



**Building and Development Tribunals**

**Queensland** Government

Department of **Local Government and Planning**

**APPEAL**

*Integrated Planning Act 1997*

**File No. 3/06/065**

## **BUILDING AND DEVELOPMENT TRIBUNAL - DECISION**

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**Assessment Manager:** Mirani Shire Council

**Site Address:** *Withheld* – “the subject site”

**Applicant:** *Withheld*

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### **Nature of Appeal**

The appeal is against the decision of the Mirani Shire Council to refuse an application for the approval of a class 10a building on amenity and aesthetics grounds.

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**Date and Place of Hearing:** 1.00 pm Thursday 3 August 2006  
At “the subject site”.

**Tribunal:**

M Hull	-	Aesthetics Referee
G Heelan	-	Aesthetics Referee
R W Rooney	-	Aesthetics Referee (Chairperson)

**Present:**

“withheld”	-	Applicant
J Graham	-	Mirani Shire Council
F Ware	-	Mirani Shire Council
R W Rooney	-	Tribunal Chairperson
M Hull	-	Tribunal Member
G Heelan	-	Tribunal Member

## Decision

In accordance with section 4.2.34(2)(e) of the *Integrated Planning Act 1997*, the Tribunal, with consent of the applicant, varies the application so that -

- (a) The floor area of the building, including any area under an awning, would not exceed 66m<sup>2</sup>; and
- (b) The length of a side would not exceed 9m;
- (c) The height of a wall (from floor to springing point) would not exceed 2.4m; and
- (d) The height of the roof apex would not exceed 3.5m above the floor; and
- (e) The height of the total length of wall adjacent to the rear boundary would not exceed 2.4m. (That is, any roof ridge would be parallel to the rear boundary); and
- (f) The external walls and roof of the building would be of non reflective material and colour;
- (g) The building is located on the south west portion of the site, taking into consideration the main sewer adjacent to the rear boundary. The distance to the southern boundary to be in accordance with the acceptable solution of Part 12 of the Queensland Development Code, but not more than 1.5m.
- (h) The existing shed is removed from the site.

subject to (a) (b) (c) (d) (e) (f) (g) and (h) being completed, the Tribunal is satisfied -

- (i) the building, when erected, will not have an extremely adverse affect on the amenity or likely amenity of the building's neighbourhood; and
- (ii) the aesthetics of the building, when erected, will not be in extreme conflict with the character of the building's neighbourhood.

As a result of the above facts and circumstances and in accordance with Section 4.2.34(2) of the *Integrated Planning Act 1997* the Tribunal is satisfied the amenity and aesthetics provisions of section 50(3) of the *Standard Building Regulation 1993* (SBR) are met if the application is varied as set out in the decision.

## Background

- “Applicants” made a development application to a private certifier for approval to construct a class 10a building at “the subject site”.
- As required under Section 50 of the *Standard Building Regulation 1993* (SBR), Mirani Shire Council assessed the application for the amenity and aesthetic impact of the proposed building work.
- Mirani Shire Council refused the application.

## Material Considered

In coming to a decision, consideration was given to the following material: -

1. Form 10 – Building and Development Appeal Notice dated 12/07/06 from “applicant”, including attachments, a letter dated 12 July 2006 and photo's of existing class 10a buildings in Marian;

2. Plan of site indicating proposed siting of building;
3. Letter dated 13/07/06 from Totalspan;
4. Plan and elevations of proposed building;
5. Mirani Shire Council letter dated 3 July 2006 not approving the proposal, giving reasons;
6. Mirani Shire Council resolution dated 27/04/05 stating criteria applicable when assessing class 10a buildings for amenity and aesthetics in designated areas;
7. Verbal submissions from applicants;
8. Verbal submissions from J Graham, Mirani Shire Council;
9. The *Standard Building Regulation 1993*;
10. The *Building Act 1975*; and
11. The *Integrated Planning Act 1997*.

### **Findings of Fact**

1. Section 50 of the Standard Building Regulation grants power to Local Government to establish an amenity and aesthetics policy.
2. Mirani Shire Council adopted an amenity and aesthetics policy under Section 50 of the *Standard Building Regulation 1993* on 27 April 2005 which, amongst other things, required class 10a buildings to be assessed by Council on the amenity and aesthetics aspects of the proposed building work.
3. The policy stipulates specific conditions for class 10a buildings in relation to amenity and aesthetics, when proposed within a residential zone, a lot zone Rural A that is less than 5ha or within an urban area, as defined on zoning maps and where deemed by council to be an existing or planned residential area.
4. These conditions are –
  - (1) The proposed class 10a shed (including any area under an awning ) would exceed a maximum floor area of 54m<sup>2</sup>, dimension 9m x 6m, or a maximum height to roof apex of 3.5m, and where;
  - (2) The subject premises already contain an existing class 10a shed that exceeds a floor area of 40m<sup>2</sup>.
5. In this instance, the proposal was for a shed having;
  - (a) a floor area (including awning) of 94.5m<sup>2</sup> – exceeding condition (1) by 40.5m<sup>2</sup>; and
  - (b) a roof apex of 4.1m – exceeding condition (1) by .6m.
6. The existing shed on the site does not exceed 40m<sup>2</sup> floor area.
7. The property abutting the rear boundary currently under cane, has approval to be subdivided into lots between approximately 750m<sup>2</sup> to 800m<sup>2</sup> in area for residential purposes.

## Reasons for the Decision

1. The Mirani Shire Council's amenity and aesthetics policy appears to have been correctly established and is applicable to the site.
2. The building as proposed was excessive in floor area and height in relation to neighbouring class 10a buildings and when built would have an extremely adverse effect on the amenity or likely amenity of the building's neighbourhood.
3. The siting of the building as proposed opened it up to the street, there being approximately 5m wide space between the existing house and the northern boundary (right hand side from the street). In its amended "location" the building will not impact unduly on the street scape.
4. The photographs provided in support of the application were primarily of sheds approved before Council's resolution. Council submit that after the resolution only two were approved by them owing to specific circumstances.

5. In the opinion of the Tribunal –

With modifications in accordance with the Decision the building will not have an extremely adverse effect on the amenity or likely amenity of the building's neighbourhood and the aesthetics of the building will not be in extreme conflict with the character of the building's neighbourhood.

6. As a result of the above facts and circumstances and in accordance with section 4.2.34(2) of the *Integrated Planning Act 1997*, the Tribunal varies the application subject to the conditions indicated in its decision.

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**R W Rooney**  
**Building and Development**  
**Tribunal Chairperson**  
**Date: 11 August 2006**

## **Appeal Rights**

Section 4.1.37. of the *Integrated Planning Act 1997* provides that a party to a proceeding decided by a Tribunal may appeal to the Planning and Environment Court against the Tribunal's decision, but only on the ground:

- (a) of error or mistake in law on the part of the Tribunal or
- (b) that the Tribunal 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 Tribunal's decision is given to the party.

## **Enquiries**

All correspondence should be addressed to:

The Registrar of Building and Development Tribunals  
Building Codes Queensland  
Department of Local Government, Planning, Sport and Recreation  
PO Box 15031  
CITY EAST QLD 4002  
**Telephone (07) 3237 0403: Facsimile (07) 32371248**

