



## Development Tribunal – Decision Notice

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### **Planning Act 2016, section 255**

<b>Appeal number:</b>	24-058
<b>Appellant:</b>	Mrs Julie Gerhardt
<b>Respondent/ Assessment manager:</b>	Rob Wibrow
<b>Co-respondent/ Concurrence agency:</b>	Sunshine Coast Regional Council
<b>Site address:</b>	37 Edwardson Drive, Pelican Waters Qld 4551 and described as Lot 266 on SP 110570 – the subject site

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### **Appeal**

Appeal under section 229 and schedule 1, section 1, table 1, item 1(a) of the *Planning Act 2016* (PA) against the decision of the Assessment Manager, as directed by the Concurrence Agency, for refusal of a Development Permit for Building Works (five (5) items in total) as identified under *Decision* and in detail under paragraph 3 of the heading *Background* (below). The decision followed the Concurrence Agency response by the Sunshine Coast Regional Council directing refusal of the items under the relevant applicable legislative mechanism for each respective item. These mechanisms include elements of the: Queensland Development Code (MP 1.2) (QDC) and Dwelling House Code (DHC), Sunshine Coast Planning Scheme 2014 (SCPS).

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<b>Date and time of hearing:</b>	Wednesday, 18 December 2024, at 10.00 am
<b>Place of hearing:</b>	The subject site
<b>Tribunal:</b>	Dr Christopher Robertson—Chair Ms Marie-Anne Ammons—Member
<b>Present:</b>	Mr Angus McKinnon and Mr Marcus Brennan— Appellant's Representatives Appellant—Did not attend Mr Stephen Whitby and Mr Jeff Dodd—Council representatives

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**Decision:****Part approval:**

The Development Tribunal (Tribunal), in accordance with section s254(2)(d) of the *Planning Act 2016* (PA), sets aside the decision of the assessment manager with respect to item (a) below and orders the assessment manager to re-make the decision within 50 business days of the date of this decision notice, as if the concurrence agency had no requirements with respect to item (a), and, in the event the assessment manager decides to approve the application with respect to item (a), to impose the following conditions with respect to the approved works:

- (a) The northern block wall, within 300mm of boundary and extending 4.19m along the northern side boundary to the canal revetment wall to be conditioned as follows:
  - (i) located and setback from the northern side boundary such that any structure or element of the wall is not attached to the revetment wall and is independently supported; and,
  - (ii) the height of the wall to match the height of adjoining neighbour's boundary wall subject to not exceeding a height of 2m.

**Part refusal:**

The Tribunal, in accordance with section 254(2)(a) of the *Planning Act 2016*, confirms the decision of the Assessment Manager, as directed by the Concurrence Agency, in regard to the following proposed works on the subject site:

- (b) Carport. Proposed at front of property.
- (c) Extension to the rear pool deck;
- (d) Block walls, Southern boundary, (including Appellant's proposed retrospective approval for additional 3m length); and
- (e) Area of enclosed and unenclosed buildings and structures with impervious roofing materials that exceeds the area already approved.

**Background**

1. The subject site is located at 37 Edwardson Drive, Pelican Waters and is 983sqm in size. The allotment faces an east-west direction with the east facing Edwardson Drive (front) and west (rear), the canal.
2. The subject site is:
  - (a) a level canal-front allotment with a 22m canal frontage;
  - (b) 983m<sup>2</sup> in area containing a substantial single-storey dwelling with a pool and outbuildings;
  - (c) zoned Low Density Residential under the Sunshine Coast Planning Scheme 2014.
3. The current appeal is based upon a refusal by the Assessment Manager (Decision notice No: 24-5467) who was directed by the Council as Referral Agency to refuse the following items applied for under Council File No: CAR23/0447 (referral agency response dated 26 April 2024) (5 items in total):
  - (a) Block Wall, northern, maximum height 2m within 300mm of boundary, to be used as a barrier between allotments near the canal boundary—

- (b) Proposed carport—The proposed carport is to be located 2m to 3.379m to the front property in lieu of 6m. It should be noted that part approval was given by the Council to locating the carport 300mm to the northern boundary in lieu of 1.5m.
  - (c) Extension to the pool deck. Pool deck to the rear of the canal boundary, current approved reduction is 2.77m. Appellant seeking 1.57m in lieu of 4.5m as stated in AO6 DHC (SCPS)
  - (d) Two interlinked elements: boundary walls and pool equipment and storage area. Block walls, Southern boundary for storage area for pool equipment, in particular:
    - (i) A roof block wall 1.1m deep x 9m long x 3.5m high was previously approved under CAR22/0975. At the hearing the Appellant's representatives advised that the contractor incorrectly built the wall to 12m in length and the Appellant is requesting retrospective approval.
    - (ii) An additional roofed wall to the southern boundary is proposed of 1.1m deep x 8m long and 3.5m high with a 3m gap between it and the block wall described in (d)(i).
  - (e) Proposed works exceeds the site coverage performance criteria P3 of the QDC, "Adequate open space is provided for recreation, service facilities and landscaping", in that maximum area covered exceeds 50%.
4. In relation to each item, Council's reasons for refusal, and the Appellant's submissions in response, respectively, are as follows:
- (a) Block Wall, northern, maximum height 2m within 300mm of boundary, to be used as a barrier between allotments near the canal boundary—
    - (i) The Council refusal is based upon conflict with PO6(b) of the DHC (loss of amenity to adjacent land) and the acceptable outcome provides for a 1m height permitted within the setback.
    - (ii) In response the Appellant submits:
      - (1) the proposal complies with PO6(a), (b) and (c) of the DHC.
      - (2) the neighbour has constructed additional fencing which is higher than 2m of vegetation growth.
  - (b) Proposed carport—
    - (i) The Council cites the proposal conflicts with performance outcomes PO2(b) and PO2(d) of the DHC, in that there is a large floor area (70.9sqm) instead of 56sqm in a residential zone and the proposed total 'site cover' will exceed the maximum, limiting the area for open space prescribed under P3 of the QDC. The proposal also conflicts with the Edwardson streetscape, which has: "...landscaped frontages and dwelling houses generally with compliant setbacks. Whilst the proposed carport would not be the only structure in the street built within 2 metres of the front boundary to Edwardson Drive",... the proposal "would present a significant amount of built form to the streetscape".
    - (ii) The Appellant submits the proposal is in keeping with the immediate built environment, which has approval and provides for passive surveillance. "The carport 3.379m setback front property boundary is adjoining and in line with the existing (living/rumpus area) dwelling and 39 neighbours garage, with the carport being located within a turnaround area set well back from the main throughfare." Further, the proposed works do not dominate the "streetscape."

The Appellant argues, streetscape is a broad term, that applies to all elements, including buildings and structures within view.

(c) Extension to the pool deck—

(i) The Council cites the proposal does not meet PO6 of the DHC:

*Buildings and structures are adequately setback from canals and other artificial waterways or water bodies (...) to:*

(b) *ensure no unreasonable loss of amenity to adjacent land and dwellings having regard to*

(i) *privacy and overlooking;*

(ii) *views and vistas;*

(iii) *building character and appearances;....*

(c) *building massing and scale as seen from neighbouring premises”*

on the bases that:

(1) Regarding PO6(b)—The proposed dimensions “would impose additional impacts to the southern neighbour with regards to their views to the canal. In addition, the deck would require a pool fence facing the canal (no specific height provided by the applicant on plans) and the southern side boundary to a height of 2 metres, which would impede the neighbour’s views to the canal.”

(2) Regarding PO6(c)—The additions, with the proposed increase in floor area “would impose greater scale and bulk when viewed from the southern neighbour’s dwelling and outdoor area...”

(ii) The Appellant cites examples of where relaxations have been given and submits the deck complies with PO6(a), (b), and (c) of the DHC and cites other examples as justification.

(iii) Further, the Appellant noted that the SCPS, 9.3.6 Dwelling House Code cites AO6 is an alternative provision to the QDC, where A2(a)(i) cites that side and rear boundary clearances where the height of that part is 4.5m or less – is 1.5m.

(d) Two interlinked elements: boundary walls and pool equipment and storage area. Block walls, Southern boundary for storage area for pool equipment:

(i) The Council refusal bases was the proposal does not adequately address performance criteria P2(b) and (c) of the QDC:

*Buildings and structures –*

(b) *allow adequate light and ventilation to habitable rooms of buildings on adjoining lots, and*

(c) *do not adversely impact on the amenity and privacy of residents on adjoining lots. (QDC).*

*The proposed pool equipment covered area and storage room addition and block walls would be located within very close proximity to the southern side boundary (0 metres in lieu of 1.5 metres) and would be immediately adjacent to windows, habitable rooms, and outdoor living areas of the southern neighbour’s dwelling. Such long and high structures are likely to impede access to light and ventilation to the habitable rooms and outdoor living areas of the dwelling to the south. As*

*such, the proposed pool equipment structure and storage room structure would not comply with P2 (b).*

*The proposed height of the structures would be 3.5 metres tall and would have a combined total length of 20 metres within the boundary setback. These structures would protect the privacy of the adjoining premises. However, the structures would be visually imposing and would leave no opportunity for the provision of any form of landscaping to soften the visual impact of the structures on the adjoining premises. The cumulative walls/roofed elements along the boundary for a length 20 metres would be imposing in terms of height, bulk and scale. In conjunction with its limited setbacks to the southern neighbouring boundary, the structures would adversely impact upon the amenity of residents on the adjoining lot to the south, particularly given the close relationship of the habitable rooms, windows and outdoor living areas of the adjoining neighbour's dwelling. As such, the proposed pool equipment structure and storage room structure would not meet compliance with P2(c).*

- (ii) The Appellant in response cites the following:
  - (1) Examples of similar work on adjacent and nearby properties.
  - (2) "The location and height of pool equipment area complies with Acceptable Solutions P2 of the Queensland Development Code."
  - (3) "The location and height of roofed storage complies with Acceptable Solutions P2 of the Queensland Development Code."
  - (4) "The location, height and length of the pool equipment and roofed storage does comply with the Performance Criteria in that the performance criteria is satisfied P2(b), (c) & (d) of the Queensland Development Code."
- (e) Proposed works exceeds the site coverage performance criteria P3 of the QDC, "Adequate open space is provided for recreation, service facilities and landscaping", in that maximum area covered exceeds 50%.
  - (i) Council's refusal basis was "The proposed additions to the dwelling house would result in total site coverage of 57.7%. The proposed development would limit the area available for landscaping to be provided on the site, particularly in parts of the site that would provide effective landscape screening between the proposed non-compliant structures and the front and side boundaries." The proposal conflicts with A3 Acceptable Solutions of QDC, "Where the maximum area covered by all buildings and structures roofed with impervious materials, does not exceed 50% of the lot area." Total coverage is: Proposed carport 79.5sqm; Existing class 1A 90.4sqm; Existing Class 1A-1B 111.1sqm; Total = 575.8m sqm, equating with 58.6% Site cover.
  - (ii) A further communication from the Council dated 23 December 2024, states, "Council would like to highlight that the "pool equipment cover area" and 'roofed storage' have been excluded in the "area" calculations on Site Cover Plan 2, but we are of the opinion these should be included unless the appellant can provide detailed drawings demonstrating these spaces satisfy any exclusions under the "area" of definition of the QDC".
  - (iii) The Appellant has confirmed in the appeal documents that the site cover is approximately 57.7%. However, "[a]dequate open space is provided for recreation, service facilities and landscaping on 37 Edwardson Drive, with the existing grassed area front of property, existing lower grassed area to canal,

proposed rear additions roofed area/ deck of approx.150 sqm, pool area, pool deck, pool underside is not enclosed and the carport not enclosed.” In addition, the 57.7% does not ”account for all areas that are considered open space, thus the % complies with QDC Performance Criteria P3”. Further, the Appellant submits, the definition of “area” in the QDC should be followed.

- (iv) Further submissions dated 6 January 2025 by the Appellant advises the roofed storage and pool equipment area are not included as they are unenclosed and only 1100mm wide and are considered sun shading devices. Further information to establish the definition ‘site cover’ which is not defined under the QDC, was provided including references to meaning ‘habitable’ spaces.
- (v) A response from Council dated 10 January 2025 provides the definitions relating to QDC MP1.2 P3 specifically

*Although “site cover” is referenced in the Sunshine Coast Planning Scheme 2014 for other development types, there are no alternative provisions in relation to QDC MP1.2 P3 for a dwelling house and any reference to “site cover” has no relevance to the matter being considered. Council’s assessment against P3 was based on the information provided by the applicant.*

*The report submitted with the application/s referenced the “Existing building and proposed building /building work for a combined site cover 58.6%” and the plans submitted did not highlight on the site plan the extent of area (...)*

*Council’s opinion is that the roofed storage and pool equipment areas are a building or structure as defined under the Building Act 1975. The “area” they comprise is not usable open space and able to be used for such purposes (...) Council is of the opinion that the proposal “area” of over 58% does have impacts on available open space and reduces space available for landscaping and recreation.*

## **Jurisdiction**

- 4. Section 229(1) of the Act identifies that schedule 1 states the matters that may be appealed to the Tribunal.
- 5. Table 1 of schedule 1 of the Act states the matters that may be appealed to the Planning and Environment Court or the Tribunal subject to (in the case of the Tribunal) the preconditions stated in section 1(2) of schedule 1.
- 6. The Tribunal has jurisdiction to determine this appeal under section 229(1)(a)(i), schedule 1, section 1, table 1, item 1(a), and schedule 1, section 1(2)(g) of the Act.

## **Decision framework**

- 7. The Appellant as the recipient of the decision notice must establish that the appeal should be upheld (under section 253(2) of the PA).
- 8. The Tribunal is required to hear and decide the appeal by way of a reconsideration of the evidence that was before the person, who made the decision the subject of this appeal (under section 253(4) of the PA).
- 9. Section 249 of the PA provides the Tribunal with broad powers to inform itself in the way it considers appropriate when hearing a tribunal proceeding and the Tribunal may seek the views of any person.

10. The Tribunal is required to decide the appeal in one of the following relevant ways set out in section 254(2) of the PA:
- (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*  
(...)

### **Material considered**

11. The material considered in arriving at this decision was:
- (a) Form 10 Notice of appeal, grounds for appeal and correspondence accompanying the appeal lodged with the Tribunals registrar on 8 November 2024.
  - (b) MP 1.2 Design and Siting Standard for Single Detached Housing – on Lots 450sqm and Over. *Queensland Development Code*. March 20120.
  - (c) “9.3.6 Dwelling House Code”, *Sunshine Coast Planning Scheme 2014*.
  - (d) “Report Cover Sheets” regarding File No: CAR23/0447 and File No: CAR22/0975. Sunshine Coast Council.
  - (e) Development Tribunal – Decision Notice 23-039 dated:24 October 2023.
  - (f) Communications with the Sunshine Coast Council: dated 23 December 2024; 10 January 2025.
  - (g) Communications with the Appellants: 20 December 2024; 6 and 25 January 2025.
  - (h) Submission response from Sunshine Coast Council, 28 February 2025.
  - (i) Submission response from Appellant 14 March 2025.

### **Findings of fact**

12. The subject site has been the subject of a number of applications and a prior Development Tribunal appeal.
13. Considerable work has been undertaken over an extended period on the subject site. Such works have impacted to varying degrees upon the subject site and adjacent properties.
14. This appeal contained no letters of support from adjacent property owners.

### **Reasons for the decision**

15. The Tribunal, with respect to each individual item of building work appealed against makes the following reasoning for the respective decision:
- (a) Block Wall, northern, Max height 2m within 300mm of boundary: Fencing works have been subsequently undertaken by the adjoining property owner, along with vegetation growth. The proposed wall and its location will have negligible impact on the adjoining property, will aide in reducing erosion and will tidy up the area’s presentation.

- (b) Proposed carport: While recognising the subject site has angular western presentation to the street and that the current streetscape has elements of non-conformity with regard to setbacks, the combined proposed carport size (floor area), in conjunction with the proposed setback, the class 1A structure already on site, with the minimum ability to landscape to reduce the visual impact on the streetscape, necessitates that a suitable setback be provided to ensure the subject site's structures do not dominate the streetscape. Although, the reduction in the size of the carport assists in addressing the site coverage reduction, the roofed areas (enclosed and unenclosed) of the total site already exceeds 50% of the maximum lot area. The increase in setback and minor reduction in floor area, in consideration of the site, streetscape and carport location does not adequately address PO2(b) and (d) and PO3 of the DHC. Further, as stated under point (e) (below) the proposed carport area should be adequately reconciled with permissible site area coverage.
- (c) Extension to the pool deck: As per approval notification dated 31 March 2023, a relaxation was provided that allowed 2.77m to the rear canal boundary. The Appellant is seeking 1.57m in lieu of 4.5m. The DHC (PO6) places emphasis upon the impact on the amenity (principally views) of the adjacent property. The Appellant has not adequately demonstrated (through design, plans and suitable materials) how these criteria will be addressed, in addition to the relaxation that has already been provided.
- (d) Block walls and pool equipment and storage area (including 3m retrospective approval): As the Council acknowledged, this is a substantial proposal which will have a direct impact upon the amenity adjacent (southern) neighbour's habitable rooms. The extent of the wall, despite the small (3m) break in the wall, provides an accumulative effect of 20m long by 3.5m high x 1.5m deep structure within the boundary setback. This proposal fails to adequately demonstrate how it addresses performance criteria P2(b) and (c) of the QDC and it will substantially impact the neighbour's access to light and ventilation.
- (e) Proposed works exceed the site coverage of 50%. The area calculation for QDC, P3 (nominated as 'site cover' on the Appellant's material) does not include all elements of the impervious roofed (enclosed and unenclosed) buildings and structures and does not highlight the areas of the calculations. The area for the existing and approved structures already exceeds the acceptable outcome and no further roofed (enclosed or unenclosed) structures as part of this appeal are approved.

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**Dr Christopher Robertson**  
**Development Tribunal Chair**  
**Date: 31 March 2025**



## **Appeal rights**

Schedule 1, table 2, item 1 of the *Planning Act 2016* provides that an appeal may be made against a decision of a Tribunal to the Planning and Environment Court, other than a decision under section 252, on the ground of -

- (a) an error or mistake in law on the part of the Tribunal; or
- (b) jurisdictional error.

The appeal must be started within 20 business days after the day notice of the Tribunal decision is given to the party.

The following link outlines the steps required to lodge an appeal with the Court.

<http://www.courts.qld.gov.au/courts/planning-and-environment-court/going-to-planning-and-environment-court/starting-proceedings-in-the-court>

## **Enquiries**

All correspondence should be addressed to:

The Registrar of Development Tribunals  
Department of Housing and Public Works  
GPO Box 2457  
Brisbane Qld 4001

Telephone 1800 804 833

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