



## Building and Development Tribunals — Decision

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### *Integrated Planning Act 1997*

<b>Appeal Number:</b>	<b>3—08—051</b>
<b>Applicant:</b>	<i>Withdrawn</i>
<b>Assessment Manager:</b>	Shane McGowan for and on behalf of GMA Certification Group P/L
<b>Concurrence Agency:</b> (if applicable)	Noosa Shire Council (now Sunshine Coast Regional Council)
<b>Site Address:</b>	<i>Withdrawn</i> — the subject site

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### **Appeal**

Appeal under section 4.2.9 of the *Integrated Planning Act 1997* (IPA) against the decision of the Assessment Manager to refuse a building development application based on Noosa Shire Council's concurrence agency response relating to front and side boundary setbacks for a proposed extension to a dwelling.

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<b>Date of hearing:</b>	2:00pm, Thursday 24 July 2008
<b>Place of hearing:</b>	The subject site
<b>Tribunal:</b>	Mr Geoff Cornish — Chair Mr John Gillespie — Member
<b>Present:</b>	<i>Withdrawn</i> — Applicant Mr Shane McGowan — GMA Certification Group P/L Mr Don Grehan — Sunshine Coast Regional Council Representative

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### **Decision:**

The Tribunal, in accordance with section 4.2.34(2)(c) of the IPA, **sets aside** the decision of the Assessment Manager refusing a building development application for a class 1a dwelling and an open carport within the required side and front setback on the basis of the concurrence agency response from Noosa Shire Council.

The Tribunal **directs** the Assessment Manager to approve the development application subject to the following conditions:

- The setback from the road boundary of the subject site is to be no less than 5 m to the outermost projection of the proposed extension.
- The setbacks from the northern side boundary are to be no less than 1.5 m for those parts of the extension that do not exceed 4.5 m in height above natural ground level, and no less than 2 m for those parts that exceed 4.5 m in height above natural ground level.

- The minimum requirement for the retention of screening vegetation on the site must be consistent with that necessary for the construction and maintenance of, and unrestricted vehicular access to, the structure.

## **Background**

The matter concerns the decision of the former Noosa Shire Council, as a concurrence agency, to refuse to vary the side and front boundary setbacks necessary to obtain a development approval for the construction of a double storey extension to the existing dwelling on 'the subject site'. As a consequence of the concurrence agency advice, the Assessment Manager had no option other than to refuse the development application. This appeal has been lodged against the refusal of the development application and the concurrence agency decision on which that refusal was based.

## **Material Considered**

The material considered in arriving at this decision comprises:

- The application, including Form 10 - Notice of Appeal, supporting plans and documentation;
- Council's Concurrence Agency response dated 14 March 2008;
- Verbal submissions from all the parties at the hearing;
- The Queensland Development Code (QDC) – Part MP 1.2; and
- The *Integrated Planning Act 1997*.

## **Findings of Fact**

The Tribunal makes the following findings of fact:

- The subject site contains an approved three bedroom dwelling, an approved swimming pool and an unapproved carport.
- The existing unapproved carport is located less than 6 m from the road boundary of the subject site.
- The intended extension of the dwelling proposes replacing the existing carport with a newly constructed one in the same location, with the addition of further rooms above it.
- There is extensive vegetation on the subject site, both at the front and to the sides of the existing carport.
- Significant trimming of existing vegetation will be required to facilitate construction of the proposed extensions and to enable unrestricted vehicular access to the reconstructed carport.
- The subject site is located on the inside of a curve in the street.
- There is significant vegetation on the road reserve in front of and adjacent to the subject site.
- The dwelling on the adjoining allotment adjacent to the proposed extension is positioned at the minimum required setback from the common side boundary.
- The Applicant sought and obtained written agreement to the proposed extension from the owner of the adjoining dwelling.
- The planning scheme for the former Shire of Noosa contains alternative siting provisions designated by zones. Where a form of building is not listed in a particular zone the siting provisions default to the QDC provisions. That is the case for this application.
- Council's decision to refuse to vary the siting provisions of the QDC was based on its assessment that the application did not satisfy the performance provisions of Parts MP 1.1 and 1.2 of the Code. Part MP 1.1 is not relevant to this application as the subject site is greater than 450 m<sup>2</sup> in area.
- In giving its decision, Council failed to direct the Assessment Manager to refuse the development application.
- It is the Tribunal's opinion that Council did not decide the referral agency response within the prescribed time and it is therefore reasonable to assume a "deemed refusal".

## Reasons for the Decision

- The fact that the existing carport is already in the proposed location is no justification for the approval of the proposed development.
- The construction of the existing carport, together with its more recent extensive upgrading, has been undertaken without any approval or siting variation. This demonstrates a degree of disregard for the requirement to meet legislated community standards.
- The existing vegetation on the subject site between the proposed double storey extension and the adjacent side boundary will require extensive trimming to allow construction to proceed. If left in place the tall tree in particular will, in the Tribunal's opinion, pose a threat to the structure due to movement in strong winds and is likely to require removal.
- Further plantings between the proposed structure and the side boundary would be limited due to restricted space. These could not provide shielding to such a high structure without also posing potential problems under wind conditions.
- Existing vegetation at the front and sides of the existing carport will require extensive trimming to enable both construction and maintenance of the extension and unrestricted access to the carport. While the Applicant may accept certain restrictions in this regard, there is no guarantee that any future owner of this property would do so. A future owner could require much of its removal. It would be neither reasonable nor practical to condition any approval to require the permanent retention of all this vegetation.
- The location of the subject site on the inside of a curve in the road suggests that some reduction in setback from the road boundary could be supported. The existing vegetation on site after trimming, together with that on the road reserve, will provide a degree of shielding that will reduce the impact of the proposed extension on the streetscape.
- The proposed uncovered balcony to the front of the extension was described as necessary to enable safe opening of the doors providing ventilation to the second storey. This could be achieved without an accessible balcony and with the required handrail and balustrading located no more than 250 mm from the face of the wall.
- A reduction in setback from the road boundary from 6 m to 5 m to the outermost projection of the proposed extension can be supported given the location and the screening vegetation that can lawfully be required to be retained i.e. the structure will result in an acceptable streetscape at this setback and therefore satisfies QDC MP 1.2 P1.
- The closeness of the proposed extension to the side boundary cannot be supported due to the bulk of the structure and the limited space available for long term screening. Any screening vegetation that would reduce the impact of this structure would require a mature height approaching 6 m and could pose a risk for the structure under wind conditions.
- The extension also has the potential to affect any proposal for redevelopment of the adjacent site owner of this adjoining dwelling i.e. the proposal, with respect to the various side boundary setbacks, would preclude the achievement of QDC MP 1.2 P2 (a) – (c).

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**Geoff Cornish**  
**Building and Development Tribunal Chair**  
**Date: 5 August 2008**

## **Appeal Rights**

Section 4.1.37. of the *Integrated Planning Act 1997* provides that a party to a proceeding decided by a Tribunal may appeal to the Planning and Environment Court against the Tribunal's decision, but only on the ground:

- (a) of error or mistake in law on the part of the Tribunal or
- (b) that the Tribunal 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 Tribunal's decision is given to the party.

## **Enquiries**

All correspondence should be addressed to:

The Registrar of Building and Development Tribunals  
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