



## Development Tribunal – Decision Notice

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### *Planning Act 2016, section 255*

<b>Appeal Number:</b>	22-026
<b>Appellant:</b>	Mr Trent Lawson
<b>Respondent:</b>	Mackay Regional Council
<b>Site Address:</b>	188 Old Bowen Coach Rd and described as Lot 55 on CI258 – the subject site

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### Appeal

Appeal under section 229 and item 3(b) of table 3 of Schedule 1 of the *Planning Act 2016* (PA) against the decision of the Respondent to issue an Action Notice dated 27<sup>th</sup> May 2022 relating to Compliance Permit PL-20211/624 for the subject site. The appeal specifically relates to a shower grate installed by the Appellant at the subject site.

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#### **Date and time of hearing:**

**Place of hearing:** N/A (appeal decided on submissions)

**Tribunal:** Kelvin Slade – Chair  
Melanie Prentice – Member

**Submissions provided by:** Tim Lucas – Nominated agent for the Appellant  
Troy Sander – Respondent's representative

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### Decision:

The Tribunal in accordance with section 254(2)(c) of the PA replaces the decision of the Respondent with another decision, namely, that the relevant works are compliant and a final inspection certificate be issued under section 84 of the *Plumbing and Drainage Regulation 2019*, subject to the condition that the Appellant submit the as constructed drawings as per the Action Notice dated 27<sup>th</sup> May 2022 Inspection Measure request.

### Background

1. AS/NZS 3500.2:2018 clause 13.17.1 states that an individual shower shall be fitted with a minimum DN 80 grate or channel grate, and shall be connected by-  
(a) an untrapped waste pipe not smaller than DN 40 to a floor waste gully; or  
(b) a trap and waste pipe not smaller than DN 40.
2. AS/NZS3500.0:2003 provides that nominal size (DN) is 'a numerical designation of size, which is common to all components in a piping system other than components

designated by outside diameters or by thread size. It is a convenient round number for reference purposes and is only loosely related to manufacturing dimensions.’  
 Relevantly, it also provides the following definitions :

‘... [Note 2, should be 3] The nominal size (DN) cannot be subject to measurement and is not to be used for purposes of calculation.  
 ....**Grate**. A sanitary or stormwater fitting consisting of a frame holding a grating.  
 ... **Outlet**. An opening or passage for water or waste exists.  
**Waste outlet**. An outlet pipe (with or without overflow ports) with a top flange and grating’

3. The installed grate, Art Plastics Bermuda model number 11204.01, carries WaterMark Certification licence number WMTK21232, which is certified to WaterMark Technical Specification (WMTS) 040:2016
4. WaterMark Technical Specification: WMTS 040:2016 (currently 2022) section 8, clauses 8.2 and 8.3 state:

8.2 Designation of size

Where the grating and outlet ends are the same size, the nominal size of the waste shall be designated by the outlet end, e.g. DN 50.  
 Where outlet and grating sizes are different, the nominal size shall be designated by the size of the grating then followed by the outlet connection end, e.g. DN 80 x DN 50.

8.3 Waterway

The minimum waterway shall be—  
 a) not less than the area specified in Table 1; or  
 b) capable of discharging a flow rate greater than the maximum flow rate from a tap outlet specified in the PCA, when tested in accordance with EN 274.2.

**TABLE 1**

<b>Nominal Size (DN)</b>	<b>Minimum waterway area (mm<sup>2</sup>)</b>
32	250
40	450
50	800
65	800
80	800
90	1000
100	1200
150	2000

5. The nominal size has been specified in the WMTS as ‘DN 80’.

## **Jurisdiction**

6. Schedule 1 of the PA states the matters that may be appealed to the Tribunal.<sup>1</sup>
7. Under table 3, item 1 of Schedule 1 of the PA, an appeal may be made against a decision under the *Plumbing and Drainage Act 2018* (P&D Act), if an information notice about the decision was given or required to be given under the P&D Act. Under column 1 of item 3, the appellant for such an appeal is identified as being a person who received, or was entitled to receive, an information notice about the decision.

## **Decision framework**

8. The onus rests on the appellant to establish that the appeal should be upheld (section 253(2) of the PA).
9. 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)
10. 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.
11. The tribunal is required to decide the appeal in one of the ways mentioned in section 254(2) of the PA.

## **Material considered**

The material considered in arriving at this decision comprises:

12. 'Form 10 – Appeal Notice', grounds for appeal and correspondence accompanying the appeal lodged with the Tribunals Registrar on 27<sup>th</sup> May 2022
13. Letter dated 30<sup>th</sup> May 2022 from Appellant Mr Trent Lawson nominating Mr Tim Lucas as agent
14. Statement Part of Form 10 dated 20<sup>th</sup> May 2022 from Mr Tim Lucas
15. SAI Global WaterMark Schedule for product 11204.01
16. Art Plastics product specification sheet for Bermuda Megaflex 80mm outlet
17. Action Notice dated 27<sup>th</sup> May 2022 issued by Mackay Regional Council to appellant Mr Trent Lawson

## **Findings of Fact**

18. The *Plumbing and Drainage Regulation 2019* section 11 stipulates:

- (1) for section 9 (4) of the Act, plumbing and drainage work or a plan for plumbing and drainage work-
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- (a) complies with the Queensland Plumbing and Wastewater Code only if the work complies with all relevant performance requirements for the work under the code
    - (b) complies with a prescribed PCA (Plumbing Code of Australia) provision only if the work complies with all relevant performance requirements for the work under the provision.
  - (2) Compliance for the work with a relevant performance requirement under the Queensland Plumbing and Wastewater Code or a prescribed PCA provision can be achieved by -
    - (a) a deemed -to-satisfy solution for the performance requirement under the code or provision [...].
19. The Queensland Plumbing and Wastewater Code Version 1: 2019 Section A2.2 states that plumbing and drainage systems must be designed, constructed and installed so that they comply with the relevant provisions of the PCA and the *performance requirements* of this code. Table A3 *Schedule of referenced documents* lists AS/NZS 3500:2018 Part 2.
20. The National Construction Code (NCC) requires any plumbing or drainage product to be WaterMark certified. The Plumbing Code of Australia is Volume 3 of NCC.

### **Reasons for the Decision**

21. AS/NZS 3500.2:2018 Stipulates an individual shower shall be fitted with a minimum DN 80 grate.
22. AS/NZS 3500.0:2003 defines a grate as consisting of a frame and grate.
23. AS/NZS 3500.0:2003 provides that DN size is not subject to measurement and is not to be used for purposes of calculation.
24. The Queensland Plumbing and Wastewater Code stipulates compliance with the provisions of the Plumbing Code of Australia volume 3 of the NCC and the Deemed to Satisfy performance requirements of the code, which references AS/NZS3500.4:2018.
25. The NCC mandates installed products be WaterMark Certified.
26. The Installed Art Plastics Bermuda shower grate is WaterMark Certified to DN 80 size and has a waterway area in excess of the minimum specified area.
27. On this basis, the Tribunal deems the installation of the shower waste grate nominated in the Respondent's Action Notice dated 27th May 2022, to be compliant with the Deemed to Satisfy provisions of AS/NZS3500.2:2018 clause 13.17.1

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**Kelvin Slade**

**Development Tribunal Chair**  
**Date: 25 October 2022**

## **Appeal Rights**

Schedule 1, Table 2 (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  
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Brisbane QLD 4001

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