate access for excavation on each side of the dwelling if future access is required.
- The Proposal complies with P2 of the QDC as the access chamber is unobstructed.

Submission by the Council:

- The proposal does not comply with QDC A2.1 (2)(b)(ii) which requires 2.4m clearance above service.
- Constructing over the sewer is deemed an unacceptable risk to Council.
- Council’s preferred option is to relocate the sewer around the building.
- Council has no issue with the filling or the retaining walls.

Material Considered

The material considered in arriving at this decision comprises:

1. 'Form 10 – Appeal Notice', grounds for appeal and correspondence accompanying the appeal lodged with the Committees Registrar on 31 May 2016.
2. Decision Notice dated 31 May 2016 by Professional Certification Group Pty. Ltd. (PCG)
3. City of Gold Coast Compliance Permit dated 19 April 2016.
4. Email from Council to PCG dated 12 May advising Council does not permit structures over the sewer.
5. Email from Council to PCG dated 26 May advising Council will not approve the current application and would require the sewer to be diverted.
6. Email from Council to PCG dated 2 June confirming Councils advice of the 26 May is to be considered as a refusal.
7. Verbal representations at the hearing.
8. The *Sustainable Planning Act 2009* (SPA).
9. The Sustainable Planning Regulation 2009 (SPR).
10. The *Building Act 1975* (BA)
11. The Queensland Development Code MP 1.4 – Building over or near relevant infrastructure (QDC)
12. Council's Network Modifications, Extensions and Connection Policy (NMEC)
13. *South-East Queensland Water (Distribution and Retail Restructuring) Act 2009* (SEQ Water Act)
14. The South East Queensland Water Supply and Sewerage Design and Construction Code (SEQ Code).

Findings of Fact

The Committee makes the following findings of fact:

- The Service in question is a 150mm Vitrified Clay sewerage line that extends from an access chamber on the adjoining property (No 37) and services No 35, 33 and 31 Acanthus Avenue.
- The QDC is applicable to the project for work over or adjacent to the Council Infrastructure.
- The QDC 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.
- PCG referred the application to Council.
- The SEQ Code was gazetted on 1 July 2013.
- The SEQ Code at Clause 4.4.4.1 requires:
 - “....Where the building works do not comply with the acceptable solutions, the building development application must be referred to the relevant water service provider (owner of the infrastructure) for assessment as a concurrence agency. The relevant water service provider must assess the building works against the QDC MP1.4 performance criteria”.
- P1 of the QDC reads:

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.*

- P2 of the QDC 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.*

- 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.
- Under the SEQ Water Act Council has adopted the NMEC as part of the Council's Water and Sewerage Network Services Plan
- Council has based its refusal on the basis of Councils NMEC.
- The NMEC does not prevent the approval of structures over infrastructure. NMEC Appendix E 1.5 Number 2 provides:

“Construction over and adjacent to sewers is generally not permitted by Gold Coast Water. Redesign of structure or relocation of the sewerage infrastructure is the preferred option. Any approval will be in very extreme circumstances and under very strict guidelines. They could include, but is not limited to:

- *CCTV inspection,*
- *An assessment of its structural condition*
- *Appropriate rehabilitation or protection or replacement works undertaken as directed by Gold Coast Water.”*

- The NMEC at Appendix E 1.5 Number 7 provides (in part):

“Residences are not permitted to be constructed over sewers. (Except in exceptional circumstances ...).”

- Council has provided an option to relocate the sewer and create a 3m wide easement. However, in the written documentation and at the hearing, Council did not provide details of any exploration or any other considerations with regard to the specific circumstances of the Application nor advise if the matter was an “exceptional” circumstance.
- Council does not appear to have considered other options provided in the SEQ Code which could be explored to satisfy the Performance Requirements of the QDC.
- Section 1.3.3 of the SEQ Code at section: Design Responsibilities, sets out the design functions to include hydraulic, survey and drafting, geotechnical, structural, mechanical materials and other specialist functions required for a project. The design of any works shall be carried out under the direction of, and certified by a Registered Professional Engineer of Queensland (RPEQ).
- The selection of products and material (referred to as products) for the replacement of the subject gravity sewer at the subject site could be at the discretion of the designer who would consider compliance with the SEQ Code, the requirements of Gold Coast Water and recognised national or industry standards.
- Section 10.6 of Part 2 of the SEQ Code: Products and Materials, refers to Tables 10.1 and 10.2 which contain a comprehensive list of products (as well as advantages and

disadvantages of each) that the designer should use to select a product that is suitable for the site as well as provide the expected life of the products of 100 years.

- On 31 May 2016 PCG refused the application based on the advice from Council.
- On 31 May 2016, the Applicant lodged this appeal with the Committees registry.
- On 2 June 2016, Council emailed PCG confirming Councils decision to refuse.

Reasons for the Decision

The Service in question is a 150mm Vitrified Clay sewerage line that extends from an access chamber on the adjoining property (No 37) and services No 35, 33 and 31 Acanthus Avenue.

Council has not fully assessed the Application against the Performance Requirements of the QDC. 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.

Council has relied upon the acceptable solutions contained within the QDC and the contents of the NMEC policy and in doing so, has not considered any alternate options which could adequately address the performance clauses of the QDC.

Council's recommendation to relocate the existing sewer has not considered the impact on the design of the dwelling or the useability of the subject site.

The SEQ Code at section 1.3.3 Design Responsibilities, sets out the design functions to include hydraulic, survey and drafting, geotechnical, structural, mechanical materials and other specialist functions required for a project. The design of any works shall be carried out under the direction of, and certified by a Registered Professional Engineer of Queensland (RPEQ).

The selection of products and material (referred to as products) for the replacement of the subject gravity sewer at the subject site could be at the discretion of the designer who would consider compliance with the SEQ Code, the requirements of Gold Coast Water and recognised national or industry standards.

Section 10.6 of Part 2: Products and Materials of the SEQ Code refers to Tables 10.1 and 10.2 which contain a comprehensive list of products (as well as advantages and disadvantages of each) that the designer should use to select a product that is suitable for the site as well as provide the expected life of the products of 100 years.

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

Geoffrey Mitchell
Building and Development Committee Chair
Date: 27 July 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