



## Development Tribunal – Decision Notice

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### *Planning Act 2016, section 255*

<b>Appeal number:</b>	<b>23-066</b>
<b>Appellant:</b>	Peter Hiskins
<b>Respondent (Assessment manager):</b>	Veen Lyall-Wilson
<b>Co-respondent (Concurrence agency):</b>	Sunshine Coast Regional Council
<b>Site address:</b>	14 Island Court, Minyama Qld 4575 described as Lot 633 on M93025

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### Appeal

Appeal under section 229(1)(a)(i) and Schedule 1, Section 1, Table 1, Item 1(a) of the *Planning Act 2016* ('the PA') against the refusal by the assessment manager, at the direction of the referral agency, of a development application for a development permit for building work for an Open Carport on the Land ('the application').

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<b>Date and time of hearing:</b>	Friday 2 February 2024 at 10.30am
<b>Place of hearing:</b>	14 Island Court, Minyama (the <b>Land</b> )
<b>Tribunal:</b>	Kim Calio – Chair Catherine Brouwer – Member
<b>Present:</b>	Peter Hiskins – Owner and Appellant Zana Larikka – Council representative Courtney Lowrie – Council representative Peter Wand – Appellant's support

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### Decision:

The Development Tribunal (**Tribunal**) in accordance with section 254(2)(a) of the *Planning Act 2016*, confirms the decision of the assessment manager to refuse the development application for a development permit for building work for an Open Carport on land located 14 Island Court, Minyama, described as Lot 633 on M93025.

### Background

1. The appellant proposed to construct an open, skillion roofed double carport attached to the existing double garage with the following approximate dimensions:
  - Gross floor area – 41.5 m<sup>2</sup>
  - Northern side length – 6.665m
  - Eastern side length – 6.465m

- Southern side length – 7.400m
- Western side length – 6.465m
- Height adjacent to Island Court – 3.495m
- Height adjoining the garage – 3.300m
- Northern boundary setback - 0.000m
- Island Court setback (OMP) – ranges from 0.420m to 0.245m
- Skillion roof gradient – 5 degrees

2. The development of a dwelling (the definition of which includes car accommodation) on the Land is subject to the relevant provisions of the Queensland Development Code (QDC) and the Sunshine Coast Planning Scheme 2014.

3. The Land is contained within the Low Density Residential Zone of the Sunshine Coast Planning Scheme 2014. The Dwelling house code includes Acceptable Solution AO2.1 which states:

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

- (a) is setback at least 6 metres from any road frontage;*
- (b) does not exceed a height of 3.6 metres; and*
- (c) has a total floor area that does not exceed 56m<sup>2</sup>.'*

4. The Tribunal notes that Acceptable Outcome AO2.1(a) is an alternative provision to the QDC.

5. 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 450m<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.

6. In this instance the Dwelling house code AO2 is an alternative siting provision to the QDC A1(a), and therefore the 6m setback provisions (for a carport) of the Low Density Residential Zone code AO2.1(a) apply to the proposed development. However, AO2.1 (b) and (c) are not alternative provisions to the QDC.

7. The provisions of the QDC with regard to side and rear boundary setbacks - Acceptable Solution A2 continues to apply to the proposed carport.

8. As the proposed carport did not meet AO2.1(a) of the Dwelling House code, an application was triggered for referral to Council as a concurrence agency pursuant to Schedule 9, Part 3, Division 2, Table 3 of the *Planning Regulation 2017 (Regulation)*.

9. As the applicant determined that the proposed carport did not meet AO2.1(c) of the Dwelling House code, a development application was also triggered for Building Work assessable against the Planning Scheme for assessment by Council.

10. The QDC Part MP1.2 A2(a) states the following with regard to side and rear boundaries:

- A2(a) the side and rear boundary clearance for a part of the building or structure is-*
- (i) where the height of that part is 4.5m or less – 1.5m*
  - (ii) where the height of that part is greater than 4.5m but not more than 7.5m – 2m; and*
  - (iii) where the height is greater than 7.5m – 2m plus 0.5m for every 3m or part exceeding 7.5m.*

11. As the proposed dwelling did not meet A2(a)(i) or the exemptions provide by A2(d)(ii) of the QDC, an application was also triggered for referral to Council as a concurrence

agency pursuant to Schedule 9, Part 3, Division 2, Table 3 of the *Planning Regulation 2017 (Regulation)*.

12. An application for a Referral Agency Response (**RAR**) and Building Work assessable against the Planning Scheme was submitted to the Sunshine Coast Regional Council (**Council**) on or about 19 September 2023 by Better Design Planning Consultancy. The Application Forms noted areas of non-compliance, stating as follows:

***Proposed carport will seek to have a reduced road setback and exceed 56m<sup>2</sup> of domestic outbuilding – dwelling codes (PO2)***

*The proposed carport and existing garage will exceed 9m along the side boundary – QDC MP1.2(P2)*

13. The Planning report submitted with the application for RAR and Building Work assessable against the Planning Scheme noted the following triggers with regard to the proposed carport:

9.3.6 Dwelling House Code

- Reduced road setback - 245mm in lieu of 6.0m.
- Domestic outbuildings exceeding 56m<sup>2</sup>

QDC MP 1.2(P2)

- Length exceeding 9m (15m<sup>2</sup>)

14. The Planning report made the following assertions with regard to the Dwelling house code provisions and the carport:

*However, the carport will not adversely impact on adjacent amenities or dominate the streetscape character. The carport will be an open structure that will be of built form and scale that is consistent to the precedents prevailing along Island Court and the surrounding streets and that is complimentary to the character of the main dwelling. (No. 8 Island Ct has a carport approved within the front setback).*

*The carport will avoid any adverse impact through bulk by maintaining open sides and having a flat roof construction.*

*The carport will be located over the existing driveway and be maintained within the property boundary, behind the security fence and will not be highly visible to the streetscape. Parked vehicles will not impact on local infrastructure.*

*The front of the property will maintain adequate open, green space that is not dominated by class 10 structures and that is supportive of existing and future landscaping.*

15. The Planning report made the following assertions with regard to the QDC provisions and the proposed carport:

*The proposed carport and existing garage will exceed 9m along the northern boundary; however, it will not be overbearing or dominant to the adjoining properties amenities.*

*The carport will maintain open sides to reduce bulk reflected to the neighbouring property and use break in form from the existing garage.*

*The carport will not be of excessive height that will be overbearing to adjacent visuals or cause shadowing to the adjoining neighbour. Carport to be used for vehicle parking only and will not contribute to loss of privacy or acoustic amenities between properties. The adjoining property has provided consent for the proposed carport.*

*The proposed building work will be in accordance with NCC requirements for fire separation, light and ventilation for both the main dwelling and the adjoining property.*

16. A letter of support for the proposed carport from the adjoining neighbour to the north of the Land together with aerial photographs purporting to demonstrate precedents in Bangalow Street Minyama, were submitted with the application material.
17. In terms of the proposed carport triggers under the Dwelling house code identified by the applicant, the following assessment regimes are required under the Planning Regulation 2017:
  - Reduced road setback 245mm of the front boundary (in lieu of the required 6m) – Referral Agency Request assessed by Council with a response providing direction to the assessment manager.
  - Domestic outbuildings exceeding 56m<sup>2</sup> – development application for Building Work assessable against the Planning Scheme assessed and determined by Council.
18. As the proposed carport did not meet the 6m front boundary setback stated in Acceptable Solution AO2.1 of the Dwelling house code, the RAR was required to be assessed against Performance Outcome PO2 of the Dwelling house code which states:

*PO2 Garages, carports and sheds:-*

  - (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.*
19. Council's assessment report notes that with a height of approximately 3.3m and a proposed gross floor area of approximately 48m<sup>2</sup>, the proposed carport would satisfy AO2.1(b) and (c) respectively and therefore a development application for Building Work assessable against the Planning Scheme was not triggered for these aspects of the proposal.
20. Council's assessment report (of 9/10/2023) notes that the proposed carport would satisfy PO2(a), (b) and (c) but would 'not satisfy (d) as it would not maintain the visual continuity and pattern of buildings in the street, which are predominately well setback from the front boundary.'
21. Council's Assessment report notes:

*The carports and garages on this street, with exception to a small corner of a carport at 1 Island Ct are setback 6m or greater.*

*Whilst it is acknowledged that an approval (ref: CAR19/0471) was previously granted for a carport located approximately 60cm from the front boundary at 8 Island Ct (Lot 657 M93025), the approval has since lapsed, and the structure*

*was not built. Further, the carport at 8 Island Ct was assessed using different assessment benchmarks that are no longer in effect. At the time of the original assessment of CAR19/0471, the Dwelling house code and the Strategic policy – Assessment of amenity and aesthetic considerations for particular building work – carports (the Strategic Policy), were applicable assessment benchmarks.*

*Further, it is also acknowledged that there is a Dwelling house at 1 Island Ct (Lot 650 M 93025) that has a small corner of a carport that is located 4.265m from the front boundary, which was approved under RAB11/0319. However, a small corner of a carport that is setback 4.265m from the front boundary is not considered to set the character for the street*

22. The carport is proposed to be approximately 3.3m high, located on the northern boundary with no setback and have a length of approximately 6.3m, which does not meet A2(a)(i) of the QDC, which requires a 1.5m setback for structures less than 4.5m in height. The proposed carport is to be attached to an existing double garage located approximately 0.1m from the northern boundary with a length of approximately 8.57m. Given the combined length of the existing garage and proposed carport within the required 1.5m side setback is greater than 9m, the proposed carport does not meet the criteria for an exemption from the side setback requirements provided under acceptable solution A2(d)(ii) of the QDC.
23. As the proposed carport did not meet Acceptable Solution A2 of the QDC it was required to be assessed against Performance Criteria P2 of the QDC which states:

*Buildings and structures –*

- (a) provide adequate daylight and ventilation to habitable rooms; and*
- (b) allow adequate light and ventilation to habitable rooms of buildings on adjoining lots.*
- (c) do not adversely impact on the amenity and privacy of residents on adjoining lots.*

24. With regard to the QDC assessment, Council's Assessment report notes:

*The proposal is able to comply with Performance Criteria P2 of the QDC MP1.2 because:*

- The carport is positioned in front the housing and is located away from any habitable rooms, so it is not anticipated to prevent adequate daylight and ventilation to habitable rooms on the subject site or the adjoining properties.*
- A letter of support has been received from the owner of the neighbouring property at 13 Island Ct, Minyama (Lot 662 M 93025) and the carport is not enclosed. Considering this, it is not anticipated that the proposal would impact on the amenity and privacy of the adjoining neighbour at 13 Island Ct. The proposed carport is located away from the southern side boundary, so it not anticipated that the proposal would result in a negative privacy or amenity impact for the neighbouring property at 15 Island Ct (Lot 664 M 93025), when viewed from within the boundary confines of their lot.*

25. On 16 October 2023, Council's delegate decided the development application and determined the RAR.

26. On 20 October 2023 Council issued a Decision Notice refusing the development application for Building Work assessable against the Planning Scheme, citing the following reason for the refusal:

*The submitted material identified a non-compliance with Acceptable outcome AO2.1(c) of the Dwelling house code, however, it is compliant because the proposed carport does not exceed a total floor area of 56m<sup>2</sup>. Therefore, this component of the application is to be refused because it is not required.*

27. On 20 October 2023 Council issued a RAR directing the assessment manager to refuse the Building Application, citing the following reasons for the refusal:

1. *The proposal does not meet Performance Outcome PO2(d) of the Dwelling house code:*

*Sunshine Coast Planning Scheme, Dwelling house code, performance outcome PO2 (d) - Garages, carports and sheds maintain the visual continuity and pattern of buildings and landscape elements within the street.*

*The proposed carport would not maintain the visual continuity and pattern of buildings in the street, which are predominantly setback 6m or greater.*

2. *Existing Car Parking*

*The existing dwelling has 2 covered car parking spaces and sufficient room on the driveway and the parking area close to the southern boundary for four additional vehicles, which exceeds the requirements for parking in the Dwelling house code. As such Council sees insufficient grounds to depart from the planning scheme.'*

28. The Tribunal notes that although an assessment of the proposal was undertaken against the QDC MP1.2 (P2) this assessment was not incorporated into Council's decision.
29. The assessment manager issued a decision notice dated 1 November 2023, refusing the development application for a Development Permit for Building Work for an Open Carport as required by section 62 of the *Planning Act 2016 (Act)*.
30. The owner of the Land, Mr Peter Hiskins, lodged this Appeal on or about 30 November 2023 in response to the refusal of the Application at the direction of the concurrence agency.
31. This appeal was dealt with by the Tribunal at the hearing held on 2 February 2024, which was conducted at the Land.

## **Jurisdiction**

32. Section 229(1) of the Act identifies that schedule 1 states the matters that may be appealed to the Tribunal.
33. 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 pre-conditions stated in section 1(2) of schedule 1.
34. The Tribunal has jurisdiction to determine this appeal under section 229, schedule 1, section 1(2)(g) and schedule 1, section 1, table 1, item 1 of the Act.

## Decision framework

35. The onus rests on the appellant to establish that the appeal should be upheld.<sup>1</sup>
36. The Tribunal is required to hear and decide the appeal by way of a reconsideration of the evidence that was before the person who made the decision appealed against.<sup>2</sup>
37. The Tribunal may nevertheless (but need not) consider other evidence presented by a party with leave of the Tribunal or any information provided under section 246 of the Act.
38. The Tribunal is required to decide the appeal in one of the ways mentioned in section 254(2) of the Act.

## Material considered

39. The material considered by the Tribunal pursuant to section 253(4) and section 253(5) of the Act in arriving at this decision comprises:
  - (a) Request for Concurrence Agency Response (Building Work) Form submitted to Sunshine Coast Regional Council for a Referral Agency Response (RAR) dated 19/9/2023 by Better Design Planning Consultancy
  - (b) DA Form 2 Development Application involving building works submitted to Sunshine Coast Regional Council by Better Design Planning Consultancy.
  - (c) Better Design Planning Consultancy Report submitted with the RAR and development application for Building Work assessable against the Planning Scheme.
  - (d) Proposal Plans prepared by Coastal Patios submitted with the RAR and development application for Building Work assessable against the Planning Scheme comprising 3 Sheets - Site Plan (undated), Plan and Elevations Scope or Works/Design (Undated), Specification Scope or Works/Quote (7/9/2023).
  - (e) A letter of support from the adjoining neighbour to the north of the Land together and aerial photographs identified as precedents in Banglow Street submitted with the RAR and development application for Building Work assessable against the Planning.
  - (f) Council's RAR, dated 16 October 2023, and the Assessment Report, dated 11 September 2023, of the development application for Building Work assessable against the Planning Scheme.
  - (g) Council's RAR decision notice (CAR23/0639) dated 18 October 2023, directing the assessment manager to refuse the Building Application.
  - (h) Council Decision Notice refusing the development application for Building Work assessable against the Planning Scheme (DBW23/0216) dated 20 October 2023.
  - (i) The decision notice dated 1 November 2023 issued by the assessment manager (Pronto Building Approvals) refusing the development application for a Development Permit for Building Work for an Open Carport
  - (j) Form 10 – Appeal Notice against the assessment manager's decision to refuse the Application for Building Works for an Open Carport, grounds for appeal and

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<sup>1</sup> Section 253(2) of the Act.

<sup>2</sup> Section 253(4) of the Act

correspondence accompanying the Appeal lodged with the Registrar on 14 April 2023.

In the grounds of Appeal the Appellant listed the following properties as evidence of Council approvals and existing structures within the 6m front boundary setback:

- 8 Island Ct - Photo of location and also previous approval in 2019.
- 1a Island Ct - Note Proximity of Main Dwelling to Roadside Boundary
- 20 Island Ct - Note Proximity of Main Dwelling to Roadside Boundary
- 4 Bangalow St - Carport approved to front boundary (2/5/2023)
- 17 Bangalow St - Carport approved to front boundary (16/3/23)
- 21 Currong St - Not approved
- 19 Currong St - Not Approved
- 4 Wandoo St - 1.6m Front setback - approved 16/2/23
- 1 Wandoo - Front Setback - approved 19/1/2018
- 27 Wandoo – doesn't appear approved
- 29 Jarrah St - Approved 4/11/2015
- 12 Bangalow - approved 17/11/2016
- 13 Wandoo - not approved

The following is an excerpt of statements made in the grounds of Appeal:

*We believe that Council have been unfair and inconsistent with their decision. We have sourced premium products to maintain an aesthetic street appeal and be sure to maintain quality over the years. In regard to Councils reason for refusal on the grounds that we potentially have 2 covered car spaces on the premises; 'the suggested car spaces' garage is used for storage for the family. We have a boat, caravan, trailer and children with vehicles. We are both working parents that require a car for transport. The extra space is for covering our assets and increasing value to the property. Apart from our personal reason, as far as land coverage allowances we are well under the 50% total roof coverage for the 995m2 size block.....*

*We are at the end of a court and won't obstruct any view from our neighbours who have approved our proposed Carport cover, with vegetation in the middle of the court, also there are established trees in our front yard..... We believe we have considered all aspects and not asking too much, also keeping in mind other parties that may be affected with maintaining excellent street appeal.*

- (k) Emails from the Appellant to the Registrar 6 February 2024 providing information the Appellant agreed to provide at the Hearing 2 February 2024, including the proposal drawings with additional dimensions and three letters of support from neighbours at 2 (dated 10/9/23), 13 (dated 10/9/23) and 15 (dated 15/9/2023) Island Court.
- (l) Email from Council to the Registrar 29 February 2024 providing information as requested by the Tribunal via Directions issued by the Registrar 27 February 2024.
- (m) Hard copy pages of photos and addresses of the places listed in (j) above, received at the Tribunal hearing of 2 February 2023.
- (n) Sunshine Coast Planning Scheme 2014 - Dwelling House code.
- (o) Queensland Development Code - MP1.2 Design and Siting Standards for Single Detached Housing – on Lots 450m<sup>2</sup> and Over



(p) *Planning Act 2016.*

(q) *Planning Regulation 2017.*

## **Findings of fact**

The Tribunal makes the following findings of fact:

### The Land and surrounding area

40. The Land is generally level and approximately 995m<sup>2</sup> in area. It is generally rectangular in shape with a frontage of approximately 13m to Island Court, which is a cul-de-sac. The Land also has a rear frontage of approximately 28m to Mulloka Canal.
41. Vehicle access to the Land is obtained via a paved driveway from Island Court at the northern end of the road frontage.
42. The Land contains a detached dwelling and a separate single storey double garage.
43. The double garage is setback approximately between 7.25m and 7.89m from the Island Court road frontage and is approximately 8.5m long and 6.4m wide.
44. The Land has a relatively narrow frontage in proportion to the area of the lot and neighbouring lots. The majority of the front area comprises a double concrete driveway in front of the double garage, and directly adjoining that driveway is a concreted area available for car parking. This parking area, which is contiguous with the driveway, has a shade sail cover supported on steel posts. This area is contained by a masonry wall behind which is the dwelling. Narrow planted garden beds are located around the perimeter of the concrete area covered by the shade sail.
45. Island Court is a cul-de-sac with a range of single and double storey dwellings on lots with rear access to the surrounding canals. Some of the Island Court properties present to the street with high masonry front fences and gates at driveways, and others present double or triple garages and driveways with no gate across the driveway. The garages, whether incorporated as part of the main house, or as a separate structure, are set back from the front boundaries by 6m or more (except for the two exceptions as noted elsewhere). Some vehicle parking occurs on the driveways within the properties. This arrangement or pattern of the built elements and the setback space presents an overall visual continuity around the Court.
46. The garden areas between the houses and the front boundary are generally grassed in part and planted with either, or both, palms and small trees, and primarily shrubs. The setback space of the garden and driveway frontages, with the landscape elements and character seen there, presents some visual continuity around the Court, and forms a key aspect of the continuity and pattern of buildings and landscape elements within Island Court.
47. The cul-de-sac has the amenity benefit of a long central island, including a widened park section, around which the one-way roadway circles. The large and wide central section is named Island Court Park. The landscape character here is of mown grass and mature, shading trees, including fig trees (*Ficus*), tea trees (*Melaleuca*), palms and some large shrubs including bottlebrush (*Callistemon*). This highly attractive open space is prominent in the streetscape views of the Island Court properties from the start of the Court and from the entire roadway. There are street trees in the outer grassed verge, however, the Island Court Park is one of the prominent and distinct landscape elements within Island Court.

48. The key Island Court streetscape elements include Island Court Park, the island to the north of that, the verge and its trees and shrubs, the property setback spaces with their driveways and vegetation, and the pattern of the buildings. The scale and form of Island Court, with its distinct island and outer verge, together with the visual continuity and pattern of the Court's buildings, forms a place with a high amenity and a particular continuity and overall pattern of buildings and landscape elements.

#### The Hearing

49. The Appellant and the Appellant's support advised:
- (a) The Appellant has owned the dwelling for approximately 13 years.
  - (b) The Appellant has three cars, one of which is stored in the existing garage while the other two are parked in front of the existing garage and are proposed to be covered by the proposed carport. The Appellant also owns a jet ski and trailer, ride on mower and caravan.
  - (c) The Appellant advised there is no room to park the two vehicles in the garage due to the 3<sup>rd</sup> car and storage within the garage.
  - (d) The Appellant advised the carport is required to protect the vehicles from the climatic elements as well as bat droppings from bats flying over to roost in the trees in Island Court Park. A further reason for the carport is to provide security for the caravan which is currently parked on the street and enable it to be stored on the Land.
  - (e) The Appellant noted that the shade sail over the southwest corner of the Land, adjacent to the Island Court front boundary wall, was existing when he purchased the property.
  - (f) The Appellant was not able to consider alternatives for the proposed carport structure as access and height was required to enable the caravan to be manoeuvred under the carport for storage under the shade sail.
  - (g) The Appellant provided a list of addresses and photographs of examples of structures he had compiled to illustrate his assertion that his proposed carport was similar to many other structures built up to the front boundaries of properties in the immediate area. A map was also provided incorporating Cypress Court, Oak Court, Island Court, Bangalow Street, Myoora Court, part of Mooloolah Drive and part of Jessica Boulevard which the Appellant had also started contained many examples of structures within the front boundary setback.
  - (h) The Appellant noted that previous approvals were given by Council for carports in the 6m setback at 4 and 8 Island Court. Although these carports have not been constructed the Appellant considered the approvals set a precedent and support the proposed carport at 14 Island Court.
  - (i) The Appellant spoke to the material provided in the Grounds of the Appeal including the setback of existing dwelling at 1A and 20 Island Court located at the intersection with Bangalow Street.
  - (j) The Appellant agreed to provide updated plans with further dimensions of the proposed carport, more photographs from the streets highlighted on the map, a copy of the approval for the carport at 4 Island Court which has not yet been constructed and a statement consolidating his points and justification support his proposed carport.

50. During the hearing Council's representatives advised:
- (a) Council advised PO2(d) of the Dwelling house code refers to the street not the wider area.
  - (b) In interpreting PO2(d), Council advised that the part of the street taken into consideration is that part which can be seen from the frontage of the subject site and that in this case it is the entire cul-de-sac.
  - (c) Council further advised when assessing the 'pattern of buildings' at least three existing examples would be required to demonstrate that there is a pattern similar to the proposal being considered.
  - (d) Council noted that with regard to 1 Island Court only a small corner of the carport intrudes into the 6m front boundary setback and there is landscaping in place to off-set the built form impacts to the streetscape.
  - (e) The previous Amenity and Aesthetic Policy for this specific area, which enabled structures within the 6m front boundary setback under certain circumstance (such as being the same style as the dwelling), was only in force for a limited trial period. This Policy was rescinded some time ago as the outcomes that were occurring were not meeting the streetscape outcomes sought by Council. Council undertook to research this expired Policy and the period it was in force and provide this information to the parties.
  - (f) With regard to the Appellant's assertions that a carport with a reduced setback had been approved at 4 Island Court, Council noted that the approved carport had not been constructed and as such the previous approval has lapsed.
  - (g) Council advised that the proposed carport at 8 Island Court was approved under a different policy regime which was not long in place.
  - (h) The previous Amenity and Aesthetic Policy for this specific area which enabled structures within the 6m front boundary setback under certain circumstances (such as being the same style as the dwelling), was only in force for a limited trial period. This Policy was rescinded some time ago as the outcomes that were occurring were not meeting the streetscape outcomes sought by Council. Council undertook to research this expired Policy and the specific period it was in force and provide this information to the parties.
  - (i) Council also noted that the approval for the proposed carport at 8 Island Court has now lapsed.
  - (j) Council considered that buildings and structures with a 6m front boundary setback was the predominant streetscape character.
  - (k) The properties on the corner of Island Court and Bangalow Street (1A and 20 Island Court) have been considered in the pattern of development. However, Council noted that a significant portion of the setback area is landscaped and vehicle access is not required through this area as vehicle access is obtained from Bangalow Street.
  - (l) Council noted it had no concerns with the side boundary setback proposed.
51. The Tribunal noted the material submitted with the Notice of Appeal was limited and insufficient to enable the Tribunal to fully consider the proposal and points raised. Additional material requested included the application and report submitted to Council,

Council's Assessment report and any other relevant correspondence between Council and the Appellant and their representatives.

### Post Hearing

52. The Appellant provided the following information to the Registrar by email 6 February 2024:

#### Letters of Support

Three letters from neighbours at 2 (dated 10/9/23), 13 (dated 10/9/23) and 15 (dated 15/9/2023) Island Court were provided. The Appellant noted the letters 'highlight the community's acceptance and endorsement of the project.'

#### (a) Documentation of Existing Carports in the Vicinity of the Land

The Appellant provided a map, list of addresses and photographs of examples from the surrounding area (incorporating Cypress Court, Oak Court, Island Court, Bangalow Street, Myoora Court, part of Mooloolah Drive and part of Jessica Boulevard) he had compiled to illustrate his assertion that his proposed carport was similar to many other structures built up to the front boundaries of properties in the immediate area.

While the map and list of 13 addresses were distributed by the Appellant at the Hearing, the 4 four pages of photographs illustrating 33 existing examples of carports in the surrounding streets was additional information and the map was updated to remove porticos. The Appellant asserts that this '*illustrates that the proposed carport is in keeping with the visual impact, construction, and setback of existing structures in the area*'.

The Appellant notes '*these examples underscore the consistency of the proposed carport with previously sanctioned structures, both in terms of construction and setback from the street.*'

#### (b) Example of a Previously Approved Carport Not Yet Constructed

Details of a carport approved by Council with a reduced front boundary setback at 4 Island Court was provided including the application form, plans and approvals. The carport was approved 28 September 2020 with a setback of 1.685m. This approval was amended to provide for a reduced setback of 0.2m on 22 February 2021. A Council assessment report for this Change Application was also provided. This approval had a currency period of 2 years. The Tribunal notes that as the approved carport has not yet been constructed this approval is now lapsed.

The Appellant notes '*The approval granted to a very similar carport design at 4 Island Ct in 2021, with a minimal front setback, is highlighted as a direct precedent that supports the current application.*'

#### (c) Updated Plans

The Appellant provided updated plans with further dimensions as requested by the Tribunal.

#### (d) Carport Summary and Report

The Appellant stated the following conclusion to his documentation:

*'The submitted evidence and notes compellingly argue that the denial of Peter Hiskins' carport request is inconsistent with the prevailing standards and precedents within the immediate area. The support from neighbouring residents, the alignment of the proposed carport with existing structures, and the specific approval of a similar design at 4 Island Ct collectively suggest that the council's decision does not adequately or reasonably reflect the local context or the application of the relevant development codes. It is respectfully requested that the tribunal reconsider the application in light of this evidence and the broader precedent within the community.'*

53. At the Direction of The Tribunal, the Registrar requested the following information from Council by email dated 27 February 2024:

1. A copy of the Council officer assessment report relating to the applications the subject of this Appeal
2. A copy of the Council officer assessment reports (original and minor change) and any other material relating to the approval for a carport at 4 Island Court.
3. A copy of the previous Amenity and Aesthetic Policy which is no longer in force together with the period for which this previous policy was in force.
4. Any other correspondence relating to the assessment of the applications the subject of this Appeal.
5. Details of any other approvals relating to structures that have been approved to be located within the front 6m setback of properties in Island Court which are still valid but have not yet been built.
6. Council officer assessment reports relating to carports approved at 8 and 11 Island Court, regardless of whether they have lapsed or not.
7. A complete copy of the applications, the subject of this Appeal as submitted to Council.

54. Council provided the following information by email dated 29 February 2024 to the Registrar, with regard to the seven items contained in the Directions issued 27 February 2024:

1. A copy of the assessment report for the Land (ref: DBW23/0216 & CAR23/0639)
2. A copy of 2 x assessment reports for the original application and the subsequent minor change application at 4 Island Court (ref: DBW20/0136 & DBW20/0136.01)
- 2A A copy of 2x Referenced Plans for the approved carports at 4 Island Court (references: DBW20/0136 & DBW20/0136.01)
3. A copy of the Strategic Policy Assessment of amenity and aesthetics considerations for particular building works (carport), which is no longer in effect.

Note, the period that the policy was in effect included 19 July 2018 – 19 July 2019.

4. Email correspondence between Council and the applicant (Email correspondence - DBW23/0216 & CAR23/0639)

5. No attachment for item 5: There appears to be no other approvals relating to structures within the front 6m setback which are still valid and have not been built.
6. A copy of the assessment email relating to carports approved at 8 and 11 Island Court. Please note that no formal assessment reports were written for these applications. The assessment appears to have been undertaken via emails, which have been included as PDF attachments. (references: CAR19/0471 & CAR19/0463)
- 6A. A copy of the 2 x Referenced Plans for the approved carports at 8 and 11 Island Court (references: CAR19/0471 & CAR19/0463)
7. A complete copy of the applications, the subject of this Appeal as submitted to Council for the Land (references: DBW23/0216 & CAR23/0639 application lodgement 1 x email & PC2306163 – 1 x Private certifier lodged document)
8. New item – rough notes brought to the tribunal meeting.

### Reasons for the decision

55. The Appellant put forward a case of precedents set by previous approvals issued for reduced front setback for carports at 1, 4, and 8 Island Court.

The following statement from Council's Assessment report for the proposed carport at 4 Island Court demonstrates that Council has previously taken into consideration approved but not yet constructed carports in determining the pattern of buildings in the street:

*The development will be in keeping with the pattern of buildings within the street. No. 8 and 11 Island Court both have carports approved within the front boundary setback. Whilst it is noted these carports have not yet been constructed, the approved carport at 8 Island Court will have a reduced setback of less than 1m from the front boundary, and the approved carport at 11 Island Court a minimum reduced setback of 0.724m from the front boundary. Further, the existing dwelling at 1 Island Court has a minimum reduced setback of approximately 3.6m from the front boundary. The reduced setback associated with the carport at 4 Island Court will therefore be in keeping with the existing pattern of buildings within the street. Further, it is noted the roof pitch of the carport has been appropriately designed to be in keeping with, but of a lesser height than, the roof pitch of the existing dwelling.*

However, the previous approval for carports at 4, 8 and 11 Island Court have now lapsed. Council confirmed there are no other approvals for carports within the 6m front boundary setback which are still current but have not yet been constructed. Therefore, the circumstances under which Council approved the proposed carport at 4 Island Court to establish the pattern of buildings are no longer in place.

The Tribunal notes that the previous approvals for 8 and 11 Island Court were given under a different Policy regime which is not longer in place. Strategic Policy – Assessment of amenity and aesthetic considerations for particular building works – carport, which stipulated circumstances under which carports within the 6m front boundary setback would be acceptable, was in force from 19 July 2018 to 19 July 2019. Therefore, approvals given under the Policy which have not been constructed are not considered relevant to the assessment of the proposed carport over the Land.

56. The Tribunal notes that the proposed carport is to be assessed against the PO2 of the Dwelling house code which states as follows:

*PO2 Buildings and Structures –*

*(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.*

57. The Council advised that the proposed carport is considered to comply with all clauses of PO2 except clause (d) and it is important to note this clause refers to the street not the surrounding area.

58. The Appellant put forward a compelling case with regard to the large number of carports constructed within the 6m front boundary setback (some with no setback) in surrounding streets. Some 33 examples were photographed and documented in Cypress Court, Oak Court, Island Court, Bangalow Street, Myoora Court, Mooloolah Drive and Jessica Boulevard. However, as PO2(d) refers to visual continuity and pattern of buildings and landscape elements within the street, these examples which are not in Island Court are not considered relevant to the assessment of the carport over the Land.

59. The Tribunal notes that although the Land is 995m<sup>2</sup> in area, it has a frontage of just 13m, and the majority of the area within the property, between the existing garage and a masonry wall and the front boundary, is concrete driveway and hard stand area with a shade sail. Although there are narrow garden strips adjacent to the shade sail, the frontage width and existing concrete areas are considered to limit options for landscaping on the property of a scale to soften structures and provide visual continuity of landscape elements.

60. The Tribunal is of the opinion that the proposed carport with a front boundary setback ranging from 0.420m to 0.245m would not maintain the visual continuity and pattern of buildings and landscape elements within Island Court.

61. The Tribunal finds that the proposed carport in the form proposed would conflict with PO2(d) of the Dwelling house code.

62. The Appellants have not discharged their onus.

63. The Tribunal upholds the decision of the assessment manager to refuse part of the Application.

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**Kim Calio**  
**Development Tribunal Chair**

**Date: 26 March 2024**

## **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, Local Government, Planning and Public Works  
GPO Box 2457  
Brisbane QLD 4001

**Telephone (07) 1800 804 833**

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