



## Building and Development Dispute Resolution Committees—Decision

---

### *Sustainable Planning Act 2009*

<b>Appeal Number:</b>	<b>26-15</b>
<b>Applicant:</b>	Anthony John Jackson
<b>Assessment Manager:</b>	Noosa Building Certifiers
<b>Concurrence Agency:</b> (if applicable)	Noosa Council (Council)
<b>Site Address:</b>	1 Allambi Terrace Noosa Heads 4567, described as Lot 107 on RP 94023 (the subject site)

---

### Appeal

Appeal under section 527 of the *Sustainable Planning Act 2009* (SPA) against the decision of Noosa Building Certifiers as the Assessment Manager to refuse a Development Application (Application) in part for an enclosed garage within the prescribed setbacks of the road boundary under the Noosa Planning Scheme. Noosa Council as Concurrence Agency, directed the refusal.

---

<b>Date and time of hearing:</b>	1 September 2015, 11:30am - 1:00pm
<b>Place of hearing:</b>	The subject site
<b>Committee:</b>	James Dunstan – Chair Deanna Heinke – General Referee
<b>Present:</b>	Anthony Jackson – Applicant (Consultant for Property Owner) Stephen McReight – Property Owner Luke Neller – Assessment Manager Terry Neller – Assessment Manager Hannah Coles – Assessment Manager Paul Riley – Council representative

---

### 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 on 5 June 2015 to refuse the Application in part for the enclosed garage and approves the siting subject to the following conditions:

1. The garage is to be sited and constructed generally in accordance with the plans prepared by Accolade Building Designs Project Number 0115MSM dated 08/07/2015, Sheets 1-7, subject to the following setbacks and conditions:
  - a. Minimum 2200 road setback to Outer Most Projection (OMP) and Wall for a maximum length of 6590mm for garage only;

- b. The entry roof is to be reduced to be consistent with the main building line of the existing verandah;
  - c. Minimum 200mm side boundary setback for a maximum length of 9m;
2. The building works are to remain under the existing roofline of the existing building, with only a minor extension on the same plane permitted to the front to the setbacks detailed above;
  3. Driveway crossover is to comply with Noosa Council standard driveway requirements;
  4. Landscaping is to be provided on either side of the enclosed garage to reduce the appearance of bulk.

## Background

The site is 556m<sup>2</sup> and is located on the corner of Winnbirra Way and Allambi Terrace Noosa Heads. The site is triangular in shape due to the angle of the road boundaries and falls from the Allambi Terrace frontage towards the Winnbirra Way frontage at the rear of the lot.

The existing development on the site is a single detached dwelling with an existing double carport located within the prescribed setbacks to the Allambi Terrace frontage.

A Development Application (Application) was submitted for a building approval for construction of a new garage and covered entryway to the Allambi Terrace frontage and for other extension works to the dwelling near the Winnbirra Way frontage.

The Council issued an information request letter during the concurrence assessment process outlining that amendments would be needed. The Applicant did not provide a written response.

The Assessment Manager refused the Application in part in accordance with the Concurrence Agency advice being deemed inconsistent with the performance requirements of the Noosa Planning Scheme Building Works Code.

Council issued the concurrence refusal on the following grounds:

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

### *Building Works Code*

#### *Setbacks*

*O1 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 large majority of dwellings are setback 6m from the road front on Allambi Terrace*

*e) for Class 10a structures, do not visually dominate the street;*

*The garage will visually dominate the street presenting a closed structure, increasing the bulk appearance of the dwelling and having a narrowing effect on the streetscape*

#### *O17*

*b) Minimise the projection of the garage or carport forward of the main face of the dwelling*

*The proposal projects 4.2m forward of the dwelling*

The Assessment Manager, upon receiving the Council advice issued a Decision Notice dated 10 August 2015, refusing the siting variation for the garage component of the Application.

The Applicant then lodged an Application for Appeal (Form 10) with the Committee's Registrar on 20 August 2015. A hearing was conducted on the subject site at 11.30am on 1 September 2015

The Applicant, acting as a Consultant for the Property Owner, the Property Owner, Assessment Manager and Council representatives made representations at hearing.

Applicant representations:

- The structure is essentially the same as the existing carport onsite, with the exception of extending to the side boundary and enclosed;
- The garage is only a minor encroachment over what is already onsite, with an existing carport located 2.5m from the road frontage;
- The owner has concerns over security and requires a lockable space for parking of 2 vehicles;
- The location of the garage is setback below a 3m high blockwall on the neighbouring property;
- There are other examples, including neighbouring property of garages encroaching on the road boundary and being more dominant than the proposal;
- The affected neighbour has provided a letter of no objection;
- Council appear to be applying the performance requirements to broadly and not considering the individual site and site specific attributes and constraints;
- There is no alternative location or ability to re-site carparking on the site due to the existing dwelling and shape of allotment;

Council's representations:

- The bulk of the structure being 7.8m in length (6590 Wall), 1.757m from the road boundary represents the main reason for refusal.
- Other structures that have been given concessions within the road boundary setbacks in the neighbourhood, including similar structures are too bulky and Council has changed their application of policy to try to reduce this occurring
- Council will not usually accept enclosed garage type structures within the road setback;
- Council is of the view that the predominant character of the area is buildings setback 6m and that the garage will present unacceptable bulk to the road frontage;
- Council would have no concerns if the structure was fully open;

## **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 20 August 2015
2. Decision Notice – Refusal issued by Noosa Building Certifiers dated 10 August 2015
3. Council Concurrence Agency response – Refused in part by Noosa Council dated 29 June 2015
4. Accolade Building Designs Project Number 0115MSM dated 08/07/2015, Sheets 1-7
5. Neighbours Letter – Provided by the Applicant to the committee in support of the Application;
6. Correspondence between the Applicant and Council prior to the Council advice being issued – Information request letter;
7. The *Sustainable Planning Act 2009* (SPA)

8. The Sustainable Planning Regulation 2009 (SPR)
9. Noosa Planning Scheme 2006
10. Verbal representation by the Applicant at the hearing;
11. Verbal representations by Council at the hearing;
12. Research undertaken on other existing buildings and structures in the surrounding area;

### **Findings of Fact**

The Committee makes the following findings of fact:

1. The subject site contains an existing carport located approximately 2.5m from the Allambi Terrace road frontage;
2. The Allambi Terrace Frontage is 25.503m in length, and contains an existing vehicle crossover providing access from the primary frontage;
3. There is no alternative location onsite for vehicle parking available due to existing site constraints, allotment shape being triangular and the location of the existing dwelling onsite;
4. The Application, made to Noosa Building Certifiers as the Assessment Manager was correctly referred to Council as a Concurrence Agency under the Sustainable Planning Regulation 2009, Schedule 7, Table 1, Item 19;
5. The Application was refused by Council because it was *deemed not to meet O1(d & e) and O17 (b) of the Building Works Code*
6. The performance criteria of the Building Works Code section O1 & O17 detailed above states:

#### **“Setbacks**

##### ***O1 Buildings and other structures are appropriately designed and sited to—***

- a. provide amenity for users of the premises as well as preserve the visual and acoustic privacy of adjoining and nearby land uses;*
- b. preserve any existing vegetation that will buffer the proposed building from adjoining uses;*
- c. allow for landscaping to be provided between buildings;*
- d. maintain the visual continuity and pattern of buildings and landscape elements within the street;*
- e. for class 10a structures, do not visually dominate the street;*
- f. avoid any significant adverse impacts on the natural values of watercourses and their foreshores, including those of the Noosa River and its lakes; and*
- g. do not interrupt the natural cycles of erosion and accretion of watercourses and foreshore areas..*

##### ***Garages, carports and other Class 10a buildings***

##### ***O17 Within the Detached Housing, Semi-Attached Housing, Attached Housing and Visitor Mixed Use Zones, garages, carports and other class 10 buildings are designed and sited to visually integrate with any associated dwelling unit and avoid dominating the street by—***

- a. minimising the width of the garage or carport; and*
- b. minimising projection of the garage or carport forward of the main face of the dwelling unit,”*

7. Viewing the existing residential streetscapes in the vicinity of this property, there are multiple examples of buildings, including the neighbouring site, where garages have been constructed to and within 1.5m of the road boundary;
8. There are some extenuating circumstances which apply to this site which allow the committee to support this application for the design and siting of the garage, subject to the conditions applied and changes being made. These circumstances include:
  - Being set below a 3m high Block wall on the boundary from the neighbour at number 3, which prevents the structure from being visible from the uphill section of Allambi Terrace;
  - Allambi Terrace includes a 5m wide council reserve, with well-established street trees located on the footpath both up and downhill from the subject site. These street trees provide a high level of screening and would contribute to reducing the bulk of the proposed structure;
  - The subject site, and adjoining neighbouring property have existing 1.8m high, solid fences which obstruct the view from streetscape from both directions;
  - The proposed structure, although being extended to the side boundary, can be kept within the existing building line of the existing carport;
  - Due to the slope of the lot, it is set down slightly from the road frontage;

### **Reasons for the Decision**

The Committee has reviewed all the information provided and finds the following:

- The siting of the proposed garage, being set below an existing 3m high block wall on the northern boundary, and recessed behind existing 1.8m solid fences will not present bulk to the streetscape;
- Due to the 5m wide council reserve, with established street trees, including dense olive trees on the northern side of the subject site, provide adequate screening to soften the impact of the garage on the streetscape. The structure will generally not be visible from the streetscape except when directly in front of the garage;
- The provision of additional soft landscaping will further assist in reducing the impact of the structure on the streetscape;
- Ensuring the structure is kept under the existing carport roofline excluding a minor extension towards the road (Approximately 300mm), and towards the side boundary, will have minimal impact on the existing encroachment and bulk on the street;
- Reduction in the overall width of the proposed garage and covered entryway, by removing part of the covered walkway back to the main building line minimises the overall encroachment.
- The Committee viewed the existing residential streetscape in the vicinity of this property, and found some examples of similar structures built within the last 5 years.

Based on a site specific assessment and application of the performance criteria, and given the circumstances applicable to this subject site, the Application is considered to meet the performance criteria of O1 and O17 of the building works code subject to conditions, and the Committee supports the siting of the garage and covered entryway subject to the below conditions:

1. The garage is to be sited and constructed generally in accordance with the plans prepared by Accolade Building Designs Project Number 0115MSM dated 08/07/2015, Sheets 1-7, subject to the following setbacks and conditions:
  - a. Minimum 2200 road setback Outer Most Projection (OMP) and Wall for a maximum length of 6590mm for garage only;
  - b. The entry roof is to be reduced to be consistent with the main building line of the existing verandah;
  - c. Minimum 200mm side boundary setback for a maximum length of 9m;
2. The building works are to remain under the existing roofline of the existing building, with only a minor extension on the same plane permitted to the front to the setbacks detailed above;
3. Driveway crossover is to comply with Noosa Council standard driveway requirements;
4. Landscaping is to be provided on either side of the enclosed garage to reduce the appearance of bulk.

---

**James Dunstan**  
**Building and Development Committee Chair**  
**Date: 15 September 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**