



Development Tribunal – Decision Notice

Planning Act 2016, section 255

Appeal number:	25-040
Appellant:	Maria Thomas
Respondent/ Assessment manager:	Harald Weber
Co-respondent (concurrence agency):	Cairns Regional Council
Site address:	56 Mallicoola Crescent, Edmonton Qld 4869 and described as lot 18 on SP 201241 – 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 24 October 2025 to refuse the development application for two carports and a garage at the subject site.

Date and time of hearing:	Monday 17 November 2025
Place of hearing:	The subject site
Tribunal:	John Eylander—Chair George James—Member Glenn Chambers—Member
Present:	Maria Thomas—Appellant Harald Weber—Respondent Karyn Hopkin—Council representative Dylan Thomas—Council representative Jayne Proberts—Council representative

Decision:

The Development Tribunal (Tribunal), in accordance with section 254(2)(a) confirms the assessment manager's Development Application Decision Notice dated 24 October 2025 per the Council Agency Response of the Cairns Regional Council decision to refuse the variation to the siting requirements for additions and alterations to the existing dwelling dated 23 October 2025.

Background

1. Edmonton in Far North Queensland was formerly the site of the Hambleton Sugar Mill surrounded by sugar cane farms. The growth of Cairns together with the closure of the Mill has led to suburban sub-divisions and associated development.
2. The Wet Tropics influences the style of homes. Carports and roofed extensions protect from rain and tropical sun. These provide protection from the elements for residents and visitors, to vehicles, boats, caravans, campervans and other interests and hobbies.
3. The subject site is a triangular block of 601m² with an existing low set home, double garage converted into living area, and a shed constructed close to the boundary line to Marcoola Crescent. The subject site is at the end of Mallicoola Street and presents a 'side view' of the home for vehicles and people using Mallicoola Street.
4. The northern boundary is shared with the neighbouring low-set house. The western boundary faces a cane train line with sporting fields beyond.
5. The existing residence on the subject site encroaches the 6m setback in the QDC MP1.2 acceptable solution. The encroachments include the double garage, the residence, and the shed.
6. The surrounding low-set homes are set out within a suburban footprint with garages facing the street.
7. Across the street from the existing shed, the neighbours have built a double carport close to the boundary line. This carport is at the end of Mallicoola Street and is softened by the angle of the neighbouring property.
8. The development application is for proposed additions and alterations to the dwelling, identified as –
 - (a) Structure 1 (patio cover extension);
 - (b) Structure 2 (carport adjacent to existing shed);
 - (c) Structure 3 (carport in front of existing garage).
9. On 15 September 2025, the Cairns Regional Council ('CRC') sent a referral confirmation and information request to the assessment manager requesting a meeting and advising—

Advice: Council officers hold concerns over the cumulative impact of the additional carport and patio within close proximity to the front boundary, in addition to an existing shed. The surrounding locality is characterised by single detached dwellings that typically contain front setbacks of at least 4 metres. There is a small amount of examples where a double width open carport is built to the front boundary. Given the subject site proposes to now contain three (3) different structures built in very close proximity to the front boundary and out of character, the amended plans are requested.
10. The emails between the assessment manager and the CRC focus on the encroachments of the existing dwelling. The assessment manager submitted the proposed structures do not create 'bulk' as—
 - (a) Structure 1 (patio cover extension) – 'There are 4 slender columns (much less than the 15% permitted normally) for the patio and carport and flat roofs that presents all of 150mm in depth'.
 - (b) Structure 2 (carport adjacent to existing shed) – 'The shed is largely obscured by a 2m high solid fence'.

- (c) Structure 3 (carport in front of existing garage) – *'The carport is an acceptable outcome as there is no other suitable location on site.'*
11. The CRC focused on the site coverage and encroachments saying—
- These are not minor encroachments in addition to the existing encroachments. In effect, the result will be a near continuous length of 33m of building structure encroaching into the road setback.*
- The proposal will also result in a 60% site cover in a low density residential area - resulting in an overdeveloped site.'*
12. On 1 September 2025, the assessment manager sent a 'Report to Regulatory Services' addressing a siting dispensation request for non-compliance with the siting provisions of QDC MP1.2 by saying—
- The proposed Dwelling House on the land described on the land described as 56 Mallicoola Crescent, Edmonton, is intended to have a site coverage of 60.1%. This is in lieu of the Acceptable Measure of 50%. The proposed additions and alterations to the Dwelling House does not comply with Quantifiable Standard 8 of Section 1.6b of CairnsPlan.*
- The outermost projection of the proposed Carport on the land described as 56 Mallicoola Crescent, is intended to be sited within 275mm from the road-frontage boundary. This is in lieu of the Acceptable Solution of 6 metres as prescribed by Acceptable Solution A1 of the Buildings and Structures element of Queensland Development Code (QDC) Code MP1.2. The proposed Carport does not comply with Acceptable Measure A1(a)(i) of the QDC MP1.2.*
- The outermost projection of the proposed Patio on the land described as 56 Mallicoola Crescent, is intended to be sited within 100mm from the road-frontage boundary. This is in lieu of the Acceptable Solution of 6 metres as prescribed by Acceptable Solution A1 of the Buildings and Structures element of Queensland Development Code (QDC) Code MP1.2. The proposed Patio does not comply with Acceptable Measure A1(a)(i) of the QDC MP1.2.*
- This means an encroachment of:*
- *The site coverage is over by 10.1%.*
 - *5725mm into the road-frontage setback (Carport).*
 - *5900mm into the road-frontage setback (Patio Extension).*
13. When addressing CairnsPlan 1.6(b)(8), the assessment manager submitted –
- Given the nature of the proposed additions and alterations and the proposed provision of fencing between neighbouring properties, it is considered that privacy will not be impacted by the proposed additions and alterations to the existing Dwelling House.*
- The proposed construction of the additions and alterations is unlikely to impact on the outlook and views from the neighbouring allotments. Views to Mallicoola Crescent will be maintained for the neighbouring allotments. It is therefore considered that the proposed additions of the roof coverings next to the existing Shed to create a Carport and to extend the Patio at the front of the existing Dwelling House will not adversely impact the amenity of the adjoining allotments on Mallicoola Crescent.*

There is a reasonable expectation of a neighbouring resident to not have overshadowing of a private open space and recreation area. The proposed additions and alterations have a maximum height of 3800mm. As both structures proposed will be located on the road frontage of the site, overshadowing will not be an issue for any of the neighbouring allotments.

It is important to consider the 'feel' of an area that adjoins the proposed additions and alterations. The proposed additions of roof coverings next to the existing Shed and over the existing front Patio is unlikely to impact on the 'feeling' of the area that directly adjoins the proposed structure. Following the construction of the proposed additions and alterations, the feel of the immediately adjoining area on the neighbouring allotment is likely to be similar to what is currently experienced on the site. The location of the site at the end of Mallicoola Crescent means that the proposed building work have limited impacts on the neighbouring allotments on Mallicoola Crescent.

The proposed additions and alterations also demonstrate a thoughtful response to the existing built form and streetscape character of Mallicoola Crescent. By maintaining consistent architectural design to what is established on the site with regards to scale, and materials used, the proposal complements the existing Dwelling House and allows the proposal to fit seamlessly into the surrounding area. The location at the end of the roadway further reduces visual prominence and ensures that the additions do not disrupt the rhythm or cohesion of the street. This approach to design and siting supports the intent of the CairnsPlan to encourage development that respects and enhances the established character and amenity of residential areas.

For the reasons outlined above, the points support the line of reasoning that the proposed additions and alterations will not be an overbearing structure, will not create an issue with overshadowing and will be unlikely to create a 'feeling' of enclosure for the residents of the neighbouring allotments. The proposed additions and alterations are therefore considered to in keeping with the character and amenity of the area and zone site is located in. It is considered that the proposed building work meets the requirements of the Qualitative Statement in relation to site coverage.

14. When addressing QDC MP1.2 – P1: Consideration of Performance Criteria, the assessment manager submitted –

The proposed construction of the additions and alterations to the existing Dwelling House to facilitate an extension to the existing Shed to create a Carport and provide a cover for the front Patio of the existing Dwelling House is proposed at 56 Mallicoola Crescent, Edmonton. The site is currently improved with an existing Dwelling House and Shed with a swimming pool at the rear of the site. The elevation from the main road frontage of the site is shown as Image 3. The proposed additions and alterations will be provided with a minimalist façade so as not to dominate the streetscape and to complement the existing Dwelling House on the subject site. The bulk of the structure including the extension to the existing Shed and the roof over the existing Patio are considered to be appropriate for the site. The proposed additions and alterations retain the modern character of standard detached Dwelling Houses along Mallicoola Crescent, which is considered to meet Performance Criterion P1 given the site is located in a residential neighbourhood.

The main road frontage setback for the proposed Carport and the main road frontage setback for the roof over the existing Patio are both located within the 6-metres setback from Mallicoola Crescent. The streetscape of the area that the additions and alterations are proposed in is characterised by single-detached Dwelling Houses. The bulk of the façade of the additions and alterations to the main road frontage offers 2 open structures that have been designed to complement the existing Dwelling House on the site. The proposed additions and alterations are considered to facilitate an appropriate streetscape that is in keeping with Mallicoola Crescent and the general Edmonton area in the vicinity of Logomeir Road. A diagram showing separation between structures for neighbouring allotments is included in Image 4 on the following page.

The proposed construction of a roofs extending from the existing Shed (to create a Carport) and over the existing Patio, encroaching on the main road frontage will not impact on the outlook and views from neighbouring properties. The property located on the northern side of the subject site will not be impacted by the construction of the 2 structures. The neighbouring property located to the west of the site is the cane-railway line servicing the Mulgrave Central Mill in Gordonvale. Fencing is already provided along both side boundaries of the subject site that provides a visual screen to Mallicoola Crescent that will not be changed by the construction of the proposed additions and alterations to the existing Dwelling House. The construction of the 2 open structures will continue to allow for external views to Mallicoola Street to be provided to the neighbouring allotments.

15. On 23 October 2025, the CRC gave the 'Referral Agency Response' directing refusal of the variation to the siting requirements in QDC MP 1.2 for additions and alterations the existing dwelling for the reasons –

The proposed Patio cover extension (Structure 1) and Carports (Structures 2 and 3) seek an alternative outcome to Acceptable Solutions A1(a)(i) where buildings and structures require a 6-metre road frontage setback. We also note that Acceptable Solution A1(c) which allows for open carports with less than 15% of wall along the perimeter of the support line is only applicable where there is no other alternative location on site for a garage or carport. Because there is an existing approved garage and shed, this acceptable solution does not apply.

Structure 1 (patio cover extension) is 5.0 metres long by approximately 3.4 metres deep (dimension not provided) is located within the 6-metre setback from the road frontage. The extent of the road frontage setback encroachment is not shown on the plans and therefore cannot be exactly assessed however it is clear from other plan features that it is within the 6-metre setback. The structure overlaps the edge of the existing dwelling roof.

Structure 2 is an open carport which is approximately 6 metres by 6 metres. It is adjacent to but not connecting to an existing shed. Proposed structure 2 is located 0.275 metres from the OMP to the road frontage boundary for a length of 6.0 metres. This is an encroachment of 5.725 metres into the road frontage setback for the full 6.0 metre length of the structure. The height of structure 2 is 4.0m above ground level (road ground level, therefore includes the height of the existing retained ground which has not been specified on the plans) for the full 6.0 metre length at the edge of the structure adjacent to the road, and increases in height with distance away from the road frontage, to a height of 3.8m (measurement taken from natural ground level from within the property, therefore excludes the height of the retained land). It is difficult to determine if the average height of all the structures have an average height of 3.5 metres.

The existing shed encroaches into the 6-metre road boundary setback, however the height of this shed has not been identified on the plans. Combining the length of the

existing shed and the proposed carport, the combined length of structure within the southern road boundary setback is approximately 12 metres. We note that this part of the property does not form the main site frontage.

Structure 3 is an open carport connecting with an existing garage which is attached to the dwelling. Proposed structure 3 sits at an angle to the road boundary therefore the corner of the structure is located 0.1 metres from the OMP to the road boundary. This makes the maximum encroachment into the road frontage setback at 5.9 metres. The full length of the structure is 8 meters long, and the full length of this edge is wholly within the 6-metre road boundary setback. The length of the structure reduces to approximately 6 metres as it accommodates the existing roof outline. The depth of the structure is approximately 6 metres with some of the roof overlapping the existing garage. The height of this structure in the elevation plans is shown to be 4.0 metres above ground level at the corner closest to the road boundary rising with distance away from the road boundary but effectively reducing in height (3.6 metres) as the existing ground level also rises (at a greater gradient).

The side of the existing garage encroaches into the 6-metre road boundary setback, however this has not been identified on the plans. Combining the length of the existing garage and the proposed carport, the continuous length of structure within the eastern road boundary setback is approximately 12 metres. We note that structure 3 impedes on the main road frontage, or entrance to the site.

The combined length of all structures (existing and proposed) along the 6-metre setback line, and therefore encroaching into the road boundary setback, is almost a continuous length of 30 metres of structures encroaching into the road setback, which is most of the road setback length.

The proposed structures are considered to compromise the achievement of the performance criteria stated in Queensland Development Code MP1.2, with specific reference to P1(a) and (b).

(P1)- The location of a building or structure facilitates an acceptable streetscape appropriate for –

(a) the bulk of the building or structure; and

(b) the road boundary setbacks of neighbouring buildings or structures.

The setback and cumulative length of the proposed structures in conjunction with the existing structures are considered to present an unacceptable bulk of structure encroaching into the front boundary clearance which will result in unacceptable streetscape pattern. The proposed volume of encroachment is also inconsistent with the road boundary setbacks of neighbouring buildings and structures with similar shaped allotments.

16. On 24 October 2025 the assessment manager made the 'Development Application Decision Notice' to refuse the application 'per Council Agency Response dated 23rd October 2025'.

Jurisdiction

17. The Tribunal's jurisdiction has been enlivened pursuant to section 229, and sections 1(1) and 1(2)(g) 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 identified as structure 1 (patio cover extension), structure 2 (carport to existing shed), structure 3 (Carport in front of existing garage).
18. Pursuant to section 254(3) of the *Planning Act*, the Tribunal has the power to make a change to a development application, so long as that change is a 'minor change', which, for a development application, means a change that—

- (i) *does not result in a 'substantially different development'; and*
- (ii) *if the application, including the change, were made when the change is made—would not cause—*
 - (A) *the inclusion of prohibited development in the application; or*
 - (B) *referral to a referral agency if there were no referral agencies for the development application; or*
 - (C) *referral to extra referral agencies; or*
 - (D) *a referral agency, in assessing the application under section 55(2), to assess the application against, or have regard to, a matter, other than a matter the referral agency must have assessed the application against, or had regard to, when the application was made; or*
 - (E) *public notification if public notification was not required for the development application; ...*

19. What constitutes a 'substantially different development' is set out in schedule 1 of the Development Assessment Rules published on 18 July 2025. It provides that a change may result in a 'substantially different' development if among other things, the proposed change:

- (c) *dramatically changes the built form in terms of scale, bulk and appearance.*

Decision framework

- 20. The onus rests on the appellant to establish that the appeal should be upheld (section 253(2) of the PA).
- 21. 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).
- 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 the PA (pursuant to which the registrar may require information for tribunal proceedings).
- 23. The tribunal is required to decide the appeal in one of the ways mentioned in section 254(2) of the PA.

Material considered

- 24. 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 27 October 2025;
 - (b) All Construction Approvals Development Application Decision Notice dated 24 October 2025;
 - (c) All Construction Approvals Report to Regulatory Services dated 1 September 2025 including –
 - Appendix 1 DA Form 2
 - Appendix 2 Drawings and Plans
 - Appendix 3 Specialist Reports containing QDC requirements
 - Appendix 4 Confirmation Notice

Appendix 5 Utility Services Map

Appendix 6 Street View Image

Appendix 7 Zoning Map

- (d) Cairns Regional Council Referral Agency Response dated 23 October 2025
- (e) Cairns Regional Council Referral Confirmation Notice and Information Request
- (f) All Constructions Approvals emails responding to Information Request

Findings of fact

25. The tribunal makes the following findings of fact:
- (a) The subject site is triangular shape of 601m² with an existing residence and shed.
 - (b) The existing double garage has been converted into living space.
 - (c) The existing residence, double garage, and shed are within the 6m setback from Mallicoola Crescent.
 - (d) Mallicoola Crescent terminates at the end of the subject site in a 'Y' configuration.
 - (e) Across the road from the existing shed is a double carport close to the street boundary.
 - (f) The 3 proposed additions are open structures with roofs. They will increase the site coverage to 60%.
 - (g) The neighbouring residence across the road from the subject site, being the neighbour with the open carport near the boundary line has site coverage of 57%.
 - (h) The immediate neighbour at 54 Mallicoola Crescent has site coverage of 43%.
 - (i) The residence at 52 Mallicoola Crescent has site coverage of 58%.
 - (j) The other neighbours across the road have site coverage of 43% and 47%.

Reasons for the decision

26. CairnsPlan section 1.6(b)(8) provides for alternative provisions to QDC site cover for a single detached class 1 building or an associated class 10 building where located within the low density residential zone (and other zones not applicable here). The qualitative statement relevantly provides '*the site coverage of all buildings and structures are in keeping with the character and amenity of the area and zone site is located in*'. The quantifiable standard provides '*Site cover is not more than 50%*'.
27. QDC MP 1.2 at P1 relevantly provides the performance criteria –
- P1 The location of a building or structure facilitates an acceptable streetscape, appropriate for –*
 - (a) *the bulk of the building or structure; and*
 - (b) *the road boundary setbacks of neighbouring buildings or structures; and*
 - (c) *the outlook and views of neighbouring residents; and nuisance and safety to the public.*
28. The proposed Structure 1 (patio extension) was conceded by the CRC as acceptable and the Tribunal agrees.

29. The proposed Structure 2 (shed extension) is sited behind an existing retaining wall with fence. The proposed shed extension roof slopes towards the road. The height of the shed extension skillion roof is 4m above the street level across the road from the neighbouring open carport at the termination of Mallicoola Crescent. The outlook and view from Mallicoola Crescent has the extension behind an existing timber fence and the proposed carport structure. The neighbouring residences across the road from the termination of Mallicoola Crescent have their views impeded by the existing open double carport. The proposed shed extension would dominate the street view and detract from the amenity view from the street. The Tribunal confirms the Council refusal for the shed extension.
30. The proposed Structure 3 (carport extension) is acceptable and meets the performance criteria of QDC MP 1.2 P1 being appropriate for the bulk of the building, the road boundary setbacks of neighbouring buildings or structures, the outlook and views of neighbouring residents, and nuisance and safety to the public. When observing the residence from Mallicoola Crescent, the public and neighbours observe the side of the existing residence. This is a structure with a length of approximately 6m. The proposed carport extending from the existing double garage will be a little over 12m and is sympathetic to the neighbouring properties.
31. Construction of structure 1 (patio cover extension) and structure 3 (carport in front of existing garage) alone would result in site coverage of approximately 53%. In considering the shape and size of the 601m² block together with the site coverage of neighbouring properties and the reasons herein, the Tribunal considered if the application had proposed structures 1 and 3 only, it would have been capable of approval.
32. However, the Tribunal considers that to approve the application with a condition that structure 2 is not constructed, would result in a change that is not a minor change, and therefore a change that the Tribunal is not permitted to make.
33. The Development Tribunal (Tribunal), in accordance with section 254(2)(a) confirms the assessment manager's Development Application Decision Notice dated 24 October 2025 per the Council Agency Response of the Cairns Regional Council decision to refuse the variation to the siting requirements for additions and alterations to the existing dwelling dated 23 October 2025.

John Eylander
Development Tribunal Chair
Date: 24 February 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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