



Development Tribunal – Decision Notice

Planning Act 2016, section 255

Appeal number:	26-017
Appellants:	Mr and Mrs Hall
Respondent (Assessment manager):	Veen Lyall-Wilson, Pronto Building Approvals
Co-respondent (Concurrence agency):	Scenic Rim Regional Council (“Council”)
Site address:	58 Roxborough Street, Canungra Qld 4275 – formally described as Lot 157 on SP272564 (“subject site”).

Appeal

Appeal under section 229(2) and schedule 1, sections 1(1)(b) and 1(2)(g), and table 1, item 1(a), of the *Planning Act 2016* (“the PA”) against the assessment manager’s decision to refuse the appellant’s application for a building works development permit for an extension to a dwelling house, in the form of a proposed carport within the street frontage setback area (“the application”).

Date and time of hearing:	Wednesday, 6 May 2026, at 10.00am
Place of hearing:	The subject site
Tribunal:	Neil de Bruyn—Chairperson Amanda Bertoldi-Ward—Member
Present	Toby Hall—Appellant Sean Beck—Council representative Daniel Smith—Council representative

Decision

1. The Development Tribunal (‘the Tribunal’), in accordance with section 254(2)(a) of the PA, **confirms** the decision of the assessment manager to refuse the application.

Background

2. The subject site consists of a residential lot with an area of 866m² and described as Lot 157 on SP272564. The subject site has direct frontage to Roxborough Street, which forms its south-western boundary. The subject site is located within the Scenic Rim Regional Council local government area. The immediate vicinity of the subject site is characterised by low density residential land uses and an area of open space and natural bushland to the south and west.

3. The subject site is included within the Low Density Residential Zone under the Scenic Rim Planning Scheme 2020, being the current and applicable planning scheme for the subject site (“the planning scheme”).
4. The subject site contains a substantial dwelling house and associated domestic facilities.
5. The appellants propose to construct a new carport over the existing driveway of the dwelling house, extending to a frontage setback of only 100mm. The proposed carport will be 6m in length, 5.7m in width and a maximum of 2.5m high.
6. The assessment manager was engaged to assess the required building works development application. There is no information before the tribunal as to the specific date upon which this engagement occurred.
7. Pursuant to schedule 9, part 3, division 2, table 3 of the *Planning Regulation 2027* (“the PR”), assessable building works such as that the subject of this appeal that do not meet applicable assessment benchmarks for design and siting are to be referred to the applicable local government as a concurrence agency.
8. In this case, building works involving a dwelling house or a Class 10 building located on the same lot are subject to the design and siting assessment benchmarks of the Low Density Residential Zone Code (“the code”) under the planning scheme, identified for section 33 of the *Building Act 1975* and in section 1.6 of the planning scheme as being alternative design and siting provisions to those provided under the Queensland Development Code.
9. Acceptable outcome AO2 of the code provides that, in the case of the subject site, setbacks to a street frontage are to be a minimum of 6m. Clearly, the proposed frontage setback of 100mm will not achieve this assessment benchmark. Accordingly, the applicable assessment benchmark for the concurrence agency’s assessment is the associated performance outcome (“PO”) for AO2, being PO2 of the code.
10. PO2 provides that setbacks:
 1. *assist in the protection of the amenity of adjacent premises;*
 2. *allow for access around the building;*
 3. *positively contribute to the amenity of the streetscape; and*
 4. *allow for on-site car parking.*
11. In its referral agency response dated 20 February 2026, Council directed refusal of the application, on the grounds that the proposed development does not comply with, and cannot be conditioned to comply with, aspects of PO2, specifically item 3 as mentioned above. The specific reasons for this direction were stated to be as follows:
 - 1) *Established Streetscape Character*

Roxborough Street is characterised by:

 - *A consistent front building line;*
 - *Open landscaped front setback areas;*
 - *Limited built form within the front setback when viewed from the public realm.*

The proposal introduces roofed built form approximately 100mm from the front boundary. This represents a substantial encroachment into the established open setback character of the street.

2) Alteration of Spatial Relationship Between Dwelling and Street

The proposed structure, notwithstanding its open-sided design:

- Introduces permanent vertical supports and a roof plane within the most visually prominent portion of the front setback;*
- Alters the established separation between the dwelling and the street;*
- Reduces the perception of openness currently contributing to the streetscape character.*

Council considers that the introduction of roofed built form in this location materially changes the existing streetscape pattern and does not positively contribute to its amenity.

3) Failure to Demonstrate Positive Contribution

Council has considered the applicant's response dated 11 February 2026, including arguments relating to:

- Visual articulation;*
- Microclimate benefits;*
- Vehicle protection;*
- Property value uplift;*
- Reduced on-street parking;*
- Neighbour support;*
- Approval of a carport at 15 Beasley Way (CAR22/040).*

Council considers that:

- The matters raised largely relate to private functional benefit rather than enhancement of the public streetscape amenity;*
- No substantive urban design analysis or objective evidence has been provided to demonstrate enhancement of streetscape amenity;*
- The existence of an approval in another street does not establish a prevailing pattern within Roxborough Street;*
- Each application must be assessed on its individual merits and specific streetscape context.*

Council is therefore not satisfied that the proposal demonstrates a positive contribution to streetscape amenity as required by PO2.

- 12. In a decision notice dated 4 March 2026, the assessment manager gave notice of the decision to refuse the application. The reason for this refusal is stated to be the concurrence agency direction by Council. No other reasons for this refusal were given.*
- 13. The appellants duly lodged this appeal with the tribunal registrar on 23 March 2026.*
- 14. A site inspection was held on the subject site on Wednesday, 6 May 2026, at 10.00am.*

Jurisdiction

15. Section 229(1) of the PA provides that schedule 1 (“the schedule”) of the PA states the matters that may be appealed to a tribunal.
16. Section 1(1)(b) of the schedule provides that the matters stated in table 1 of the schedule (“table 1”) are the matters that may be appealed to a tribunal. However, section 1(2) of the schedule provides that table 1 only applies to a tribunal if the matter involves one of the matters set out in section 1(2).
17. Section 1(2)(g) provides that table 1 applies to a tribunal if the matter involves a matter under the PA, to the extent the matter relates to the *Building Act 1975* (“BA”), other than a matter under that Act that may or must be decided by the Queensland Building and Construction Commission.
18. This appeal involves a matter under the PA, that relates to the BA, that is not one that may or must be decided by the Queensland Building and Construction Commission.
19. Table 1 thus applies to the tribunal in this appeal. Accordingly, the tribunal is satisfied that it has jurisdiction to hear and decide this appeal.

Decision framework

20. Generally, the onus rests on an appellant to establish that an appeal should be upheld (section 253(2) of the PA).
21. The tribunal is required to hear and decide an appeal by way of a reconsideration of the evidence that was before the person who made the decision appealed against (section 253(4) of PA).
22. 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 PA.
23. The tribunal is required to decide an appeal in one of the ways mentioned in section 254(2) of the PA, and the tribunal’s decision takes the place of the decision appealed against (section 254(4)).
24. The tribunal must not make a change, other than a minor change, to a development application (section 254(3)).

Material considered

25. The material considered in arriving at this decision was:
 - a) *DA Form 2 Building Work Details* provided to the tribunal and the appellant on 7 May 2026, in response to the tribunal’s direction dated 6 May 2026.
 - b) Form 10 Notice of Appeal lodged with the tribunal registrar on 23 March 2026.
 - c) The appellants’ detailed grounds for appeal as outlined in an attachment to the Form 10.
 - d) The assessment manager’s decision notice dated 4 March 2026.
 - e) Council’s referral agency response dated 20 February 2026 directing refusal of the application.

- f) The assessment manager's response dated 11 January 2026 to a further advice request presumably issued by Council (a copy of which request has not been provided to the tribunal).
- g) Apollo Patios plans (undated) showing the proposed carport, and a variety of photographs showing examples of carport structures, ostensibly within the local area of the subject site.
- h) The *Planning Act 2016* and the *Planning Regulation 2017*.
- i) The *Scenic Rim Planning Scheme 2020*.

Findings

26. Two preliminary matters had to be considered by the tribunal:

- a) Based on the material before the tribunal, including a copy of the DA Form 2, the applicant for the application was JTS Patio Constructions Pty Ltd, trading as Apollo Patios Brisbane and Sunshine Coast, whilst the appellants as listed on the Form 10 Notice of Appeal are Mr and Mrs Hall.

Table 1, item 1 of the schedule (schedule 1 of the PA) provides in this case that an appeal against the refusal of all or part of a development application may only be made by the applicant for that development application.

The tribunal considered the above-mentioned distinction between applicant and appellant and satisfied itself that the definition of "applicant" under the PA (schedule 2), set out below, includes Mr and Mrs Hall, as the occupants and presumably the owners of the subject site, and therefore entitles them to bring this appeal. That is, the tribunal is satisfied that the Halls are persons in whom the benefit of the application vests.

"applicant, for an appeal in relation to an application, includes the person in whom the benefit of the application vests."

- b) The Form 10 Notice of Appeal, as lodged with the Registrar on 23 March 2026, was not signed by the appellants nor the property owner(s).

The tribunal finds that, as the unsigned Form 10 has been adopted by the parties to this appeal, without any objections having been noted, the unsigned Form 10 can be accepted by the tribunal for the purposes of this decision.

- 27. The application required referral to Council under schedule 9, part 3, division 2, table 3, item 1(b) of the PR.
- 28. As stated in paragraph 20 above, the onus rests on the appellants to establish that this appeal should be upheld.
- 29. Council directed refusal of the application based upon its conclusion as stated in paragraph 11 above, to the effect that the non-compliant road frontage setback of the proposed carport would not contribute positively to the amenity of the streetscape, which Council considered to be predominantly characterised by buildings and structures providing consistent front building lines, open landscaped front setback areas and limited built form with the front setback areas.
- 30. At the inspection and hearing of this appeal, the tribunal walked the full length of the local streetscape of Roxborough Street, to get a detailed appreciation of the character

of the local streetscape. The tribunal's observations and findings in this regard were consistent with the Council's characterisation of the streetscape in paragraphs 11 and 29 above.

31. That is, the tribunal finds that the local streetscape is predominantly characterised by buildings displaying compliant and generous frontage setbacks, notwithstanding the tribunal's observations outlined in paragraph 32 below.
32. The only local example of an apparently non-compliant building or structure, other than some boundary fences (all visually assessed by the tribunal to be no higher than 1.8m, and therefore not subject to design and siting requirements), was a shade-sail carport structure at 54 Roxborough Street. The tribunal was informed by Council at the hearing that this structure has no approval. Notwithstanding its apparent unapproved status, the tribunal finds that its continued existence (and apparent condonation by Council and the local community) means that it must be taken into account in any assessment of the visual values of the local streetscape character.
33. In this case, the tribunal finds that the appellants have not provided any evidence that would lead to an alternate conclusion regarding the impact of the proposed carport's siting on the predominant streetscape character and visual amenity.
34. In the material before the tribunal and the verbal submissions made at the hearing, reference was made to an approved carport located at 15 Beasley Way. Whilst the apparent approval by Council of this particular carport potentially raises questions of consistency of decision-making, the tribunal finds that the Beasley Way carport is situated within an entirely different streetscape to that of the subject site. Accordingly, the tribunal finds that its existence has no bearing on any consideration of the impact of the subject development on the local streetscape of Roxborough Street.
35. Whilst the tribunal acknowledges the appellants' desire to provide weather protection for vehicles parked on the driveway of the subject site, the tribunal also noted, at the site inspection, that the dwelling house includes an integrated two-bay garage that could well be used for this purpose.
36. Given the siting of the existing dwelling house on the subject site, the tribunal finds that the character of the streetscape, and the overwhelmingly compliant nature of building setbacks within the local streetscape, are such that the proposed development could not be conditioned to comply with PO2 of the code. That is, a compliant 6m setback would not be possible, given the siting of the existing house, and any building setback less than the 6m benchmark would be inconsistent with the achievement of items 1 and 3 of this performance outcome.
37. Based on the above analysis, and in the absence of any evidence provided to the contrary by the appellants, the tribunal finds that the proposed development would not comply with, and could not be conditioned to comply with, PO2 of the code.
38. Accordingly, the tribunal finds that the appellants have not established that this appeal should be upheld (as required by section 253(2) of the PA).

Reasons for the decision

39. The tribunal, in accordance with section 254(2)(a) of the PA, has decided this appeal as set out in paragraph 1 above.

40. The tribunal's reasons for this decision are that it has found that the application does not comply with the matters a referral agency's assessment must be against, in the form of PO2 of the code, and that the appellants have not provided any evidence to demonstrate otherwise, or to otherwise establish that this appeal should be upheld.

Neil de Bruyn
Development Tribunal Chair
Date: 15 May 2026

Appeal rights

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

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

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

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

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

Enquiries

All correspondence should be addressed to:

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