



## Building and Development Dispute Resolution Committees—Decision

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### *Sustainable Planning Act 2009*

<b>Appeal Number:</b>	32 – 15
<b>Applicant:</b>	Pacific BCQ Building Certification Queensland
<b>Assessment Manager:</b>	Pacific BCQ Building Certification Queensland (Don Grehan, Building Certifier)
<b>Concurrence Agency:</b> (if applicable)	Noosa Council (Council)
<b>Site Address:</b>	1 Safari Street, Noosa Heads, and described as Lot 164 RP 161234 – the subject site

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### Appeal

Appeal under section 527 of *Sustainable Planning Act 2009* (SPA) against the Decision Notice of the Assessment Manager to refuse an Application for building work for a double garage (the Application) located within the front road boundary setback. Noosa Council (Council) as the Concurrence Agency directed the Assessment Manager to refuse the Application as it did not meet and could not be conditioned to meet the Specific Outcomes of the Noosa Plan.

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<b>Date and time of hearing:</b>	28 September 2015 at 10am
<b>Place of hearing:</b>	The subject site – 1 Safari Street, Noosa Heads
<b>Committee:</b>	Richard Prout – Chair Debbie Johnson - Member
<b>Present:</b>	Don Grehan – Pacific BCQ Building Certification Queensland– (Assessment Manager and Applicants Representative) Paul Riley – Council representative Ian Humphreys – Property Owner Deanne Humphreys – Property Owner

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### Decision:

The Building and Development Dispute Resolution Committee (Committee), in accordance with section 564 of the SPA **sets aside** the decision of the Assessment Manager to refuse the garage at the direction of Council, and approves the building Application with the following conditions:

- The proposed garage shall be sited in accordance with the following drawings:
  - and+design (Andrew McKellar Design), Drawing Number 30.0515.1.1A, Dated May 2015, Sheets 1.1A, (Floor Plan);

- and+design (Andrew McKellar Design), Drawing Number 30.0515.1.2A, Dated May 2015, Sheets 1.2A (Floor Plan);
  - and+design (Andrew McKellar Design), Drawing Number 30.0515.2.1A, Dated May 2015, Sheets 2.1A, (Section A);
  - and+design (Andrew McKellar Design), Drawing Number 30.0515.3.1A, Dated May 2015, Sheets 3.1A, (Elevations).
- The Applicant shall, prior to any building work commencing onsite, gain, a Development Approval for Building Work.

## **Background**

The subject site is a 592 m<sup>2</sup> corner allotment located at 1 Safari Street, Noosa Heads and is zoned Detached Housing under the Noosa Plan.

The existing three bedroom room dwelling on the site was built in 1988 and includes a single lock up garage. The existing dwelling has a front road boundary setback of 5.63m from Safari Street Road Frontage and 6.560m from Cooyar Street frontage.

There is a roofed veranda attached to the dwelling and located approximately 2 m from the front road boundary with Safari Street. However Council has advised they have no record of a building approval having been issued for the veranda.

The Property Owners are proposing a major renovation of the dwelling and as part of this work, are proposing to convert the existing single garage to a fourth bedroom and storeroom. In order to provide covered off street parking the property owners are proposing a new double garage to the front of the dwelling with a maximum front road boundary setback of 2.090m from Safari Street road frontage.

The Property Owners engaged a builder Matthews Constructions, who lodged a Development Application for Building Work with Pacific BCQ Building Certification Queensland (Assessment Manager) in June 2015 for the proposed renovations to the dwelling including a garage with a 2.090m front road boundary setback from Safari Street.

The garage did not comply with the minimum setback requirements of Schedule 1 (Minimum Boundary Setbacks for Buildings and Other Structures) of the Noosa Plan.

The Assessment Manager lodged a request for referral agency response for building work with the Noosa Council (Council) on the 17 June 2015. The Council issued a Concurrence Agency response on the 14 July 2015 instructing the Assessment Manager to refuse the Application as it did not meet and could not be conditioned to meet the performance requirements of the Noosa Plan.

The Assessment Manager issued a Preliminary Application Decision Notice on the 8 September 2015 refusing the garage as directed by the Concurrence Agency.

The Building and Development Dispute Resolution Committees (the Committee) received and Application for appeal Form 10 from the Applicant on the 9 September 2015.

## **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 9 September 2015;

2. IDAS Form 1 - Application Details, IDAS Form 2 - Building work requiring assessment against the *Building Act 1975*;
3. Noosa Council Application Form – Request for referral agency response for Building Work dated 17 June 2015;
4. Report from Pacific BCQ Building Certification Queensland dated 17 June 2015 to Noosa Council addressing the performance criteria of the relevant sections of the Noosa Plan;
5. Concurrence Agency Response Information Request from Noosa Council date 7 July 2015;
6. Email from Pacific BCQ Building Certification Queensland dated 22 July 2015 to Noosa Council requesting they complete the assessment of the referral;
7. Concurrence Agency Response from Noosa Council dated 14 July 2015;
8. Preliminary Application Decision Notice issued by Pacific BCQ Building Certification Queensland dated 8 September 2015 refusing the garage;
9. The following drawings:
  - and+design (Andrew McKellar Design), Drawing Number 30.0515.1.1, Dated May 2015, Sheet 1.1, (Floor Plan);
  - and+design (Andrew McKellar Design), Drawing Number 30.0515.1.2, Dated May 2015, Sheet 1.2, (Floor Plan);
  - and+design (Andrew McKellar Design), Drawing Number 30.0515.2.1, Dated May 2015, Sheet 2.1, (Section A);
  - and+design (Andrew McKellar Design), Drawing Number 30.0515.3.1, Dated May 2015, Sheet 3.1, (Elevations);
  - and+design (Andrew McKellar Design), Drawing Number 30.0515.1.1A, Dated May 2015, Sheets 1.1A, (Floor Plan);
  - and+design (Andrew McKellar Design), Drawing Number 30.0515.1.2A, Dated May 2015, Sheets 1.2A (Floor Plan);
  - and+design (Andrew McKellar Design), Drawing Number 30.0515.2.1A, Dated May 2015, Sheets 2.1A, (Section A);
  - and+design (Andrew McKellar Design), Drawing Number 30.0515.3.1A, Dated May 2015, Sheets 3.1A, (Elevations).
10. Email from Applicants to Pacific BCQ Building Certification Queensland dated 22 July 2015 requesting matter be referred to the Committee;
11. Untitled and undated report justifying why the proposed garage should have been approved;
12. Verbal submissions at the hearing from all parties to the appeal;
13. The Noosa Plan;
14. The Queensland Development Code MP 1.2 (Design and Siting Standard for Lot 450 m<sup>2</sup> and Over);
15. The *Sustainable Planning Act 2009*;
16. The *Building Act 1975*.

## **Findings of Fact**

The Committee makes the following findings of fact:

## Subject Site

1. The subject site is an 592m<sup>2</sup> corner allotment located at 1 Safari Street, Noosa Heads, and is zoned Detached Housing under the Noosa Plan;
2. The allotment was created on the 20 December 1977;
3. The following buildings were noted onsite:
  - A dwelling and single garage approved by Noosa Council on the 23 February 1988. The dwelling has a front road boundary setback of 5.63m from Safari Street Road Frontage and 6.560m from Cooyar Street frontage; and
  - A roofed veranda attached to the dwelling and located approximately 2 m from the front road boundary with Safari Street. Council has advised they have no record of a building approval having been issued for the veranda.
4. The streetscape in the surrounding area of the subject site predominately consists of residential dwellings with mixture of open fronted allotments or 1.8 m high front boundary fences/walls with soft landscaping and buildings setback 6 m from the front road boundary.
5. At the hearing the Applicant raised the issue that the QDC MP1.2 (Design and Siting Standard for Lot 450m<sup>2</sup> and Over) may be the applicable code in this instance as the Noosa Plan does not have a reduced secondary road frontage for corner allotments.

Acceptable Measures A1(b) of the QDC MP1.2 gives a reduced secondary road frontage on allotment with an average depth of 24 m or less.

The Applicant was of the opinion that given the Noosa Plan does not have a similar Acceptable Measure it is not complying with the requirements of Section 33 of the *Building Act 1975* (the Act) which states the following:

### **33 Alternative provisions to QDC boundary clearance and site cover provisions for particular buildings**

(1) *This section applies for work (relevant work) that—*

- (a) *is building assessment work or self-assessable building work; and*
- (b) *is for a single detached class 1 building or a class 10 building or structure located on the same allotment as a single detached class 1 building.*

(2) *A planning scheme or PDA instrument may include provisions (alternative provisions) that, for relevant work, are alternative or different to the QDC boundary clearance and site cover provisions.*

(3) *However, a planning scheme or PDA instrument may include alternative provisions only if the provisions are a qualitative statement or quantifiable standard.*

(4) *If there are alternative provisions for relevant work, the QDC boundary clearance and site cover provisions only apply to the extent the alternative provisions do not apply to the work.*

(5) *Alternative provisions cannot be made other than under a planning scheme or PDA instrument.*

(6) *In this section—*

**PDA instrument** means a relevant development instrument for a priority development area, made under the Economic Development Act 2012.

**qualitative statement** means a statement about a performance or outcome sought to be achieved when applicable buildings or structures are completed.

**quantifiable standard** means a standard that achieves a performance or outcome sought under a qualitative statement.

The Committee is of the opinion that the Noosa Plan is complying with the requirements of Section 33 of the Act, as Table 14-44, of Division 11 Building Works Code clearly states that Schedule 1 is an alternative provision to QDC Parts MP1.1 and MP1.2, P1, P2 and P7.

Table 14-44 clearly details the required acceptable measures or quantifiable standard, in this instance a 6m front road boundary setback and a performance outcome or quantifiable standard.

### Application Process

1. The Property Owners engaged a builder Matthews Constructions, who lodged a Development Application for Building Work with the Assessment Manager in June 2015 for dwelling additions that incorporated a double garage located 2.090m from the front road boundary with Safari Street and 200 mm from the side western boundary;
2. The garage did not comply with the minimum setback requirements of Schedule 1 (Minimum Boundary Setbacks for Buildings and Other Structures) of the Noosa Plan. As per Schedule 1 the minimum front road boundary setback for a garage is 6m;
3. The side boundary setback to the garage along the western boundary is complying with Acceptable Solutions A2(d) of the QDC MP1.2 (Design and Siting Standard for Lot 450m<sup>2</sup> and Over) which is the applicable code for the side boundary setback in this instance;
4. The Assessment Manager lodged a request for referral agency response for building work with Noosa Council on the 17 June 2015 against Specific Outcome 14.95 Siting, Table 14-44, Division 11 – Building Works Code, of the Noosa Plan;
5. Section 33 (Alternative provisions to QDC boundary clearance and site cover provisions for particular buildings) of the *Building Act 1975* allows a planning scheme to include alternative provisions for single detached Class 1 buildings and Class 10 buildings or structures to the provisions of the QDC for boundary clearance and site cover. Table 14-44, of Division 11 Building Works Code clearly states that Schedule 1 is an alternative provision to QDC Parts MP1.1 and MP1.2, P1, P2 and P7;
6. Noosa Council issued a Concurrence Agency Response Information Request on the 7 July 2015 requesting the following:

*The proposed garage is unlikely to be supported by Council. Please provide a design with less impact on the streetscape.*
7. The Assessment Manager sent an email to Noosa Council on the 22 July 2015 instructing them to complete the assessment of the Concurrence Agency Request;
8. The Council issued a Concurrence Agency Response on 14 July 2015 against the provisions of Performance Outcome O1 (Setbacks), of Table 14-44 (Building Work) 14.95 Siting, of the Noosa Plan, directing the Assessment Manager to refuse the garage for the following reasons:

*The application is refused as the proposed development does not comply with and cannot be conditioned to comply with the following performance criteria:*

*Noosa Plan*

*Building Works Code*

*Setbacks*

*01 Buildings and other structures are appropriately designed and sited to:*

*(d) maintain the visual continuity and pattern of buildings and landscape elements within the street.*

*The building setbacks in the street maintain a continuity of 6 metres.*

*(e) for class 10a structures, do not visually dominate the street.*

*The proposed garage will present a bulk and mass of building to the street that will have a dominating effect.*

*(b) minimising projection of the garage or carport forward of the main face of the dwelling unit;*

*There is an existing large single garage that can be increased in width to a double garage keeping the building in line with the existing dwelling.*

9. The Assessment Manager issued a Preliminary Application Decision Notice on the 8 September 2015 refusing the garage as directed by the Concurrence Agency;
10. The Committee received the application for appeal, Form 10 from the Applicant on the 9 September 2015.

### **Reasons for the Decision**

The Committee conditionally sets aside the decision of the Assessment Manager to refuse the garage at the direction of Council for the following reasons:

- At the hearing, the appeal parties discussed the following option;
  - Increase the front road boundary setback to the wall of the garage to 5.00 m by relocating the proposed storeroom to an area between the side boundary and bedroom four;
- The hearing was suspended to allow the Property Owners the opportunity to develop a set of revised drawings reflecting the above for Council to consider;
- The Property Owners submitted amended drawings to Council and the Committee on the 29 September 2015;
- The Council advised the Committee on the 29 September 2015 that they were satisfied with the amended drawings.

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**Richard Prout**  
**Building and Development Committee Chair**  
**Date: 1 October 2015**

## **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  
GPO Box 2457  
Brisbane QLD 4001  
**Telephone (07) 1800 804 833 Facsimile (07) 3237 1248**