



Building and Development Dispute Resolution Committees—Decision

Sustainable Planning Act 2009

Appeal Number:	43-14
Applicant:	Dunsdon Investments Pty Ltd C/-Pacific BCQ
Assessment Manager:	Pacific BCQ Building Certification Queensland (Donald, Frances Grehan)
Concurrence Agency: (if applicable)	Noosa Council
Site Address:	14 Peregian Esplanade, Peregian Beach, and described as Lot 314 P93112 – the subject site

Appeal

Appeal under section 527 of *Sustainable Planning Act 2009* (SPA) against the Preliminary Decision Notice of the Assessment Manager to refuse a swimming pool, side boundary masonry constructed wall, front boundary masonry constructed retaining wall, and a masonry constructed pool fence. Noosa Council (Council) as the Concurrence Agency directed the Assessment Manager to refuse the structures as they did not meet and could not be conditioned to meet the Specific Outcomes of the Noosa Plan.

Date and time of hearing:	14 January 2015 at 10.00am
Place of hearing:	The subject site,
Committee:	Richard Prout – Chair Stephen Craven - Member
Present:	Richard Dunsdon - Applicant Don Grehan - Assessment Manager Rob Wibrow - Noosa Council representative

Decision:

The Building and Development Dispute Resolution Committee (Committee), in accordance with section 564 of the SPA **confirms** the decision of the Concurrence Agency to refuse the swimming pool, the front east facing retaining wall and block wall pool fence.

The Committee, in accordance with section 564 of the SPA **sets aside** the decision of the Concurrence Agency to refuse the northern side boundary fence, and approves the northern side boundary fence with the following conditions:

- The fence shall not exceed a maximum height of 3 m above natural ground level; and
- The fence shall be reduced to a maximum height of 2 m above natural ground level within the 6 m of the front road boundary setback.

Background

The subject site is a 847 m² allotment located at 14 Peregian Esplanade, Peregian Beach, and is zoned Semi-Attached Housing under the Noosa Plan.

The existing dwelling at the site was built in 1995 and has a front road boundary setback of approximately 15 m from Peregian Esplanade. By locating the dwelling toward the rear of the allotment, the Architect was able to maximise the ocean views afforded by the allotment.

However, due to this positioning of the dwelling there is only very limited space at the rear of the building and the only practical location for a swimming pool on the site is between the dwelling and the front road boundary. The natural ground level between the dwelling and the front road boundary slopes towards the road with a change in ground level of 2.850 m.

The Applicant lodged a Development Application for Building Work with Pacific BCQ Building Certification Queensland (Assessment Manager) for the following building and structures:

- Class 10a gazebo located 200mm from the northern side boundary;
- Class 10b wall located 200mm from the northern side boundary with a maximum height above natural ground level of 3 m;
- Class 10b swimming pool and surround entertaining area located within the prescribed front road boundary setback with a coping height above natural ground level somewhere between 1.85 m and 2.35 m;
- Class 10b combined retaining wall and pool fence located 1 m from the front road boundary with an overall height above natural ground level somewhere between 3.05 m and 3.55 m.

The gazebo does not comply with the acceptable solutions of the Queensland Development Code MP 1.2 (QDC MP1.2) and the remaining structures do not comply with the minimum setback requirements of the Noosa Plan.

The Assessment Manager lodged a request for referral agency response for building work with Noosa Council in 2014. Noosa Council issued a Concurrence Agency Response on the 28 July 2014 instructing the Assessment Manager to approve the gazebo but refuse the remaining structures.

The Assessment Manager issued a Preliminary Application Decision Notice on the 24 November 2014 approving the gazebo and refusing the remaining structures as directed by the Concurrence Agency.

The Building and Development Dispute Resolution Committees (the Committee) received application for appeal Form 10 from the Applicant on the 2 December 2014.

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 2 December 2014;
2. IDAS Form 1 - Application Details, IDAS Form 2 - Building work requiring assessment against the *Building Act 1975*;
3. Sunshine Coast Council Application Form – Request for referral agency response for Building Work dated 27 June 2013;

4. Letter/report from Pacific BCQ Building Certification Queensland dated 13 August 2013 to the Sunshine Coast Regional Council;
5. Concurrence Agency Response from Noosa Council dated 28 July 2014;
6. Preliminary Application Decision Notice, issued by Pacific BCQ Building Certification Queensland dated 24 November 2014;
7. The following drawings:
 - Noosa Cooloola Pools, dated July 2013 drawing 004-0713 sheet 1, and sheet 2;
 - Noosa Cooloola Pools, dated 25 July 2013 view 1, view 2;
 - SCG Consulting Engineers, dated July 2013 drawing 23172-S1;
 - Kimmorley Surveying Pty Ltd, dated 2 June 2014, drawing 14042-1;
 - Residential Building Design dated 5 May 2014, drawing DC-159 sheet 1, and sheet 2;
 - Untitled drawing sectional view A-A through site provided by owner at Hearing.
8. Verbal submissions at the hearing from all parties to the appeal;
9. The Noosa Plan;
10. The Queensland Development Code MP 1.2 (QDC MP1.2);
11. The *Sustainable Planning Act 2009* (SPA);
12. The *Building Act 1975* (BA).

Findings of Fact

The Committee makes the following findings of fact:

Subject Site

1. The subject site is an 847 m² allotment located at 14 Peregian Esplanade, Peregian Beach, and is zoned Semi-Attached Housing under the Noosa Plan;
2. The existing dwelling onsite was built in 1995 with a front road boundary setback of 15m from Peregian Esplanade;
3. The ground level between the dwelling and the front road boundary slopes towards the road with a change in ground level of 2.850 m;
4. A combined retaining wall and boundary wall has been built along the front road boundary. As per the information provided by the applicant and Council the retaining wall is approximately 1.44 m in height, with the overall height of the wall 2 m above natural ground level;
5. As per the *Building Act 1975* a retaining wall exceeding 1 m in height is assessable development i.e. triggers a Development Approval for Building Work. Council has advised that they have no records of a Development Approval for Building Work being obtained for the structure, and the structure did not form part of the original Development Approval for Building Work for the dwelling;
6. The allotment to the northern side is a battle-axe block, and consists of a 4 – 5 m wide driveway access which runs the full length of the subject site's northern boundary. Thus the northern allotment's dwelling is located on the western side (rear) of the subject site and the nearest "adjoining" dwelling to the north is 13 metres away;

7. The streetscape in the surrounding area of the subject site predominately consists of open fronted allotments with soft landscaping and where walls have been erected within the front road boundary setback they are complying with the requirements of the planning scheme i.e. boundary walls are below 2 m in height, and retaining walls are below 1 m in height.

Application Process

1. The Applicant lodged a Development Application for Building Work with the Assessment Manager on the 26 July 2013 for the following building and structures:
 - Class 10a gazebo located 200mm from the northern side boundary;
 - Class 10b wall located 200mm from the northern side boundary with a maximum height above natural ground level of 3 m;
 - Class 10b swimming pool and surround entertaining area located within the prescribed front road boundary setback with a coping height above natural ground level somewhere between 1.85 m and 2.35 m;
 - Class 10b combined retaining wall and pool fence located 1 m from the front road boundary with an overall height above natural ground level somewhere between 3.05 m and 3.55 m.
2. Natural ground surface or natural ground level is defined in the Noosa Plan as follows:

natural ground surface or natural ground level for an allotment means:

a) the ground level of the allotment on the day the first plan of survey showing the allotment was registered; or

b) if the ground level on the day mentioned in paragraph (a) is not known, the natural ground surface as determined by a cadastral surveyor.
3. The gazebo did not comply with Acceptable Solutions A2(c)(v) of the QDC MP1.2 as the building was roofed, more than 2.4 m in height, and was not primarily for ornamental or for horticultural purposes;
4. The remaining structures 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 the Schedule 1:
 - The maximum height of a Class 10b screen/fence within 1.5 m of a side or rear boundary or within 6 m of a front road boundary is 2 m; and
 - The maximum height of Class 10b retaining wall or swimming pool within 1.5 m of a side or rear boundary or within 6 m of a front road boundary is 1 m;
5. The Assessment Manager lodged a request for referral agency response for building work with Noosa Council in 2014 against Specific Outcome 14.95 Siting, Table 14-44, Division 11 – Building Works Code, of the Noosa Plan, and the Performance Criteria P2 of the QDC MP1.2;
6. 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;
7. Noosa Council issued a Concurrence Agency Response on the 28 July 2014 instructing the Assessment Manager to conditionally approve the gazebo but refuse the remaining structures as;

Council concludes that the above refused building work does not meet or cannot be conditioned to meet the following Specific Outcomes of the 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.

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

8. It was an agreed fact at the hearing that Specific Outcome 01 (e) was not applicable, as the swimming pool, retaining wall, pool fence, and boundary wall that were refused are all Class 10b structures, not a Class 10a building;
9. The Assessment Manager issued a Preliminary Application Decision Notice on the 24 November 2014 approving the gazebo and refusing the remaining structures as directed by the Concurrence Agency;
10. The Committee received the application for appeal, Form 10 from the Applicant on the 2 December 2014;

Reasons for the Decision

From the information provided by the Applicant and from the site inspection carried out by the Committee members during the appeal hearing, the following has been determined:

- The proposed Class 10b wall along the northern side boundary has a maximum height above natural ground level of 3 m;
- The proposed Class 10b swimming pool and surrounding entertaining area located within the prescribed front road boundary setback has a finished coping height above natural ground level of between 1.85 m and 2.35 m;
- The proposed Class 10b combined retaining wall and pool fence is located 1 m from the front road boundary with an overall height above natural ground level of between 3.05 m and 3.55 m.

The Committee **confirms** the decision of the Concurrence Agency to refuse the swimming pool, the front east facing retaining wall and block wall pool fence for the following reasons:

- The committee is satisfied that the proposed structures do not meet the Specific Outcomes of the Noosa Plan and that the proposed structures if built would be in extreme conflict with the surrounding streetscape and would not maintain the visual continuity and pattern of buildings and landscape elements within the street;
- The Committee is satisfied that a swimming pool and surrounding podium area can be designed to meet the Applicant's needs and outcomes of the Noosa Plan.

The Committee **sets aside** the decision of the Concurrence Agency to refuse the northern side boundary fence for the following reasons:

- The Committee is satisfied that the proposed structure meets the Specific Outcomes of the Noosa Plan;
- The Committee is satisfied that the structure will have no impact on the adjoining allotment given that the area adjacent to the structure is a driveway access only for the neighbouring dwelling which is located to the rear of 14 Peregrian Esplanade;
- The Committee has imposed conditions on the height and location of the structure as the Committee is satisfied that a structure over 2 m in height within the front road boundary

setback would be in extreme conflict with the surrounding streetscape. The Committee is also satisfied that a structure exceeding 3 m in height within 1.5 m of the side boundary would be in extreme conflict with the surrounding streetscape and would affect the amenity of the allotments to the north of the site.

Richard Prout
Building and Development Committee Chair
Date: 21 January 2014

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