



Building and Development Dispute Resolution Committees—Decision

Sustainable Planning Act 2009

Appeal Number:	56 - 11
Applicant:	Sunraze Shade Pty Ltd
Assessment Manager:	Sunshine Coast Regional Council (Council)
Site Address:	30 Jessica Blvd, Minyama and described as Lot 227 on Plan M 93013 — the subject site

Appeal

Appeal under section 527 of the *Sustainable Planning Act 2009* (SPA) against the decision of the Sunshine Coast Regional Council (Council) as Assessment Manager to refuse a Development Application for Preliminary Approval for Building Work – Shade Sail.

Date of hearing:	10.30am – Friday 19 th August 2011
Place of hearing:	The subject site – 33 Jessica Blvd, Minyama
Committee:	Mr Phil Dance – Chair Mr Ian Adams – General Referee
Present:	Mrs Michelle Forbes – Owner/Applicant Mr Luke Forbes – Owner/Applicant Mr Alan Thompson – Council

Decision:

The Committee, in accordance with section 564 of the SPA **sets aside** the Appeal (against the decision of the Council for Development Application PBA11/0042) and approves the Shade Sail subject to the following conditions:

- The shade sail is to be attached to posts which are structurally independent of, but adjoining the side boundary block wall. The posts may also be affixed to the side boundary wall.
- The track for the shade sail is to be set a minimum of 100mm below the top of the existing side boundary wall.
- The lowest edge of the shade sail (nearest the track) is to set a minimum of 100mm

below the top of the existing side boundary wall.

Background

A Development Application was received by Council on 9th June 2011 for preliminary approval for building works for a shade sail.

The proposed shade sail was to be of pervious (non-waterproof) material attached to the southern side of the house. The sail would have a maximum site cover of 50m² attached to the pitch of the roof on an obtuse angle to the top of the 2m high concrete block side boundary wall. The southern side boundary setback of the house is approximately two (2) metres.

The purpose of the shade sail is primarily to catch leaf litter and foliage from trees located on the adjoining property to the South.

Council on the 16th June 2011 issued a Decision Notice refusing the Development Application of the following grounds.

1. *The development does not comply and cannot be conditioned to comply with Performance Criteria 2 of MP 1.2 (Design and Siting Standards for Single Detached Housing on Lot 450m/2 and over) of the Queensland Development Code for the following:*
 - (a) *The proposed structure will affect the amenity of the adjoining property.*
 - (b) *The proposed structure will detract the outlook from the adjoining property.*
 - (c) *The proposed structure will affect the light and ventilation to the adjoining property.*
2. *There are no constraints on the allotment that prevent the proposed structure from being built with a complying setback of 2.0 metres.*

It was noted that the proposal put to the Council provided for the anchor track for the sail to be affixed to the top of the boundary wall.

Mr Thompson, representing Council, helpfully suggested that any concerns a neighbour might reasonably have could be overcome by affixing the shade sail "track" to posts which were independently anchored, but abutting the boundary wall, and arranging for the lower edge of the shade sail to be below the top of the boundary wall. This would ensure that the shared boundary wall was not relied upon as an anchor point for the shade sail, and secondly, that any accumulation of leaves or other debris on the sail would be contained within the subject property.

It was also noted by the appellants that there was some animosity between them and the neighbour, and that there was no prospect of an agreed position, with respect to both the vegetation and the shade sail being reached.

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 6th July 2011.

2. Queensland Development Code (QDC) MP 1.2 Design and Siting Standard for single detached housing – on lots 450m² and over.
3. Caloundra City Plan 2004 – Detached Housing Code.
4. Verbal submissions from the owner/applicant at the hearing.
5. Verbal submission from the Council representative at the hearing.
6. *Sustainable Planning Act 2009* (SPA)
7. Building Code of Australia

Findings of Fact

The Committee makes the following findings of fact:

- The site is developed with a double storey Class 1a building with a frontage to Jessica Blvd and a rear boundary to a canal on a lot greater than 450m².
- The site inspection revealed that the landowner/applicant has done recent landscaping including external tiles to outdoor recreation area. The tiles had been stained or marked from leaf litter dropped from vegetation located on the adjoining property
- No comment was received from the adjoining landowner.
- QDC MP 1.2 is the applicable code for the proposed structure to be located within the side boundary setback.
- The shade sail will have minimal impact on the amenity of the adjoining property.
- The proposed structure will be difficult to sight by the adjoining property owner given the established vegetation along the common boundary. As such the proposed structure will not detract the outlook from the adjoining property.
- The shade sail to be located on the southern side of the two storey Class 1a building will not significantly increase shade on the adjoining property.
- Given the existing dense vegetation on the adjoining property along the common boundary, the proposed shade sail will not detrimentally affect the light and ventilation to the adjoining property.
- The habitable rooms of the adjoining house are located towards the front of the site and not located to the rear or adjoining the proposed position that the shade sail is to be located.
- To ensure the shade sail did not adversely affect the structure integrity of the shared side boundary wall, conditions are applied so that the shade sail is not to be directly secured/supported to the top of the common boundary wall but to posts adjoining the common wall.
- To ensure no runoff from the shade sail or collected leaf litter enters the adjoining property, the edge of the shade sail is required to be set down below the top of the wall to be contained within the subject site.

Reasons for the Decision

The Committee did not find the reasons for refusal identified in the Decision Notice issued by the Council on balance to be sufficient to warrant refusal of the Development Application.

Given the orientation of the house, the existing established vegetation adjoining a 2.0m high concrete block wall along the common boundary, the proposed location of the shade sail and how it is to be positioned, the committee formed the opinion 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 Council representative and the Committee accepted the verbal statements by the landowner/applicant in regard to the need for the structure to be located adjoining the side boundary.

The shade sail structure was considered by the Committee to be comparable to structures that may be exempted from QDC – MP1.2 A2 (a) and (b), that being a structure permitted under QDC MP1.2 A2 (c) (v) which is not enclosed by walls or roofed; not more than 2.4m in height at the boundary and primarily ornamental or for horticultural purposes.

It was the general consensus that with appropriate conditions imposed on the approval for the shade sail structure, Performance Criteria P2 of QDC MP1.2 would be achieved.

Building & Development Committee Chair

Phil Dance

Date: 5th September 2011

Building & Development Committee Member

Ian Adams

Date: 5th September 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
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Department of Infrastructure and Planning
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