

# QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL

CITATION: *Australian Sunrise Citrus Pty Ltd & Anor v Body Corporate for Portside Noosa Waters* [2021] QCATA 69

PARTIES: **AUSTRALIAN SUNRISE CITRUS PTY LTD**  
**KERREE BEZENCON**  
(appellants)  
  
v  
**BODY CORPORATE FOR PORTSIDE NOOSA WATERS**  
(respondent)

APPLICATION NO/S: APL021-20

MATTER TYPE: Appeals

HEARING DATE: 19 March 2021

DELIVERED ON: 13 April 2021

DECISION OF: Member Roney QC

ORDERS: **The appeal is dismissed.**

CATCHWORDS: APPEAL AND NEW TRIAL – APPEAL – GENERAL PRINCIPLES – RIGHT OF APPEAL – WHEN APPEAL LIES – ERROR OF LAW – where s 289(2) of the *Body Corporate and Community Management Act 1997* (Qld) allows a person aggrieved by an Adjudicator’s order to appeal on a question of law to the Queensland Civil and Administrative Tribunal – what is error of law – whether there was an error of law

REAL PROPERTY – STRATA AND RELATED TITLES – MANAGEMENT AND CONTROL – BYLAWS – whether Body Corporate in General Meeting acted lawfully in passing motions put forward by a lot owner to rectify damage to parts of lots by replacing and meeting the cost of replacing decking on the lots – where body corporate passed resolutions to rectify damage to parts of lots — whether to order that resolutions void - what is essential supporting framework – whether timber decking is essential supporting framework.

WORDS AND PHRASES- essential supporting framework

*Body Corporate and Community Management Act 1997*  
(Qld), s 94(2)

*Queensland Civil and Administrative Tribunal Act 2009*  
(Qld), s 146

*Body Corporate and Community Management*  
*(Accommodation Module) Regulation 2008* (Qld),  
s 157(1), s 157(2), s 157(4)

Body Corporate and Community Management  
(Accommodation Module) Regulation 2020 (Qld) s 170 ,  
s 182

*Opal Terraces* [2001] QBCCMCmr 348

*Costa D'Ora Apartments* [2006] QBCCMCmr 621

#### APPEARANCES:

Appellant: B Strangman of Counsel instructed by Stratum Legal  
Respondent: Self-represented; R Evans, Secretary and S Turner,  
Chairperson

#### REASONS FOR DECISION

- [1] The appellant, Australian Sunrise Citrus Pty Ltd, is the owner of Lot 1 in Portside Noosa Waters CTS 16592 which is a scheme comprising 20 lots and common property. It is regulated by the *Body Corporate and Community Management Act 1997* (Qld) (**Act**) and the *Body Corporate and Community Management (Accommodation Module) Regulation 2008* (Qld) (**Accommodation Module**). The other appellant is Kerree Bezencon, a director of Australian Sunrise Citrus Pty Ltd and a committee member. The respondent is the Body Corporate. The Chairperson and Secretary of the Body Corporate appeared in the Appeal on behalf of the Body Corporate.
- [2] The appellants brought an application before the Office of the Commissioner for Body Corporate and Community Management alleging that the respondent body corporate had invalidly passed five resolutions at the scheme's annual general meeting held 14 December 2018 which authorised the Body Corporate to undertake and pay for rectification works to the upper or lower decks of lots 8, 9, 13 and 19 in the scheme, respectively. The resolution pursuant to motion 16 purports to authorise, and reimburse the owner of lot 15 for, already completed works to that lot's lower deck.
- [3] Portside Noosa Waters comprised 20 townhouse-style residences on a waterway which ran off the Noosa River at Noosaville. The townhouses had mooring facilities on the waterfront and there was direct access to the Noosa River. The decks about which this Appeal is concerned, and specifically the lower decks, offer views out to the waterfront immediately in front of the townhouses.
- [4] Each unit has a ground floor deck which is marked within the darkened black line that delineates the boundary structure containing each lot, on the BUP 103414 registered in 1995, and each lot has a ground floor exclusive use courtyard, wrapping around its

ground floor deck. The Adjudicator found that a number of lot owners extended their lower decks into their exclusive use areas some 20 years ago. Lot 5's original deck and later extension were fitted improperly in that the deck did not properly allow for water drainage. Following requests for the Body Corporate to attend to maintenance on existing decks and balconies, the committee adopted a general policy that for lower decks, the Body Corporate would be responsible for repair and replacement of all original sections including original decking boards, and owners would be responsible for the costs associated with any disturbance and reinstatement of any extended sections and improvements (such as handrails), and for upper balconies, the Body Corporate would be responsible for tiles, waterproofing, balustrades, soffit linings and the treatment of steel perimeter beams (that is, seemingly all components).

- [5] The orders originally sought included that the purported resolutions were at all times void and that, for works already undertaken, the respondent take reasonable steps to recover from the respective lot owners any costs incurred by the respondent in respect of those works and any funds reimbursed to owners. They sought declarations that resolutions 12 and 13, resolutions 14 and 15, and resolution 16 were void as being contrary to the Act and for orders that, if works have been undertaken under or pursuant to resolutions 12 and 13, or resolutions 14 and 15, the owners of the lots or having the exclusive use of common property upon which those works have been undertaken, are to reimburse the respondent's costs of those works undertaken, within 30 days of the date of the order.
- [6] Orders were also sought that, if any money has been paid or reimbursed under resolution 16, including without limitation to the owner of Lot 15, then the persons to whom those moneys have been paid are to reimburse the respondent, within 30 days of the date of the order.
- [7] Orders were also sought that before any further work was undertaken, or contractors were engaged by the respondent to attend to any works with respect to the lower decks or upper balconies, a qualified, licensed, independent expert or experts first be engaged to report on the state of each relevant deck or balcony, the work (if any) that needs to be done, what portions of that work are the lot owner's responsibility under section 168 of the Accommodation Module, what portions of that work are the respondent's responsibility under section 157(2) of the Accommodation Module, and whether and to what extent, the work for which the respondent is liable under section 157(2) arises as a result of the actions (or inaction) of a person other than the respondent, in that those actions (or inaction) have caused or contributed to the damage or deterioration of part of a lot as provided in section 157(4) of the Accommodation Module.
- [8] The Adjudicator held (*Portside Noosa Waters* [2019] QBCCMCmr 623) that responsibility for maintaining (and if necessary, repairing) scheme property lies with either the body corporate (that is, owners collectively) or otherwise with owners and occupiers individually. Usually, the party responsible for maintenance is also responsible for the cost of it although there are exceptions, for example where a party has caused a need for works that ordinarily would be the responsibility of another party.
- [9] Section 157(1) of the Accommodation Module provides that a body corporate is responsible for maintaining common property in good condition and, if it is structural in nature, in structurally sound condition. It should be noted that there was a new version of the Accommodation Module enacted in 2020 and this Regulation appears to

have come into force on 1 March 2021. What was formerly [Section 157](#) of the Accommodation Module 2008 is now [Section 170](#) of the Accommodation Module 2020. The parties did not identify that there is a new version of the Accommodation Module enacted in 2020 and that the Regulation appears to have come into force on 1 March 2021 in any of their submissions but I reference it for completeness as the issue for determination here may arise for consideration again.

- [10] Section 157(2) of the Accommodation Module 2008 provided that if the scheme is created under a building format plan (**BFP**), as occurred in this case, the body corporate is also responsible for maintaining some parts of owners' lots. Those parts are: balustrades and the like that practically form part of a lot boundary; roofing membranes that provide protection for lots or common property; "foundation structures"; roofing structures providing protection; and "essential supporting framework".
- [11] Section 157(4) of the Accommodation Module 2008 ( now section 170) provided that if a body corporate is responsible for such parts of lots, but part of the deterioration or damage is caused by another person, the body corporate may recover from that person costs (called 'prescribed costs') reasonably attributable to the other person.
- [12] Section 168 of the Accommodation Module provided that an owner is responsible for maintaining that person's lot, unless it is part of the lot for which the body corporate is responsible.
- [13] Section 171 of the Accommodation Module 2008 provided for maintenance obligations that apply to common property which has been designated as a lot's exclusive use area. Unless otherwise provided for in a by-law, an owner is responsible for maintenance and operating costs of parts of common property over which they have been granted exclusive use rights. However, in a BFP, unless otherwise specified in a by-law, the owner is not responsible for any original foundation structures, protective roofing structures, and supporting framework. In the new version of the Accommodation Module enacted in 2020 what was formerly [Section 171](#) of the Accommodation Module 2008 is now [Section 182](#) of the Accommodation Module 2020. The language in the new section 182 is identical to that in the former section 171.
- [14] The Adjudicator was satisfied that it was unreasonable for the Body Corporate to make purported resolutions 12 and 13 in relation to the upper decks and that section 94(2) of the Act was contravened in each instance and that the purported resolutions should be declared void. That finding has not been appealed.
- [15] In relation to the lower decks, the real issue was concerned with the decking boards themselves, not the entirety of the deck structures. That is the issue which is the subject of this Appeal. Even though a balcony may form part of an owner's lot, it has been held that bearers and joists and their associated fixing brackets and bolts are considered to be part of 'essential supporting framework' and therefore the body corporate's responsibility to maintain.
- [16] It may be noted that in a decision handed down 20 years ago in *Opal Terraces* [2001] QBCCMCmr 348 an Adjudicator said that:

In my opinion the bearers and joists are part of the "essential supporting framework" of the building. In applying this provision to the subject balconies, it means that those parts of the joists falling within the upper half of the floor

structure, despite being part of each lot, are the responsibility of the body corporate to maintain (as are the lower bearers which are part of the common property). The decking boards are not essential parts of the framework and remain the responsibility of the owners. The fascia board is also not essential and therefore the responsibility of the owner. In summary, the bearers and joists (plus fixing brackets and bolts) are the responsibility of the body corporate and the fascia and decking (plus nails) are that of owners.

- [17] There appears to have been no evidence before the Adjudicator in *Opal Terraces* about the structural significance of the decking boards in that case or their function as essential supporting framework. No decision appears to have applied the findings in *Opal Terraces*.
- [18] Additionally, it was decided by another adjudicator 15 years ago that the waterproofing membranes on balconies are the responsibility of the body corporate to maintain (*Costa D'Ora Apartments* [2006] QBCCMCmr 621). In that case the adjudicator found that that the balconies there were roofing structures and/or essential supporting framework, and the Body Corporate had a responsibility to maintain the balconies in a “structurally sound condition”.
- [19] Returning to the facts of this case before me, in May 2018, deck repair and extension quotations had been provided in relation to Lots 13, 15 and 19. The quotations included replacement of structural elements and decking boards, and in each case, also allowance for works on extensions of the original decks. In each case, only the extension parts of the works were apportioned and described as the “Owner’s Cost”. Then the committee received correspondence concerning proposed works to the deck of Lot 15. Given a perceived need to undertake repairs without further delay, the owner proposed to proceed with the work and pay for it, if there was an assurance that she would be reimbursed by the Body Corporate for its share. Ms Bezencon objected to the committee giving that assurance without knowing what part of the works was the Body Corporate’s responsibility and whether there had been any contributory negligence by the lot owner in relation to the damage said to require repair.
- [20] As the adjudicator properly held, to the extent that the decks are on title, section 168 of the Accommodation Module applies, except to work covered by section 157(2) (i.e. in this case, materials in respect of accommodation structures and essential supporting framework).
- [21] To the extent that the decks are in an exclusive use area, the works are to earlier improvements to an exclusive use area made by the relevant owners (i.e. earlier extension of a deck). Accordingly, the approval for those works will dictate the maintenance obligations in accordance with section 172 of the Accommodation Module or if there is no approval, as the appellants contend, then sections 171 and 162 of the Accommodation Module applied.
- [22] The respondent Body Corporate argued that it must maintain the original decks on the basis they are caught by section 157(2) of the Accommodation Module, namely they are a “foundation structure” or an “essential supporting framework” that must be maintained in a structurally sound condition by the Body Corporate. The essential issue therefore which was before the Adjudicator, and which arises again for consideration in this Appeal, concerns the proper interpretation of section 157(2) of the Accommodation Module as to whether, on its proper construction, it is the responsibility of the Body

Corporate to maintain, and indeed meet the cost of maintaining elements of the scheme land “that are not common property in a structurally sound condition”, specifically “foundation structures” and “essential supporting framework”, including load-bearing walls. Critically, the appellants’ contention both here and before the Adjudicator, was that the decking component of the lower decks was not a foundation structure or an essential supporting framework.

[23] As I identify later in these reasons, appeals to this Tribunal are only on a question of law. The appellants contend that the Adjudicator erred in law in construing the words “essential supporting framework” where they appeared in section 157(2) of the Accommodation Module as including deck boards in circumstances when that decking formed part of decks constructed within an owner’s lot. It was also contended that the Adjudicator erred in law in finding that the appellants then failed to discharge the burden of proof in establishing that the deck boards were not part of the essential supporting framework.

[24] In relation to the issues which are the subject matter of this appeal, the Adjudicator held as follows:

[79] There is no dispute that the non-original deck extension areas are individual lot owners’ responsibility, and the disputed motions appear to have taken that into account in apportioning costs. It therefore seems to be common ground that the areas of dispute are whether the deck boards on the original decks were the Body Corporate’s or the individual lot owners’ responsibility, and whether any damage to parts of the original deck structure that the Body Corporate was responsible for was contributed to by another person who should therefore contribute to that cost.

[80] The respondent contends that the deck boards are ‘essential supporting framework’ that the Body Corporate is liable to maintain and repair. The legislation is silent as to what constitutes essential supporting framework. As a basis for its position, the respondent points to AS 1684-1975, which describes ‘strip flooring’ as ‘structural’. The term ‘strip flooring’ would seemingly encompass the deck boards the subject of this application. The word ‘structural’ in my view must lend credence to the argument that the deck boards are a ‘supporting’ element, as it is difficult to see a substantial difference in meaning between those words. It is otherwise difficult to see why the standard would differentiate between structural and non-structural flooring if there were not a substantial difference in the purposes they served.

[81] The applicants contend the deck boards are not structural or supporting, because they are not ‘supporting’ anything other than things above them, like furniture. I cannot see anything in the words of the legislation that requires such a narrow interpretation of the words ‘essential supporting framework’. Those words, and especially the word ‘framework’, at least invite the interpretation that any elements that serve to support the integrity of the structure as a whole, including by making it more rigid (for example), can be an element of an essential supporting framework.

[82] I note there is no onus on the respondents to satisfy me that the case put against them by the applicants is not made out. In light of the above, I am not satisfied that the deck boards on the original decks in this case are not part of the ‘essential supporting framework’ for the decks. Therefore, I am not satisfied that the deck boards of the original decks in this case are not the Body Corporate’s responsibility.

[83] In any event, the applicants say, the Body Corporate should have considered recovering costs from the owners for their potential contribution to damage to the original deck, through section 157(4) of the Accommodation Module, whether to foundations, bearers, joists or deck boards. As I have said, I do not consider that there is a positive obligation on a body corporate to investigate whether an owner should pay a contribution to the body corporate's maintenance costs, in the usual course. There is no evidence in this case that the owners did contribute to any damage. Accordingly, in this case I do not consider that section 157(4) provides a basis to invalidate the resolutions concerning the lower decks, and hence disturb the proposals as to the proportions of the costs to be borne by the Body Corporate and the owners.

[84] I have discussed above the issue of whether a body corporate is required to get independent expert advice before it approves an expenditure. In the cases of the lower decks, given the nature of the works and the relatively low cost, I am not satisfied that it was unreasonable for the Body Corporate not to have received independent expert advice for those works. It follows that I do not agree with the applicants that the owner of Lot 9 ought to lose their right to claim compensation because it cannot now be independently established what work was actually required or who is liable for the cost of that work. In any event, I note that owner requested approval to commence the work, upon the Body Corporate's undertaking to make an appropriate reimbursement. That is not the same circumstance as an owner proceeding without approval and then seeking reimbursement.

[85] In the circumstances, I am not satisfied that resolutions 14, 15 and 16 should be invalidated.

[25] The decision of the Adjudicator was given under s 276 of the Act. Section 276 provides as follows:

**276 Orders of adjudicators**

(1) An adjudicator to whom the application is referred may make an order that is just and equitable in the circumstances (including a declaratory order) to resolve a dispute, in the context of a community titles scheme, about—

(a) a claimed or anticipated contravention of this Act or the community management statement; or

(b) the exercise of rights or powers, or the performance of duties, under this Act or the community management statement; or

(c) a claimed or anticipated contractual matter about—

(i) the engagement of a person as a body corporate manager or service contractor for a community titles scheme; or

(ii) the authorisation of a person as a letting agent for a community titles scheme.

(2) An order may require a person to act, or prohibit a person from acting, in a way stated in the order.

(3) Without limiting subsections (1) and (2), the adjudicator may make an order mentioned in schedule 5.

(4) An order appointing an administrator—

- (a) may be the only order the adjudicator makes for an application; or
- (b) may be made to assist the enforcement of another order made for the application.

(5) If the adjudicator makes a consent order, the order—

- (a) may include only matters that may be dealt with under this Act; and
- (b) must not include matters that are inconsistent with this Act or another Act.

[26] The appeal to this Tribunal is governed by s 289 of the Act, which provides:

**289 Right to appeal to appeal tribunal**

(1) This section applies if—

- (a) an application is made under this chapter; and
- (b) an adjudicator makes an order for the application (other than a consent order); and
- (c) a person (the aggrieved person) is aggrieved by the order; and
- (d) the aggrieved person is—
  - (i) for an order that is a decision mentioned in section 288A, definition order—an applicant; or
  - (ii) for another order—
    - (A) an applicant; or
    - (B) a respondent to the application; or
    - (C) the body corporate for the community titles scheme; or
    - (D) a person who, on an invitation under section 243 or 271(1)(c), made a submission about the application; or
    - (E) an affected person for an application mentioned in section 243A; or
    - (F) a person not otherwise mentioned in this subparagraph against whom the order is made.

(2) The aggrieved person may appeal to the appeal tribunal, but only on a question of law.

[27] Section 290 of the Act provides:

**290 Appeal**

(1) An appeal to the appeal tribunal must be started within 6 weeks after the aggrieved person receives a copy of the order appealed against.



(2) If requested by the principal registrar, the commissioner must send to the principal registrar copies of each of the following—

- (a) the application for which the adjudicator's order was made;
- (b) the adjudicator's order;
- (c) the adjudicator's reasons;
- (d) other materials in the adjudicator's possession relevant to the order.

(3) When the appeal is finished, the principal registrar must send to the commissioner a copy of any decision or order of the appeal tribunal.

(4) The commissioner must forward to the adjudicator all material the adjudicator needs to take any further action for the application, having regard to the decision or order of the appeal tribunal.

[28] Section 146 of the *Queensland Civil and Administrative Tribunal Act 2009* (Qld) ('QCAT Act') provides:

**146 Deciding appeal on question of law only**

In deciding an appeal against a decision on a question of law only, the appeal tribunal may—

- (a) confirm or amend the decision; or
- (b) set aside the decision and substitute its own decision; or
- (c) set aside the decision and return the matter to the tribunal or other entity who made the decision for reconsideration—
  - (i) with or without the hearing of additional evidence as directed by the appeal tribunal; and
  - (ii) with the other directions the appeal tribunal considers appropriate; or
- (d) make any other order it considers appropriate, whether or not in combination with an order made under paragraph (a), (b) or (c).

[29] Hence, pursuant to s 146, in deciding an appeal against a decision on a question of law, the Appeal Tribunal is not engaged in a rehearing of the matter. On that basis I excluded new evidence which the respondent sought to adduce on this appeal.

[30] Section 294 of the Act and s 146 of the QCAT Act provide, in effect, that in deciding an appeal, the Appeal Tribunal has all of the jurisdiction and powers of an adjudicator under the Act, as well as the powers of the Appeal Tribunal under the QCAT Act. Section 146 of the QCAT Act provides for the Appeal Tribunal to confirm or amend the decision; set it aside and make its own decision; or set aside the decision and return the matter to the Adjudicator for reconsideration, with any directions it.

[31] The errors of law said to have been committed by the Adjudicator in interpreting section 157(2) of the Accommodation Module rely upon the findings set out above in paragraphs 80 and 81 of the Reasons. As is evident from what the Adjudicator set out at

paragraph 80 of the Reasons, reference has been made to the language in the Australian Standard AS1684 of 1975 which described strip flooring as structural, and by analogy strip flooring was capable of describing decking.

- [32] The finding of the Adjudicator was that the language of section 157(2) “invite[s] the interpretation that any elements that serve to support the integrity of the structure as a whole, including by making it more rigid (for example), can be an element of an essential supporting framework”. Having arrived at that conclusion the Adjudicator appears to have accepted that it followed that deck boards were a “supporting element” although those words do not specifically appear in section 157(2).
- [33] The appellant contends that the finding at paragraph 81 of the Reasons is an error of law insofar as it was held that the effect of the language of section 157(2) of the Accommodation Module 2008 is that it does not give rise to a narrow interpretation of what it is that comprises “essential supporting framework” and that it includes “any element that serves to support the integrity of the structure as a whole, including making it more rigid”.
- [34] It may be readily accepted that the lower decks in this case comprised bearers and joists, as well as the decking which was above them. The decking was nailed. The joists sit above the bearers and the decking sits on the joists. Self-evidently, because of the spacing between the joists, there would be limited, if any, use which the decks would be able to be put without the decking in place. One would likely fall between the joists.
- [35] According to common dictionary meanings, for example the Macquarie Dictionary, the word essential means in a context such as this: absolutely necessary, indispensable. It also means having to do with the essence of a thing. The decking or flooring to a timber deck fits both those meanings. Again, the Macquarie Dictionary defines “framework” as inter alia “a structure composed of parts fitted and united together” but also included “work done in, on or with a frame”. A deck, including its flooring, is clearly a structure composed of parts fitted and united together. What then does the adjective “supporting” add, if anything, to the other two concepts? Support itself can be provided in different ways that do not mean it is the only supporting element. For example, a supporting actor is in a secondary role. The Macquarie Dictionary defines “support” as “to bear or hold up; to sustain or withhold without giving way”. It includes both “the act of supporting” but also the state of being supported”. In my view, read together, these words where they appear in the expression “essential supporting framework” in section 157(2) are capable of describing the purpose, function and character of shot edge strip floor decking which binds the joists and other flooring members together and provide the essential floor on which load is partially borne when the deck is used, or even when it is not in use.
- [36] It seems to me that fundamentally the question of whether a particular structure, whether it is decking, bearers, joists or stumps on a deck, or indeed any other structure falls within the definition which is something that is an essential supporting framework or as a foundation structure is essentially one of fact.
- [37] Some of the contest which arose in this case highlights a difference of opinion between the evidence of an engineer in a brief report relied upon in submissions in reply filed by the appellants below, and contrary opinion by one of the lot owners about the extent of and whether there was a structural element to the decking. I should make it clear that

the notion that one can generalise and say that no deck, or no decking on a deck would constitute essential supporting framework is misplaced. It has been treated in various ways for different purposes, and as the Adjudicator's Reasons make clear are referenced in the 1975 Standard AS1684, specifically by reference to strip flooring. It is not precisely the same issue that is being confronted in this case, although in my view the Adjudicator fairly identified the reasoning that could be developed from the way in which strip flooring was treated under the Standard as, in principle, it is likely to suggest that flooring-like decking which might not be joined by a tongue and groove form of joinder, and might be separated by gaps, could nevertheless be essential and structural.

[38] The evidence about the function being performed by the decking is less than satisfactory, however it would not be unusual for an Adjudicator to need to decide how to apply the statutory regime to limited facts put forward by the parties in a given case..

[39] In this case there are numerous photographs which show what the deck structure itself was and shows what the configuration of the bearers, joists and deck surface was. The owner of unit 5, Mr Harold Haydon, filed a submission before the Adjudicator dated 30 June 2019. At the time of his submission he was 73 years of age, but until he had retired, he was a practising architect with a qualification in architecture obtained in 1973, had a Graduate Diploma in Building Project Management obtained in 1988 and was a registered builder in practice from 14 June 1977. He expressed the view that the decking boards were structural in that they spanned related structural supports, namely the floor joists and that the deck would not be trafficable without the deck boards. He referred to AS1684 of 1975 and identified in section 3 what were required timber floor framing and flooring and the sizes required. In relation to joist sizes and spacing it provided "the spacing of floor joists shall not be greater than the maximum given in tables 5 and 6 herein for the thickness, type and species of structural flooring which they will be required to support". In clause 3.11.3 of the Standard, reference was made to the types of flooring. Those two types were structural and non-structural. The structural flooring was identified as being "structural strip flooring" or sheet flooring. The non-structural flooring examples are demonstrably types of flooring which are decorative or flooring finishes, and reference parquetry and mosaic parquetry.

[40] Clause 3.1.3 of the Standard referred to:

structural strip and sheet flooring is generally fixed to a supporting timber substructure of joist and beams by nailing, whereas non-structural flooring, particularly light decorative parquetry and parquetry factory-assembled into mosaics, requires a generally flat structural subfloor, which may be either concrete or timber to which the parquetry is attached with a suitable adhesive. If of timber, the subfloor shall comply with Rule 3.11.1.

[41] Attached to the reply submissions filed below on behalf of the appellants was a very brief report by Kate Broadbent who is a director of an entity known as Advisory Services (Qld). The report identifies that she holds a Bachelor of Engineering and is a member of the Master Builders and apparently has a builder's licence. She contended that those parts of the Australian Standard just referred to have been taken out of context because when one looks at section 3.11.6 of the Standard it talks about structural strip flooring as being tongued and grooved or specifically tongued to permit secret nailing and does not reference decking timber. She goes on to assert that it is "known with (sic) the construction and timber industry that structural strip flooring is

tongued and grooved or specifically tongued to permit secret nailing and does not refer to decking timber boards”.

- [42] If her argument be correct, it would mean that irrespective of its function, and even where it was obviously structural, timber flooring which was not tongued and grooved but shot edged, whether squared or rounded timber which was “butted” adjacent to another length of flooring, is treated as non-structural simply because it was not secretly nailed or tongued and grooved. It would be a surprising outcome were that to be the case because although strip flooring might well commonly be tongued and grooved, she presents nothing to suggest that that is necessarily so. She also appears to express a view about what others “know”. How she claims to be able to express such an opinion about what is known in the construction and timber industries is not apparent from her report.
- [43] Notwithstanding what she says about section 3.11.6 of the Standard, it does not define structural strip flooring as being tongued and grooved flooring or specially tongued to permit secret nailing. Indeed section 3.11.6 does not purport to define structural strip flooring for the purposes of section 3.11.3 as to what for the purposes of the Code is the classification of timber into structural or non-structural. It is concerned with what is required for the laying and fixing of strip flooring and sets out a number of requirements in that regard. These include them being laid straight and parallel with tongues fitted into grooves and clamped together. That does not imply that one cannot have straight and parallel strip flooring which does not have tongues fitted into grooves. It describes how the ends are to be cut square. It describes the treatment of flooring fitted after walling. It describes boards having a nominal width above 75mm being required to be fixed with at least one nail at each joist; for larger boards, two nails each joist. It provides that boards profiled for secret nailing and skew nailing through tongues at each joist shall have nails punched to permit the full entry of the tongue into the groove.
- [44] In my view, whilst section 3.11.6 clearly does provide a standard for the way in which tongued and grooved timber is to be fitted, clamped and nailed, it does not define structural strip flooring as only that which can be fitted and nailed in that way. And even if it did define structural strip flooring as only that which can be fitted and nailed in that way, that does not mean that the words “essential supporting framework” in section 157(2) , now section 182 of the Accommodation Module mean only that which is structural strip flooring which is tongued and grooved.
- [45] Ms Broadbent then goes on to express an opinion that “the decking timber is not considered a structural component of the essential framework but considered a finish”. By way of example she contends that you do not need RPEQ certification of the decking finish but would for the structural framework”. Who it is she is referring to as the subject holding the belief or state of mind as to what is “considered” a structural component is not identified. She then goes on to contend that irrespective of what the 1975 Standard provided, the 2010 Standard AS1684 applied and that under that standard “timber decking is not referred to as structural or a component of the structural framework”.
- [46] AS1684 of 2010 provides in part 5 that the “Section specifies the requirements for the installation of tongued and grooved strip flooring and decking as well as plywood and particleboard sheet flooring”. It is true that decking is not referred to as structural or a

component of the structural framework and that is not surprising because it is not concerned with defining any flooring as such.

[47] In my view the opinion of Ms Broadbent is of little persuasive value. If the adjudicator had given consideration to it I doubt that any different result would have been arrived at. More critically, it does not necessarily follow that if an Australian Standard which provides the function of identifying how particular types of flooring can be erected does not define or limit the meaning to be attributed to the words “essential supporting framework” or “foundation structures”. Even if professional engineering or architectural opinion was that decking was not a foundation structure, it does not follow that flooring of any kind, including decking which provides a supporting framework, does not fall within the definition of essential supporting framework within section 157 of the Accommodation Module.

[48] The appellants contend that the obligation of a Body Corporate to maintain structural elements of a lot in a building format plan scheme has been a continuing feature of modules which have existed over time. Legislative change later identified what parts of exclusive use common property a lot owner was liable to maintain. From 2003 amending legislation had the effect of inserting what was then section 122(3) into the Accommodation Module, and that is what I was told is the now numbered section 171(3) and remains in force today. It has been renumbered in fact. The appellants argue by reference to the Explanatory Notes of the 2003 amending legislation they were designed to give greater clarity and accountability on administrative matters including maintenance of common property, and that:

the equivalent of the present section 171 provides unless an exclusive use bylaw specifically provides otherwise, the owner to whom exclusive use of common property is given is responsible for the maintenance of that part of the common property. However it is generally not appropriate that, in a building format scheme, this obligation to maintain common property applies to the maintenance of those parts of the common property that exist for the shelter and support of the general benefit of the scheme, even if they are within the area that is the subject of exclusive use bylaw.

[49] From those comments, it is submitted that the proper construction of section 157(2) of the Accommodation Module, and its reference to foundation structures and essential supporting framework could be read down to limit their operation to structural components that exist for the shelter and support for the general benefit of the scheme.

[50] I do not accept this submission, and nothing in the language of section 157 provides any support for the view that this language should be distorted to arrive at the conclusion that it was only foundation structures that provided general benefit to the scheme land, or the scheme itself that was caught by it. Were it otherwise, there would be no real work for section 157(2)(b) of the Module to perform. It would also mean, as Counsel for the appellants conceded, that the bearers and floor joists would also not be treated as foundation structures or essential supporting framework because they would not be for any general benefit to the Scheme. He argues that a broad interpretation of section 157 of the Module could include the requirement for a body corporate to oil the decks. In my view this point is misconceived, because section 157 references maintaining elements of the scheme “in a structurally sound condition”. It does not impose an obligation on the Body Corporate to maintain in every material respect all features of a foundation structure or essential supporting framework.

[51] In the circumstances, I find that the Appellants have not demonstrated any error of law on the part of the Adjudicator and I order that the appeal be dismissed.