



Development Tribunal – Decision Notice

Planning Act 2016, section 255

Appeal number:	25-031
Appellant:	Nathan Richards
Respondent/ Assessment manager:	Harald Weber
Co-respondent/ Concurrence agency	Cairns Regional Council
Site Address:	42-44 King Street, Gordonvale Qld 4865 and described as Lot 10 on RP 740926 – the subject site

Appeal

Appeal under section 229 and item 1 of table 1 (Appeals) of the *Planning Act 2016* (PA) against the Assessment Manager's decision dated 10 September 2025 to refuse the development approval for a carport at 42-44 King Street, Gordonvale.

Date and time of hearing:	10:00 am on Tuesday 14 October 2025
Place of hearing:	The subject site
Tribunal:	John Eylander—Chair George James—Member Glenn Chambers—Member
Present:	Nathan Richards —Appellant Tom van den Berg – Appellant's Agent Harold Weber —Respondent Hannah Dayes—Council representative Jayne Proberts—Council representative Viran Dassanayake—Council representative

Decision:

The Development Tribunal (Tribunal), in accordance with section 254(2)(a) of the *Planning Act 2016* (PA) confirms the decision of the Assessment Manager to refuse the development application.

Background

1. The town of Gordonvale is situated south of Cairns and has a long history with the sugar cane industry. The locality has a historical town centre, areas of urban development, cane farms, and rural residential blocks.
2. The appellant applied to the Council for development approval of a double car carport to be constructed at the subject site between the existing home and the road frontage boundary.
3. On 10 September 2025, the Council refused the variation to the siting requirements in section 1.6 of the CairnsPlan 2016 v3.1 ("Quantitative Statement"), that provides –

Where within the Rural residential zone, the setback of buildings:

- (a) *maintains the amenity of adjoining premises and the rural residential character of the area and zone the site is located in;*
- (b) *achieves separation from neighbouring buildings and frontages.*

4. The Council's objections are premised on the Quantitative Statement, "...where buildings and structures require a 6 metre road frontage setback.". Council noted:

the Carport would be an open structure with a width of 7.0 metres and is proposed to be located 0.2 metres from the road frontage boundary with a height ranging from 2.6 metres at the boundary to 3.2 metres where adjoining the Dwelling House.

5. In considering the Quantitative Statement, the Council considered the amenity of adjoining premises, the surrounding area and zone. The Council said –

There are no existing structures built to the front boundary within King Street or the surrounding area. A nearby site, 46-48 King Street, has an approved reduction in side boundary setback for Class 10 structures where adjoining the (since abandoned) "King Street Easement" (Council Reference: #765305). Given this structure does not front a part of the transport network identified as King Street, this site is not considered to contribute to the front boundary amenity of the streetscape and area.

There are no existing sites along King Street that have a reduced front boundary. The closest front boundary dispensation is at 65-67 Grey Street, which is located 350 metres from the subject site and is situated towards the end of a cul-de-sac. This site has a Carport setback 3.5 metres from the front boundary for a length of 5.6 metres and height of 4.0 metres. Notwithstanding, this setback is significantly greater than the current proposal, with the Applicant advised that a similar setback could be supported. Notwithstanding, it is acknowledged that this site forms an outlier and does not provide the character or amenity of the area.

There are no other existing examples of reduced front boundary setbacks within the streetscape or area, as such the area is consistent with the front boundary setbacks regulated under the zone.

Further, the site has alternative means of frontage and access to ancillary structures via its Hamilton Street frontage.

6. The appellant's agent, Tom van den Berg prepared written submissions for the appeal in response to the Council's decision and relevantly said –

During a phone conversation ... Dayes advised that due to the subject site being part of the "Transport Network Overlay - Road Hierarchy" there were different

considerations for the subject site than that of its neighbour which has a 27 plus metre structure on its front boundary.

...Dayes further mentioned there was a siting approval partially granted for the neighbour's structure (so one would logically assume that the neighbouring site was required to abide by the same considerations as the subject site). This is despite being told in an email on the 15/6/25 that "Officers note that the existing residential character contains no lawful siting dispensation approvals". As of 18/07/25 both sites are zoned as "Rural Residential".

(...) ... Dayes also stated that the "frontage" for the neighbour in question was situated at the opposite end of the of the property (i.e. Castlereagh Street) even though the postal address of the property is 46-48 King Street.

7. The Appellant's Agent also raised the issue of site flooding and damage to assets, noting the flooding overlay that impacts the majority of the subject site. The proposed carport partially touches upon the flooding overlay when applying the Flood and Inundation Hazards Overlay Code.

Jurisdiction

8. Section 229(1) of the PA provides that schedule 1 of the PA states the matters that may be appealed to a tribunal. 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).
9. 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*, other than a matter under that Act that may or must be decided by the Queensland Building and Construction Commission
10. Accordingly, the Tribunal's jurisdiction has been enlivened pursuant to section 229 and item 1 of table 1 of schedule 1 (Appeals) of the *Planning Act 2016* arising from the decision of the referral agency to refuse the proposed Dwelling Additions (carport).

Decision framework

11. The onus rests on the appellant to establish that the appeal should be upheld (section 253(2) of the PA).
12. The tribunal is required to hear and decide the appeal by way of a reconsideration of the evidence that was before the person who made the decision appealed against (section 253(4) of the PA)
13. The tribunal may nevertheless (but need not) consider other evidence presented by a party with leave of the tribunal or any information provided under section 246 of the PA (pursuant to which the registrar may require information for tribunal proceedings),
14. The tribunal is required to decide the appeal in one of the ways mentioned in section 254(2) of the PA.

Material considered

15. 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 11 September 2025;
 - (b) Cairns Regional Council decision dated 10 September 2025;

- (c) Tropique Building Design plans marked WD01- WD06
- (d) Tom van den Berg of Tropique Building Design submissions to the Tribunal
- (e) Tom van den Berg of Tropique Building Design submissions to CRC
- (f) CairnsPlan 2016 Property Report produced 18 August 2025;
- (g) Email chain between the parties from 15 July 2025 to 22 August 2025;
- (h) Authority to Act authorising Tom van den Berg to act for Nathan Richards

Findings of fact

16. The tribunal makes the following findings of fact:

- (a) The subject site is within the Rural residential zone of the CairnsPlan 2016;
- (b) The subject site is impacted by the flooding overlay;
- (c) The house on the subject site is located approximately 6 metres from the road frontage, is of low-set construction, and the garage has been converted into a sitting room that adjoins the dining room;
- (d) A block fence with infill panels has been constructed along the King Street frontage with an opening at the existing driveway to the house;
- (e) There is an easement to the west boundary that permits access to a side gate to the subject site. A large block and tin garage/granny flat can be accessed from the side boundary;
- (f) Driveway access to the house is to the front west side. There are air conditioning units mounted to the west wall. There is a fenced swimming pool area commencing approximately 4 meters from the west wall of the house;
- (g) Development proposal is for an open double carport with a colour scheme matching the front fence. The concrete slab for the carport is 6m x 5.45m with 2.81m of the slab in front of the house providing foot access to the patio. The front of the carport is 2.4m in height and the rear is 3.2m in height with a skillion roof;
- (h) There is no covered parking attached to the house that allows a driver and/or passenger to transition from the car to the house with protection from the elements;
- (i) The opposite neighbour on King Street has an advanced conifer tree hedge along King Street;
- (j) There is an easement from King Street to the west that permits vehicular access to neighbouring properties. This easement appears to be an extension of King Street and the neighbours identify their property as 46-48 King Street;
- (k) There are two (2) structures on the frontage of the property at 46-48 King Street, one being a four-car garage and the other a three car garage;
- (l) The neighbour opposite 46-48 King Street also has a large structure on the road frontage;
- (m) The Rural residential area has acreage lots and farming structures together with sheds and open structures for farm equipment, vehicles, boats, caravans and the like.

Reasons for the decision

17. In addressing Table 1.6.b of the CairnsPlan 2016 v3.1, when considering the amenity of adjoining premises and the rural residential character of the area together with the setback of the carport achieving separation from neighbouring building and frontages, the Tribunal finds –
- (a) The area consists of rural residential lots being acreage blocks with grassed areas, large trees, and areas of trees and bush.
 - (b) Neighbouring properties have significant structures built on the front boundary lines to an easement including the neighbour's quadruple and triple garage more than 50 m from the proposed carport.
 - (c) The subject site uses an easement to access the side of the subject lot where there is a garage and access to the existing residence.
 - (d) A built to boundary open carport detracts from the rural residential character of the street and surrounding area.
 - (e) The proposed open carport is not compliant with the Quantitative Statement under Table 1.6.b of the CairnsPlan 2016 v3.1.
 - (f) There are alternative on-site locations for a carport.
18. The Development Tribunal (Tribunal), in accordance with section 254(2)(a) of the *Planning Act 2016* (PA) confirms the decision of the Assessment Manager to refuse the development application.

John Eylander
Development Tribunal Chair

Date: 9 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
Department of Housing and Public Works
GPO Box 2457
Brisbane QLD 4001

Telephone 1800 804 833

Email: registrar@hpw.qld.gov.au