



Development Tribunal – Decision Notice

Planning Act 2016, section 255

Appeal number:	25-033
Appellant:	James Henderson
Respondent/ Assessment manager:	Harald Weber
Co-respondent/ Concurrence agency:	Cairns Regional Council
Site address:	7 Hill Street, Manunda Qld 4870 and described as Lot 31 on RP 702086—the subject site

Appeal

Appeal under section 229 and item 1(a) of table 1 of schedule 1 (Appeals) of the *Planning Act 2016* (PA) against the Assessment Manager's decision dated 27 August 2025 to refuse the development approval for a carport and garage at the subject site.

Date and time of hearing:	20 October 2025 at 1:00pm
Place of hearing:	The subject site (if held on site or another address if held off site)
Tribunal:	John Eylander—Chair George James—Member Glenn Chambers—Member
Present:	James Henderson—Appellant Harald Weber—Respondent Dylan Thomas, Jayne Proberts and Viran Dassanayake— Council representatives

Decision:

The Development Tribunal (Tribunal), in accordance with section 254(2)(d) of the *Planning Act 2016* (PA), sets the decision aside and orders the Assessment Manager to remake the decision by 4:00pm on the date 28 days after the date of this decision.

Background

1. The appellant applied for developmental approval for the new construction of an open carport and a garage (class 10a structures) as part of stage 2 works for the renovation of an existing home on the subject site.
2. On 25 August 2025, Council refused the application on the basis of siting requirements in the Queensland Development Code MP1.2, stating:

The proposed Carport and Garage seeks an alternative outcome to Acceptable Solutions A1(a)(i) where buildings and structures require a 6 metre road frontage setback. The Carport is to have a width of 6.2 metres and is proposed to be located 0.9 metres from the road frontage boundary with a height of approximately 4.2 metres as per calculations, whilst the Dwelling House Stairs are to be located 4.2 metres from the front property boundary.

Additionally, the proposed Carport and Garage seek an alternative to Acceptable Solution A2(d) for side and rear boundary setbacks for Class 10a structures; where the structures are able to be within the nominated boundary clearance if that part of the structure is no more than 9 metres in length, has a height of no more than 4.5 metres (and a mean height of no more than 3.5 metres), and is not located closer than 1.5 metres to a window in a habitable room of an adjoining dwelling.

Under the Queensland Development Code, where the structures are not within the above provisions, the side and rear boundary setback requirements fall back on to Acceptable Solutions A2(a)(i), which states that where the height of buildings and structures are 4.5 metres or less, the clearance to side and rear boundaries is 1.5 metres.

The proposed Carport and Garage is to be located 0.121 metres from the southern side boundary, for a length of 18.75 metres (excluding roof eaves) and would have a height exceeding 3.450 metres within this clearance, and 3.2 metres to the wall. The proposed Carport is to be an open structure for a length of 6.65 metres, whilst the remainder of the encroachment would be the solid blockwork Garage wall, for a length of 12.1 metres. The proposed development would be more than double (approximately 208.3% excluding eaves) the allowable length for Class 10a structures to be sited within the nominated side boundary clearance under the Queensland Development Code, with approximately 64.53% (12.1 metres) of the encroachment would be consisting of a straight block wall of the Garage.

The encroachment is further estimated to have a cumulative length that is approximately 53% of the shared lot boundary; more than half of the length of the lot (i.e. the shared boundary was measured as being approximately 35 metres).

This encroachment would further be facing the windows of habitable rooms of the neighbouring dwelling located at 5 Hill Street, Manunda.

3. Council continued:

The proposed Carport and Garage is not considered to meet the performance criteria stated in the Queensland Development Code MP1.2, specifically Performance Criteria P2 (b) and (c) which states: (P2) Buildings and structures –

(b) allow adequate light and ventilation to habitable rooms of buildings on adjoining lots.

(c) do not adversely impact on the amenity and privacy of residents on adjoining lots.

The scale and extent of the buildings and structures encroaching within the side boundary clearance for a setback of 0.121 metres and a height over 3.45 metres, is considered to compromise the amenity, and the light and ventilation of the

neighbouring allotment, as the proposed development would be directly facing windows of the neighbouring dwelling, occupying a significant portion of bulk along the shared boundary and obstructing the neighbouring residents' views. The proposed development may cause increased shadowing onto the adjoining dwelling by the proposed height and length of structures, and is considered to be inconsistent with the requirements of Class 10a structures within residential areas under the code.

Whilst neighbour's consent from the landowner's has been provided through an email chain correspondence, this is not an assessable criterion under the Queensland Development Code, and it is further noted that the email correspondence is unclear in regard to the form of correspondence and the proposed plans (i.e. discrepancies in elevations and no mention of combined length of structures within the clearance; as the email refers to a 3 metre high block wall only, whereas the development involves an enclosed Garage and Carport over 3.45 metres within the side setback clearance for a length over 18.75 metres to the OMP).

It is further determined that there is sufficient spacing to the southern side (approximately 3.1 metres) for vehicle access to the rear of the lot where a Carport and Garage may be located as an alternative location to the front and side setback clearance areas, as depicted on the proposed plans (eg: Landscape Plan Project no. JH-01, Drawing 02.4 Rev. 2 by Bedrock Development & Construction dated 31 March 2025).

Under Performance Criteria P1, Acceptable Solution (A1) (c)(ii) of the Queensland Development Code an Open Carport may be setback less than the required road frontage clearance (i.e. 6 metres under A1 (i)(a)), if there is no alternative on-site location for a garage or carport beyond the required 6 metre clearance area and there is no vehicular access having a minimum width of 2.5 metres. As mentioned above, due to the site having vehicular access and an alternative location for the proposed open Carport away from the front boundary setback area, there is no sufficient justification for the proposed Carport to be located within the southern boundary clearance at the proposed location.

4. The applicant's submissions dated 17 September 2025 to the Tribunal addressed the Council's decision in turn as follows:

1) Open Car-port to Front of property

The first section of carport is entirely open and is consistent with other properties along the Hill street frontage (including 20A/B and 12 Hill street – zero meter boundary open garages) – this was accepted in a pre-lodgement request to council and attached as per below: The proposed garage wall It is not closer than 1.5m to the neighbour's window; it is over 3.0m from their windows. Neighbouring properties towards Anderson street, have 6m high zero boundary walls

2) Garage Wall to side of property

When the elevation is considered against a fence which is allowable to 2.4m high on zero boundary the encroachment past the allowable lengths is only as shown below in red, showing very minimal encroachment or bulking to the side of the house or 5 Hill Street. Council Comment: This encroachment would further be facing the windows of habitable rooms of the neighbouring dwelling located at 5 Hill Street, Manunda. The neighbours' windows are some neighbour 2.5 meters from the proposed wall line with no more shadow being cast than the current two storey premises.

3) Neighbours consent

The garage and car-port has been given full consent from the neighbour based off the floor plans and elevations. The email on the 4th of June 2025 at 1:24PM from the owner's agent David Hall to the owner of 5 Hill street (Gillian Steward) contained snapshots of the floor plan showing the car-port and 12m garage wall being on the boundary and section through the garage showing the wall was at 3m also on the boundary.

4) Privacy, Security, amenity and Safety Issues

The owners from 7 Hill street have had multiple used syringes thrown over the fence from 5 hill street; they have had cars vandalised by tenants of 5 hill street (hence the reason to want two off street garaged car spaces), police attendance is a regular occurrence as well as abusive language, drug dealing, acts of domestic violence and assault are a regular occurrence.

The owner of 7 Hill street has had a vehicle vandalised by people from 5 Hill street and while waiting for the garage to be built has to park private cars else where; there have been some 3,685 cars stolen in Queensland in 2024; with 633 of that being in Cairns; with Suncorp and NRMA recommending the best way to keep vehicles safe and secure is to park them off street.

In regards to privacy and neighbours amenity; The council itself attended 5 hill street on the 26th of June with the police, traffic control, 2 body trucks, a 5 tonne digger and removed 400 used syringes from the property along with 10 trucks full of rubbish; then now have a barring order from anyone from council attending the property, due to faecal matter present in the yard. Yet the council is refusing to let the neighbours from 7 Hill street build a wall on the boundary to keep their own amenity and safety from used syringes being thrown into the yard where children play, and children are too scared to go that side of the house due the feral criminal activities of the occupants. But is more concerned about some possible overshadowing to a window which is boarded up than the safety of a working class family. Refer council references 4232943.

Jurisdiction

5. 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).
6. 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
7. 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 and garage).

Decision framework

8. The onus rests on the appellant to establish that the appeal should be upheld (section 253(2) of the PA).

9. 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).
10. 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).
11. The tribunal is required to decide the appeal in one of the ways mentioned in section 254(2) of the PA.

Material considered

12. 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 22 September 2025.
 - (b) Development Application Decision Notice dated 27 August 2025.
 - (c) Cairns Regional Council Referral Agency Response dated 25 August 2025.
 - (d) Bedrock Development construction plans dated 31/5/2025.
 - (e) Appellant's submissions to Tribunal dated 17/09/2025 including Cairns Regional Council "Response to Preliminary Enquiry – Proposed dwelling House Extensions" dated 10 October 2025, photos of 9 Hill Street double carport of boundary, photo 20 A&B Hill Street closed garage on boundary, photos of 5 Hill Street dilapidated home and surrounds, photo of vandalised car, photo of syringes with needles thrown into 7 Hill Street.

Findings of fact

13. The tribunal makes the following findings of fact:
 - (a) Queenslander style homes feature in Hill Street Manunda.
 - (b) There is a dilapidated house at 5 Hill Street that is unoccupied and is used by vagrants including use of injectables.
 - (c) There are many examples of structures on the street frontage and with setbacks less than 6m including carports and garages on the street boundary.
 - (d) There are multi-level buildings in the surrounding streets with bulk structures dominating the visual amenity.
 - (e) Hill Street joins Anderson Street, which is predominantly commercial with a petrol station diagonally opposite and tilt slab building adjacent to 5 Hill Street.
 - (f) The commercial buildings on Anderson Street are within view of the rear deck and windows on the southern wall of the existing building. The commercial buildings dominate the views from 5 Hill Street.
 - (g) The northern side of 7 Hill Street has large established trees and it would be undesirable to disturb these as they soften the views of the commercial buildings on Anderson Street for the residents further down Hill Street.
 - (h) There is a flooding risk on Hill Street.

- (i) The appellant is renovating the existing home at 7 Hill Street.
- (j) Developmental approval is sought for an open double carport on the southern side of the existing structure.
- (k) The proposed open carport is positioned with the middle including peaked roof at the external edge of the wall of the home being in sympathy with the existing structure.
- (l) The southern bay of the proposed open carport connects to a two (2) bay proposed garage that has its outermost projection approximately 0.12m from the side boundary.
- (m) The proposed garage has a length of 12.1m and a height of 3.45m and 3.2m to the wall.
- (n) The proposed open carport and garage has a combined length of 18.75m. The length of the shared boundary is 35m.
- (o) The timber fence will be removed and a new timber fence constructed along the shared boundary to a height of 2.4m.
- (p) The proposed open carport and garage is sympathetic to the style of the existing home and has a desirable visual amenity for the site and the neighbours.
- (q) The owners of the neighbouring lot, 5 Hill Street have consented to the proposed open carport and garage.

Reasons for the decision

14. The Council representative conceded the proposed carport was acceptable and was consistent with established structures on and surrounding Hill Street. The Tribunal agrees the proposed carport meets the acceptable solution under QDC MP 1.2 A1(c). The proposed carport screens and separates the residential aspect of Hill Street from the commercial bulk of Anderson Street.
15. The streetscape of Hill Street includes a multitude of garage and carport configurations similar to the proposal.
16. The class 10a proposed garage is 12.1m in length with a block wall height of 3m being raised to account to the flood level. There is a skirting roof to match the roof angle causing the height of the skirting roof to rise to the existing building. The neighbour's windows are approximately 2.5m from the proposed structure.
17. A visual drawing of the proposed garage and carport was referred to, and it is consistent in design to the Queenslander style, being a relevant consideration. The proposed garage could be amended to lower the slab level with a skillion roof. The result would be flooding risk to the garage and a roof line not in accordance with the Queenslander style of the existing home and the houses in the street.
18. The length of 12.1m allows the proposed garage to meet the rear wall of the existing house offering a cost-effective solution and in accordance with visual amenity.
19. The property to the rear consists of multi-level units and is screened by large trees at the rear of 7 Hill Street.
20. The commercial buildings to the rear and side of 5 Hill Street dominate the view.
21. 5 Hill Street is zoned Medium density residential and under the planning scheme is permitted to have a building 4 storeys in height, albeit at the prescribed setback

22. The appellant desires to store his motorboat on trailer in the proposed garage. This boat was parked on the street with the concern of vandalism and theft. The storage of the boat in the enclosed garage removes this item from view on the street.
23. The proposed garage meets QDC MP A2(d)(i) and (iii). The design exceeds the acceptable solution MP A2(d)(ii) that permits a length of 9m.
24. When considering the Performance Requirements QDC MP P2, the Tribunal accepts the proposed garage –
 - (a) provides adequate daylight and ventilation to habitable rooms. The current wall has minimal windows on the southern side and has lighting and ventilation from the east and west walls.
 - (b) is approximately 2.5m from the hypothetical habitable rooms of the building on 5 Hill Street. This building is dilapidated and uninhabitable. The building has an add on asbestos fibre cement structure facing the proposed garage.
 - (c) Does not impact on the amenity and privacy of residents on the adjoining lot. The proposed garage is visually sympathetic and gives privacy to the adjoining lot.
25. The Tribunal considers the proposed garage satisfies the Performance Criteria of MP1.2 P2 on the following basis:
 - (a) The encroachment along the side boundary will not impact light and ventilation to the proposed ground floor habitable rooms.
 - (b) The current condition of the dwelling on 5 Hill Street is not habitable and therefore consideration of the impacts on the adequate light and ventilation are negligible.
 - (c) 5 Hill Street is likely to be redeveloped in the future and the design will be adapted to suit the current proposal at 7 Hill Street.
 - (d) Overshadowing is unlikely if any new development on 5 Hill Street complies with the mandatory boundary setback prescribed by the scheme.
 - (e) The predominant views from 5 Hill Street are to Hill Street frontage or to the western elevation into the backyard. It must be noted there is a commercial building to the southern elevation having a greater impact on the amenity than the proposal.
26. In relation to the Council alternative of locating the garage/carport to the rear of the allotment, there is inadequate vehicle circulation to facilitate this and there is a potential greater loss of amenity for the neighbours based on odours and noise from vehicle movements in the future.
27. The Tribunal decides the appeal in accordance with section 254(2)(d) of the PA and sets the decision aside and orders the Assessment Manager to remake the decision by 4:00pm 28 days after the date of this decision.

John Eylander
Development Tribunal Chair

Date: 22 December 2025

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