



Development Tribunal – Decision Notice

Planning Act 2016, section 255

Appeal number:	25-038
Appellant:	Brett and Julie Miers
Respondent (Assessment manager)	Veen Lyall-Wilson (Pronto Building Approvals)
Co-respondent (Concurrence agency)	Gympie Coast Regional Council
Site address:	8 Larapinta Court, Rainbow Beach Qld 4581 and described as Lot 23 on RP 96912 – the subject site

Appeal

Appeal under section 229 and schedule 1, section 1, table 1, item 1(a) of the *Planning Act 2016* (PA) against the part refusal of a development application for building works. The proposal being additions to a dwelling including a double width carport proposed within the road (front) setback of an existing dwelling house.

The part approval relates to the Gympie Regional Council's referral agency response directing the assessment manager to approve only the part of the application for additions to the dwelling (thereby refusing the proposed carport) because the proposed carport does not comply with and cannot be conditioned to comply with Gympie Regional Council's adopted Amenity and Aesthetics Resolution.

Date and time of hearing:	11.00am, 18 November 2025
Place of hearing:	The subject site
Tribunal:	Debbie Johnson—Chair Neal Charlton—Member Lisa Lambie—Member
Present:	Brett and Julie Miers—Appellants Andrew Parker—Council Representative Paul Hay—Council Representative

Decision

The Development Tribunal (Tribunal), in accordance with section 254(2)(a) of the *Planning Act 2016*, confirms the decision of the assessment manager and maintains the part refusal applicable to the proposed double width carport.

Background

1. The subject site is situated centrally along Larapinta Court, which is a relatively short low density residential suburban street ending in a cul-de-sac. The subject site has a north-easterly outlook over Larapinta Court and neighbouring dwellings over the road, towards the native bushland area along the Rainbow Beach coastline. The street comprises sixteen residential allotments that predominately accommodate single storey dwellings except for the subject site and two others, side by side, at the cul-de-sac end, which are two storeys.
2. The subject site is rectangular in shape, with a site area of 600sq/m. Neighbouring allotments in the street are similar in size and shape save for the six properties that comprise the cul-de-sac head formation at the end of the road.
3. The subject site slopes gently from the rear down towards the street but generally gives the appearance of being level. The cul-de-sac in turn falls gently to the north-west where it intersects with Turana Street.
4. Larapinta Court and the wider area was largely established in 1970-1980s as a holiday or retirement destination. The dwellings within Larapinta Court and the immediate locality generally still reflect this period, as does the subject site.
5. The existing dwelling on the subject site is a three bedroom home that is two storey and primarily masonry block construction. The main living is on the upper level with access via external stairs leading to an expansive covered timber veranda. This veranda wraps along the northern and eastern sides of the dwelling and has been partially enclosed at the western end. The setback from the eastern facing veranda to the road boundary is 4.56m.
6. The ground floor accommodates a small, separate living area and a single lock up garage. The property also features an in ground pool and a large carport suitable for either a boat, car or caravan. Vehicle access to the subject site is via an existing single width concrete driveway leading to the single garage on the lower level of the home.
7. The appellants indicated that they share their home with adult children and they were seeking to build a carport at the front of the property to practically provide cover for all their vehicles. The appellants also stated that they have larger vehicles to allow them to tow their caravan and that the existing single width garage cannot accommodate any of their cars due to height limitations.
8. The appellant purchased the property in 2021 with the intention of seeking an approval to enable the construction of a new carport at the front of the subject site. With this in mind, the appellants lodged an enquiry to Council on 31 January 2024 about constructing a carport. Council responded by email on 9 February 2024, stating that any building works within the 6m street setback are unlikely to be supported.
9. The appellant engaged JTS Patio Constructions Pty Ltd, trading as Apollo Patios to document the proposed design to support the making of a development application for building work. The drawings submitted with the development application indicate a 3.0m high skillion structure that is approximately 6.0m long and 4.46m wide, setback 100mm from the front boundary to Larapinta Court. The drawings also include a covered veranda extension along the street side of the dwelling. However, the building work drawings do not provide any significant detail of the existing site and improvements.
10. On behalf of the appellant, JTS Patio Constructions Pty Ltd, trading as Apollo Patios, engaged Pronto Building Approvals seeking a development approval for building works.

The application included a retrospective building approval for veranda decking that had already been constructed.

11. On 18 August 2025, Pronto Building Approvals, in its capacity as the assessment manager, referred the building work application to Gympie Regional Council
12. On 27 August 2025, Council issued a Request for Further Information, indicating that the proposed carport was not supported and suggested a possible alternate design.
13. On 10 September 2025, the assessment manager responded to Council requesting that the application proceed, based on the original design, understanding that Council would likely not support the proposal.
14. On 15 September 2025, Council issued a Referral Agency Response which approved only part of the application related to the veranda deckings. The balance of the application related to the carport is therefore taken to be refused.
15. On 19 September 2025, the assessment manager issued a Part Approval and Part Refusal Decision Notice to JTS Patio Constructions Pty Ltd, trading as Apollo Patios. The notice stated the part of the application related to the carport was refused as directed by Council in its referral agency response.
16. On 15 October 2025, the appellant stated the grounds for appeal and completed and submitted the Form 10 – Notice of Appeal to the Registrar.
17. On 10 November 2025, the assessment manager sought approval via the registrar, to withdraw from the appeal in accordance with Section 229(5) of the PA, which provides ‘If an appeal is only about a referral agency’s response, the assessment manager may apply to the tribunal or P&E Court to withdraw from the appeal’. The chair on behalf of the tribunal subsequently granted this request.

Jurisdiction

18. This appeal has been made under section 229 of the PA, as a matter that may be appealed to a tribunal.
19. Schedule 1 of PA, section 1(2) states table 1 may apply 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’.
20. The tribunal is satisfied that the application lodged with the assessment manager and the referral of the development application to Council is a matter that satisfies this requirement. The appeal concerns a development application for approval of building works which was required to be referred to Council for assessment of specific local matters contained within Council’s planning scheme, which form part of the Building Assessment Provisions. Relevantly, section 32 of the *Building Act 1975*. allows a local government to make or amend—
 - (a) *a local planning instrument that designates, for the BCA or QDC, matters prescribed under a regulation; or*
 - (b) *a provision of a local law or planning scheme or a resolution about an aspect of, or matter related or incidental to, building work prescribed under a regulation; or*
 - (c) *alternative provisions under section 33.*

21. That application was partly refused by the assessment manager as directed by Council, who are 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 of all or part of a development application.
22. The part refusal by the assessment manager as directed by Council has enlivened the jurisdiction of the Tribunal.

Decision framework

23. 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.’
24. 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.*
25. 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), 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*
 - ...
 3. *However, the tribunal must not make a change, other than a minor change, to a development application.*

Material considered

26. The material considered in arriving at this decision was:
 - (a) Form 10 Notice of appeal, grounds for appeal and correspondence accompanying the appeal lodged with the Tribunals registrar on 15 October 2025.
 - (b) Gympie Regional Council's Concurrency Agency Advice, dated 15 September 2025, to the assessment manager.

- (c) Decision Notice – Part Refusal issued by the assessment manager being Veen Lyall-Wilson of Pronto Building Approvals. Reference number 250762 dated 198 September 2025 for the proposed carport.
- (d) Appeal written submission, prepared by Council, and submitted by email on 18 November 2025, via the registrar, following the hearing. All parties to the appeal were also provided with this submission at the hearing held on site.
- (e) Appellant’s written response to Council submission received by email via the Registrar 20 November 2025.
- (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) Gympie Regional Council Planning Scheme 2013
- (m) The National Construction Code 2022 (NCC).
- (n) The verbal submissions made by the parties at the hearing and during the site inspection.
- (o) Google Maps and Streetview.
- (p) Site inspection and street walk during the hearing

Findings of fact

27. The tribunal makes the following findings of fact:

- (a) The hearing for the appeal was held at the appellant’s home and subject site, on 18 November 2025. The existing residence provides for a single lock up garage area on the ground floor of the two-storey home. There is also a large separate carport between the home and the northern side boundary of the subject site. The exact position and dimensions of the existing carport are unknown as the proposed plans are not sufficiently detailed in this respect.
- (b) The tribunal was informed that the appellant required two covered car parking spaces to allow safe, weatherproof access from the vehicles into the dwelling. The appellant stated that without a carport this transition becomes hazardous and uncomfortable. The appellant owns a caravan that is commonly stored in the existing separate carport structure.
- (c) At the hearing the appellant reiterated justification for the proposal and stated that the proposed carport would have a negligible impact on the streetscape, which was varied and inconsistent in character.
- (d) The appellant also argued that several neighbouring examples of other structures in the streetscape should be considered in the assessment of the appeal, including solid fence walls which form part of the streetscape.
- (e) At the hearing there was brief discussion with respect to the original garage. The appellant stated that this area provided an opportunity as a workshop but was too

small to be able to function as covered parking for any of their vehicles, because the height is too limited.

- (f) The Council representatives advised that for the purpose of assessing the proposed carports amenity and aesthetics, the meaning of the term 'streetscape' is as per the planning scheme. In effect, the streetscape is limited to the street and limited to the immediate vicinity (visible up and down the street from the property in question). Accordingly, other properties that may be 'in the area' but not in 'the streetscape' are not relevant in the assessment.
- (g) Relevantly, residential properties in Larapinta Court predominately do not have approved carports or garages positioned forward of the dwelling.
- (h) The design documentation for the proposed double carport indicates a setback of 100mm from the front boundary. The existing building line setback from the extended veranda to the street boundary is determined to be 4.56m. The carport roof is designed to be attached to the veranda at the rear and be supported on two, 140mm square timber posts at the street frontage. While the overall depth of the new roof at 4.46 is insufficient in length to cover a vehicle, it would also be possible to utilize the depth available under the veranda deck area. Together these structures would allow more than sufficient length to accommodate vehicles.

Streetscape

- (i) The existing two-storey dwelling currently has a road boundary setback of 4.6m. The majority of the neighbouring buildings are set back 6m. There are two properties in the street that appear to have a structure within the road boundary setback area, both of which are single storey dwellings. The majority of sixteen homes in this street feature mature planting with lawns and open front yards, such as the subject site. There is some vertical aluminium fencing along the street that is discreet and only two properties have solid fencing. Overall, the streetscape of Larapinta Court can be described as a street made up primarily of residential dwellings that maintain a reasonable setback from the dwelling's façade to the road. While these road boundary setbacks vary in size and some contain vegetation or other natural features, the Tribunal is of the view that there is still a discernible consistency or 'rhythm' within the street, which contributes to a relatively cohesive and predictable visual environment.
- (j) Council stated in writing that the proposed development for the carport does not comply with the relevant Performance Criteria (PC) 6 and PC 7, Table 3- Assessment Criteria of the Gympie Regional Council *Adopted Amenity and Aesthetics Resolution*, adopted in 22 February 2023.
- (k) The Adopted Amenity and Aesthetics Resolution states:

In order to achieve regulatory efficiency and streamline processes, dwelling houses (which include outbuildings) are exempt development in the Residential Living zone.
- (l) Further stated within the resolution is:

This resolution is made in accordance with Schedule 9 Division 2 Table 1of the Planning Regulation 2017 (PR) where building work for a building or structure may:

 - (i) *have an extremely adverse effect on the amenity, or likely amenity, of the locality; or*

- (ii) *be in extreme conflict with the character of the locality.*

The Queensland Development Code (QDC)

- (m) QDC MP 1.2 applies to new building work for single detached dwellings, Class 1 and associated Class 10 buildings and structures on lots 450m² and over in area.
- (n) QDC Acceptable Solutions A1 and A2 outline the required building line setbacks from the road, side and rear boundary lines.
- (o) 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 Gympie Regional Planning Scheme 2013

- (p) The subject site is located in a Residential Living Zone. The planning scheme Part 6.2.1.1 (1) states:

The purpose of the zone is to provide for predominantly dwelling houses supported by community uses and small-scale services and facilities that cater for local residents.

- (q) Table 6.1 within the Residential Living Zone code at Acceptable Outcome AO2.7 states 'Buildings have a minimum set back of 6m to the primary street frontage'. The corresponding Performance Outcome, PO2 states:

The density, built form and appearance of development compliments and is in keeping with the low density residential character of the zone.

- (r) The Adopted Amenity and Aesthetics Resolution states in part:

The Amenity and Aesthetics Resolution has been adopted to ensure that, in line with community expectations, Council retains regulatory control over building work which may have an extremely adverse effect on the amenity, or likely amenity of the locality, or is in extreme conflict with the character of the locality in which it is proposed.

- (s) Table 2 - Class 10, within the resolution, provides that a 6m setback is required for a carport on an allotment with a 600sq/m lot size. Where this setback is not achieved, a Building Certifier must not issue a development application for building approval, without referral to the Gympie Regional Council as the Concurrence Agency. Council must then consider the relevant performance criteria relating the setback being sought, to determine compliance and provide advice to the assessment manager.

- (t) In this instance the performance criteria stated are-

PC5 Buildings or structures are of a size, bulk and form that is in keeping with the character of the area.

PC6 The location of the building or structure provides for an acceptable streetscape and does not adversely impact upon the amenity of neighbouring properties.

PC7 Buildings or structures are designed and sited to visually integrate with the dwelling house and avoid dominating the street by minimising the:

- (i) *width of the structure; and*
- (ii) *projection of the structure forward of the main face of the dwelling house.*

- (u) In the written advice provided to the assessment manager, Council stated in part:

The proposed 4.6m x 6.0m x 2.75m Class 10a with primary street frontage setback of 100mm will have an adverse effect on the amenity of the locality and be in conflict with the character of the locality as it does not comply with and cannot be conditioned to comply with the relevant performance criteria PC6 and PC7 of Table 3 Assessment Criteria.

- (v) It is the responsibility of the tribunal to determine if the refusal of the development application for building works, as it relates to the proposed carport should be confirmed, changed, replaced or set aside. 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 relevant legislation.

Reasons for the decision

28. The tribunal finds that Gympie Regional Council's adopted Amenity and Aesthetics Resolution dated February 2023 is the higher order assessment criteria relevant to this matter.
29. The tribunal finds that the QDC MP1.2 provides siting requirements for the street setback. However, the Gympie Regional Council's Planning Scheme 2013 Residential Living Zone code stipulates siting requirements, both acceptable outcomes and performance criteria for assessable development, until such time that the Council adopted the Amenity and Aesthetics Resolution.
30. The tribunal finds that the assessment manager was unable to issue a decision notice approving the proposed carport without Council endorsement for the siting and location of the structure.
31. The tribunal finds that the streetscape of Larapinta Court can be described as a street made up primarily of residential dwellings that maintain a reasonable setback from the dwelling's façade to the road. While these road boundary setbacks vary in size and some contain vegetation or other natural features, the tribunal is of the view that there is still a discernible consistency or 'rhythm' within the street which contributes to a relatively cohesive and predictable visual environment. Therefore, the tribunal agrees with Council that the introduction of the proposed carport structure that is 4.5m in width and located 100mm from the road **front boundary** will have an adverse effect on the amenity of the locality and be in conflict with the character of the locality.
32. The tribunal finds the combination of the site's location, the existing character of the street and the overwhelming adherence a 6.0m front boundary setback is compelling.
33. The tribunal finds that the siting for the proposed carport could not be supported.

Debbie Johnson
Development Tribunal Chair

Date: 14 January 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:

The Registrar of Development Tribunals
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Brisbane Qld 4001

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