



Building and Development Dispute Resolution Committees—Decision

Sustainable Planning Act 2009

Appeal Number:	37 – 15
Applicant:	Peter Ferguson and Gail Ferguson.
Assessment Manager:	Noosa Building Certifiers.
Concurrence Agency: (if applicable)	Noosa Council (Council)
Site Address:	185 Edward Street Sunshine Beach described as Lot 62 on RP 94566 – the subject site.

Appeal

Appeal under section 527 of the *Sustainable Planning Act 2009* (SPA) against the decision of the Assessment Manager to refuse a Development Application for Building Work in relation to the construction of a garage / carport at the direction of the Concurrence Agency. Noosa Council is of the view the location of garage / carport conflicts with the siting provisions of Schedule 1 of the Noosa Plan.

Date and time of hearing:	11.00 am, 19 November 2015.
Place of hearing:	The subject site.
Committee:	Don Grehan – Chair Deanna Heinke – Committee Member
Present:	Peter Ferguson – Applicant Gail Ferguson - Applicant Luke Neller – Assessment Manager’s representative Hannah Coles – Assessment Manager’s representative Paul Riley – Council representative Rob Wibrow - Council representative

Decision:

The Building and Development Dispute Resolution Committee (the Committee), in accordance with section 564 of the SPA, **sets aside** the decision of the Assessment Manager and approves the proposed carport subject to the following conditions and directions:

Conditions:

1. Approval is given for an open carport only, the structure is to be constructed in accordance with the Site Plan, Ground Floor Plans and Elevations marked BDDRC 37-15 (attached), subject to the following requisitions:

- (a) The eastern carport elevation adjoining Edwards Street must remain open and must not be fitted with a roller door, shutter, grill or similar;
 - (b) The northern and southern carport elevations may be fitted with batten screens only, the battens are not to exceed 86mm in width and must not be spaced less than 25mm apart. The batten screens must remain pervious;
 - (c) The individual batten screen panels to the southern carport elevation must not be less than 3.0m in length;
 - (d) The material and finishes of the southern elevation of the carport (including batten screening) located within 750mm of the property boundary must be maintenance free (no paint or render) and perimeter termite barriers must be readily able to be inspected and maintained without encroachment on to adjoining properties;
 - (e) Proposed 5000L above ground rainwater tank is not to be located within 6.0m of the eastern boundary alignment fronting Edward Street.
2. The proposed carport can be sited with the road boundary setback of 0.00mm to the eastern boundary alignment fronting Edward Street and a side boundary setback of 0.00mm from the southern boundary alignment.
 3. No part of the proposed carport, including footings, gutters, etc are to encroach beyond the boundaries of the prescribed allotment. A set out certificate signed by a Registered Cadastral Surveyor, verifying setbacks from the prescribed property boundaries, is to be submitted to the Assessment Manager prior to the issue of a Form 21 Final Certificate and a copy of the set out certificate is to be submitted to Council for inclusion on the property record.
 4. Unless noted otherwise, the Condition Time, requisite stages of inspection, requisite certificates of design, compliance or aspect together with any specific elemental conditions and details of any applicable self-assessable codes or further development approval required are to be nominated in writing by the Assessment Manager prior to the commencement of work. Such details are to be provided to the Applicant, Builder and Council.

Directions:

5. The Applicant is to provide the Assessment Manager with the Building Certifiers copy of the QBCC Home Warranty insurance documentation prior to the commencement of works.
6. Applicant and Council are reminded that the Conditions of this Decision are the Conditions of a Development Approval for Building Works and attach to the land binding the owner, the owner's successors in title and any occupier of the land.

Background

The Assessment Manager refused a Development Application for Building Works to construct a garage with a minimum road boundary clearance of 0.00mm following receipt of a Concurrence Agency Response from the Council.

The Council, directing the refusal, considered that the proposed development did not comply with, and could not be conditioned to comply with the Acceptable Outcomes O1 (d) and (e) and O17 (b) of the Building Works Code of the Noosa Plan.

The Applicant, dissatisfied with the refusal, lodged an appeal with the Committees Registry on the 29th of October 2015 against the Decision of the Assessment Manager.

Material Considered

The material considered in arriving at this decision comprises:

1. 'Form 10 – Appeal Notice', grounds for appeal and correspondence accompanying the appeal lodged with the Committees Registrar on 29 October 2015.
2. Assessment Managers Decision Notice, Reference No. 20150353 dated 27 October 2015.
3. Noosa Council's Concurrence Agency Response, Reference No. RAB15/0087 dated 13 October 2015.
4. Verbal submissions from the Applicant and Applicant's representative given at the hearing.
5. Verbal submissions from Council's representative given at the hearing.
6. The *Sustainable Planning Act 2009* (SPA).
7. The Sustainable Planning Regulation 2009 (SPR).
8. The *Building Act 1975* (BA).
9. The Building Works Code of the Noosa Plan.
10. Schedule 1 (Minimum boundary setbacks for buildings and other structures) of the Noosa Plan.
11. Amended architectural details, submitted post hearing on 11 December 2015, as requested by the Committee.

Findings of Fact

- The subject site is a 506m² allotment situated within an established residential neighborhood, which contains a single storey residential dwelling (circa 1970). The Applicant sort approval from the Assessment Manager for a Development Approval for Building Works in relation to the proposed construction of a garage/carport to be located to the front left of the allotment with a road boundary setback of 0000mm and a side boundary set back of 0000mm.
- The existing dwelling is constructed to the allowable side boundary clearances, there is no vehicular access available to the rear of the property and there is no covered on-site vehicular parking.
- The subject property is located on the slip road adjacent to the west of the principal thoroughfare and is situated approximately 3m below the crown of the higher order road.
- The Edward Street slip road is narrow, bound by a minimal footpath to the west and a stacked stone retaining wall (to approximately 2.0m in height) to the east. There is no provision that would enable off-site vehicular parking within the road reserve.
- There are other examples of covered car accommodation constructed within a 6m road boundary clearance on other properties within the vicinity of the subject site. The legality of the siting of those structures is not within the jurisdiction of this Committee.
- In arriving at their decision to direct a refusal, Council considered that:
 1. The garage was not appropriately designed and sited to maintain the visual continuity and patterns of building and landscape elements within the street;

2. The garage was not appropriately designed to not visually dominate the street; and
3. The garage was not appropriately designed to minimise its projection forward of the main face of the dwelling.

Reasons for the Decision

- The Committee was not satisfied that the originally designed garage, with particular reference to the extent of the proposed impervious enclosure, inclusive of the provision of a roller door, was an appropriate design that satisfied the specific outcomes of the Building Works Code of the Noosa Plan.
- The Committee is satisfied that the amended architectural design (attached), as negotiated in consultation with the parties to the appeal, satisfies specific outcomes O1 and O17 of the Building Works Code of the Noosa Plan.

Don Grehan
Building and Development Committee Chair
Date: 16 February 2016

Appeal Rights

Section 479 of the *Sustainable Planning Act 2009* provides that a party to a proceeding decided by a Committee may appeal to the Planning and Environment Court against the Committee's decision, but only on the ground:

- (a) of error or mistake in law on the part of the Committee or
- (b) that the Committee had no jurisdiction to make the decision or exceeded its jurisdiction in making the decision.

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

Enquiries

All correspondence should be addressed to:

The Registrar of Building and Development Dispute Resolution Committees
Building Codes Queensland
Department of Housing and Public Works
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Brisbane QLD 4001
Telephone (07) 1800 804 833 Facsimile (07) 3237 1248