Development Tribunal – Decision Notice

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

Appeal number:	24-039
Appellant:	Dean Hamilton
Respondent (Assessment manager):	Troy Ellerman
Co-respondent (Concurrence agency):	Logan City Council
Site address:	20 Tangadee Court, Shailer Park Qld 4128, described as Lot 866 on RP 802622

Appeal

Appeal under Appeal under section 229 and schedule 1, section 2, table 1, item 1(a) of the *Planning Act 2016* against the decision of the assessment manager.

Date and time of hearing:	1.00am on 14 February 2025
Place of hearing:	Via Microsoft Teams
Tribunal:	Mark Chapple – Chair Thomas Bayley – Member Martin Roushani-Zarmehri - Member
Present:	Dean Hamilton – the Appellant Andy Lees – Logan City Council – Co-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.

Background

1. The Appellant and Rachel Carter are the owners of land and a dwelling at 20 Tangadee Court, Shailer Park described as Lot 866 on RP802622 (the subject site).
2. The Appellant and Rachel Carter made a Development Application for a building permit to build a boulder retaining wall – a class 10B building. A sewer line, a service provided by

the Logan City Council, runs through the subject site. The Respondent was the Assessment Manager for the Application.

3. By way of a Decision Notice dated 5 August 2024, the Respondent refused the application on the basis *"No evidence of official referral agency response from Council for building near relevant infrastructure."*

4. The Appellant has appealed the decision of the Respondent.

Jurisdiction

5. Section 229(1) of the PA provides that Schedule 1 of the Act (the Schedule), states matters where there may be an appeal to the tribunal.

6. Section 1(1)(b) of the Schedule provides that the matters stated in Table 1 of the Schedule (Table 1) are matters that may be appealed to the Tribunal. However, Section1(2) of the Schedule provides that Table 1 only applies to the Tribunal if the matter involves one of the list of matters set out in Section 1(2).

7. Section 1(2)(g) provides that Table 1 applies to a Tribunal if the matter involves a matter under the PA, to the extent the matter relates to the *Building Act 1975* other than a matter that must be decided by the Queensland Building and Construction Commission.

8. In the circumstances, Table 1 applies to the Tribunal with respect to the decision of the Respondent.

Decision framework

9. The onus rests on the appellant to establish that the appeal should be upheld (section 253(2) of the PA).

10. 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).

11. 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).

12. The Tribunal is required to decide the appeal in one of the ways mentioned in section 254(2) of the PA.

Material considered

13. The material considered in arriving at this decision was:

    (a) Form 10 Notice of Appeal including grounds for appeal.

    (b) Decision Notice Refusal – Troy Ellerman – 5 August 2024.

    (c) Email – Andy Lees – City of Logan to Dean Hamilton – 27 May 2024 including Dean Hamilton's email to Andy Lees also of 27 May 2024.

    (d) Drawings JCR Projects SO1 Revision C, SO2 Revision C, SO3 Revision B, SO4 Revision C.

    (e) Report Sam Geotechnics – 17 February 2023.

    (f) Drawings Adaspace Building Drafting Pty Ltd for proposed retaining walls and earthworks A01 Revision A, A02 Revision A, A03 Revision A, A04 Revision A.

    (g) Slope stability analysis – Sam Geotechnics.

(h) Standard proforma for geotechnical certification – Sam Geotechnics

(i) As constructed retaining wall geotechnical certification – 22 May 2024 – Sam Geotechnics.

(j) Form 15 Compliance Certificate – Sam Jeyan, Sam Geotechnics Pty Ltd – 22 May 2024.

(k) Information Request – innovative building approvals – 18 May 2024.

(l) Email Dean Hamilton to Developments Tribunal – 21 October 2024.

(m) Email Troy Ellerman to Developments Tribunal – 22 October 2024.

(n) Email Dean Hamilton to Developments Tribunal – 15 November 2024.

(o) Survey drawing as constructed retaining wall survey – Hillocc – 31 October 2024.

(p) Survey drawing as constructed retaining wall – Hillocc bearing licensed surveyor's signature.

(q) Extract from Logan City Council Records showing sewer infrastructure in Tangadee Court supplied by Andy Lees of Logan City Council.

(r) Photographs Supplied by Andy Lees of Logan City Council.

Findings of fact

14. The Tribunal makes the following findings of fact:

(a) A sewer line runs through the subject site.

(b) The Appellant and Rachel Carter are owners of the subject site.

(c) The sewer line running through the subject site is a service provided by the City of Logan.

(d) The Respondent decided for the purpose of the QDC MP1.4 that the sewer pipe within the subject lot was within the zone of influence of the retaining wall for which approval was applied for.

(e) The Respondent was provided with inadequate information regarding the exact location and depths of the sewer line to assess compliance with A1 and A2 of QDC MP 1.4 Chapter 3.

Reasons for the decision

15. As found by the Tribunal, a sewer line, a service provided by the City of Logan, runs through the subject site.

16. The Respondent gave the Appellant an information request which included a request that a referral agency response be provided by the Logan City Council as acceptable solutions A1(2)(b) and A2.1(2)(d) of the Queensland Development Code MP1.4 (QDC MP 1.4) had not been complied with. The reason given for the noncompliance was that the retaining wall design showed a council sewer approximately 2.2m deep approximately 1.4m from the wall placing the sewer line in "angle of influence of the pipe".

17. The *Planning Regulation 2017* (PR) section 22 provides that Schedules 9 and 10 of the PR prescribe for the PA section 54(2)(a), the referral agency for Development Applications and for the PA section 55(2), the matters the referral agency may or must assess the development application against and may or must have regard to.

18. The *Planning Regulation 2017*, Schedule 9, Division 3, Table 7 provides:

Table 7 – Building work over or near relevant infrastructure relating to Queensland Development Code, part 1.4	
Column 1	**Column 2**
1 Development application requiring referral	Development application for building work that is assessable development under section 1, if – (a) the Queensland Development Code, part 1.4 applies to the work; and (b) the work will be carried out on a lot that contains, or is adjacent to a lot that contains, a sewer, water main or stormwater drain; and (c) either – (i) the work does not comply with an acceptable solution for a relevant performance criteria stated in the part; or (ii) the work is for a class of building or structure for which the part does not state an acceptable solution; and (d) the relevant service provider is not the applicant.
2. Referral agency	The relevant service provider
3. Limitations on referral agency's powers	—
4. Matters referral agency's assessment must be against	Whether the proposed building or structure complies with the performance criteria in the Queensland Development Code, part 1.4 that relate to a sewer, water main or stormwater drain
5. Matters referral agency's assessment must have regard to	—
6. Matters referral agency's assessment may be against	—
7. Matters referral agency's assessment may have regard to	—
8. Fee for referral, if the referral agency is a public sector entity other than a local government.	An amount – (a) The referral agency considers to be reasonable; and (b) That is not more than the reasonable cost of the referral agency performing its functions as referral agency

19. The Queensland Development Code, MP1.4 – Building over or near relevant infrastructure – Table 1 provides:

Application	**Performance criteria applicable**
Building work is proposed to be carried out on *a lot* and *relevant infrastructure* is located on the *lot*.	P1 and P2

Building work is proposed to be carried out on *a lot* (the subject *lot*) and *relevant infrastructure* is located on *a lot* adjacent to the subject *lot*, but not on the subject *lot* itself	P1
Building work is proposed to be carried out on a *lot* (the subject *lot*) and *relevant infrastructure* is located on both the subject *lot* and a *lot* adjacent to it	For the relevant *infrastructure* on the subject *lot* – P1 and P2 For the *relevant infrastructure* on the adjacent *lot* – P1

20. In the circumstances as a sewer line runs through the subject site the Tribunal finds that it needs to be shown that the retaining wall meets the Acceptable Solutions A1 and A2 or a request for a request for a Referral Agency response must be made.

21. The performance requirements and acceptable solutions in Queensland Development Code, MP1.4, Chapter 3, are reproduced at Appendix 1 to this decision.

22. The QDC MP1.4 defines the zone of influence as

> ***zone of influence***, of a *building* or *structure*, the subject of a *building development application*, means the area determined by the *assessment manager* to be loaded by the footings or other *load bearing elements* of the *building* or *structure* taking into account the *angle of repose.*

23. The QDC 1.4 defines "angle of repose" in the following terms and provides notes:

> ***angle of repose*** means the steepest angle of descent or dip of the slope relative to the horizontal plane when material on the slope face is on the verge of sliding.
> *Note—*
> The angle of repose for the *zone of influence* of a *building* or *structure* is determined based on the type of soil present where the *building* or *structure* is located. Generally, the *assessment manager* for a *building development application* will determine the angle to be 30 degrees for *cohesionless soil* and 45 degrees for other types of soil (measured from the horizontal plane). The appropriate angle should be used when designing any footings for a *building* or *structure* located over or near *relevant infrastructure.*
> *Examples—*
> See **Figures 1**, **2**, **4, 5** and **14**."

Was the Respondent correct to request a Referral Agency Response?

24. In the Information Request of 18 May 2024, the Respondent said:

> *This places the retaining wall within the angle of influence of the pipe which does not comply with Acceptable Solutions A1 2b) and A2.1 2d) of the Queensland Development Code MP 1.4 (QDCMP1.4).*

25. Acceptable Solutions A1(2)(b) and A2.1(2)(d) are set out in **Annexure 1** to this decision notice, however for convenience are also set out below.

> A1 (2) The footings for a *building* or *structure* must
> (…)
> (b) either—
> (i) 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; or
Example—
See **Figure 4**

(ii) be supported on screwed or bored (but not driven) piles or piers that—
(A) are installed at least 1.2m from the *vertical plane along the centreline*; and
(B) extend so the point of the *zone of influence* of the piles or piers that intersects with the *vertical plan along the centreline* is at least 300mm below the *invert level* for a pipe forming part of the infrastructure or
Example—
See **Figure 5**.

(iii) if the *building* or *structure* is a *light-weight class 10*—
(A) comply with AS 1684 or AS 2870; or
(B) be certified by an *RPEQ* as compliant with P1.

Note—
The solution in A1(2)(b)(iii) is only available for a *light-weight class 10*. The solutions in A1(2)(b)(i) and A1(2)(b)(ii) are also available for such a *building* or *structure*.

A2.1 (2) the building or structure complies with this subsection if –
(…)
(d) for any *gravity wall* over 1m high—
(i) the wall is constructed 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*; or
Example—
See **Figure 14**.
(ii) the design of the wall is certified by an *RPEQ* to be appropriate taking into account the safety of workers who will inspect, maintain or replace the *relevant infrastructure*, as required.

26. Considering the context, the Tribunal is satisfied that by use of the words *"angle of influence"* the Respondent was referring to the *"zone of Influence"* as defined in the QDC MP 1.4 and the Tribunal finds that the Respondent decided for the purpose of the QDC MP1.4 that the sewer pipe within the subject lot was within the zone of influence of the retaining wall that approval was applied for.

27. The Respondent did not appear at the hearing but in an email of 22 October 2024 to Registrar advised that drawings JCR Engineers SR698 SO1 Rev C, SR698 SO2 Rev C, SR698 SO3 Rev. B, SR698 SO4 Rev. were the ones the subject of the decision. These drawings were with the appeal documents and do not show the exact location or depth or contain any description of any sewer, which is deemed critical information for the purposes of determining an outcome.

28. After directions were made by the Tribunal, the Appellant supplied an *"As Constructed Retaining Wall Survey"* from Hilloc Surveyors, which showed a sewer pipe running across the subject site near the boundary with Tangadee Court. The drawing does not indicate the exact depth or diameter of the sewer.

29. Andy Lees of the Logan City Council provided a drawing from Council records, an extract from which is set out below in **Figure 1,** which shows the general location of the sewer and contains some information about the sewer depth (the subject site is shown as 866).

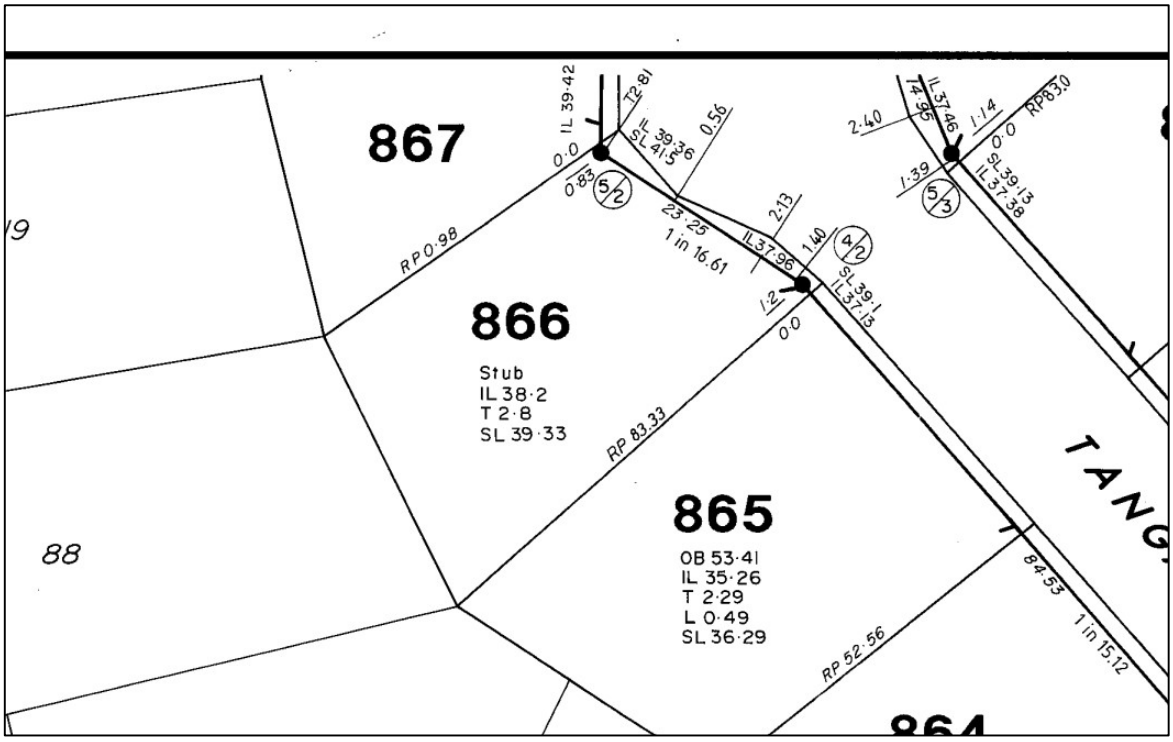

Figure 1

30. The Appellant submitted that the structure, where it is shown intersecting with the sewer below, was landscaping and not a retaining wall that could easily be removed.

31. Andy Lees was supportive of the wall's design and had suggested that it may have complied with Acceptable Solutions A1(2)(b) and A2.1(2)(d) of the QDC MP 1.4. The Tribunal respects Andy Lee's position and indeed is grateful for his assistance at the appeal hearing, however based on the material, the Tribunal cannot see any reason to find that the Respondent acted incorrectly in determining the wall was in the "zone of influence" and in turn asking that a Referral Agency Response be requested from the Council.

32. In the circumstances the Tribunal finds that the Respondent was right to request that the Appellant make a request for a Referral Agency Response from the Logan City Council.

Was there a Referral Agency Response?

33. There is no document which on its face purports to be a Referral Agency Response. There is an email of 27 May 2024 from Andy Lees to the Appellant which includes the following passage:

> *Thank you for time this afternoon to talk through your enquiry and the photo's sent through.*
>
> *As discussed, and to confirm your retaining wall on the western side of the temporary steps is acceptable to Logan Water in relationship to the existing sewer line. We request the provision of a safe working distance is maintained around Logan City Council sewerage maintenance structures and property connections. The cover of the sewer maintenance structures must have a clear zone of 1.5 metres maintained around it in all directions from the centre of the sewer maintenance structure cover and be open to the sky.*

34. The Tribunal needs to decide if the email 27 May 2024 is a *Referral Agency Response.*

35. Section 54(1) of the PA Provides

> *Copy of application to referral agency*

(1) An applicant for a development application must, within the period required under the development assessment rules, give a copy of the application and, subject to section 109(b), the required fee, to each referral agency.

36. There was no material before the Tribunal that showed that a fee had been paid to the Logan City Council, the Referral Agency.

37. Section 56(1) of the PA provides:

> ***Referral agency's response***
>
> *(1) After assessing the development application, the referral agency must decide—*
>
> *(a) to tell the assessment manager that the agency has no requirements for the application; or*
>
> *(b) to direct the assessment manager to do any or all of the following—*
>
> *(i) to give any development approval subject to stated development conditions;*
>
> *(ii) to give any development approval for only a stated part of the application;*
>
> *(iii) to give any development approval only as a preliminary approval;*
>
> *(iv) to impose a stated currency period for a development approval given; or*
>
> *(c) to direct the assessment manager to refuse the application for stated reasons.*

38. While the email of 27 May 2024 can be construed as generally supportive of the retaining wall design, section 56 of the PA is very clear about options about what the referral agency has to tell the assessment manager or direct the assessment manager to do. Considering the circumstances in which the email was sent and the contents of the email, the Tribunal finds that the email was not a Referral Agency Response.

Mark Chapple
Development Tribunal Chair
Date: 7 April 2025

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 and Public Works
GPO Box 2457
Brisbane Qld 4001

Telephone 1800 804 833

Email: registrar@epw.qld.gov.au

Annexure 1

Chapter 3 Performance requirements and acceptable solutions

PERFORMANCE REQUIREMENTS	ACCEPTABLE SOLUTIONS
Ensuring building work does not damage relevant infrastructure etc	
P1 *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. *Note*— For the application of P1, see section 4.	**A1** (1) *A building or structure* complies with this acceptable solution if— (a) the work is for a *class* 1 *building*, or a *class 10 building* or *structure*; and (b) the *relevant infrastructure* is— (i) a *sewer* with a *DN* not more than 225mm that is not a *pressure pipeline*; or (ii) a *stormwater drain* with a DN not more than 375mm that is not a *pressure pipeline*; or (iii) a *combined sanitary drain*; and (c) the work complies with subsections (2) to (5). (2) The footings for the *building* or *structure* must— (a) be installed at least 1m from all parts of

PERFORMANCE REQUIREMENTS	ACCEPTABLE SOLUTIONS
	the *connection*; and *Example—* See **Figure 3**. (b) either— (i) 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; or *Example—* *See* **Figure 4**. (ii) be supported on screwed or bored (but not driven) piles or piers that— (A) are installed at least 1.2m from the *vertical plane along the centreline*; and (B) extend so the point of the *zone of influence* of the piles or piers that

PERFORMANCE REQUIREMENTS	ACCEPTABLE SOLUTIONS
	intersects with the *vertical plane along the centreline* is at least 300mm below the *invert level* for a pipe forming part of the infrastructure; or *Example—* See **Figure 5**. (iii) if the *building* or *structure* is a *light-weight class 10*— (A) comply with AS 1684 or AS 2870; or (B) be certified by an *RPEQ* as compliant with P1. *Note—* The solution in A1(2)(b)(iii) is only available for a *light-weight class 10*. The solutions in A1(2)(b)(i) and A1(2)(b) (ii) are also available for such a *building* or *structure*. (3) Excavation for the work must not be carried out within 600mm of the outer wall of the infrastructure. *Example—* See **Figure 6**.

PERFORMANCE REQUIREMENTS	ACCEPTABLE SOLUTIONS
	(4) Compaction by vibration for the work must not be carried out within 2m of the *vertical plane along the centreline*. *Example—* See **Figure 7**.
	(5) The use of *fill* must not result in over 1m of additional *fill* being placed over the infrastructure, unless— (a) the fill is associated with a retaining wall*;* and (b) the infrastructure is bridged over in accordance with a design that is certified by an *RPEQ.* *Examples—* See **Figures 8** and **9**. *Note—* If a person relies on A1(5)(b) for achieving compliance with P1, it will not be possible for them to rely on A2 for achieving compliance with P2 because a *building* or *structure* that complies with A1(5)(b) cannot also comply with A2. Therefore, an *alternative solution* for P2 will be required for the building or structure.

PERFORMANCE REQUIREMENTS	ACCEPTABLE SOLUTIONS

Maintaining access to and ventilation for relevant infrastructure

P2 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.

Notes—

1 For the application of P2, see section 4.

2 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.*

A2.1 *Acceptable solution for a building or structure that is not a light-weight class 10*

(1) A *building or structure* complies with this acceptable solution (A2.1) if—

(a) it is not a *light-weight class 10*; and

(b) the *relevant infrastructure* is—

(i) a *sewer*, *combined sanitary drain* or *water main* with a *DN* not more than 225mm; or

(ii) a *stormwater drain* with a *DN* not more than 375mm; and

(c) the *building* or *structure* complies with subsection (2).

(2) The *building* or *structure* complies with this subsection if—

(a) a wall, footing, pile, pier or floor of the *building* or *structure* is installed at least 1.2m from the *vertical plane along the centreline* of the infrastructure; and

Example—

PERFORMANCE REQUIREMENTS	ACCEPTABLE SOLUTIONS
	See **Figure 10**.
	(b) for any part of the infrastructure other than a *maintenance cover,* a *clear zone* for the infrastructure, having the following dimensions, is maintained— (i) a minimum width of 1.5m along the horizontal plane that intersects the *vertical plane along the centreline*; and (ii) a height of 2.4m from the finished surface level; and (iii) a length the same as the length of the infrastructure; and *Examples—* See **Figures 11** and **12**.
	(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

PERFORMANCE REQUIREMENTS	ACCEPTABLE SOLUTIONS
	horizontal plane from the centre of the cover at finished surface level; and (B) an infinite height from the finished surface level; and (ii) the *building* or *structure* does not cause ponding on the upper surface of the cover (because the building or structure allows water to drain away naturally); and (iii) the cover is not covered by *fill* associated with the *building work*; and *Example—* See **Figure 13**. (d) for any *gravity wall* over 1m high— (i) the wall is constructed so the *invert level* for a pipe forming part of the infrastructure is at least 300mm above the point of

PERFORMANCE REQUIREMENTS	ACCEPTABLE SOLUTIONS
	the *zone of influence* of the *building* or *structure* that intersects with the *vertical plane along the centreline*; or *Example—* See **Figure 14**.
	(ii) the design of the wall is certified by an *RPEQ* to be appropriate taking into account the safety of workers who will inspect, maintain or replace the *relevant infrastructure*, as required.
	A2.2 *Acceptable solution for a light-weight class 10*
	(1) A *building* or *structure* complies with this acceptable solution (A2.2) if—
	(a) it is a *light-weight class 10*; and
	(b) the *relevant infrastructure* is—
	(i) a *sewer* or *combined sanitary drain* with a *DN* not more than 225mm; or