



Building and Development Dispute Resolution Committees—Decision

Sustainable Planning Act 2009

Appeal Number: 29 – 11

Applicant: Wilkinson Homes Pty Ltd

Assessment Manager: Incert Innovative Certifiers

Concurrence Agency: Townsville City Council (Council)
(if applicable)

Site Address: 13 Bay St Pallarenda and described as Lot 112 P7963 – the subject site

Appeal

Appeal under section 532 of the *Sustainable Planning Act 2009* (SPA) against the decision of Incert Innovative Certifiers to refuse the development application for building works, namely a new building structure (shade sail) which has been constructed within the required front and side boundary setbacks

Date of hearing: Wednesday 6 July 2011

Place of hearing: The subject site

Committee: Martin Clark - Chair

Present: John Wilkinson – Applicant
Michael Tory – Owner
Bruce Shephard – Incert Innovative Certifiers
Denise Hinneberg – Townsville City Council
Melanie Percival – Townsville City Council

Decision:

The Committee, in accordance with section 564 (2) (c) of the SPA **sets aside** the decision appealed against, and **changes** the decision and directs the assessment manager to approve the application subject to the following conditions:

- a) The sail fixing rail attached to the north-facing wall of the dwelling shall be removed and refixed at a level 1.2m below the existing level, being 3.3m above the slab level adjacent to the building.
 - b) The sail dimensions shall be modified accordingly.
 - c) The sail shall not be replaced by a non-permeable material.
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Background

The subject property is a two-storey masonry and framed dwelling located in an established traditional residential area, some 230 metres from Rose Bay.

On 26 May 2010 the applicant lodged a siting variation to Incert Innovative Certifiers to modify an existing building development approval by including the construction of an additional shade sail structure, 8.6m in length along the north side of the dwelling.

On 11 August 2010 the applicant lodged an application to Council as Concurrence Agency for the proposal.

The sail structure is existing. It extends to 200mm from the side boundary, and the forward-most post of the sail structure is less than 6m from the front boundary. The height of the structure on the boundary side does not exceed 2.4m. The height of the sail attachment on the wall of the house relative to the finished driveway level is not dimensioned on the submitted drawings.

The Townsville Council's City Plan 2005 contains alternative provisions to the Queensland Development Code (QDC) MP 1.2, and removes the QDC entitlement to encroach on the standard side boundary setbacks for normal-height Class 10a structures up to 9m in length cumulative.

On 29 September 2010 Council requested further justification for the proposal, suggesting that the structure be more "architecturally engineered", and citing concerns about the impact on streetscape and neighbourhood amenity.

On 24 November 2010, the applicant responded to this request by citing the minor encroachment under QDC requirements and a positive written submission from the adjoining owner dated 31 August 2010.

The Council refused the application on 25 February 2011, on the grounds of scale, bulk, location, impacts on streetscape and neighbourhood amenity.

On 18 March 2011, the Certifier refused the application to change the existing building approval on the grounds of Council's refusal.

On the same date the applicant lodged an appeal with the Building & Development Dispute Resolution Committees.

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 18 March 2011;
2. Decision notice from the assessment manager refusing the development application for building works, dated 18 March 2011;
3. Council's decision notice dated 25 February 2011;
4. Various correspondence between Council and the applicant;
5. Site plan, plans and elevations of the new building structure (shade sail);
6. The SPA;
7. The Building Regulation 2006;
8. Relevant provisions of QDC MP 1.2 and Townsville City Council Plan 2005;
9. Submissions made, and discussions at the hearing

Findings of Fact

The Committee makes the following findings of fact:

1. The shade sail is properly constructed and structurally sound, as evidenced by the fact that it was in place during Cyclone Yasi, withstood winds up to 200km/hr, and suffered only minor damage due to a tree falling against it from the windward side.
2. The sail structure was originally barely visible from the street, but this is no longer the case due to the loss of mature landscaping on the north side of the site occasioned by the cyclone.
3. Although the lower edge of the sail is close to the side boundary, the design of the sail is such that water will not sheet over the boundary during an intense rainstorm.
4. The height of the structure adjacent to the dwelling can be reduced at reasonable cost and without loss of function.

Reasons for the Decision

The Council representatives indicated that they had no objection to the small encroachment on the front boundary setback or the encroachment on the side setback. The Council's main concern was the height of the structure adjacent to the dwelling, determined at the hearing to be 4.48m.

The applicant and owner agreed to obtain a price for reducing the height of the fixing rail on the wall of the dwelling and modifying the dimensions of the sail. Advice on this was received on 7 July 2011.

The existing height and slope of the sail is out of keeping with roof profiles in the surrounding area, and a reduction in the height of the sail on the house side will overcome the adverse effect on the streetscape.

The cost of reducing the height and slope is not disproportionate.

Martin Clark

Building and Development Committee Chair

Date: 18 July 2010

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
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