



Building and Development Dispute Resolution Committees—Decision

Sustainable Planning Act 2009

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| Appeal Number: | 29 – 15 |
| Applicant: | Phil Harrison |
| Assessment Manager: | Adept Building Approvals |
| Concurrence Agency: (if applicable) | Moreton Bay Regional Council |
| Site Address: | 3 Avalon Street Sandstone Point described as Lot 625 on SP 106307 – the subject site. |

Appeal

Appeal under section 527 of the Sustainable Planning Act 2009 (SPA) against the decision of the Assessment Manager to refuse an Application for a Permissible Change to a Development Approval for Building Work in relation to the design and siting of a Detached Garage at the direction of the Concurrence Agency.

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| Date and time of hearing: | 10.00am, 16 September 2015. |
| Place of hearing: | The subject site |
| Committee: | Don Grehan – Chair |
| Present: | Phil Harrison – Applicant. Wade Potter – Assessment Manager. Sheryl Harvey – Assessment Managers Representative Joe Zocco – 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 Application for the Permissible Change to a Development Approval for the Detached Garage subject to the following conditions as considered appropriate:

Conditions:

1. 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. Such details are to be provided to the Applicant, Builder and Council.
2. Upon satisfactory final Inspection (including compliance with any Conditions) the Assessment Manager must issue a Form 21 Final Inspection Certificate and otherwise fulfil the obligation imposed by Sections 99 and 149 of the Building Act 1975.

Background

The Assessment Manager refused an Application for a permissible change to a development approval for building work in relation to the increased height of an “as constructed” detached garage following receipt of a Concurrence Agency Response from the Moreton Bay Regional Council (Council).

Council, having previously supported the siting of the building within the 6.0m road boundary setback, directed the refusal of the Application for a permissible change as it considered that, with its increase in height and subsequent effect in terms size and scale, the ‘as constructed’ detached garage would not satisfy the Performance Criteria of MP.1.2 of the Queensland Development Code and was contrary to the Council’s Policy No. 14-2150-076, Amenity & Aesthetics – Impact of proposed building work.

The Applicant, dissatisfied with the refusal, lodged an appeal with the Committees Registry on the 27th of August 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 27 August 2015.
2. Assessment Managers Decision Notice (Refusal), Reference No. 00002092 dated 20 August 2015.
3. Moreton Bay Regional Council Concurrence Agency Response (Approval), Reference No. BL/4643/2014/AA.
4. Moreton Bay Regional Council Concurrence Agency Response (Refusal), Reference No. BL/4643/2014/AA-Amend.
5. Verbal submissions from the Applicant’s representative given at the hearing.
6. Verbal and written submissions from Council's representative given at the hearing.
7. The *Sustainable Planning Act 2009* (SPA).
8. The Sustainable Planning Regulation 2009 (SPR).
9. The *Building Act 1975* (BA).
10. The Queensland Development Code MP1.2 (QDC MP1.2)
11. Moreton Bay Regional Council Policy No. 14-2150-076, Amenity & Aesthetics – Impact of proposed building work.

Findings of Fact

- The subject site is an 830m² parcel situated within a well-established residential neighborhood; a two storey residential dwelling is situated on site. In August of 2015 the Applicant applied to the Assessment Manager for a Development Approval for Building Works in relation to the proposed construction of a skillion roofed, gabled end detached garage to be located to the front left of the allotment and with a road boundary setback of 3000mm and a side boundary set back of 150mm.
- The dimensions of the proposed detached garage were 3800mm to the apex, 3275mm to the eave, 6000mm in width and 9000mm in length.

- The proposed siting of the detached garage together with its physical characteristics were such that it was inconsistent with the Acceptable Solutions the QDC MP1.2 A1(i) (road boundary setbacks) and A2(d)(i) (mean height) and the relevant criteria of Moreton Bay Regional Council Policy No. 14-2150, Amenity & Aesthetics – Impact of proposed building work.
- In accordance with Schedule 7 of the SPR, the Assessment Manager requested Council's response to the proposal as a Referral Agency (Concurrence) for the assessment of the relevant aspects against the Performance Outcomes and intent of the abovementioned Code and Policy and, following their assessment, Council advised that it had no objection to the proposal.
- A Development Approval for Building Works was issued for the construction of the detached garage and, being a nondescript Class 10A non-habitable building, the Assessment Manager chose only to mandate the Final Inspection Stage.
- At commencement of the building work and without the advice of the Assessment Manager, the builder determined that the topography of the site was such that minor earthworks were necessary in order to provide a level building platform and to this end approximately 400mm of fill was placed towards the front of the allotment and the construction proceeded.
- At the completion of the works the mandatory final inspection was requested at which time the Assessment Manager noted that the inclusion of the 400mm of fill material to building platform had inadvertently resulted in the finished building exceeding the specifications that predicated Council's Response and the Approved Plans.
- The Applicant, to address the departures from the Approved plans in relation to the increased height of the detached garage, made Application to the Assessment Manager for a permissible change to a development approval for building work pursuant to Section 369 of the SPA, the processes of which subsequently included the second Application request to Council's for their response to the siting of the completed building as a Referral Agency (Concurrence).
- In determining the request for Concurrence Agency Advice, Council considered that the additional 400mm in building height and the subsequent effect in terms of size and scale:
 - (1) Would have an adverse impact on the amenity of residents on the adjoining lot due to height and length of the building work;
 - (2) Would not facilitate an acceptable street scape by reason of its impact upon the outlook and views along Avalon Street for neighboring residents and vehicles moving along Avalon Street & Avoca Esplanade; and
 - (3) Would have a negative aesthetic impact on the streetscape due to its overall size

Accordingly Council directed the Assessment Manager to refuse the Application for a permissible change to the development approval.
- The property potentially most affected by the location of the constructed detached garage is 1 Avalon Street Sandstone Point (Lot 624 SP 106307) to the north of the subject site. A single storey dwelling and attached garage is constructed on that premises with a setback of approximately 1.5m to the side boundary shared with the subject site. Geographically, the detached garage on the subject site sits directly adjacent to the attached double garage appurtenant to the dwelling on 1 Avalon Street.

Reasons for the Decision

- Noting that Council had previously supported the siting of the detached garage, the Committee is satisfied that Performance Criteria P1 and P2 of QDC MP1.2 have been fulfilled and that the additional building height and subsequent effect in terms of size and scale does not over and above:
 - (1) Adversely impact on the amenity of residents on the adjoining lots over and above that ;
 - (2) Adversely impact upon the outlook and views along Avalon Street of neighbouring residents and/or also vehicles moving along Avalon Street & Avoca Esplanade.
 - (3) Negatively impact aesthetically on the streetscape;
- Noting that Council had previously supported the siting of the detached garage, the Committee is satisfied that the additional building height and subsequent effect in terms of size and scale meets the intent of Moreton Bay Regional Council Policy No. 14-2150-076, Amenity & Aesthetics – Impact of proposed building work in that the building does not have an extremely adverse effect on the amenity or likely amenity of its locality or extremely conflicts with the character of its locality.

Don Grehan
Building and Development Committee Chair
Date: 18 November 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