

PLANNING AND ENVIRONMENT COURT OF QUEENSLAND

CITATION: *Matthew Lawrence v The City of Gold Coast & Anor* [2022]
QPEC 19

PARTIES: **MATTHEW LAWRENCE**
(Appellant)

V

THE CITY OF GOLD COAST
(Respondent)

And

TUIJA INVESTMENTS PTY LTD
(Co-Respondent)

FILE NO: 1849/2021

DIVISION: Planning and Environment

PROCEEDING: Appeal

ORIGINATING COURT: Planning and Environment Court, Brisbane

DELIVERED ON: 10 June 2022

DELIVERED AT: Brisbane

HEARING DATE: 30 May–1 June and 3 June 2022

JUDGE: Everson DCJ

ORDER: **Appeal dismissed**

CATCHWORDS: PLANNING AND ENVIRONMENT – APPEAL – appeal
against approval of a multiple dwelling in the Medium
density residential zone

PLANNING AND ENVIRONMENT – ASSESSMENT –
compliance with the planning scheme – weight to be given to
submissions

LEGISLATION: *Planning Act 2016* (Qld)
Planning and Environment Court Act 2016 (Qld)
Planning Regulation 2017 (Qld)

CASES: *Abeleda & Anor v Brisbane City Council & Anor* [2020]
QCA 257

Wilhelm v Logan City Council & Ors [2020] QCA 273

Zappala Family Co Pty Ltd v Brisbane City Council [2014] QCA 147

COUNSEL: K W Wylie for the appellant
N D Loos for the respondent
D P O'Brien QC and R Yuen for the co-respondent

SOLICITORS: Anderssen Lawyers for the appellant
Norton Rose Fulbright for the respondent
Connor O'Meara for the co-respondent

Introduction

- [1] This is a submitter appeal against the decision of the respondent to approve a development application for a development permit for a material change of use for a Multiple dwelling ("the proposed development") on land situated at 21 William Street, Mermaid Beach ("the site").
- [2] Essentially, the proposed development is a four-storey residential multiple dwelling and the appellant contends that it should not exceed three-storeys.

The proposed development

- [3] The proposed development consists of four residential levels and an additional roof terrace. The roof terrace provides an open barbeque area, lounge areas, building services and amenities, and an air conditioning plant.¹ There is a wholly underground carpark and 12 separate units with three units on each level. All but one of the units are to be three-bedroom units.² The other unit is a single-bedroom unit to be located on the ground floor. It is intended that the building have an overall height to the top of the lift shaft of 18.45 m.³
- [4] Two architects gave evidence at the hearing of the appeal, Mr Richards, on behalf of the respondent and Mr Peabody, on behalf of the co-respondent. In their joint report they summarised the design of the proposed development in, *inter alia*, the following terms:

"The architecture of the building is characterised by visible expressed floor levels and an overhanging roof.

¹ Exhibit JNT.003.004, para 28; Exhibit JNT.003.001, para 24.

² Exhibit JNT.003.004, para 28.

³ *Ibid.*

...

The northern and southern façades do not have columns supporting the roof so the expression of the roof on corners has a generous cantilever form which contributes to the subtropical design character of the building. The roof cantilever on the top-level assists in reducing the overall bulk and scale of the building, casting a changing shadow on the walls below as the suns [sic] moves through the sky during the day.

...

The roof and the building below it have a generous 9 m setback where the vehicle driveway is located. ... This recess in the building form achieves two key outcomes. The length and overall bulk of the front façade is reduced.

...

In addition, the recess reduces the length of wall on the western boundary and opens up the pedestrian pathway where it approaches the street – providing a wider view in and out and a better connection to the street.

...

The proposed development is a well-considered piece of architecture with a range of elements that demonstrate design finesse that is respectful of its location within the local area and the relationship to and impact on neighbouring development.

...

The proposed development is considered a contemporary response to the beachside environment (including form and materials) which shall contribute to the varied, ordered and interesting skyline and reinforce the local identity and sense of place.

The proposed development achieves a high-quality urban design outcome which is functional, accessible, attractive and memorable along with being responsive to the subtropical environment and adjoining public spaces...⁴

The site and the surrounding area

- [5] The site is situated on the northern side of William Street, roughly halfway between Hedges Avenue to the east and the Gold Coast Highway to the west.⁵ It has a total area of 1,214 m² and a southern frontage of approximately 30 m to William Street.⁶ It has a 40 m boundary adjoining a public path to the west which leads to St Johns

⁴ Exhibit JNT.003.001, paras 33-42.

⁵ Exhibit JNT.003.004, para 16.

⁶ Ibid; Exhibit JNT.003.003, para 10.

Park which adjoins its northern boundary.⁷ To the east of the site is a three-storey multiple dwelling with an “L” shaped floor plan and prominent angled roof lines, which is dated and lacks aesthetic appeal.⁸ The site currently contains seven low rise residential units which are contained within a red brick two-storey structure.⁹ The building is dated and unremarkable.

[6] The interrelationship between the proposed development and the surrounding area was the subject of considerable evidence from architects and visual amenity experts at the hearing of the appeal.

[7] In the joint expert report on architecture, Mr Richards and Mr Peabody observed that:

“From an architectural perspective, the general surrounding context for the subject land can be considered to extend from Mermaid Park to the north to Seabeach Avenue to the south, and from the beach front east of Hedges Avenue to the Gold Coast Highway to the west.”¹⁰

[8] The visual amenity experts were Mr Butcher, who gave evidence on behalf of the appellant, Dr McGowan, who gave evidence on behalf of the respondent and Mr Powell, who gave evidence on behalf of the co-respondent. The three experts considered the surrounding context for the site in similar terms.¹¹

[9] The architects made the following observations:

“The residential building heights within the general surrounding context range from single storey to seven-storeys in height. Many multiple dwellings three-storeys and higher have a single basement for car parking within the footprint of the floors above, with the basement extending above ground by a metre approximately. This achieves natural ventilation and the basement does not count as a storey in the Planning Scheme. The raised ground floor creates an elevated building scale and expression. There is no real pattern of the location for the taller development through the area.”¹²

⁷ Exhibit JNT.003.003, para 10.

⁸ Ibid, para 16 and Fig 12.

⁹ Ibid, para 11 and Figs 8-11.

¹⁰ Exhibit JNT.003.001, para 12.

¹¹ Exhibit JNT.003.003, para 34.

¹² Exhibit JNT.003.001, para 15.

- [10] An illustration of the unanimous observations of the architects set out above is represented by Figure 11 in their report.¹³ This demonstrates that all of the four-storey development in the vicinity of the site is at least a block to the north of it. However, there are developments of three-storeys with a basement out of the ground to the south, including the substantial multiple dwelling development at 32 William Street known as Kalahari Palms. It is located on the southern side of William Street diagonally opposite the site to the west.¹⁴ Not only does it present to the street with a prominent elevated basement but also a significant gabled roof atop the third storey.
- [11] The architects also observed that the majority of existing buildings in the surrounding area which equal or exceed three-storeys plus a basement out of ground are on lots of at least 750 m².¹⁵ They described the architectural character of existing residential buildings in the surrounding area as “eclectic in nature”,¹⁶ and they note a diversity of roof forms.¹⁷ Notably, a number of dwelling houses in the surrounding area are large and of a scale similar to a three or four-storey multiple dwelling.¹⁸
- [12] Pursuant to the strategic framework in the respondent’s planning scheme, Gold Coast City Plan 2016¹⁹ (“the planning scheme”) the site is located within the Urban neighbourhoods area and is part of the area mapped for investigation for the light rail urban renewal area.²⁰ The town planners who gave evidence, Mr Ovenden, on behalf of the appellant, Ms Owens, on behalf of the respondent, and Mr Buckley, on behalf of the co-respondent, acknowledged that the mapping of the site in this way “clearly anticipates, as Stage 3 of the Gold Coast Light Rail is implemented, that this local area may be subject to a change in development intensity”.²¹
- [13] The site is also located within the Medium density residential zone.²²

¹³ Ibid, p 11.

¹⁴ Ibid; Exhibit JNT.003.003, Fig 14 and Fig 19.

¹⁵ Exhibit JNT.003.001, para 17.

¹⁶ Ibid.

¹⁷ Ibid, para 18.

¹⁸ Ibid, para 19.

¹⁹ Version 7.

²⁰ Exhibit JNT.003.004, para 39 and Fig 3.

²¹ Ibid, para 44.

²² Ibid, para 50.

[14] Pursuant to the Building height overlay map, the site is on the southern edge of an area mapped for three-storeys and 15 m in height.²³ This designation also includes the block incorporating the opposite side of William Street, to the west of the site. Directly opposite the site, the southern side of William Street extending east is mapped for a building height of two-storeys and 9 m.²⁴

The statutory assessment framework

[15] Pursuant to the *Planning and Environment Court Act 2016* (Qld) (“PECA”), the appeal is by hearing anew,²⁵ and the co-respondent must establish that the appeal ought to be dismissed.²⁶ Section 46 of the PECA addresses the nature of an appeal and relevantly provides:

“(2) The Planning Act, section 45 applies for the P&E Court’s decision on the appeal as if-

- (a) the P&E Court were the assessment manager for the development application; and
- (b) the reference in subsection (8) of that section to when the assessment manager decides the application were a reference to when the P&E Court makes the decision.”

[16] As the proposed development was impact assessable,²⁷ s 45 of the *Planning Act 2016* (“PA”) provides that the assessment must be carried out against the relevant assessment benchmarks in a categorising instrument for the development which, in the circumstances before me, are the relevant provisions of the planning scheme.²⁸ It must also be carried out having regard to any matters prescribed by regulation.²⁹ In this regard, s 31(1)(g) of the *Planning Regulation 2017* (Qld) states that I must have regard to “the common material”. This is defined to include any properly made submissions about the development application which have not been withdrawn.³⁰ In this regard, there were 914 properly made submissions and they were all opposed to the proposed development.³¹ Further, the assessment may be

²³ Ibid, para 58 and Fig 5.

²⁴ Ibid.

²⁵ *Planning and Environment Court Act 2016* (Qld) s 43.

²⁶ Ibid s 45(2).

²⁷ Exhibit GCC.002.001, p 98.

²⁸ *Planning Act 2016* (Qld) s 45(5)(a)(i).

²⁹ Ibid s 45(5)(a)(ii).

³⁰ *Planning Regulation 2017* (Qld), Schedule 24.

³¹ Exhibit JNT.003.004, para 33.

carried out having regard to any other relevant matter, other than a person's personal circumstances, financial or otherwise.³²

[17] The Court in determining an appeal about a development application is conferred a wide discretion pursuant to s 60 of the PA which relevantly states:

“(3) To the extent the application involves development that requires impact assessment, and subject to section 62, the assessment manager, after carrying out the assessment, must decide-

- (a) to approve all or part of the application; or
- (b) to approve all or part of the application, but impose development conditions on the approval; or
- (c) to refuse the application.”

[18] In undertaking this task, the observations of Mullins JA in *Abeleda & Anor v Brisbane City Council & Anor* are instructive:

“[42] ...The decision-maker under s 60(3) of the Act is still required to carry out the impact assessment against the assessment benchmarks in the relevant planning scheme and can take into account any other relevant matter under s 45(5)(b). The starting point must generally be that compliance with the planning scheme is accorded the weight that is appropriate in the particular circumstances by virtue of it being the reflection of the public interest (and the extent of any non-compliance is also weighted according to the circumstances), in order to be considered and balanced by the decision-maker with any other relevant factors.

[43] In view of the fact that s 60(3) of the Act reflects a deliberate departure on the part of the Legislature from the two part test under s 326(1)(b) of the SPA, it is no longer appropriate to refer in terms of one aspect of the public interest “overriding” another aspect of the public interest before a development application that is non-compliant with the assessment benchmarks can be approved. The decision-maker may be balancing a number of factors to which consideration is permitted under s 45(5) of the Act in making the decision under s 60(3) of the Act where the factors in favour of approval (or approval subject to development conditions) have to be balanced with the factors in favour of refusal of the application. The weight given to each of the factors is a matter for the decision-maker in the circumstances...”³³

³² *Planning Act 2016* (Qld) s 45(5)(b).

³³ [2020] QCA 257.

[19] Mullins JA further observed in *Wilhelm v Logan City Council & Ors*:

“[77] ...The change in the decision-making regime has not affected the fundamental nature of a planning scheme as the reflection of the public interest in the appropriate development of land.”³⁴

[20] The applicable principles for the construction of planning documents were considered by the Court of Appeal in *Zappala Family Co Pty Ltd v Brisbane City Council*, notably that the same principles which apply to statutory construction apply to the construction of planning documents,³⁵ and that such documents need to be read as a whole in a way which is practical and as intending to achieve a balance between outcomes.³⁶

Relevant provisions of the planning scheme

[21] In the planning scheme, the strategic framework prevails over all other components to the extent of any inconsistency for impact assessment.³⁷ The strategic framework includes the strategic intent in s 3.2.1, which relevantly states:

“This City Plan represents a major shift from development on the city’s fringe to redevelopment of urban centres and key inner-city neighbourhoods ...

...

The City Plan supports greater development intensity and smaller lot sizes in the city’s well-serviced and highly urbanised areas while requiring lower development intensities and larger lot sizes in areas where services and infrastructure are not as advanced ...”³⁸

[22] Subsequently in s 3.2.2 it is stated, *inter alia*, that:

“... Growth and development will be concentrated in an integrated network of well-serviced urban places – places with good access to public transport, services and infrastructure assets, or places where improvements to public transport provide a catalyst for mixed use development and high density living ...

Mixed use centres and specialist centres, urban neighbourhoods and the light rail urban renewal area ... will be targeted for renewal and transformation ...”³⁹

³⁴ [2020] QCA 273.

³⁵ [2014] QCA 147 at [52].

³⁶ *Ibid* at [56].

³⁷ Exhibit GCC.002.001, s 1.4(1)(b), p 4.

³⁸ *Ibid*, pp 9-10.

³⁹ *Ibid*, pp 11-12.

[23] Notably, s 3.3.2 of the strategic framework addresses the Urban neighbourhoods element. In s 3.3.2.1, specific outcomes relevantly include:

- “(8) The **Building height overlay map** shows the building height pattern and desired future appearance for local areas within urban neighbourhoods. This map also shows areas where building heights change abruptly to achieve a deliberate and distinct contrast in built form within and between low, medium or high rise areas.
- (9) Increases in building height up to a maximum of 50% above the **Building height overlay map** may occur in limited circumstances in urban neighbourhoods where all the following outcomes are satisfied:
- (a) a reinforced local identity and sense of place;
 - (b) a well managed interface with, relationship to and impact on nearby development, including the reasonable amenity expectations of nearby residents;
 - (c) a varied, ordered and interesting local skyline;
 - (d) an excellent standard of appearance of the built form and street edge;
 - (e) housing choice and affordability;
 - (f) protection for important elements of local character or scenic amenity, including views from popular public outlooks to the city’s significant natural features;
 - (g) deliberate and distinct built form contrast in locations where building heights change abruptly on the **Building height overlay map**; and
 - (h) the safe, secure and efficient functioning of the Gold Coast Airport or other aeronautical facilities.

Note: Where the Building height overlay map shows both storeys and metres, the lesser of the two shall apply, and any fraction which results from the calculations shall be rounded down to the nearest floor or partial floor.”⁴⁰

[24] The following provisions of the Medium density residential zone code (“MDRZC”) has been identified as relevant:

“6.2.2.2 Purpose

- (1) The purpose of the **Medium density residential zone code** is to provide for a range and mix of dwelling types including Dwelling houses and Multiple dwellings supported by

⁴⁰ Ibid, pp 23-24.

Community uses and small-scale services and facilities that cater for local residents.

- (2) The purpose of the code will be achieved through the following overall outcomes:

...

- (b) Housing is provided at a form, scale and intensity that is appropriate for the zone and each particular locality it is in where the following outcomes are satisfied:

...

Housing needs

- (iv) delivery of a generous mix of housing form, sizes and affordability outcomes that meet housing needs (including housing needs of the future) for the locality;

Design and amenity

- (v) whether intended outcomes for building form/city form and desirable building height patterns are negatively impacted, including the likelihood of undesirable local development patterns to arise if the cumulative effects of the development are considered;
- (vi) retention of important elements of neighbourhood character and amenity, and cultural heritage;
- (vii) whether adjoining residential amenity is unreasonably impacted;

...

- (d) Built form (excluding Dwelling houses on small lots) –
- (i) has a building height that does not exceed that indicated on the **Building height overlay map**;...⁴¹

[25] In terms of Performance outcomes, part of PO2 requires that site cover “promotes an open, attractive and distinct skyline” and has been identified as relevant.⁴² PO3 which requires that building height not exceed that shown in the Building height overlay map is also identified as relevant.⁴³

[26] The term Building height is defined in the following terms:

⁴¹ Ibid, pp 107-109.

⁴² Ibid, PO2(d), p 115.

⁴³ Ibid.

“Building height	<p>If specified:</p> <p>(a) in metres, the vertical distance between the ground level and the highest point of the building roof (apex) or parapet at any point, but not including load-bearing antenna, aerial, chimney, flagpole or the like; or</p> <p>(b) in storeys, the number of storeys above ground level; or</p> <p>(c) in both metres and storeys, both (a) and (b) apply.”⁴⁴</p>
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The issues in dispute

[27] The issues in dispute have narrowed considerably. They were slightly wider at the commencement of the hearing of the appeal,⁴⁵ however essentially they are now confined to whether or not the proposed development should be permitted to extend to a fourth storey and exceed a height of 15 m relying upon s 3.3.2.1(9) of the strategic framework. In this regard, the contentious outcomes are (a), (b), (c), (e) and (f).

[28] A number of relevant matters are also raised for consideration including whether the proposed development would be contrary to reasonable community expectations for development of the site and whether the merits of the proposed development, and its absence of impacts, are such that it should be approved notwithstanding any non-compliances with the planning scheme.

Discussion

[29] In the course of closing addresses, Mr Wylie, on behalf of the appellant, made the concession that if the co-respondent has demonstrated compliance with specific outcomes 3.3.2.1(9)(a), (b), (c), (e) and (f) of the strategic framework, that is the end of the matter.⁴⁶ In circumstances where a three-storey multiple dwelling on the site, if otherwise compliant with the MDRZC is code assessable, this concession appears warranted. It is not the use which is proposed which is the subject of the hearing of the appeal. Rather, in circumstances where the planning scheme expressly provides for an additional storey, the resolution of this appeal turns on whether the pre-conditions for it have been met.

⁴⁴ Ibid, Table SC1.2.2, p 160.

⁴⁵ Exhibit JNT.008.001.

⁴⁶ T4-52, ll 35-40.

- [30] The concessions of Mr Wylie are well made in circumstances where each of the identified provisions of the MDRZC appear to be addressed in the relevant considerations which must be satisfied to achieve an increase in building height up to a maximum of 50 percent pursuant to s 3.3.2.1(9) of the strategic framework. This provision also prevails over components of the MDRZC to the extent of any inconsistency when assessing the proposed development.⁴⁷ The assessment also occurs in the context of only a 23 percent uplift in height being contemplated by the proposed development.⁴⁸ It is important also to note that the circumstances where an uplift in building height may occur pursuant to s 3.3.2.1(9) are limited to where all of the relevant criteria are satisfied. None of these criteria are quantitative and some are indeed quite amorphous.
- [31] The first of the relevant criteria is a reinforced local identity and sense of place. As with the other relevant criteria, this concept must acknowledge not only what exists in respect of development in the local area but also what the planning scheme intends. As noted above, it is clear that four-storey development is contemplated for the site in certain circumstances in the context of this area being identified for greater development intensity, particularly given its designation as an investigation area for light rail urban renewal. When it is considered that the limited rooftop structures will be the only parts of the proposed development which exceed the 15 metre height restriction and that these structures would not be visible less than 38 metres from the site,⁴⁹ I readily accept the evidence of Mr Powell⁵⁰ that this together with other design elements, including setbacks and architectural treatments, avoid a sense of overbearing and comply with this requirement. What is proposed is a well-designed, well-articulated and well separated coastal multiple dwelling which is a modern reinforcement of the beachside local identity and sense of place, in the context of the greater density contemplated by the planning scheme. Moreover, like the majority of the taller buildings in the locality, it is intended to be located on a large lot.
- [32] The next consideration is a well managed interface with, relationship to and impact on nearby development, including the reasonable amenity expectations of nearby

⁴⁷ Exhibit GCC.002.0014, s 1.4(1)(b).

⁴⁸ T2-64, ll 15-20.

⁴⁹ Exhibit TUI.007.001, p 12; Exhibit JNT.003.003, para 91(g).

⁵⁰ Exhibit JNT.003.003, para 89.

residents. In approaching the question of compliance with this criterion, the visual amenity expert called by the appellant, Mr Butcher, conceded that he had only considered the locality in the context of its current character, and not what the planning scheme intended in terms of character. Furthermore, he acknowledged that his focus was on William Street rather than the broader locality.⁵¹ His approach was therefore too narrow.⁵² I prefer the evidence of the architects and the other visual amenity experts who gave evidence before me. In particular, I accept the evidence of Mr Powell:

“As a starting point, the absence of the adjoining residential neighbours on three of the four boundaries, and having a driveway as the primary interface on the only neighbouring residential lot to the east, greatly assists to avoid or mitigate impacts on residential amenity and adds to the sense of building separations, and breathing space around the building, to assist the form in sitting comfortably in its setting.”⁵³

- [33] I also accept the evidence of Ms Owens, the town planner who gave evidence on behalf of the respondent, where she stated:

“The proposal achieves a 7.6m distance to the neighbouring duplex (located to the west of the public throughfare link) and 5.4m to the adjoining three (3) storey units. The separation distances are larger than the typical building separation present in William Street, ensuring that the extent of the reduced roof setbacks will not impact on the existing amenity afforded to the adjoining residential properties.”⁵⁴

- [34] I therefore find this requirement complied with, particularly when one considers that the reasonable amenity expectations of nearby residents must take into account the greater density of development contemplated by the relevant planning scheme provisions.

- [35] The next consideration is a varied, ordered and interesting local skyline. If ever there was an amorphous planning scheme provision, this is it. The architects agreed that:

“It is acknowledged that the eclectic nature of the existing residential buildings within the general surrounding context, including the diversity in age, style, built form and materiality establishes a local

⁵¹ T3-35, ll 20-30.

⁵² The same is true of his approach to the other relevant outcomes.

⁵³ Exhibit JNT.003.003, para 89(b)(ii).

⁵⁴ Exhibit JNT.003.004, para 126(b).

identity and sense of place with a varied, ordered and interesting skyline.”⁵⁵

[36] In this context, I accept the evidence of Mr Powell that:

“the proposal contributes to a varied local skyline by providing a flatter roof that varies from the adjoining skillion and gable forms, contributes to order by maintaining a perceivable roofline of approximately 600-750mm below the overlay of 15m, and contributes to an interesting local skyline by adopting a cut-out at the streetscape ... and a vegetated rooftop interfacing with the park ...”⁵⁶

[37] I therefore find compliance with this requirement.

[38] The next relevant outcome of housing choice and affordability is contentious. The term “affordability” is to be distinguished from the defined term “Affordable housing” in the planning scheme which is defined as housing “that is appropriate to the needs of households with low to moderate incomes.”⁵⁷ I accept the evidence of the economists who gave evidence in the hearing Mr Norling, who gave evidence on behalf of the appellant, and Mr Parker, who gave evidence on behalf of the respondent, that the local area includes “an ultra-high priced beachfront market comprising those dwellings along the eastern side of Hedges Avenue and Albatross Avenue.”⁵⁸ Furthermore, I accept their evidence that the residential market in Mermaid Beach is generally considered a high priced market.⁵⁹ In circumstances where the median price within study area identified by them is \$2.3 million for houses and \$582,521 for units, the concept of affordability needs to be seen in its context.⁶⁰ I accept the evidence of both experts that the proposed development would increase housing diversity and choice.⁶¹ I also accept the evidence of both experts that market prices for the proposed three-bedroom units would be in the order of \$1.6 million to \$2 million.⁶²

[39] The appellant argues that demolishing the seven existing more affordable dwelling units to construct the proposed development would diminish housing affordability

⁵⁵ Exhibit JNT.003.001, para 23.

⁵⁶ Exhibit JNT.003.003, para 89(c)(i).

⁵⁷ Exhibit GCC-002-001, Table SC1.2.2, p 158.

⁵⁸ Exhibit JNT.003.002, para 41(b).

⁵⁹ Ibid, para 43.

⁶⁰ Ibid, paras 51 and 52.

⁶¹ Ibid, paras 74 and 76.

⁶² Ibid, para 39.

in the locality.⁶³ This approach to the question of affordability is too simplistic. It ignores the intention of the planning scheme that greater density of development occur in the local area and the evidence of Mr Buckley, the planner who gave evidence on behalf of the co-respondent, that over time there will be more four-storey buildings in the vicinity.⁶⁴ Mr Ovenden, the planner who gave evidence on behalf of the appellant, concedes that there is no discreet council policy for the provision of affordable housing in Mermaid Beach.⁶⁵ It is also relevant that the proposed development includes a much more modest ground level single-bedroom unit. I am of the view that the concept of affordability must be addressed in the context of the site having regard to these matters. I therefore accept the argument of the co-respondent that this requirement is complied with as it provides a three-bedroom residential option with proximity to public transport at a price point that is lower than a comparable dwelling house, as well as the single-bedroom unit. Accordingly, I find this requirement is satisfied.

- [40] The final relevant outcome for consideration pursuant to s 3.3.2.1(9) of the planning scheme is protection for important elements of local character or scenic amenity, including views from popular outlooks to the city's significant natural features. First, the latter part of this requirement does not appear to be relevant. Second, I am satisfied the design elements of the proposed development identified above, which create a well articulated building which is not overbearing, will protect important elements of local character or scenic amenity, including views from St Johns Park.⁶⁶
- [41] Obviously I must also have regard to the common material including the 914 properly made adverse admissions. The majority of these submissions were from residents of the Mermaid Beach locality and took the form, in most instances, of two proformas. A number of the issues raised in the submissions, including those relating to traffic impacts and the correct identification of storeys, did not translate into issues to be resolved at the hearing of the appeal. While these submissions are entitled to weight, they cannot outweigh what the planning scheme contemplates as appropriate development for the site in circumstances where it is “the reflection of

⁶³ Outline of Argument for the appellant, para 87.

⁶⁴ T3-42, ll 30-36.

⁶⁵ T3-60.

⁶⁶ Exhibit JNT.003.003, Fig 36.

the public interest in the appropriate development of land.”⁶⁷ The planning scheme is where reasonable community expectations for development of the site are to be found. The planning scheme clearly contemplates appropriate four-storey multiple dwellings on the site in circumstances where, as I have found, all of the relevant outcomes to permit this have been satisfied. It is therefore not appropriate that the submissions, which are evidence of significant public sentiment opposed to the proposed development, outweigh the public interest expressed in the planning scheme.

Conclusion

[42] I find that the proposed development complies with s 3.3.2.1(9) of the planning scheme. If I am wrong in this respect, any non compliances are not such as to warrant refusal in this case. They are minor in the context of what is proposed. In this regard, relevant matters warranting approval of the proposed development include it representing a rejuvenation of an outdated residential development in the context of the planning scheme contemplating greater density in the local area. It is also a relevant matter that the proposed development exhibits excellent architectural and design qualities and does not result in any unacceptable amenity impacts. These relevant matters also justify approval of the proposed development in the event of any subsisting non compliances with the MDRZC.

[43] I therefore dismiss the appeal.

⁶⁷ *Wilhelm v Logan City Council & Ors*, supra at [77].