



Development Tribunal – Decision Notice

Planning Act 2016, section 255

Appeal number:	25-043
Appellant:	Lyn Haywood (Owner)
Respondent/ Assessment manager:	Ross Scott
Co-respondent/ Referral agency:	Fraser Coast Regional Council
Site address:	5 Campbell Street, Torquay Qld 4655 described as Lot 2 on SP139432

Appeal

Appeal under schedule 1, table 1, item 1(c) of the *Planning Act 2016* against the Conditions of a Building Development Approval directed to be imposed by a Referral Agency.

Date and time of hearing:	Not applicable
Place of hearing:	On the papers
Tribunal:	Don Grehan—Chair Suzanne Brown—Member

Decision:

The Development Tribunal ('**Tribunal**'), in accordance with section 254(2)(b) of the *Planning Act 2016* (PA) **changes** the conditions of development approval given by the Assessment Manager by:

1. Deleting the reference to Fraser Coast Regional Council as a referral agency for the Building Development Application in relation to QDC MP 1.4 – *Building over or near relevant infrastructure*, including the deletion of Conditions directed to be attached to the development approval pursuant to the Concurrence Agency Response, Reference No. CAR 25/0261, dated 30 July 2025.

For the reasons set out in paragraphs [41]-[51] the appeal is upheld.

Background

1. The subject site is a 1370m², irregularly shaped allotment located in an established residential neighbourhood. The allotment is encumbered by two sewer mains that

generally parallel the western and southern boundaries intersecting at a sewer access chamber located in the south-western corner of the premises.

2. A Building Development Approval was issued for the construction of a steel portal-framed shed with an attached awning on the subject site. At the final inspection stage, an error in the siting of the building was identified, giving rise to particular concern regarding the building's proximity to the sewer main running generally parallel to the southern boundary.
3. In the absence of sufficient evidence at that time demonstrating compliance of the building with QDC MP 1.4 – Building over or near relevant infrastructure, discussions were held between the appellant, the respondent and the referral agency. Those discussions culminated in the respondent submitting a retrospective application to the referral Agency on behalf of the appellant.
4. In assessing the retrospective application to build over or near relevant infrastructure, the referral agency formed the view that the as-constructed building and structure did not satisfy the applicable performance requirements of QDC MP 1.4. Consequently, the referral agency directed the assessment manager to impose the following conditions on any subsequent Building Development Approval required to amend the existing approval:
 1. *Construction of a new sewer clear of the existing building in accordance with SC6.3 - Planning Scheme Policy for Development Works and provide sufficient clearance from the shed to the satisfaction of Council. All works must be at the Developer's cost.*
Note: Prior to construction of the sewer, an operational works application along with detailed engineering drawings must be submitted to and approved by Council.
 2. *The existing sewer under the shed must be decommissioned by Council at the Developer's cost.*
 3. *The decommissioned sewer must be filled with an incompressible material at the Developer's cost sufficient to bear the weight of the building without collapse.*
 4. *The new sewer must be accepted on maintenance by Council.*
5. The appellant, dissatisfied with the conditions of the subsequent Building Development Approval required to amend the existing approval, lodged an appeal with the Development Tribunal Registry on 26 November 2025.

Jurisdiction

6. The appeal is within the jurisdiction of the Tribunal.
7. The Decision Notice the subject of these proceedings relates to a building development application decided under section 60 of the *Planning Act 2016* (PA).
8. Table 1 of schedule 1 of the PA states that an appeal may be made against a provision of the development approval.
9. Pursuant to schedule 1, section 1(2)(g) a relevant matter includes a matter relating to the *Building Act 1975* (BA), other than a matter that may be decided by the Queensland Building and Construction Commission.
10. Accordingly, table 1 of schedule 1 applies, and the Tribunal has jurisdiction to hear an appeal against a provision of the building development approval.

Decision framework

11. Generally, the appellant bears the onus of proof to establish the appeal should be upheld.
12. 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 pursuant to section 253(4) of the PA.
13. 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).
14. The Tribunal is required to decide the appeal in one of the ways mentioned in section 254(2) of the PA.

Material considered

15. The material considered in arriving at this decision was:
 - (a) the Form 10 Notice of Appeal, grounds for appeal and correspondence accompanying the appeal lodged with the Tribunals registrar on 26 November 2025;
 - (b) the Referral Agency (Concurrence) Response, Ref. CAR25/0261 dated 30 July 2025;
 - (c) the Decision Notice and Approved Plans given by the Respondent, Ref. R24342 (Amended), dated 25 November 2025;
 - (d) the *Planning Act 2016* (PA);
 - (e) the *Planning Regulation 2017* (PR);
 - (f) the *Building Act 1975* (BA);
 - (g) the *Building Regulation 2021* (BR);
 - (e) the Queensland Development Code (QDC), Mandatory Part 1.4 – Building over or near relevant infrastructure (QDC MP 1.4);
 - (f) the *Water Supply (Safety and Reliability) Act 2008* (WSA);
 - (h) written submissions from the Appellant forming part of the Appeal Documentation;
 - (g) referral Agency's Statement of Reasons;
 - (h) respondent's Response Report: Councils Statement of Reasons;
 - (i) Fraser Coast Regional Council's Infrastructure Asset online mapping system.

Findings of fact

The Tribunal makes the following findings of fact:

16. On 22 May 2024, the assessment manager issued a Building Development Approval (the original approval) for the construction of a 17.8m wide x 22.0m long steel portal-framed shed, together with an attached 3.0m wide x 22.0m long awning (the subject building) at 5 Campbell Street, Torquay Qld 4655 (the subject property).
17. The assessment manager assessed and approved the subject building as a class 10a building or structure being a private garage, carport or the like.
18. At the date of issue of the original approval, the subject property comprised a 1370m² irregularly shaped, vacant allotment. The allotment is encumbered by two sewer mains

that generally parallel the western and southern boundaries intersecting at a sewer access chamber located in the south-western corner of the premises.

19. A final inspection of the completed shed and awning was conducted by the assessment manager on 17 September 2024. During that inspection, an apparent error in the siting of the building was identified with particular concern being raised in relation to the building's proximity to the sewer main running generally parallel to the southern boundary.
20. Building work for the alteration or repair of an existing class 10 building or structure; or the construction of a new class 10 building or structure must comply with the Queensland Development Code (QDC), Mandatory Part 1.4 – Building over or near relevant infrastructure (QDC MP 1.4) where, when the work is completed, any part of the building or structure will be located within 3m from the vertical plane along the centreline of any relevant infrastructure such as a sewer operated by or for a sewerage service provider.
21. The builder for the work was subsequently requested to provide evidence demonstrating how the building complied with QDC MP 1.4.
22. Compliance with QDC MP 1.4 is achieved by complying with the specified Performance Requirements which may be satisfied by one of the following methods:
 - (a) formulation of a Performance Solution; or
 - (b) compliance with the specified Acceptable Solutions; or
 - (c) a combination of (a) and (b).
23. The builder was unable to provide evidence demonstrating how the building complied with QDC MP 1.4 and informal discussions were held between the Appellant, Respondent and Referral Agency, culminating in the Respondent submitting an application to the Referral Agency on behalf of the Appellant.
24. Details of the relevant infrastructure taken from Fraser Coast Regional Council's Infrastructure Asset online mapping system are as follows:
 - (a) Gravity Sewer Main, Asset ID 33855 (GSM33855), generally parallels the western boundary at an average depth of 1300mm; falls from north to south.
 - (b) Intersecting Sewer Access Chamber, Asset ID 13918 (SAC13918), located in the south-western corner of the allotment has an invert depth of 1820mm;
 - (c) Gravity Sewer Main, Asset ID 19771 (GSM19771), generally parallels the southern boundary at an average depth of 1900mm, falls west to east;
 - (d) Fraser Coast Council confirms the Gravity Sewer Mains are 150mm in diameter, constructed of vitreous clay, with internal spiral lining
25. Neither the respondent nor the referral agency identified the proximity of the building and structure to GSM33855 as an area of compliance concern.
26. The location of the as-constructed building and structure indicates that approximately 21.320 lineal meters of the external wall, footings, slab and bored piers of the subject building and structure are located within 1.0m of the vertical plane extending along the centreline of GSM19771.
27. At its shallowest, that being the invert level at SAC13918, Gravity Sewer Main, Asset ID 19771 is 1827mm in depth from lid level of the chamber falling eastward at a grade of approximately 1:171.

28. The approved plans and specifications include footings detail incorporating bored piers the deepest of which along gridline 8, being the directly adjacent to GSM19771, is bored pier reference BP2Ba nominated to be 1100mm in depth located approximately 20m downstream from the centre of SAC13918.
29. The calculated depth of GSM19771 at 20m downstream from the centre of SAC13918 given a fall of 1:171 or 5.85mm per metre is 1944mm, which provides a clearance of 694mm above the 150mm diameter pipework.
30. The subject building is a Class 10 building whose walls, columns and roof are constructed from materials other than concrete and masonry. Accordingly, the building satisfies the definition of a "light-weight class 10" under section 6 of QDC MP 1.4.
31. To satisfy QDC MP 1.4 via the specified Acceptable Solutions, a light-weight Class 10 building or structure must satisfy the following criteria:
- (a) The relevant infrastructure must be a sewer with a nominal diameter of not more than 225mm that is not a pressure pipeline (Acceptable Solution A1(1)(b)(i)); and
 - (b) The structure must have footings that:
 - (i) comply with either AS1684 or AS2870 (Acceptable Solution A1(2)(iii)(A)); or
 - (ii) are certified by a Registered Professional Engineer of Queensland as compliant with QDC MP 1.4 with Performance Requirement P1 (Acceptable Solution A1(2) (iii) (B)); and
 - (c) Excavation for the work must not be carried out within 600mm of the outer wall of the infrastructure (Acceptable Solution A1(3)); and
 - (d) Compaction by vibration for the work must not be carried out within 2m of the vertical plane along the centreline of the sewer (Acceptable Solution A1(4)); and
 - (e) The use of fill must not result in over 1m of additional fill being placed over the infrastructure, unless the fill is associated with a retaining wall and the infrastructure is bridged over in accordance with a design that is certified by a Registered Professional Engineer of Queensland (Acceptable Solution A1(5)(a) & (b)); and
 - (f) Not more than 10m of the building or structure extends continuously over the vertical plane along the centreline of the sewer (Acceptable Solution A2.2(a)); and
 - (g) It provides any sewer access chamber maintenance cover with a circular clearance zone of 1500mm radius along the horizontal plane from the centre of the cover at finished surface level extending vertically to an infinite height, does not cause ponding on the upper surface of the cover and does not result in fill being placed over the access chamber maintenance cover (Acceptable Solution A2.2(b)); and
 - (h) It provides a clear zone for the connection having a horizontal base extending 1m clear of all parts of the connection at finished surface level; and a height of 2.4m from the finished surface level (Acceptable Solution A2.2(c) (i) and (ii)).
32. To satisfy QDC MP 1.4 via the specified Performance Requirements, a light-weight Class 10 building or structure must, in relation to a sewer:
- (a) not adversely affect the operation of relevant infrastructure (Performance Requirement P1(a)); and
 - (b) not place a load on the infrastructure that adversely affects its structure (Performance Requirement P1(b)); and

- (c) be constructed and located so its integrity is unlikely to be affected as a result of the infrastructure being maintained or replaced; or failing to function properly (Performance Requirement P1(c)(i) & (ii)); and
 - (d) allow any 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 (Performance Requirement P2(a)); and
 - (e) allow the relevant service provider the access above the infrastructure required for inspecting, maintaining or replacing the infrastructure (Performance Requirement P2(b)).
33. Circa June/July 2025, the respondent, on behalf of the applicant, submitted an application (request for referral agency advice) to Fraser Coast Regional Council as the referral agency. This application sought to demonstrate that the existing building and structure satisfied the performance criteria prescribed by QDC MP 1.4 in relation to the sewer main via a combination of the compliance with the specified Acceptable Solutions and the formulation of a Performance Solution.
34. In relation to Performance Requirement P1 of QDC MP 1.4, the respondent proposed that the requirements are met via compliance with the Acceptable Solutions noting that:
- (a) the footings and slab design for the subject building comply with AS 2870, citing the approved plans and specifications as justification of this position; and
 - (b) no excavation work for the footings and slab for the subject building occurred within 600mm of the relevant sewer infrastructure (GSM19771), citing the approved plans and specifications as justification of this position.
35. In relation to Performance Requirement P2 of QDC MP 1.4, the respondent proposed that the requirements were met via a Performance Solution that sought to rely upon two hypothetical building configurations that individually satisfy Acceptable Outcome A2.2(2)(a) of QDC MP 1.4 as a comparative basis for demonstrating compliance with Performance Requirement P2(b).
36. On 30 July 2025, Fraser Coast Regional Council, as the relevant service provider and referral agency prescribed under Schedule 9, Table 7 of the PR, issued Concurrence Agency Response Ref. CAR25/0261, directing the Assessment Manager to impose the following conditions on any subsequent building development approval:
1. *Construction of a new sewer clear of the existing building in accordance with SC6.3 - Planning Scheme Policy for Development Works and provide sufficient clearance from the shed to the satisfaction of Council. All works must be at the Developer's cost. Note: Prior to construction of the sewer, an operational works application along with detailed engineering drawings must be submitted to and approved by Council;*
 2. *The existing sewer under the shed must be decommissioned by Council at the Developer's cost.*
 3. *The decommissioned sewer must be filled with an incompressible material at the Developer's cost sufficient to bear the weight of the building without collapse.*
 4. *The new sewer must be accepted on maintenance by Council.*

Items 1 to 4 were to be completed prior to the issue of a final building certificate for the shed.

37. In directing the imposition of these conditions, the Referral Agency formed the view that:
- (a) the shed and its pier footings were within the zone of influence of the sewer and would place additional load on the infrastructure that would adversely affect its structure, increasing the risk of damage to the infrastructure via cracking and the internal spiral lining deforming, adversely affecting the operation of the sewerage infrastructure;
 - (b) the shed would need to be partially demolished for the sewerage infrastructure to be maintained or replaced;
 - (c) the proposed performance solution did not satisfy Performance Criteria P2(b) as the shed does not allow the Council the access above the sewer required for inspecting, maintaining and replacing the infrastructure; and
 - (d) the building work for the construction of the shed did not comply with the relevant acceptable outcomes of QDC MP 1.4; and
 - (e) the performance solution does not comply with, or address, performance requirement P1(a), (b) and (c).
38. On 25 November 2025, the Assessment Manager issued Amended Building Development Approval (the amended approval) Ref. R24342 (Amended), which imposed the conditions directed by the referral agency. Those conditions are the subject of this appeal.
39. The Tribunal must decide the proceedings based on the laws in effect when the application or request was properly made.
40. The Tribunal must hear and decide the appeal by way of a reconsideration of the evidence that was before the person who made the decision appealed against which, in this instance, means reconsideration of the application submitted to the Referral Agency which led to the direction to impose the subject conditions.

Reasons for the decision

41. The subject building and structure satisfy the definition of a “light-weight class 10” under section 6 of QDC MP 1.4 and may be assessed as such.
42. The relevant infrastructure is a sewer with a nominal diameter of not more than 225mm and is not a pressure pipeline.
43. Section 3 of the Form 15 – Compliance Certificate for Building Design or Specification, signed by Mr Alexander Filonov, RPEQ No. 8094, and forming part of the Building Approval Documents, confirms that the footing and slab options for the subject building and structure were designed in accordance with AS 2870.
44. The grounds for appeal, correspondence accompanying the appeal, the characteristics of the relevant infrastructure and calculations provide no evidence that excavation for the work was carried out within 600mm of the outer wall of the infrastructure.
45. The grounds for appeal and the correspondence accompanying the appeal provide no evidence that compaction by vibration was carried out within 2m of the vertical plane along the centreline of the sewer as part of the development.
46. The photographs contained within the grounds for appeal and the correspondence accompanying the appeal provide no evidence that fill exceeding 1m in depth was placed over the infrastructure, nor is there evidence of the construction of any retaining walls as part of the development.

47. Despite approximately 21.320m of the building and structure being located within 1.0m of the vertical plane extending along the centreline of GSM19771, the evidence before the Tribunal does not establish that more than 10m of the building or structure extends continuously over that vertical plane. Rather, having regard to Council's Infrastructure Asset Mapping System, the approved documentation and the photographic evidence, the Tribunal finds that the building and structure is located predominantly adjacent to GSM19771 and does not extend more than 10m continuously over the vertical plane along its centreline for the purposes of Acceptable Solution A2.2(2)(a) noting that QDC MP1.4 does not stipulate a critical minimum offset from the sewer in relation to the location of a lightweight Class 10 building or structure.
48. The grounds for appeal and the correspondence accompanying the appeal confirm that Sewer Access Chamber, Asset ID 13918 has been provided with a clearance zone of 1500mm radius along the horizontal plane from the centre of the cover at finished surface level extending vertically to an infinite height.
49. The photographs contained within the grounds for appeal and the correspondence accompanying the appeal provide no evidence to indicate the ponding of water on, or the placement of fill over, the upper surface cover of Sewer Access Chamber, Asset ID 13918.
50. A review of Fraser Coast Regional Council's online Infrastructure Asset Mapping System confirms that the nearest sewer connection is located within the adjoining property, approximately 3.0 m from the subject building, and is clear of any obstruction caused by the building or structure
51. Accordingly, having regard to paragraphs [41] to [50] the Tribunal is satisfied that the as-constructed light-weight Class 10 building and structure complies with Acceptable Solutions A1(1)(b)(i), A1(2)(iii)(A), A1(3), A1(4), A1(5)(a) and (b), A2.2(a), A2.2(b) and A2.2(c) of QDC MP 1.4.
52. The Tribunal finds that the corresponding Performance Requirements P1(a), P1(b), P1(c)(i) and (ii), P2(a) and P2(b) are satisfied through compliance with the Acceptable Solutions without the need for a Performance Solution to be formulated. Accordingly, the Assessment Manager was not required to refer the retrospective application to the relevant service provider for assessment as a referral agency.
53. The Tribunal acknowledges the referral agency's concern that the location of the building may constrain access to GSM19771 for its future inspection, maintenance or replacement. However, Performance Requirement P2(b) is not to be considered independently of the compliance pathways expressly provided by QDC MP 1.4 which confirms that where the applicable Acceptable Solutions is satisfied, the corresponding Performance Requirement is satisfied.

Don Grehan
Development Tribunal Chair

Date: 11 September 2026

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:

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