



Building and Development Tribunals

Queensland Government

Department of **Local Government and Planning**

APPEAL

Integrated Planning Act 1997

File No. 3/06/109

BUILDING AND DEVELOPMENT TRIBUNAL - DECISION

Assessment Manager: Mirani Shire Council

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

Applicant: *Withheld*

Nature of Appeal

The appeal is against the decision of the Mirani Shire Council to refuse an application for a proposed shed on land described as Lot “*withheld*” and situated at “the subject site”.

Council considers the proposed structure, when built, will have an extremely adverse effect on the amenity or likely amenity, of the locality and be in extreme conflict with the amenity and aesthetics character of the area for the following reasons:-

1. *The proposed shed with a total floor area of 80m², substantially exceeds the maximum floor area provided for under Council's resolution, pursuant to Section 3.1.8 of the Integrated Planning Act 1997;*
 2. *The shed height of 4.4 metres substantially exceeds the maximum 3.5 metre height provided for under Council's resolution, pursuant to Section 3.1.8 of the Integrated Planning Act 1997;*
 3. *The siting and scale of the shed will have an extremely adverse impact on the visual amenity of the neighbourhood and the streetscape;*
 4. *The size and scale of the shed is out of character with the locality; and*
 5. *Approval of a shed of this scale would set an unfavourable precedent.*
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Date and Place of Hearing: 10.30am Tuesday 23 January 2006.
Inspection of the site and hearing at
“the subject site”.

Tribunal:

Mr David Battese	Tribunal member
Mr Malcolm Hall	Tribunal member
Mr L F Blumkie	Tribunal Chairperson

Present:	“withheld”	Applicant/Owner
	“withheld”	Applicant/Owner
	“withheld”	Applicants father
	Mr Jeff Graham	Mirani Shire Council representative
	Mr Neil de Bruyn	Mirani Shire Council representative
	Mr L Blumkie	Tribunal Chairperson
	Mr Malcolm Hall	Tribunal member
	Mr David Battese	Tribunal member
	Mr Rick Poppleston	Observer - Morvale Group
	Mr Brent Coleman	Observer - Morvale Group
	Ms Lee Glindemann	Observer - Whitsunday Shire Council

Decision

The Tribunal, in accordance with Section 4.2.34 (2) (b) of the *Integrated Planning Act 1997*, **changes** the decision appealed against and with the consent of the owner, allows the proposed shed subject to the following conditions:-

1. The shed is reduced in size to be 6 metres wide and 10 metres deep ie 60m². The 8 metre wide slab can remain and it is the owners' choice as to where the 6metre width is located. It will be necessary to have the structural adequacy of the slab (with the reduced width) confirmed by a registered structural engineer.
2. The shed is reduced in height to be a maximum height of 2.7 metres at the top plate line and 3.8 metres at the apex, when measured above the finished slab.
3. The existing setback and boundary clearance are to be maintained.
4. The roof is changed to a dutch gable to match the existing house.
5. The roof has overhangs on all sides to match the existing house.
6. The shed has external materials and roof sheeting matching the existing house.
7. A fence approved by the Mirani Shire Council is constructed between the existing house, shed and side boundary on the shed side.
8. The existing slab is modified so as to satisfy Mirani Shire Council Policy Register for footings close to sewer lines.
9. The development application is modified in accordance with the above conditions and a copy forwarded to Mirani Shire Council and a development approval obtained before commencing the demolition and modifications.
10. Compliance with all other requirements of Queensland Building Legislation, including disposal of stormwater drainage, to the satisfaction of Mirani Shire Council.
11. All building work to be completed to the satisfaction of the Mirani Shire Council within 6 months of this decision unless otherwise extended, (before the cut-of date) by the Mirani Shire Council.

Background

The 1220m² subject property is currently developed with a house (no car accommodation included). The house plan was approved by a private certifier on 1 December 2005.

The site plan of the approved documents for the house, indicated a 9 metre x 7.5 metre shed. The Council copy of the approval was marked in red, indicating that the shed was not included as part of the approval.

The owner was unable to produce his copy of the house approval at the hearing.

The owner commenced construction of the shed, as he believed the builder had obtained building approval for the shed at the same time the house was approved.

The proposed shed has already been constructed, but not in accordance with the application (as submitted with the appeal documents) as the following differences were identified on site:-

- wall height 3 metres;
- no overhang on all sides.

Council became aware of the construction of the shed during a routine inspection of the estate and upon inspection of records, found that no approval had been obtained. Hence, the owner was issued with a 'show cause' notice dated 18 October 2006.

No response was received from the owner regarding the 'show cause' notice.

On 8 November 2006, a development application was lodged with Council for the shed. The proposal exceeded the maximum area, dimensions and height under Council's Amenity and Aesthetics policy, and was therefore refused on 15 November 2006.

The owner was advised of the decision notice refusal on 20 November 2006.

An appeal was lodged with the Building and Development Tribunals Registrar on 14 December 2006.

The estate was developed by Morvale Developments and all purchasers of property within the estate signed a building covenant.

Mr Brent Coleman (construction supervisor of Morvale Developments) attended the hearing and advised that Morevale Developments had received a number of complaints from residents in the estate advising that the shed would appear not to comply with covenant 3.4.

Morvale Developments gave notice to the owners of the non-compliance with the covenant in correspondence dated 18 October 2006.

The owner advised that he purchased the property from a private owner not Morevale Developments.

Material Considered

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

1. Drawings and correspondence accompanying the appeal;
2. Copy of the Decision Notice dated 20 November 2006;
3. Copy of the Form 10 – Building and Development Tribunals Appeal Notice lodged with the Registrar on 14 December 2006;
4. Verbal submissions from applicants;
5. Coloured perspective view of finished site development from applicant;
6. Verbal submissions from the Mirani Shire Council representatives;

7. Written submissions from Mirani Shire Council representatives dated 23 January 2007;
8. Mirani Shire Council Policy Register for buildings located close to sewer lines;
9. Part plan indicating recent garage approvals within the neighbourhood;
10. Written submission from Morevale Developments;
11. *Building Regulation 2006* (BR);
12. The *Integrated Planning Act 1997* (IPA);
13. Local Government Building Note edition No 132 on Amenity & Aesthetics;
14. Mirami Shire Council Resolution on Amenity and Aesthetics dated 13 September 2006; and
15. An inspection of the site and neighbourhood.

Findings of Fact

A Amenity and Aesthetics Resolution.

Mirani Shire Council first adopted an Amenity and Aesthetics Policy under Section 50(1) of the *Standard Building Regulation 1993* on 27 April 2005. This was amended to be in line with changes to legislation on 13 September 2006.

The policy, amongst other things, declared that all development applications for “*Class 10a sheds within a residential A zone where:*

‘The proposed Class 10a shed (including any area under an awning) would exceed a maximum floor area of 54m², dimensions of 9m x 6m or a maximum height to roof apex of 3.5 metres’;

will require specific assessment by Council of the amenity and aesthetic implications of the proposal.

Recent amendments (1 September 2006) to Building Legislation in Queensland made Council a concurrency agency under the IPA. Schedule 2 Item 15 of the *Integrated Planning Regulation 1998* (IPR) requires building work proposals, which are in excess of the policy, to be assessed by the local government (concurrency agency) for the amenity and aesthetics impact of the proposed building work.

The local government may refuse an application if the building, when built, would have an **extremely** adverse effect on the amenity or likely amenity of the building’s neighbourhood etc.

B Site

The site is a level rectangular shaped corner lot 1220m² in area. The site is developed with an existing class 1 building approximately 225m² in area and has no covered car accommodation and a 8 metre x 10 metre shed has been erected, without a development approval.

C Development in the neighbourhood.

An inspection of the neighbourhood indicated the majority of properties are developed with Class 1 buildings. There are numerous sheds to the rear of many properties within the estate, as identified on the plan submitted by the Council representative.

A number of these existing sheds exceed the policy and have been approved by Council as they are considered by Council, because of their location, not to have an extreme adverse effect on the amenity of the neighbourhood. These included:-

- 67.5m² with a 3m eaves and a 4m apex to the rear of a property.
- 65.2m² with a 2.7m eaves and a 3.5m apex.
- 72m² with a 2.7m eaves and a 3.28m apex at the end of a cul-de-sac and backing onto the cemetery.

Reasons for the Decision

The Mirani Shire Council amenity and aesthetics policy appears to have been correctly established and is applicable to the site.

Building Legislation requires the amenity and/or aesthetics to be in **extreme** conflict etc before Council can refuse the application on Amenity & Aesthetics grounds.

In this instance the proposal exceeds Council Policy as follows:-

- a floor area of 80m² exceeds the policy by 26m²;
- an apex height of 4.4 metres exceeds the policy by 900mm;
- external dimensions exceed the policy which stipulates maximum dimensions of 9 metres x 6 metres; and

in relation to existing sheds in the estate, the Tribunal considers the subject shed has an extreme adverse effect on the amenity or likely amenity of the buildings in the neighbourhood.

Being a corner lot, the shed is totally visible from the street.

There are other spaces on the site where the owner could extend the house to provide car and boat accommodation. Such proposal would appear not to be subject to Council's amenity and aesthetics policy.

The owner's work vehicle and trailer measures some 9.4 metres in total length and is 2 metres in height.

The Tribunal considered it possible to reduce the size and height of the proposal and meet the needs of the owner. A reduction in width to 6metres, height to eaves of 2.7 metres and apex height of 3.8 metres would be acceptable to Council.

The Tribunal considered the Council Resolution, development within the neighbourhood, location, overall shape, size, height, color scheme of the proposed shed and with the consent of the owner imposed the following conditions on the proposal:-

1. The shed is reduced in size to be 6 metres wide and 10 metres deep ie 60m². The 8metre wide slab can remain and it is the owner's choice as to where the 6 metre width is located. It will be necessary to have the structural adequacy of the slab (with the reduced width) confirmed by a registered structural engineer.
2. The shed is reduced in height to be a maximum height of 3.8metres above the finished slab.

3. The existing setback and boundary clearance is maintained.
4. The roof is changed to a dutch gable to match the existing house.
5. The roof has overhangs on all sides to match the existing house.
6. The shed has external materials and roof sheeting matching the existing house.
7. A fence approved by the Mirani shire Council is constructed between the existing house, shed and side boundary on the shed side.
8. The existing slab is modified so as to satisfy Mirani Shire Council Policy Register for footings close to sewer lines.
9. The development application is modified in accordance with the above conditions and a copy forwarded to Mirani Shire Council and a development approval obtained before commencing the demolition and modifications.
10. Compliance with all other requirements of Queensland Building Legislation including disposal of stormwater drainage to the satisfaction of Mirani Shire Council.
11. All building work to be completed to the satisfaction of the Mirani Shire Council within 6 months of this decision unless otherwise extended, (before the cut-off date) by the Mirani Shire Council.

The Council representative agreed that a shed, with the above conditions, would **not** be in **extreme** conflict with amenity or aesthetics of the existing or proposed building's neighbourhood.

Hence, in accordance with section 4.2.34(2) (b) of the *Integrated Planning Act 1997* the Tribunal decided to change the decision appealed against and, with the consent of the owner, allow a garage subject to the above conditions.

Leo F Blumkie
Building and Development
Tribunal Chairperson
Date: 29 January 2007

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 and Planning
PO Box 15031
CITY EAST QLD 4002
Telephone (07) 3237 0403: Facsimile (07) 32371248