



## Development Tribunal – Decision Notice

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

<b>Appeal number:</b>	<b>24-061</b>
<b>Appellant:</b>	Hanna Peruzynska and Matthew Heath
<b>Respondent (Assessment manager):</b>	Zac Wilkins
<b>Co-respondent (Concurrence agency):</b>	Sunshine Coast Regional Council
<b>Site address:</b>	6 Palm Drive Mooloolaba Qld 4557, described as lot 16 on RP 94393 – 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 refusal of a Development Application for approval of Building Works being additions to a dwelling for a double width carport to be built within the side boundary and road setback area. The decision followed a referral agency response by the Sunshine Coast Regional Council, recommending part approval (carport side boundary) and part refusal (carport front boundary) for the siting of the carport, being the subject of the application. Council referenced their assessment and advice against the Sunshine Coast Planning Scheme 2014 – Dwelling House Code provisions of PO2(d).

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<b>Date and time of hearing:</b>	10.00am 17 March 2025
<b>Place of hearing:</b>	The subject site
<b>Tribunal:</b>	Debbie Johnson - Chair Catherine Baudet - Member
<b>Present:</b>	Hanna Peruzynska and Matthew Heath - Appellants Tegan Johnson - Council representative Jeffrey Dodd - Council representative

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### **Decision:**

The Development Tribunal (the tribunal), in accordance with section 254(2)(d) of the PA, sets aside the decision of the assessment manager to refuse the application, and orders the assessment manager to remake the decision within 25 business days of the date of receiving this decision notice, as if the concurrence agency had no requirements.

## Background

1. The subject site has a site area of 508sq/m and faces north. The property is more or less a trapezium shape, square to the road frontage, but raking across the rear boundary. The frontage is approximately 18m wide. The frontage is a similar width to surrounding properties, except for the adjoining site to the west, which has a wider frontage. The land slopes noticeably from the road down approximately 1m to the floor level of the existing dwelling.
2. The site contains a very tidy single storey renovated brick veneer dwelling that incorporates a small single width garage on the western side. The garage is currently not being utilised as it is too small and narrow to accommodate either of the appellants' vehicles and is frequently impacted by stormwater ingress. The three-bedroom dwelling is modest in scale by today's standards, but in keeping with designs from the period in which it was built - likely the mid 1980s. The site appeared to be fenced on all sides, with the front fence being an open slat style, approximately 1.8m high.
3. The neighbouring house on the western side (number 4), is a lowset 1950s style, chamferboard-clad, dwelling. Over time there have been many sheds and carport structures built on this property, predominately along the boundary shared with the appellants. However, there are several structures at the rear of the dwelling as well. Despite the collection of structures and the lack of fencing to the street frontage, the lawn and gardens are established and very tidy. There is no concrete driveway or crossover from the street, only well-maintained lawns.
4. The neighbouring house on the eastern side (number 8) was originally built as a single storey slab on ground in the 1990s. It is now two-storey in part, with a large shade sail providing protection for cars parked between the dwelling and the street frontage. Despite having the same width of street frontage, it features two driveway crossovers. Both vehicles can park under the shade sail or travel down the eastern side boundary, (alongside the appellants' site), to a garage at the rear.
5. The appellants engaged the services of a building designer, Jim Shingles trading as Patio Dreams, to design a suitable lightweight double carport with a low-pitched skillion roof, best described as a 'flyover' design. The design illustrates an open double width carport within the 6m street setback, at 300mm from the front boundary.
6. On 5 December 2024, the assessment manager submitted a Request for a Referral Agency Response under schedule 9, part 3, division 2, table 3 of the *Planning Regulation 2017* to the Sunshine Coast Regional Council for proposed building work within the prescribed road and side boundary setback requirements.
7. On 17 December 2024, Council issued a Referral Agency Response recommending a part approval (300mm carport side boundary) and part-refusal (300mm carport front boundary) to the assessment manager, for reasons stated in the response.
8. On 19 December 2024, the assessment manager issued a Decision Notice refusing the carrying out of building works assessable under the *Building Act 1975*. The decision stated the following reason -Sunshine Coast Council Decision Notice (Part Refusal) for CAR24/0807.
9. On 19 December 2024, the appellants stated their grounds for appeal and completed and submitted the Form 10 – Notice of Appeal to the Registrar.

## Jurisdiction

10. This appeal has been made under section 229 of the PA, as a matter that may be appealed to a tribunal.

11. Schedule 1 of PA, section 1(2) however states that table 1 applies to a tribunal only if the matter involves one of the circumstances set out in paragraphs (a) to (l) of that section. 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'.
12. The tribunal is satisfied that the application lodged with the Assessment Manager and the referral of the development application to Council satisfies that requirement, being, a development application for approval of building works under the section 33 of the *Building Act 1975*, which allows alternative provisions to QDC boundary clearance and site cover provisions for buildings.
13. That application was subsequently refused by the assessment manager as recommended by Council as the referral agency. Table 1 item 1(a) in schedule 1 of the PA sets out that for a development application, an appeal may be made to a tribunal against the refusal or all or part of the development application.
14. The refusal directed by Council and made by the Assessment Manager have enlivened the jurisdiction of the Tribunal.

### **Decision framework**

15. Section 246 of the PA provides as follows (omitting the examples contained in the section):

*The registrar may, at any time, ask a person to give the registrar any information that the Registrar reasonably requires for the proceedings.  
The person must give the information to the registrar within 10 business days after the registrar asks for the information.*

16. 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— other evidence presented by a party to the appeal with leave of the tribunal; or any information provided under section 246.*

17. Section 254 of the PA deals with how an appeal such as this may be decided and the first three subsections of that section (omitting section 254(2)(e), as it relates to a deemed refusal (not relevant here) and 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*
  - (e) *[not relevant].*
- (3) *However, the tribunal must not make a change, other than a minor change, to a development application.*

## **Material considered**

18. The material considered in arriving at this decision comprises:
- (a) Proposed building works plans prepared by Patio Dreams for the appellant.
  - (b) Referral Agency Response for CAR24/0807 dated 17 December 2024, recommending a part approval, part refusal to the assessment manager.
  - (c) Decision Notice - Refusal issued by the assessment manager being Zac Wilkins of Pinnacle Certification. Reference number 240775 dated 19 December 2024 for the Carport.
  - (d) Form 10 – Appeal Notice dated 19 December 2024.
  - (e) The ‘Carport Application Appeal 6 Palm Drive Mooloolaba’ documentation prepared by the appellants, as submitted to the Registrar with the Form 10.
  - (f) The Planning Act 2016 (PA).
  - (g) The Planning Regulation 2017 (PR).
  - (h) The Development Application Rules.
  - (i) The Building Act 1975 (BA).
  - (j) The Building Regulation 2021 (BR).
  - (k) The Queensland Development Code (QDC) Part MP 1.2.
  - (l) The Sunshine Coast Regional Council’s Development.i.
  - (m) The Sunshine Coast Regional Council Planning Scheme 2014.
  - (n) The National Construction Code 2022 (NCC).
  - (o) The verbal submissions made by the parties at the hearing and during the site inspection.

## **Findings of fact**

19. The hearing for the appeal was held at the appellants’ home and subject site, on 17 March 2025. The existing residence has a single garage that is incorporated within the walls of the single storey dwelling. The driveway slopes noticeably down from the road.
20. The tribunal was informed that the appellants required two covered car parking spaces, and that the existing single garage was not sufficient to provide cover for either of their vehicles. Further we were advised that the existing garage was regularly impacted by stormwater ingress.
21. At the hearing the appellant reiterated justification for the allowance of a new double width carport to be built within the front setback area. Weather protection for their vehicles was a priority and the appellant explained that the proposal would have a negligible impact on the streetscape, which was varied and inconsistent in character.
22. The Council representatives advised that it uses the immediate vicinity (visible up and down the street from the property in question) as their definition of streetscape, and that the adjacent properties did not have approved carports in the setback zone.

23. The conceptual building design plans for the carport propose a street setback of 300mm and a western side boundary setback of 300mm. The carport design demonstrates a flyover insulated panel, skillion roof. The roof is designed to sit on two posts, being 2.4m high near the frontage, and two posts at the rear which will be supported over the existing roof for the dwelling.
24. Council's referral agency response to the assessment manager, to part-refuse the building application was based on their assessment against the Sunshine Coast Planning Scheme 2014 – Dwelling House Code. Council specifically referenced Performance Outcome PO2(d) that states:

*Garages, carports and sheds maintain the visual continuity and pattern of buildings and landscape elements within the street.*

25. Council found and stated in part:

*The proposed carport would not maintain the visual continuity and pattern of buildings and landscape elements in the street. There do not appear to be any other carports in Palm Drive, within close visual proximity to the subject site, that area as close as 300mm to the front boundary.*

*Whilst examples of structures within the required setback at 4, 8 and 23 Palm Drive have been noted, only one has had a lawful relaxation/ building approval.*

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

26. QDC MP 1.2 applies to new building work for single detached dwellings, Class 1 and associated Class 10 buildings and structures on lots 450m<sup>2</sup> and over in area.
27. QDC Acceptable Solutions A1 and A2 outline the required building line setbacks from the road, side and rear boundary lines. A1(a) states:

*For a detached dwelling, garage or a carport the minimum road setback is –*

- (i) 6m;*
- (...)*

A2(a) states:

*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;*
- (...)*

A2 goes further to qualify exemptions and conditions pertaining to this requirement. The exemptions could apply to an open carport structure:

*A2(c) Structures may be exempted from A2 (a) where –*

- (i) the structure is not a deck, patio, pergola, verandah, gazebo or the like other than one permitted under A2 (c) being primarily a horticultural structure;*
- (ii) the structure is not used for entertainment, recreational purposes or the like;*
- (iii) a screen, fence or retaining wall or a combination of screens, fences or retaining walls is not more than 2m in height.*
- (...)*

A2(d) refers to structures which could include an open carport and states:

*Subject to A2(c), class 10a buildings or parts may be within the boundary clearances nominated in A2(a) and (b) where –*

- (i) the height of a part within the boundary clearance is not more than 4.5m and has a mean height of not more than 3.5m; and*
- (ii) the total length of all buildings or parts, of any class, within the boundary clearance is not more than 9m along any one boundary; ...*
- (...)*

28. However, despite the provisions outlined in the QDC, a local government may adopt alternative boundary clearances and site cover provisions for Class 1 and 10 buildings in their local planning scheme. The provisions of the QDC apply to the extent that a local planning scheme does not opt to provide alternative provisions.

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

29. The Sunshine Coast Planning Scheme, Part 9.3.6 Dwelling House Code PO2, contains alternative siting provisions to that prescribed in the QDC.
30. 9.3.6.2 Outlines the purpose and overall outcomes for the Dwelling House Code and states in part:
- (1) 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.*
  - (2) The purpose of the Dwelling House Code will be achieved through the following overall outcomes:-*
    - (a) a dwelling house incorporates a high standard of design and makes a positive contribution to the streetscape character of the area in which it is located;*
    - (b) a dwelling house is sited and designed to protect the amenity and privacy of neighbouring residential premises;*
    - (c) a dwelling house provides a high level of amenity to the residents of the dwelling house;*
    - (d) a dwelling house is provided with an acceptable level of infrastructure and services;*

9.3.6.3 outlines the relevant performance outcomes and acceptable outcomes for a Dwelling House and table 9.3.6.3.1 sets out the requirements for accepted development and performance outcomes and acceptable outcomes for assessable development. A02.1, an acceptable outcome for Garages, Carports and Sheds, states in part:

*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;*
- (...)*

*Note—A02.1(a) alternative provision to QDC.*

31. PO2 provides the performance outcomes for garages, carports and sheds. The performance outcomes must be demonstrated when the corresponding acceptable outcome is not met. In this instance where the appellant seeks to erect a carport within the 6m setback area, they do not meet the acceptable measure set out under A02.1.
32. Therefore, it must be demonstrated that the proposed development does meet the performance criteria under PO2, which are listed below:
- (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.*
33. Council's referral agency response to the assessment manager recommended part refusal of the building application based on their assessment against the Sunshine Coast Planning Scheme 2014 – Dwelling House Code. Council only referenced Performance Outcome PO2(d) that states:
- Garages, carports and sheds maintain the visual continuity and pattern of buildings and landscape elements within the street.*
34. Therefore, it is the responsibility of the Tribunal to determine if the visual continuity and pattern of buildings and landscape elements within this street would be maintained should the proposed carport be constructed. While the appellant has provided supporting documentation already outlined in this decision, the only matters that the Tribunal may lawfully take into consideration are those that address the criteria stated at PO2(d).
35. The tribunal finds that the predominant streetscape in the location of the subject site, consists of established dwellings of varying styles, given development began in the 1950s and has evolved since this time. All the homes are tidy and well maintained regardless of their size or age. Many homes were built well before 1980 and remain original (numbers 2, 3, 4, 5, 9 and 11 Palm Drive) some have been substantially renovated (numbers 6 and 8 Palm Drive) or completely rebuilt (numbers 7, 14 and 17 Palm Drive).
36. The subject site is on the southern side of that section of Palm Drive between Parkway Drive and Poinsettia Avenue. This section of Palm Drive offers a straight line of sight to 12 allotments (numbers 3 to 25) on the northern side and 9 allotments (numbers 2 to 18) on the southern side. Many of these properties have solid masonry walls, however an equal number are enclosed by hedging, or gardens generally, with little or no fencing.
37. From a streetscape perspective, the properties on the southern side of Palm Drive are visually less obtrusive than those on the northern side due to the natural topography of the land through this section. That is, the northern side is higher above the road, while the properties on the southern side are lower. Such is the situation with the subject site.
38. While Council has provided confirmation that not all the structures within the 6m setback are lawfully erected, it is obvious many have been there for years, and unlikely to be removed. For example, a large boat/caravan carport at 4 Palm Drive, that is built alongside the location sought by the appellants for their own carport. The neighbouring carport, while 3-4m set back from the frontage, is 12m long with a gable roof approximately 3.5m high.

### **Reasons for the decision**

39. Although there are few examples of existing carport structures within the 6m street setback area in the immediate vicinity of the subject site, there is also no evidence of an established continuity or pattern of development. Rather, the charm of this locality, is the very diversity that the established landscape and built form offers.
40. The street provides a direct access through to Mooloolaba and is therefore used by many others, who are not residents in the area. Residents have been resourceful in adapting their property frontages to maintain their privacy and safely secure their properties.

41. The Tribunal finds that in this situation, the proposed carport, pitched at 2.4m, with a low profile lightweight skillion roof, would not impact on the visual continuity and pattern of buildings and landscape elements within the Palm Drive vicinity.

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**Debra Johnson**  
**Development Tribunal Chair**  
**Date: 13 May 2025**



## **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**

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