

**Planning Act 2016, section 255**

**Appeal Number:** 39-18

**Appellant:** Matthew Hanlon

**Respondent (Assessment Manager):** Sunshine Coast Regional Council

**Site Address:** 8 Wavell Ave Golden Beach and described as Lot 16 on RP 137281 – the subject site

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**Appeal**

Appeal made under section 229 and Schedule 1 Table 1, Item 1(a) of the *Planning Act 2016* (PA) against the refusal of a development application, for construction of a carport on the basis that the proposal conflicts with the Dwelling House code provisions of the Sunshine Coast Planning Scheme 2014.

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**Date and time of hearing:** 25 March 2019 at 10.00am

**Place of hearing:** The subject site

**Tribunal:** Debbie Johnson – Chair  
Catherine Baudet and Belinda Scott - Members

**Present:** Matthew Hanlon – Appellant  
Rachel Hanlon, Kim Hanlon, Peter Wyatt and Michael Ward - Attendees  
Peter Chamberlain and Steven Tucker – Sunshine Coast Council representatives

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**Decision:**

The Development Tribunal (Tribunal), in accordance with section 254(2)(c) of the *Planning Act 2016* (PA) replaces the decision of Council to refuse the development application for building works to construct a Class 10a structure for a carport, with a decision to allow the development application with siting of the structure as proposed in Caloundra Design and Drafting, Site Plan Dwg No 20618 dated June 2018.

The proposed carport must be sited, designed and built in general accordance with the following:

- i. The carport to have a minimum setback to Wavell Ave of 1.5m; and
- ii. The overall width of the carport facing Wavell Ave is not more than 6.2m; and
- iii. The minimum setback to the southern side boundary is 2.8m; and
- iv. The carport has a maximum building height relative to natural ground of 3.6m; and
- v. The carport is designed with a concealed flat klip-lok roof at 2 degree pitch enclosed by a deep parapet not less than 375mm high, to all three exposed sides to conceal the roof structure; and
- vi. The carport is to be supported along the frontage to Wavell Ave by timber columns being a minimum of 150mm square; and
- vii. The existing driveway and crossover is not to be made any wider; and

- viii. The existing lawn area between the existing driveway and the southern neighbouring fence at the front of the property is to feature landscaping to provide privacy to the neighbouring property and enhance the streetscape.

The Appellant shall, prior to any building work commencing onsite, apply for and gain, a Development Approval for the Building Works. The conditions mentioned above are to be referred to and checked prior to the issue of the final inspection certificate.

## **Background**

1. The subject lot is approximately 20m wide and 30m deep with an area of 609sq/m. The property appears to be rectangular in shape but is actually a parallelogram. There is an existing brick veneer, slab on ground 'L' shaped dwelling, positioned in the centre and it is parallel to both side boundaries. Therefore, the building line varies in relation to the front and rear boundaries. The northeast corner of the dwelling is setback 6m from the front boundary while the south-eastern corner is setback approximately 7.75m.
2. The site falls slightly (900m across the 30m length of site, according to Council mapping) from the rear western boundary to the eastern front boundary. However, most of the fall can be detected in the front setback area as the site was predominately levelled when the original dwelling was built.
3. There is an existing concrete driveway between the dwelling and the roadway in the wider portion of the property frontage. The appellant currently parks two or more vehicles in this area and has extended the original concrete apron across to the southern boundary fence line. This additional width enables three cars to park alongside each other.
4. The appellant purchased this property on 26 May 2016. At that time the dwelling featured four bedrooms, two bathrooms, a study, two living areas, but no covered car accommodation. In 2016, prior to this purchase, the vendor had obtained two development approvals for significant alterations and renovations. In his capacity as an owner builder, the vendor converted the original double garage within the dwelling to accommodate a second living area, study and fourth bedroom.
5. In early 2018, the appellant made specific preliminary enquiries with Council officers and proceeded to have plans prepared with the intention of gaining appropriate approvals to erect a double carport in the front setback area. The appellant subsequently engaged a private building certifier. The certifier ultimately lodged a development application for the building works with Council as the proposed carport was code assessable against the planning scheme provisions set out in the Dwelling House Code.
6. Council issued a decision notice of refusal to the building certifier by email on 19 September 2018 and on the 4 October 2018, the appellant lodged an appeal against this decision with the Development Tribunal. A tribunal was established on 21 December and an onsite hearing was conducted on 16 January 2019. However, as the tribunal was unable to reach a unified decision, proceedings were suspended on 18 February 2019 and a new tribunal was appointed on or about 20 February 2019.
7. On 25 March 2019 a second onsite hearing was conducted with the new tribunal panel. At the hearing, the appellant provided a single folder containing many various written and photographic representations, to inform the tribunal. Many of these representations were already available to the tribunal and other parties to the appeal, through submissions previously made to the Registrar. To ensure natural justice, Council representatives were invited to scrutinize the contents of this folder at the hearing and advise whether or not they would like a copy of the contents. Similarly they were asked to confirm whether or not the tribunal could take the contents of this folder away from the hearing, knowing that the tribunal would be able to consider the contents prior to preparing a decision. Council

representatives confirmed that they did not require a copy of the contents of the folder nor did they object to the tribunal taking the folder after the hearing was completed.

## **Jurisdiction**

1. This appeal to the tribunal has been made under section 229 of the PA, as a matter that may be appealed to a tribunal. In Schedule 1 of PA, section 1(2) states Table 1 may apply to a tribunal but only if the matter involves the circumstances set out in paragraphs (a) to (l). Paragraph (g) of section 1(2) states: “a matter under this Act, to the extent the matter relates to the Building Act, other than a matter under the Act that may or must be decided by the Queensland Building and Construction Commission”.
2. The tribunal is satisfied that the development application made to Council satisfies that requirement being, a development application for building works approval under the section 33 Alternative provisions to QDC boundary clearance and site cover provisions for particular buildings of the Building Act 1975.
3. That application was subsequently refused by Council. Table 1 item 1(a) in Schedule 1 of the PA states that for a development application an appeal may be made to a tribunal against the refusal or all or part of the development application.

## **Decision framework**

1. Section 246 of the PA provides as follows (omitting the examples contained in the section):
  - (1) The registrar may, at any time, ask a person to give the registrar any information that the Registrar reasonably requires for the proceedings.
  - (2) The person must give the information to the registrar within 10 business days after the registrar asks for the information.
2. Section 253 of the PA sets out matters relevant to the conduct of this appeal. Subsections (2), (4) and (5) of that section are as follows:
  - (2) Generally, the appellant must establish the appeal should be upheld.
  - (4) 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.
  - (5) However, the tribunal may, but need not, consider—
    - (a) other evidence presented by a party to the appeal with leave of the tribunal; or
    - (b) any information provided under section 246.
3. Section 254 of the PA deals with how this appeal may be decided and the first three subsections of that subsection are as follows:
  - (1) This section applies to an appeal to a tribunal against a decision.
  - (2) The tribunal must decide the appeal by—
    - (a) confirming the decision; or
    - (b) changing the decision; or
    - (c) replacing the decision with another decision; or
    - (d) setting the decision aside, and ordering the person who made the decision to remake the decision by a stated time; or
  - (3) However, the tribunal must not make a change, other than a minor change, to a development application.

## **Material Considered**

The material considered in arriving at this decision comprises:

1. Form 10 – Appeal Notice, grounds for appeal lodged with the Tribunals Registrar on 4 October 2018.
2. Revised concept of low pitched ‘Solarspan’ carport design, on marked up Site Plan and photographic mock up as received on 4 October 2018, by the Registrar from the appellant.

3. Email dated 3 December 2018 from the appellant to the Registrar titled: Development Tribunal appeal No 38-18 for 8 Wavell Ave Golden Beach. The attachments included a letter of support from Mark McArdle MP. Additional photographic examples of car covering structures within the road boundary setback (carport structures) and a document titled, Updated Map Version 2.
4. Letter of support dated 29 November 2018, for the appellant's proposal from Mark McArdle MP.
5. Forwarded email dated 7 January 2019 from the Tribunal (5 January 2018) through the Registrar to Council, titled: Development Tribunals appeal No 38-18 for 8 Wavell Ave Golden Beach- Date of Hearing. This email requested information prior to the hearings including:
  - Copy of the application Form plus supporting information the applicant lodged with Council for the code assessment.
  - Confirm if the Council sent out an information request to the applicant. If yes provide a copy and any response received from the applicant.
  - Copy of the following approvals for building work, PC16/0761 and PC16/2488.
  - A copy of the detached housing code that was applicable at the time of the above mentioned approvals.
  - A copy of the registered plan for the site.
6. Email dated 8 January 2019 between Council the Registrar and the Tribunal indicating relevant documents available through "Development.i", Council's online portal.
7. Email dated 9 January 2019 between Council and Registrar titled: DWB 18/0097 – 8 Wavell Ave Golden Beach – Apl No 39-18- Email 1. Attachments included Plans, No objection letters from neighbours, DA Form 2, DA Form 1, Action Notice, Response to Action Notice, DBW180097.MSG, Report document and Referral Response document.
8. Building Design Plans titled: Proposed Alterations to Existing for M Hanlon, dated June 2018 and identified as Dwg No 20618 Sheets 1-4/4, as prepared by Caloundra Design and Drafting for the subject site. Plans include Site Plan, Floor Plan Section and Elevations for a new carport, storage shed with covered patio and a new covered patio to the rear of the existing dwelling.
9. Building Design Plans titled: Proposed Additions and Alterations for M Hanlon, dated August 2016, Dwg No not legible, Sheets 1-3/3, as prepared by Strathpine Design and Drafting. Plans include Site Plan, Floor Plan Section and Elevations for a carport to be constructed within the road setback area on the subject site.
10. Letters of no objection prepared by various neighbours in the location of the subject site including:
  - Robert and Jennifer Dunvan of 6 Wavell Ave Golden Beach dated 8 April 2017
  - Tracy Duggan and Michael Ward of 5 Wavell Ave olden Beach dated 7 September 2016
  - Jean Ward of 7 Wavell Ave Golden Beach dated 7 September 2016
  - Maria Harris of 2/24 Churchill St Golden Beach dated 9 September 2016
  - Email from Kristy Shelton owners of Unit 1 and2/ 10 Wavell Ave Golden Beach.
11. Completed DA Form 2 Building Works details Version 1.0 applicant noted as Caloundra Building Approvals, date received noted as 26 June 2018.
12. Completed DA Form 1 applicant's Details Version 1.0 applicant noted as Matthew and Rachel Hanlon, date received noted as 26 June 2018.
13. Action Notice for DBW18/0097 dated 17 July 2018.
14. Copy of Registered Plan 137281.
15. Email dated 8 August 2018, between Council and Caloundra Building Approvals in relation to Action Notice items.

16. Document undated, as prepared by building certifier requesting Concurrence Agency Advice for Siting, in relation to proposed carport on subject site.
17. Request for Concurrence Agency Response (Building Work) Form dated 3 July 2018 as prepared by Caloundra Building Approvals.
18. Conditional development approval Decision Notice by Caloundra Building Approvals, dated 11 February 2016. The approval for building works being a new ensuite within the existing dwelling at 8 Wavell Ave Golden Beach. The application was made by Bradley Grassi the owner and owner builder for the proposed work.
19. Building Design Plans as approved by Caloundra Building Approvals titled: Proposed Ensuite Addition to Existing prepared for B. Grassi, dated 11 February 2016 and identified as Dwg No 16506 Sheets 1-3/3, as prepared by Caloundra Design and Drafting. Plans include Site Plan, Floor Plan and West Elevation.
20. Form 22 Notice of discontinuance of engagement dated 11 February 2016 issued to B. Grassi by Caloundra Building Approvals.
21. Form 57 Reminder notice of the lapsing of an approval dated 14 March 2018 issued to B Grassi by Caloundra building Approvals.
22. Conditional development approval Decision Notice by Alliance Building Approvals, dated 9 May 2016. The approval for building works being 'As Constructed' building works for the conversion of a double garage to habitable rooms, within the existing dwelling at 8 Wavell Ave Golden Beach. The application was made by Bradley Grassi the owner and owner builder for the proposed work.
23. Building Design Plans as approved by Alliance Building Approvals titled: Proposed Alterations to Existing prepared for B. Grassi, dated 6 May 2016 and identified as Dwg No 16506 Sheets 1-4/4, as prepared by Caloundra Design and Drafting for the subject site. Plans include Site Plan, Existing and Proposed Floor Plans and Elevations for the existing double garage to be replaced by habitable rooms within the existing dwelling. Plans were specifically notated to ensure potential for one covered carpark along the southern side of the dwelling, where a width of 28m was indicated.
24. Dwelling House Code Provisions from Sunshine Coast Planning Scheme 2014
25. Detached House Code provisions from Caloundra Planning Scheme 2004.
26. Email dated 11 January 2019 from the Registrar to Council prior to the initial onsite hearing, titled: DBW18/097 - 8 Wavell Ave Golden Beach – Apl No 38-18- Email 2, requesting a copy of:
  - the Detached House Code at the time of the approvals for PC2016/0761 and PC16/2488 ie pre dating 2016
  - PC 16/0761 Decision notice and plans
  - PC16/2488 Decision notice and plans
  - PC 16/0761 Form 22 Notice of Disengagement
  - PC 16/0761 Form 57 Reminder Notice and
  - A copy of the registered plan for the subject site
27. Email dated 11 January 2109 from Council to the Registrar titled: DBW18/097 - 8 Wavell Ave Golden Beach – Apl No 38-18- Email 2 with attachments being:
  - the Detached House Code (Detached House Code Sunshine Coast Planning Scheme 2014)
  - PC 16/0761 Decision notice and plans
  - PC16/2488 Decision notice and plans
  - PC 16/0761 Form 22 Notice of Disengagement
  - PC 16/0761 Form 57 Reminder Notice and
  - A copy of the registered plan for the subject site.

28. Four emails dated 11 January 2019 between Tribunal Chair, Registrar and Council pertaining to specific issue of Detached Housing Code requested by the Tribunal being the code prescribed in the superseded Caloundra City Plan 2004.
29. Email dated 16 January 2019 from Council to the Registrar titled: DBW18/097 Tribunal RFI for refused Carport at 8 Wavell Ave Golden Beach.
30. Email dated 21 January 2019 from the Registrar to the appellant containing further information submitted by Council by email on 16 January 2019, after the hearing. The Registrar, at the request of the Tribunal Chair, inviting the appellant to respond to that information.
31. Email dated 21 January 2019 from the appellant to the Registrar and forwarded to the Tribunal titled: DBW18/097 Tribunal RFI for refused Carport at 8 Wavell Ave Golden Beach.
32. Written "Comments in addition to Tribunal Hearing 39-18 (8 Wavell Ave) dated 21 January 2019 and prepared by the appellant.
33. Forwarded email dated 22 January 2019, through the Registrar to Council from the appellant titled: DBW18/097 Tribunal RFI for refused Carport at 8 Wavell Ave Golden Beach. This email contained attachment titles: Additional Comments- Appeal 39-18, Council's Decision Notice of Refusal for DBW18/0097 dated 18 September 2018, Council's Notice about Decision Statement of Reasons dated 17 September 2018 and Council's Assessment Report dated 17 September 2018
34. Council's Development.i print page showing PC18/7100 development application for "Residential Garage, Shed, Carport Pool, Shelter" was submitted for building works on the subject site on 12 November 2018 and approved by private certification on 14 November 2018.
35. Completed DA Form 2 Building Works details Version 1.1 applicant noted as Caloundra Building Approvals found through Council's Development.i.
36. Letter of support for the appellant from Michael McLean Sales Specialist with Coronis Real Estate.
37. Aerial map view of the subject site and the immediate locality.
38. Appellant's four page document, part of 'blue folder' handed to Tribunal at the second onsite hearing, each page separately titled:
  - Application and supporting items
  - Application Process
  - Side Carport Theory
  - Backyard
39. Appellant's three page photographic submission titled: Recent approvals being part of 'blue folder' handed to Tribunal at the second onsite hearing.
40. Two newspaper clippings referencing building carports in the road frontage, taken from the Sunshine Coast Daily part of 'blue folder' handed to Tribunal at the second onsite hearing
41. Appellant's two page photographic submission title: Safety Concern- Side of Home and Major safety concerns- weather being part of 'blue folder' handed to Tribunal at the second onsite hearing.
42. Copy of QDC Part NMP1.1 Driveways, dated 1 January 2008 being part of 'blue folder' handed to Tribunal at the second onsite hearing.
43. Appellant's two page diagrammatic submission, titled Clear vision from open sided carport being part of 'blue folder' handed to Tribunal at the second onsite hearing.
44. Copy of Australian Government publication dated February 2014, titled Driveway safety design guidelines: Summary of feedback, being part of 'blue folder' handed to Tribunal at the second onsite hearing.

45. Copy of Australian Government publication, Information Sheet 43 titled: Child pedestrian safety: driveway deaths and low speed vehicle run-overs, Australia 2001-10.
46. Copy of Slow down and ride wide for a better view publication by Australia Post.
47. Copy of an incident investigation report, dated 18 April 2017 as prepared by the appellant in his role with Australia Post.
48. Various single page publications and printouts being part of 'blue folder' handed to Tribunal at the second onsite hearing and titled as follows:
  - Don't go if you don't know by Department of transport and Main Roads
  - Keep your driveway safe by Child Accident prevention Foundation of Australia
  - Driveway Safety by Ipswich Police
  - Driveway Safety by National Road Safety Council
49. Observations about the built and natural environment and photographs from around the location of the subject site.
50. Planning and Development online information for the subject site and surrounding residential properties.
51. RP Data Professional online information for the subject site
52. The *Planning Act 2016* (PA)
53. The *Planning Regulation 2017* (PR)
54. The *Development Application Rules*
55. The *Building Act 1975* (BA)
56. The *Building Regulation 2006* (BR)
57. The *Queensland Development Code* (QDC) Part MP 1.2
58. The *Sunshine Coast Planning Scheme 2014*
59. *The Caloundra Planning Scheme 2004* (superseded)
60. The *National Construction Code 2016* (NCC)

## Findings of Fact

61. There are approximately 26 lots in Wavell Ave between the intersection with Lamerough Parade to the north and Lamerough Parade to the south. The subject site is typical in size and shape to those surrounding parcels of land in this part of Wavell Ave with the exception being those properties on corner sites. There are several corner properties in this section of the street that have reduced building line setbacks. Examples are located at:
  - 31 Lamerough Parade, two doors south of the subject lot;
  - 29 Churchill St, diagonally opposite the subject lot, but north by three allotments;
  - 22 and 27 Drake St, opposite the subject lot, but north by six allotments; and
  - 19 Haig St, opposite the subject lot, but north by 13 allotments.

In addition to reduced setbacks demonstrated on these corner sites, 6 Wavell Ave immediately south of the subject lot, appears to have a reduced building line setback but this is difficult to confirm visually.
62. The reconfiguration that created these lots was in 1973 and the majority of the homes were originally built in the following fifteen years. Dwellings are predominately single storey brick veneer with tiled roof, a little more than half of these have double garage accommodation under the main roof.
63. There are several examples of homes that have altered the garage areas to increase their habitable area. These residents have either managed without a covered car space or added a separate structure such as a carport to accommodate their vehicles. Examples include:
  - 8 Wavell Ave, the subject lot, there is no covered car parking on the site;
  - 14 Wavell Ave, there is no covered car parking on the site;

- 16 Wavell Ave, there has been a single garage built alongside the original garage; and
  - 19 Wavell Ave, a corner lot, with a double carport in the street frontage to Wavell Ave.
64. Only one property in this area has a driveway leading to a carport at the rear of the house and that is an older style of home at 10 Wavell Ave, adjoining the subject lot.
65. The appellant purchased the subject lot in April 2016 with settlement taking place on 26 May 2016. The dwelling was and is in excellent condition having been altered and renovated by the previous owner.
66. Two separate building approvals were granted to the previous owner, who was acting as an owner builder in both projects. These are identified as:
- PC 16/0761 being a conditional development approval Decision Notice by Caloundra Building Approvals, dated 11 February 2016. The approval for building works being a new ensuite within the existing dwelling at 8 Wavell Ave Golden Beach; and
- PC16/2488 being a conditional development approval Decision Notice by Alliance Building Approvals, dated 9 May 2016. The approval for building works being 'As Constructed' building works for the conversion of a double garage to habitable rooms, within the existing dwelling at 8 Wavell Ave Golden Beach.
67. PC16/2488 was issued while the property was under contract between the previous owner builder and the appellant. The decision notice was for 'as constructed' building works.
68. As constructed building works infers the work was inspected and approved after the fact. The approved building plans were dated 6 May 2016 by the designer, indicating the documentation also followed the construction of the work. These plans were subsequently approved after the building certifier had inspected and been satisfied that the works were fully compliant with all relevant code provisions. This situation often occurs when a property under contract and it becomes evident that works had been undertaken without the required approvals and final inspection.
69. The approved building design Site Plan (Dwg No 16506 Sheet 1/4) clearly shows a 6m x 2.8m area positioned alongside the original garage for a future carport location. On the approved plans the building certifier has added a condition in the form of a note in red, pointing to the future carport space shown by the designer. "The condition reads: This area to remain clear to provide access to potential covered parking area at rear of property."
70. The approved building design plans also illustrate that there was sufficient area at the rear of the dwelling for two or possibly more vehicles to be accommodated within a garage or a carport. Similarly it is likely that a turnaround area might also have been possible. However, access to the rear would be significantly constrained by the single driveway width of 2.8m between the fence line/ side boundary and the wall of the house, for a distance of nearly 8m. This access way would likely be difficult to navigate in a forward gear and more difficult to navigate safely in reverse.
71. It is clear the appellant, sought relevant advice from designers, building certifiers and Council officers, believing the most appropriate position for a carport was within the road setback area over the existing concrete driveway.
72. The Tribunal has been provided with a copy of building design plans titled: Proposed Additions and Alterations for M Hanlon, dated August 2016. The drawing number isn't, legible, however the drawings sheets were labelled 1-3/3, and they were prepared by Strathpine Design and Drafting. Plans include Site Plan, Floor Plan Section and Elevations for a carport to be constructed within the road setback area on the subject site. These drawings were prepared for the appellant three months after having purchased the property. The Tribunal can see no record of these plans having been submitted as a building application to either a building certifier or directly to Council in 2016. These drawings were



ultimately part of the drawing documentation submitted to Council for DBW18/0097, the subject of this appeal.

73. The appellant attended Council offices in January 2018 to discuss an application for a double garage within the road boundary setback area. It is clear from the appellant's submissions to the Tribunal, that he believed there was a reasonable chance he'd be successful in obtaining an approval for this carport. It is also evident from the appellant's submissions to the Tribunal that he had a desire for a safe, practical and aesthetically acceptable area in which to park and protect the family's vehicles.
74. The appellant engaged Caloundra Design and Drafting who prepared the building design plans titled: Proposed Alterations to Existing for M Hanlon, dated June 2018 and identified as Dwg No 20618 Sheets 1-4/4. Plans include Site Plan, Floor Plan Section and Elevations for a new carport, storage shed with covered patio and a new covered patio to the rear of the existing dwelling. These drawings together with those prepared by Strathpine Drafting in August 2016 identified as Sheets 1-3/3 completed the building design drawing package
75. The appellant engaged Caloundra Building Approvals seeking a building permit for the works. Caloundra Building Approvals subsequently referred the development application for building works to the Sunshine Coast Regional Council on 3 July 2018, for concurrence agency advice.
76. Council issued an Action Notice to Caloundra Building Approvals on 17 July 2018 stating in part, that the works were code assessable against the provisions of the Planning Scheme, and the Form 2 needed to be resubmitted.
77. Caloundra Building Approvals responded in accordance with Council's directions as set out in the Action Notice and emailed a revised Form2 on 8 August 2018. Subsequently, Council became the assessment manager for the application issuing a Confirmation Notice to the applicant on 10 August 2018, stating that DBW 18/0097 was properly made on 8 August 2018.
78. The appellant had several discussions with the Council officers throughout the assessment period. Part of their concern was the proposed building height. The appellant offered an amended carport design with a skillion roof, as it was clear to the appellant that Council were not going to support the application for the carport with the hipped roof design. However Council did not issue any request for further information and did not agree to consider an alternative design.
79. Council issued a Decision Notice dated 17 September 2018, stating that the application had been refused on 17 September 2019.
80. The appellant completed Form 10 and lodged an appeal against this decision on 4 October 2018.
81. The appellant provided the Tribunal with numerous local examples of properties with carports, garages or other structures in the road boundary setback area. The appellant has also sought and provided clarification on whether or not these structures have been lawfully constructed. The appellant also provided many examples of poor landscaping outcomes displayed by properties in the locality. While the Tribunal takes this information into account, it is on the basis of considering the existing landscape elements, pattern of development and visual continuity of the street, in the focus area of Wavell Ave. Precedents in itself is not a consideration that the Tribunal takes into account. In this matter, it is a consideration of the proposal in the context of that existing built environment.

#### **Sunshine Coast Planning Scheme 2014**

82. A dwelling house is a defined use in Schedule 1 of the Sunshine Coast Planning Scheme 2014 which states: "A residential use of premises for one household that contains a single

dwelling. The use includes out-buildings and works normally associated with a dwelling house and may include a secondary dwelling". Therefore by definition, any building application for a carport is interpreted as a building application pertaining to a dwelling house.

83. The subject lot is zoned Low Density Residential and is in the Precinct LDR1 known as the Protected Housing Area. Allotments in the LDR1 precinct are primarily limited in their opportunity to obtain an approval to develop anything other than a single dwelling house use as defined by the planning scheme.
84. Under Part 5, Material Change of Use tables of assessment, Table 5.5.1 states: "within the Low Density Residential zone, a dwelling house is accepted development provided it meets the acceptable outcomes of the Dwelling house code. Where proposed development does not meet the acceptable outcomes for the use code, the development becomes code assessable".
85. Under Part 5 Building Works Tables of assessment, Table 5.7.1 states: "building works (for all zones) is accepted development if the applicable use code (Dwelling House code in this instance) and the Transport and Parking code identifies acceptable outcomes applicable to accepted development".
86. Section 5.3.3 (2) of the Scheme, states: "Accepted development that does not comply with one or more of the relevant acceptable outcomes in the relevant parts of the applicable code(s) becomes assessable development requiring code assessment unless otherwise specified." In this matter, development for a Dwelling House becomes code assessable. The building works are subject to the provisions of the Dwelling house code, the Golden Beach/ Pelican Waters local plan code and the Transport and parking code.
87. Section 9.3.6.2 Purpose and overall outcomes of the Dwelling House Code states in part: "The purpose of the Dwelling house code is to ensure dwelling houses achieve a high level of comfort and amenity for occupants, maintain the amenity and privacy of neighbouring residential premises and are compatible with the character and streetscape of the local area."
88. Part 9.3.6.1 sets out the application of the Dwelling house Code provisions as follows:
- "(1) This code applies to accepted development and assessable development identified as requiring assessment against the Dwelling house code by the tables of assessment in Part 5.
- (2) The acceptable outcomes in Table 9.3.6.3.1 are requirements for applicable accepted development. Where accepted development does not meet the prescribed acceptable outcomes, the development becomes assessable development and can be assessed against the corresponding performance outcomes. Council becomes the assessment manager in this situation."
89. Table 9.3.6.3.1 sets out Performance outcomes and acceptable outcomes for the Dwelling House Code, the relevant assessment criteria are listed below.

Acceptable outcome AO2.1 states in part:

"Where located on a lot in a residential zone, a garage, carport or shed:-

- (a) is setback at least 6m from any road frontage;
- (b) does not exceed a height of 3.6m;

Note AO2.1 (a) alternative provision to the Queensland Development Code (QDC)

Performance outcome PO2 states:

Garages, carports and shed:-

- (a) preserve the amenity of adjacent land and dwelling houses;
- (b) do not dominate the streetscape;
- (c) maintain an adequate area suitable for landscapes adjacent to the road frontage; and

(d) maintain the visual continuity and pattern of buildings and landscape elements within the street."

90. In this matter assessment must be considered against the performance outcomes set out in PO2 as AO2.1 provisions are not being met. In addition, as is noted, AO2.1 (a) is an alternative provision to the Queensland Development Code, therefore no consideration can be given to front setback provisions of the QDC.

91. Acceptable outcome AO9 of the Dwelling House Code states:

"Access driveways, internal circulation and manoeuvring areas and on site car parking areas are designed and constructed in accordance with:(a) IPWEA Standard Drawings SEQ R-049, R-050 and R-056 as applicable and(b) AS2890 Parking Facilities- Off-street parking". IPWEA Standard Drawings SEQ R-049 and R-050 are not applicable in this instance as they provide the technical details for residential driveway and crossovers. The driveway and crossover is existing in this instance and no changes are proposed. However, Performance outcome PO9 also states:

"The design and management of access, parking and vehicle movement on the site facilitates the safe and convenient use of the dwelling house by residents and visitors".

92. Part 9 Developments: 9.1 Preliminary (2) of the Scheme states: Use Codes and other Development codes are specific to each planning scheme area. Thus, the Golden Beach/ Pelican Waters Local Plan Performance outcomes and Acceptable outcomes are given precedence to the provisions of the Dwelling house code and the Transport and parking code in this matter. There are two specific references to low density development in the Golden Beach area and neither contradict or override the outcomes sought in the Dwelling House Code or The Transport and Parking code pertaining to this matter. These are found under 7.2.13.2 and 7.2.13.3.

93. Under 7.2.13.2 Context and setting provisions for the Local Plan of Golden Beach/ Pelican Waters, reference is made to the residential communities of Golden Beach and Pelican Waters stating: "Both of these neighbourhoods are generally characterised by dwelling houses on conventional sized lots and canal allotments". This is clearly evident in that part of Wavell Ave, which is the focus of our consideration.

94. Under 7.2.13.3(m) Purpose and Overall outcomes for the Local Plan of Golden Beach/ Pelican Waters, reference is made to development in residential areas, including areas in the Low density residential zone, stating that: "the zone provides for high quality residential buildings that reflect a beachside setting, with development having a form, scale and level of intensity that minimises its visual impact on the Pumicestone Passage waterfront and views of the Glass House Mountains from Caloundra". Development in Wavell Ave does not affect Pumicestone Passage waterfront nor does it impact on views of the Glass House Mountains.

### **The Queensland Development Code (QDC)**

95. The Dwelling House Code contains some alternate provisions to the QDC. The QDC Part MP1.2 is the standard for the Design and Siting requirements applicable to Class 1 Dwellings and Class 10 structures on residential sites over 450 m<sup>2</sup> in area. The provisions of the QDC apply to the extent that a local planning scheme does not opt to provide alternative provisions. In this instance the Dwelling House Code AO2.1 (a) provides some alternative siting provisions to the QDC A1 (a), therefore the 6m setback provisions (for a garage or a carport) of the Dwelling House Code apply to the proposed development.

## Findings

### Reasons for the Decision

96. The Tribunal finds:

- (i) Included in the purpose and outcomes to be achieved by the Dwelling House Code provisions is a stipulation that dwelling houses achieve a high level of comfort and amenity for occupants as well as to maintain the amenity and privacy of neighbouring residential premises and are compatible with the character and streetscape of the local area. It is therefore reasonable to address the alternatives we leave the current and future residents on the subject lot, if they can only achieve covered parking at the side or at the rear of the dwelling house. The tribunal found these alternatives currently offer an unacceptable outcome for the occupant; and
- (ii) The remodelling of the original garage was lawfully approved and works were complete when the appellant purchased the property. However, it is clear that the remodelling of the original garage fundamentally restricted the potential for a garage or a carport to be lawfully erected on the site. The previous garage area is now an essential and desirable component of the resident's living space; and
- (iii) There are several examples of reduced building lines due to the number of corner lots intersecting Wavell Ave, these include the two neighbouring southern properties. Neither of these properties undermine the amenity or streetscape enjoyed by residents in Wavell Ave; and
- (iv) A flat roofed, unobtrusive parapet carport, at a height lower than the main house roof gutter, is considered more appropriate than the hipped roof design originally proposed by the appellant. The tribunal finds the alternate structure will satisfy the Dwelling House Code PO2 provisions namely:
  - (a) preserve the amenity of adjacent land and dwelling houses;
  - (b) do not dominate the streetscape;
  - (c) maintain an adequate area suitable for landscapes adjacent to the road frontage;  
and
  - (d) maintain the visual continuity and pattern of buildings and landscape elements within the street."

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**Debbie Johnson**  
**Development Tribunal Chair**  
**Date: 24 April 2019**

## 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  
GPO Box 2457  
Brisbane QLD 4001

**Telephone (07) 1800 804 833 Facsimile (07) 3237 1248**

**Email: [registrar@hpw.qld.gov.au](mailto:registrar@hpw.qld.gov.au)**