

Gladstone Regional Council

Council Policy

Title	BUILDING OVER OR NEAR COUNCIL INFRASTRUCTURE
Policy Number	P-2023-11
Business Unit/s	CUSTOMER EXPERIENCE
Date of Adoption	
Resolution Number	
Date Repealed	

1.0 PURPOSE:

The purpose of this policy is to:

1. Protect Council from potential impacts on Council Infrastructure from activities associated with building work over or near Council infrastructure; and
2. Provide clear guidance on Council's expectations on the application of the Queensland Development Code (QDC) MP1.4 'Building over or near relevant infrastructure' in relation to:
 - Building work that is not exempt under Chapter 1 and/or cannot meet the requirements of Chapter 3 (Acceptable Solutions) as contained in QDC MP1.4;
 - Light-Weight Class 10 Buildings and Structures;
 - The Repair and Replacement of Class 10B Pre-Existing Buildings and Structures over or near Council infrastructure; and
 - Requests for approvals of Pre-Existing Unapproved Buildings or Structures over or near Council infrastructure.
3. Set the criteria for when an application is required for Class 2 to 9 Building Work over or near Council infrastructure.

2.0 SCOPE:

This policy applies to Building Work over or near Council Infrastructure that is:

1. For new or repair/replacement building work for Class 1 and 10 Buildings and Structures which cannot meet an 'Acceptable Solution' under QDC MP1.4 'Building over or near relevant infrastructure' and an 'Alternative Solution' is proposed; and
2. For Class 2 to 9 Buildings and Structures where building work is proposed in close proximity to Council Infrastructure (within 5 metres of the infrastructure, or for ground anchors or rock bolts, within 10m of the infrastructure) .

This Policy does not apply where:

1. Any public utility easement (including an easement for sewerage, water or drainage purposes) is registered over Council Infrastructure which prohibits or restricts construction of structures in the easement area, in which case the Building Work will be governed by the terms of the easement; or
2. A requirement for an approval under *Local Law No. 1 (Administration) 2011* that applies for Building Work within Council controlled roads or areas.

3.0 RELATED LEGISLATION:

- *Building Act 1975*
- *Building Code of Australia*
- *Building Regulation 2016*
- *Local Government Act 2009*
- *Planning Act 2016*
- *Planning Regulation 2017*
- *Plumbing and Drainage Act 2018*
- *Plumbing and Drainage Regulation 2019*
- *Professional Engineers Act 2002*
- *Water Supply (Safety and Reliability) Act 2008*
- *Workplace Health and Safety Act 2011*

4.0 RELATED DOCUMENTS:

- Building Code of Australia contained within the National Construction Code Building and Plumbing Newsflash 604, published by the Queensland Government
- Capricorn Municipal Development Guidelines (CMDG)
- Queensland Development Code, MP1.4 Building over or near relevant infrastructure

5.0 DEFINITIONS:

To assist in the interpretation of this policy the following definitions apply:

Acceptable Solution means Building Work that complies with the Acceptable Solutions column of Chapter 3 of the Queensland Development Code MP1.4 Building over or near relevant infrastructure

Alternative Solution means proposed Building Work that does not meet an exemption under Chapter 1 or the requirements of the Acceptable Solutions column of Chapter 3 of the Queensland Development Code MP1.4 Building over or near relevant infrastructure

Building Work means building work as defined by section 5 of the *Building Act 1975* (Qld) for any building or structure

CCTV means closed-circuit television. It is also known as video surveillance. Closed circuit means that the cameras transmit footage to a closed audience.

Class 1 Building or Structure is as defined under the *Building Code of Australia* contained within the *National Construction Code*

Class 10 / Class 10A, 10B Building or Structure is as defined under the *Building Code of Australia* contained within the *National Construction Code*

Class 2 to 9 Building or Structure is as defined under the *Building Code of Australia* contained within the *National Construction Code*

Council means Gladstone Regional Council

Council Infrastructure means relevant infrastructure as defined under QDC MP1.4 which is owned and/or controlled by Council (for example: sewers, water mains, stormwater drains and combined sanitary drains)

Light-Weight Class 10 Building or Structure is as defined in the Queensland Development Code MP1.4 Building over or near relevant infrastructure and as further defined in Attachment 1 to this Policy, Building and Plumbing Newsflash 604, published by the Queensland Government

Pre-Existing Building or Structure means an existing building or structure that was constructed prior to the commencement of the Queensland Development Code MP1.4 Building over or near relevant infrastructure (commencement date: 13 December 2013)

QDC MP1.4 means Queensland Development Code MP1.4 Building over or near relevant infrastructure

Repair or Replacement of Pre-Existing Class 10B Building or Structure means:

- a Pre-existing 10B Class Building or Structure as defined in this Policy that requires replacement or repair as the condition of the building or structure is a safety risk or is likely to fail if not replaced or repaired; and
- the owner seeks to repair and/or replace the building or structure in the same position and/or alignment as the existing building or structure

For the purposes of this Policy the proposed Building Works must not include any extension or other significant change as determined at Council's sole discretion, to be considered a repair or replacement

RPEQ means Registered Professional Engineer of Queensland

Water Main includes the pipes and associated infrastructure that carries potable water, raw water and recycled water.

6.0 POLICY STATEMENT:

6.1 Background

Council as an essential service infrastructure provider (water, sewerage and drainage) must ensure that this infrastructure is protected from damage and can be operated, repaired and maintained in a safe, efficient and effective way. Where this infrastructure is located on or near private property, these responsibilities must be balanced against the rights of property owners to use and develop their land without unnecessary constraints and to minimise the risk of private property damage and/or harm to people as a result of Council operating, maintaining and repairing its infrastructure.

Class 1 and 10 Buildings or Structures

Council prefers and strongly encourages all Class 1 and 10 building work to comply with the

‘Acceptable Solutions’ under the Queensland Development Code MP1.4 ‘Building over or near Relevant Infrastructure’. Where an ‘Acceptable Solution’ is proposed there is no requirement for building proponents to obtain an additional Council approval to build over or near Council infrastructure.

Where an ‘Alternative Solution’ is proposed (ie. building work does not comply with an Acceptable Solution), the application for building work must be referred to Council for ‘Concurrence Agency’ assessment. Alternative Solutions that restrict the available space for the operation, maintenance and repair of Council infrastructure can be problematic as Council’s standard equipment and work practices may not be suited to a reduced workspace and therefore may:

- result in additional costs to operate, maintain and repair the infrastructure; and/or
- reduce repair and maintenance options; and/or
- increase safety risks; and/or
- result in the need to demolish the building/structure to enable Council to maintain or repairing Council Infrastructure.

Further, should an Alternative Solution fail and there is no recourse available via third parties, the associated costs are generally borne by Council / Ratepayers.

Class 2 to 9 Buildings and Structures

The impact on Council infrastructure of Class 2 to 9 buildings and structures needs to be assessed based on the type of building work proposed.

This Policy sets the criteria to determine if an application for Class 2 to 9 building work proposed in close proximity to Council infrastructure requires an application for assessment. The application process will allow building proponents to:

- where necessary, consider other building footprints/options prior to any costs being incurred and work being carried out;
- ensure that building work proposed does not interfere with or place a load on Council infrastructure which could lead to the proponent being asked to remove the building or structure and/or relocate, repair or replace damaged infrastructure;
- incur fines under the *Water Supply (Safety and Reliability) Act 2008*.

6.2 Class 1 and 10 Buildings and Structures

6.2.1 New Building Work (excluding Repair or Replacement of Pre-Existing Building or Structure)

Where Alternative Solutions are proposed Council will generally require and provide the following advice to proponents:

- a. That the proposed building work be changed to achieve compliance with Acceptable Solutions or an exemption under QDC MP1.4; or
- b. That the building proponent consider applying to ¹relocate the existing Council Infrastructure so that the Building Work can achieve compliance with Acceptable Solutions or exemption

¹ The relocation of Council Infrastructure will be performed by Council or an approved contractor. The design, materials and construction method must also be approved by Council and in accordance with Council’s engineering standard requirements. Council will inspect all open trenches prior to backfilling. All associated costs will be borne on the property owner/developer.

under QDC MP1.4.

- c. Where a building proponent seeks to proceed with an Alternative Solution (ie. Acceptable Solution/s cannot be achieved), the following requirements are likely to be imposed:
- The Alternative Solution must be RPEQ certified to achieve the performance criteria of Chapter 3 of QDC MP1.4
 - Lodgement of current ²CCTV data for the infrastructure proposed to be impacted by the Alternative Solution, at the proponent's cost (ie. this may be pre, post and/or at particular stages of the work)
 - Subject to the condition of the proposed impacted infrastructure, the building proponent may be required to contribute to the early replacement, or early Council planned relocation, of the impacted infrastructure.

6.2.2 Repair or Replacement of Pre-Existing Class 10B Building or Structure

Applications to repair or replace a Pre-Existing Class 10B Building or Structure over or near Council Infrastructure which is not exempt under Chapter 1 or does not meet the requirements of Chapter 3 (Acceptable Solutions) of QDC MP1.4 will be considered. They will be assessed as an Alternative Solution and take into consideration the following matters to determine reasonable and relevant conditions:

- a. the building rights of property owner prior to the commencement of QDC MP1.4;
- b. the purpose of the building or structure and whether it can be practically relocated (ie. it may not be practical to relocate load bearing retaining walls);
- c. protection of the infrastructure and the community's long-term interests.

6.2.3 Light-Weight Class 10 Buildings and Structures

Council endorses the definition of Light-Weight Class 10 Buildings and Structures as clarified in Attachment 1 to this Policy 'Building and Plumbing Newsflash 604'.

Should Council receive building approvals for Light-Weight Class 10 Buildings or Structures over or near Council infrastructure granted/certified by external parties (ie. private building certifiers, Registered Professional Engineer of Queensland), that are outside of that defined in Attachment 1, Council may take compliance action or other action against the external parties and/or the property owner to ensure the long-term protection of Council Infrastructure.

6.2.4 Requests for Building Approval for an Unapproved Pre-existing Class 1 or Class 10 Building or Structure constructed over or near Council Infrastructure

Should a property owner seek a building approval for an Unapproved Pre-existing Building or Structure over or near Council infrastructure, which is not exempt under Chapter 1 of QDC MP1.4 or does not meet the Acceptable Solutions of QDC MP1.4, Council may impose all or some of the following requirements depending on the type of building or structure being assessed:

- a. Lodgement of the required building and plumbing application/s and associated fees (with the Assessment Manager/s).

² CCTV data will be obtained by Council at the proponent's cost.

- b. Lodgement of survey data (prepared by a Registered Surveyor) to evaluate the relationship between the existing building/s and/or structure/s and Council Infrastructure.
- c. Certification of the constructed building/s or structure/s by a RPEQ, if required, at Council's sole discretion.
- d. Lodgement of current ³CCTV data for the Council infrastructure impacted by the building work at the proponent's cost, if required, at Council's sole discretion.
- e. Any other conditions deemed relevant.

6.3 Class 2 to 9 Buildings and Structures

Proposed Class 2 to 9 building works as defined in Chapter 1 S.4 (5)(a) of QDC MP1.4, requires an application to Council for assessment of the potential impacts on Council infrastructure where the proposed building work does not meet the criteria of Chapter 1 S.4 (5) (b) to (d) of the QDC MP1.4. Council will generally require and provide the following advice to proponents:

- 6.3.1 That the building proponent amend the proposed building footprint to achieve compliance with Chapter 1 S.4 (5) (b) to (d) of the Queensland Development Code MP1.4; or
- 6.3.2 That the building proponents consider applying to ⁴relocate existing Council Infrastructure so that the Building Work achieves compliance with Chapter 1 S.4 (5) (b) to (d) of the Queensland Development Code MP1.4.
- 6.3.3 Where proposed building work cannot achieve compliance with Chapter 1 S.4 (5) (b) to (d) of QDC MP1.4, the following requirements are likely to be imposed:
 - a. RPEQ certification that demonstrates that the proposed building work:
 - will not adversely affect the operation of Council's infrastructure or place a load on Council's infrastructure that adversely affects it; and
 - the integrity of proposed building work is unlikely to be affected as a result of Council's infrastructure being maintained, replaced or failing to function properly; and
 - when completed, the building work allows any gas that builds up in Council's infrastructure to escape in a way that ensures individuals in close proximity to a maintenance cover for Council's infrastructure are not harmed by the gas; and
 - when completed the building work allows Council the required access above its infrastructure to inspect, maintain or replace the infrastructure.
 - b. Lodgement of current ⁵CCTV data for the Council infrastructure proposed to be impacted by the building work, at the proponent's cost (ie. this may be pre, post and/or at particular stages of the building work), as required, at Council's sole discretion.

³ CCTV data will be obtained by Council at the proponent's cost.

⁴ The relocation of Council Infrastructure will be performed by Council or an approved contractor. The design, materials and construction method must also be approved by Council and in accordance with Council's engineering standard requirements. Council will inspect all open trenches prior to backfilling. All associated costs will be borne on the property owner/developer.

⁵ CCTV data will be obtained by Council at the proponent's cost.

- c. Subject to the condition of the proposed impacted infrastructure, the building proponent may be required to contribute to the early replacement, or early Council planned relocation, of the impacted infrastructure.

6.4 Delegation to the Chief Executive Officer

Council shares its decision making and discretionary powers as contained in this Policy through delegation of Policy powers to the Chief Executive Officer.

7.0 ATTACHMENTS:

1. Building and Plumbing Newsflash 604

8.0 REVIEW MECHANISM:

This policy will be reviewed when any of the following occur:

1. The related legislation or governing documents are amended or replaced; or
2. Other circumstances as determined by resolution of Council or the CEO; or
3. Five years from date of adoption.

TABLE OF AMENDMENTS			
Document History	Date	Council Resolution No.	Notes (including the prior Policy No, precise of change/s, etc)
Originally Approved	3 December 2013	G/13/1819	Formerly Policy No. P-2013/29
Amendment 1	17 November 2015	G/15/2646	Formerly Policy No. P-2015-36
Amendment 2			

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LEISA DOWLING
CHIEF EXECUTIVE OFFICER

ATTACHMENT 1 – BUILDING AND PLUMBING NEWSFLASH 604

Building and Plumbing Newsflash 604

Light-weight class 10 buildings and structures under the Queensland Development Code Mandatory Part 1.4 – Building over or near relevant infrastructure

Purpose

To clarify the intent of the concessions for light-weight class 10 buildings and structures under the Queensland Development Code Mandatory Part 1.4 - Building over or near relevant infrastructure (QDCMP1.4), version 1.2.

Background

The QDCMP1.4 applies to building work for buildings and structures to be carried out on, or adjacent to, a lot that contains relevant infrastructure (sewers, water mains, stormwater drains and combined sanitary drains).

Building work must be assessed against QDCMP1.4 as part of a building development application.

The QDCMP1.4 provides acceptable solutions for the:

- location of footings, excavations, compaction, piles and piers
- design of footings in certain instances
- extent filling can be undertaken
- clearance zones around infrastructure.

Concessions for light-weight class 10 buildings and structures are also provided in the acceptable solutions, specifically A1(2)(b)(i) to (iii) and A2.2.

Where QDCMP1.4 applies and a building or structure does not comply with an acceptable solution of the code, a certifier must refer the application to the service provider for assessment.

Issue

An issue has been identified concerning the light-weight concessions being applied to complex, bulky and integrated buildings and structures, contrary to the intent of the provision.

This has resulted in structures being built that:

- cannot be easily removed or rebuilt without considerable effort and expense
- adversely affect the operation and/or place an adverse load on the infrastructure
- restrict the service provider's access to infrastructure.

Applying light-weight concessions

The QDCMP1.4 defines a building or structure to be 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 include a:

- steel-framed shed, carport or garage with a slab
- timber patio, deck or gazebo
- fiberglass or polyethylene rainwater tank.

This definition and the subsequent concessions are to be strictly and narrowly applied. Typical light-weight class 10s have the appearance of a building or structure that is **ancillary** to the main building.

Buildings and structures that are not light-weight class 10

For the purposes of QDCMP1.4, the following should not be classified as light-weight class 10s:

- **class 10 buildings or structures with roofing that is integral to, or a continuation of, the main building's roof.**

Examples include buildings and structures that are connected to, and project directly out from, the main building. These structures are under the same roofline of the main building, i.e. their roofs are a continuation of the roof trusses of the main building.

They are often constructed at the same time as the main building e.g. integrated outdoor entertainment rooms, entranceways and garages/carports.

- **class 10 buildings or structures that form an integral part of the design of the main building**

Examples include buildings and structures that form an integral part of the design of the main building, such as a porch whose floor is connected to the main structure of the house, rather than being attached to the house.

Buildings and structures that are light-weight class 10

For the purposes of QDCMP1.4, the following can be classified as light-weight class 10s:

- patio structures of simple timber post and beam construction
- patio structures made of prefabricated elements i.e. polycarbonate roofed patios
- simple decks and gazebos that are attached to, rather than form part of, the main building
- modest carports and garages
- steel sheds
- rainwater tanks.

Note: the examples provided are not exhaustive but demonstrate how to apply the principles of the light-weight class 10 definition.

More information

To view the QDCMP1.4, please visit the [Business Queensland website](#).

Visit the Queensland Government legislation website to view the [Building Act 1975](#) and the [Building Regulation 2021](#).

Contact us

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