



## Building and Development Dispute Resolution Committees—Decision

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### *Sustainable Planning Act 2009*

**Appeal Number:** 51 - 11

**Applicant:** Maxwell and Melanie Wrigley

**Assessment Manager:** Coastline Certification Group  
**Concurrence Agency:** Gold Coast City Council (Council)

**Site Address:** 4 Hoylake Court Parkwood and described as Lot 81 on RP 8070181 — the subject site

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### **Appeal**

Appeal under section 527 of the *Sustainable Planning Act 2009* (SPA) against the decision of Coastline Certification Group as Assessment Manager to refuse a Development Application (DA) for Development Approval for Building Work – Shade Sail. The refusal was based on advice from Council as the Concurrence Agency.

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**Date of hearing:** 10.30am – Tuesday 6 September 2011

**Place of hearing:** The subject site – 4 Hoylake Court, Parkwood

**Committee:** Mr Ian Adams – Chair  
Mr Greg Rust – General Referee

**Present:** Mrs Melanie Wrigley – Applicant  
Mr Max Wrigley – Applicant  
Mr Wiremu Cherrington – Council  
Mr Cameron Ward – Council  
Mr Samuel Watson – Council

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### **Decision:**

The Building and Development Dispute Resolution Committee (Committee), in accordance with section 564 of the SPA **sets aside** the decision appealed against and **directs** that the Assessment Manager **approve** the application for the privacy shade sail subject to reasonable and relevant conditions.

### **Background**

A complaint was made from person/s within the nearby locality that triggered Council to inspect the subject site and the erected privacy shade sail that resulted in the issuance of a Show Cause Notice. Due to privacy laws Council is unable to advise of the exact nature of the complaint and which property it came from.

A Show Cause notice was issued by Council dated 17 December 2010 in regard to the constructed privacy screen sail adjoining a lot boundary. An Enforcement Notice was subsequently issued by Council dated 18 March 2011 in regard to the structure. A development application (DA) seeking approval for a development permit for building works was made to the Assessment Manager dated 22 March 2011. The DA sought approval for the existing established structure.

The proposed structure is a privacy shade sail erected vertically and made of black pervious (non-waterproof) material which is attached to three posts having a height of 5.5m above ground level and length of 11m. The screen is positioned approximately 400mm from the dividing boundary fence. The purpose of the shade sail is primarily to provide privacy between the two adjoining buildings and to prevent overlooking from the adjoining building at 9A West Mountain Court into the applicant's property.

The Assessment Manager issued a Decision Notice on 16 June 2011 refusing the DA. The reason for refusal being -

*"The Gold Coast City Council as a Concurrency Agency for a Siting Variation under the Planning Scheme has provided a Refusal (attached) with reference number: BLD201102893 and dated 06/05/2011. As the "As Constructed" structure has not been approved for the Siting Variation, Coastline Building Certification group cannot approve this Development Application."*

The reason why the applicants felt justified to erect the privacy shade sail relate to a prior Council submission they had lodged regarding a Material Change of Use application on the adjoining property. The details about this submission were discussed at the hearing.

- The applicants of this appeal previously made a submission to the Council during the public notification period in regard to a combined Material Change of Use (MCU) (Detached Dwelling) and Reconfiguration of lot (RoL) (Subdivision to create 2 lots) on the adjoining lot situated at 9 West Mountain Court.
- Council approved the Development Application on the adjoining lot on 23 December 2005. The applicants at the hearing advised they were of the understanding the future detached house on the adjoining lot was to be a single storey dwelling.
- Council records show the adjoining property owners, after the approval for the MCU and RoL, submitted amended plans for a two storey dwelling as well as a Siting Variation approval for the Class 1a building at 9A West Mountain Court.
- Council responded to the applicant's complaint about the two storey house in correspondence dated 22 February and the alleged overlooking of their property to advise the house had been correctly approved by a private building certifier who had taken into account the conditions of approval for the subdivision and the *"usual remedy is to cultivate vegetation, trees and/or bushes, to reduce any effect of the alleged offensive item"*.

Council advised at the appeal hearing that there was an error in the Concurrence Agency grounds for refusal of the Applicant's Siting Variation for the shade sail, application No. 201102893, in that reference should have been made to Performance Criteria P2 not P1 of the Queensland Development Code Mandatory Part 1.2 (QDC MP 1.2).

The Committee notes that while it is free to inform itself as it considers appropriate, it considered that consulting with the neighbour was not required to determine the matter.

## **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 Registrar on 24 June 2011.

2. Queensland Development Code (QDC) Mandatory Part 1.2 Design and Siting Standard for single detached housing – on lots 450m<sup>2</sup> and over.
3. Gold Coast City Plan.
4. Gold Coast City Council assessing officer inspection report.
5. Verbal submissions from the applicants at the hearing.
6. Verbal submissions from Council representatives at the hearing.
7. *Sustainable Planning Act 2009 (SPA)*.
8. Building Code of Australia.

## **Findings of Fact**

The Committee makes the following findings of fact:

- The site is developed with a single storey Class 1a building with a frontage to Hoylake Court on a lot greater than 450m<sup>2</sup>.
- The site inspection revealed a relatively recently built two storey Class 1a building at 9A West Mountain Court, adjoining the western side boundary that overlooks the subject site.
- The applicant has done works to their class 1a building to provide a greater level of privacy. This included double glazing of windows along the western elevation of their building and recent landscaping along the shared western boundary including planting of clumping bamboo to assist with providing privacy.
- While the privacy shade sail is visible from West Mountain Court, QDC MP 1.2 is the applicable code for assessment of the proposed structure to be located within the side boundary setback.
- The proposed structure is of a similar height to some of the established vegetation along the common boundary. As such the proposed structure is not of an imposing height to significantly detract from the outlook from the adjoining property.
- The adjoining house has been designed to take advantage of the outlook to the east and north. The height of the privacy sail is such that the occupants of the adjoining house are still able to view the roof of the applicant's house and beyond when looking in an easterly direction.
- The adjoining house has a 3m setback to the adjoining side boundary, a 3m wide verandah for the full width of its northern elevation that adjoin habitable rooms and an obtuse verandah roof creating ceiling internally of a height of 3.3m. An appropriate level of daylight and ventilation is provided to the habitable rooms of the building on the adjoining lot with the proposed structure as-constructed. The shade sail will not detrimentally affect the light and ventilation to the habitable rooms of the building on the adjoining property.
- The shade sail will have minimal impact on the residential amenity of the adjoining property.

## **Reasons for the Decision**

The Committee did not find the reasons for refusal identified in the Decision Notice issued by the

Assessment Manager on balance to be sufficient to warrant refusal of the DA.

Given the design of the adjoining house and its layout, the existing established vegetation on the applicant's land, steps already taken to minimise overlooking and loss of privacy, the Committee formed the opinion that the shade sail would not:

- detrimentally affect the amenity of the adjoining property;
- detract the outlook from the adjoining property; or
- detrimentally affect light and ventilation to the adjoining property.

The Assessment Manager and Council accepted the verbal statements by the applicant in regard to the need for the structure to be located adjoining the side boundary.

There is sufficient room for planting of vegetation/shrubs along the side boundary of 9A West Mountain Court to add in screening of the privacy sail if deemed necessary by the occupants of that premises.

The shade sail structure was considered by the Committee to be comparable to structures that may be exempted from QDC MP 1.2, or slightly larger in length and height to structures deemed acceptable under the QDC MP 1.2.

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**Building and Development Committee Chair**  
**Ian Adams**  
**Date: 7 October 2011**

## **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 Infrastructure and Planning  
PO Box 15009  
CITY EAST QLD 4002  
**Telephone (07) 3237 0403 Facsimile (07) 3237 1248**