



Building and Development Dispute Resolution Committees—Decision

Sustainable Planning Act 2009

Appeal Number:	26 - 16
Applicant:	Crittenden Constructions (Builder)
Assessment Manager:	Adept Building Approvals
Concurrence Agency: (if applicable)	Moreton Bay Regional Council (Council)
Site Address:	42 Prince Edward Parade, Redcliffe and described as Lot 96 on RP 74531 – the subject site

Appeal

Appeal under section 527 of the *Sustainable Planning Act 2009* (SPA) against the decision of the Assessment Manager to refuse a Building Development Application (the Application) for a two storey garage (Class 10a) at the direction of the Council as Concurrence Agency. Council determined that the proposed plans conflicted with the “Performance and/or Overall Outcomes under the Dwelling House Code under the Moreton Bay Regional Council Planning Scheme”

Date and time of hearing:	Monday 29 August 2016 at 10.30am
Place of hearing:	The subject site
Committee:	John Panaretos – Chair Neil de Bruyn – Member
Present:	Tina Smith-Roberts – Property Owner Ray Smith-Roberts – Property Owner Ian Crittenden – Applicant’s Representative Wade Potter – Assessment Manager’s Representative Sheryl Harvey – Assessment Manager’s Representative Chris Trewin – Council Representative Kendall McNab – Council Representative

Decision:

The Building and Development Dispute Resolution Committee (Committee), in accordance with section 564 of the SPA **confirms** the decision of the Assessment Manager on 26 July 2016 at the direction of the Council, to refuse the Application for a two storey garage (Class 10a building).

Background

The Application involved in this appeal relates to a proposed Class 10a building being a garage 182m² in floor area, 13m long, 6.8m high and set back 3.1m from the street alignment, with two two-storey roller door openings facing the northern side boundary. The garage is oriented to facilitate vehicles entering and exiting the site in forward gear, but presents a largely blank end-wall to the streetscape. The area surrounding the garage will be landscaped and no change is proposed to the existing compliant crossover width.

The Application falls under the General Residential Zone, Next Generation Neighbourhood Precinct of the Moreton Bay Regional Council Planning Scheme. The proposed garage is subject to Code Assessment where it fails to satisfy the Self-assessable Outcomes (SAO's) of the Dwelling House Code and is assessable against the corresponding Performance Outcomes (PO's) of the Code.

The Property Owner lodged an Application for a Development Permit for Building Works with the Assessment Manager, Adept Building Approvals, for a Class 10a two storey garage (including upper level 'Storage Use') ancillary to an existing dwelling house at 42 Prince Edward Parade, Redcliffe.

The Application was subsequently referred to Council as Concurrence Agency because it was code assessable due to the proposal's failure to comply with the following SAO's:

SAO3	Minimum Front Setback	5.4m
SAO7	Maximum Covered Car Space Opening	6.0m
SAO24	Maximum Roofed Area (Outbuildings)	70m ²
	Maximum Height and Mean Height	4m & 3.5m respectively
	Positioned behind main building line and not within primary frontage setback.	

On 25 July 2016, Council as Concurrence Agency, directed the Assessment Manager to refuse the Application on the basis that the proposed plans failed to satisfy Acceptable Solutions and associated Performance Outcomes PO3, PO7 and PO22 of the Dwelling House Code.

On 26 July 2016, the Assessment Manager issued a Decision Notice formally refusing the Application.

On 2 August 2016, the Applicant (Crittenden Constructions – the Builder) under an Authority to Act from the property owner, lodged an Application for appeal /declaration -Form 10 and associated documentation and grounds of appeal with the Committees Registrar.

On 29 August 2016, a hearing was held on the subject site with all appeal parties.

Council refused the Application because the proposal conflicted with the following Performance Outcomes of the Dwelling House Code which correspond to the SAO's above:

PO3 Council considered the proposed garage did not appear to be subordinate to the dwelling and thus was not consistent with the intended character of the streetscape, nor did it enable passive surveillance of the public areas;

Note: The '*intended character of the streetscape*' is described in the Overall Outcomes of the 'Next Generation Neighbourhood Precinct' of the planning scheme.

PO7 Not considered due to the proposed garage openings not facing the streetscape;

PO22 Council considered the proposed building dominates the street frontage and would negatively impact the visual amenity of adjoining properties.

At the hearing, Council also raised the reduced opportunity for casual surveillance of the street (PO12 of the code) as a reason for refusal. The Applicant's representative stated that the proposed front setback was consistent with the building line of large apartment buildings on adjoining properties. Council representatives indicated that the reduced front setback could be accommodated but they were particularly opposed to the height of the proposed garage which they considered would be inconsistent with, and would dominate the desired streetscape character as well as hinder casual surveillance of the public area. Council indicated the garage may satisfy Code requirements if it were recessed 1m under a habitable 'extension' of the house on the upper level.

The Committee undertook an inspection of the street surveillance opportunities from the western deck of an upper level of the house during the hearing. After discussion of alternative options, Council representatives indicated that an alternative design incorporating a façade with habitable rooms addressing the street, with garage recessed, and reduced apparent dominance of the garage in the streetscape, at a similar front setback, would better address the relevant Performance Outcomes.

Finally, the question of whether the Application represented a Material Change of Use, in addition to Building Work, arose at the hearing. However, the Committee concluded this question was not relevant to the appeal.

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 August 2016.
2. IDAS Application Forms 1 & 2 and accompanying Building Plans S1 A-2, S2 A-2, S3 A-2 and S4 A-2 drawn by Cazcad Design Plans.
3. Council's Concurrence Agency Response dated 25 July 2016.
4. The Assessment Manager's Decision Notice dated 26 July 2016.
5. Verbal representations by all parties at the hearing.
6. The Moreton Bay Regional Council Planning Scheme.
7. The *Sustainable Planning Act 2009* (SPA)
8. The Sustainable Planning Regulation 2009 (SPR).

Findings of Fact

The Committee makes the following findings of fact:

- Due to its location on the foreshore, the site and adjoining sites are expected to show two 'frontages' to the public sphere, even though they are limited to one gazetted road frontage. Nonetheless, the relevant code requirements are applicable to the Prince Edward Parade frontage.
- The orientation of the proposed garage facilitates safe vehicle egress from the site in forward gear but results in a largely blank two-storey end-wall facing the street.
- The proposed front setback is acceptable and consistent with setbacks of neighbouring buildings. However, the proposed garage will have an adverse impact on the visual

amenity and intended character of the streetscape as laid out in the applicable performance outcomes of the Dwelling House Code and Overall Outcomes of the 'Next Generation Neighbourhood Precinct' of the planning scheme.

Reasons for the Decision

The Application, which consists of a garage at ground level and storage level above, conflicts with PO3, PO12 and PO22 of the Dwelling House Code of the MBRC Planning Scheme. Specifically, the proposed garage:

- a. Is of a height and scale as to dominate, and be inconsistent with, the intended streetscape character for Prince Edward Parade;
- b. Is not subordinate to the existing dwelling in the context of the streetscape and will likely dominate the streetscape; and
- c. Will materially obstruct casual surveillance of the street from the dwelling.

Given the above, the Committee confirms the decision of the Assessment Manager to refuse the Application.

John Panaretos
Building and Development Committee Chair
Date: 7 September 2016

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
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