



**Building and Development Tribunals**

**Queensland Government**

Department of **Local Government and Planning**

**APPEAL**

*Integrated Planning Act 1997*

**File No. 3/06/005**

## **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 a proposed garage on land described as “the subject site”.

Council considers the proposed structure, when built, will have an adverse effect and be in conflict with the amenity and aesthetics of the area for the following reasons:-

- 1 *The bulk and scale of the shed will not complement the existing and planned future residential character of the area, and would have an adverse effect on the aesthetics character and amenity of the neighbourhood.*
  - 2 *Will be in conflict with the Material Change of Use approval given for urban residential lots on the adjoining land to the South.*
  - 3 *The approval of such an oversized shed would set an unfavourable precedent.*
  - 4 *The site already contains a 3 bay shed and the addition of a further oversized shed would result in an industrial like appearance.*
  - 5 *The location of such a large shed on the premises would preclude any future subdivision of this acre block, and would be contrary to the objectives of sustainable utilisation entrenched in the Integrated Planning Act 1997.*
  - 6 *Reduce the potential for subdivision of neighbouring allotments.*
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**Date and Place of Hearing:** 10.30am Tuesday 31 January 2006

Inspection of the site and hearing at “the subject site”

**Tribunal:**

Mr Bruce Lees

Tribunal member

Mr Malcolm Hull Tribunal member  
Mr L F Blumkie Tribunal Chairperson

**Present:**

Applicant  
Applicant's father  
Ms Lorraine Garnham Mirani Shire Council representative  
Mr Philip Lane Mirani Shire Council representative  
Mr L F Blumkie Tribunal Chairperson  
Mr Malcolm Hull Tribunal  
Mr Bruce Lees Tribunal

**Decision**

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

- A
- (i) The existing house is to be linked to the existing shed by some means so that, when viewed from *withheld*, they both appear as one building.
  - (ii) The owner/applicant obtains documented professional advice from a registered Design Consultant or Architect on how the above link is best carried out.
  - (iii) The documented advice is attached to the amended building application for the proposed new garage.
  - (iv) The linking of the house and shed is to be carried out within 6 months of approval being given for the proposed new garage.
- B
- (i) The garage is to be reduced in overall height and have a straight gable roof from the gutter to the ridge line.
  - (ii) The garage to measure 2.9 metres high at the external wall gutter line from the existing concrete floor level and be approximately 4 metres high above the floor at the finished ridge line.
  - (iii) It shall be located in its current position i.e., 8 metres from the rear boundary and 10 metres from the side boundary.
  - (iv) It shall have maximum dimensions of 12 metres x 12 metres (as existing).
  - (v) It shall be finished in a colorbond material as shown in the application.
  - (vi) Landscaping shall be carried out and maintained between the proposed garage and the rear boundary similar to that provided to the side boundaries.
  - (vii) The application to be modified and a development approval obtained.
  - (viii) Compliance with all other requirements of Queensland Building Legislation including disposal of stormwater drainage to the satisfaction of Mirani Shire Council.

**Background**

Under the current Mirani Town Plan the subject land is zoned rural.

The subject property, which adjoins a 40ha cane farm, is one of about 25 one acre lots that also adjoin the cane farm (refer plan).

Council has a current proposal to subdivide this cane farm into a residential subdivision (refer plan).

The other side of *withheld* already has an 800sqm subdivision (refer plan), many of these lots have a house and separate garage.

The 1 acre (4047sqm) subject property is currently developed with a house (no car accommodation included) and a separate 9m x 7m existing colorbond garage adjacent, but not connected to the house.

The applicant has a large boat (12metres long and 3metres high when measured on the trailer) and requires a suitable enclosed space for safe storage of the boat and other equipment.

The existing garage is not suitable as it is not of sufficient height and is currently used for the parking of the owners two vehicles, lawn mower and other normal household equipment.

Application was made to the Mirani Shire Council for a proposed 12m x 12m garage in early 2005.

Council refused the application on amenity and aesthetic grounds on the 4 May 2005.

The applicant held verbal discussion (not documented) with a Council officer regarding options for modification of the proposal which were not acceptable to the applicant or Council.

An identical application was again made to Council (as the time to appeal the original decision had expired) and Council refused this application on the 20 December 2005.

The applicant lodged an appeal with the Registrar on the 3 January 2006.

### **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 December 2005.
- 3 Copy of the Appeal Notice dated 3 January 2006.
- 4 Verbal submissions from *withheld*.
- 5 Verbal submissions from the Mirani Shire Council representatives.
- 6 Smartmap No 8655-12142.
- 7 Part plan indicating recent garage approvals within the neighbourhood.
- 8 Plan showing Marian Development projects as at November 2005.
- 9 Plan of approved residential subdivision for a 1 acre lot similar to the subject lot.
- 10 Plan of approved subdivision to rear of subject block.
- 11 Town Map No 9 indentifying the boundaries of the neighbourhood with a heavy black line.
- 12 *Standard Building Regulation 1993* (SBR).
- 13 *The Integrated Planning Act 1997* (IPA).
- 14 Local Government Building Note edition No 132 on Amenity & Aesthetics.
- 15 Mirani Shire Council Resolution on Amenity and Aesthetics dated 27 April 2005.
- 16 An inspection of the site and neighbourhood.

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### **Findings of Fact**

*A Standard Building Regulation - Division 4 - Amenity and Aesthetics*

Mirani Shire Council adopted an Amenity and Aesthetics Policy under Section 50(1) of the Standard Building Regulation 1993 on the 27 April 2005.

The resolution amongst other things declared that all development applications for “ .....*Class 10a sheds within a residential zone, including a rural residential zone, on a lot zoned Rural A that is less than 5ha in extent, or within an urban area, as defined on the zoning maps, deemed by Council to be an existing or planned residential area, where:*

- 1 The proposed Class 10a shed (including any area under an awning) would exceed a maximum floor area of 54m<sup>2</sup>, dimensions of 9m x 6m or a maximum height to roof apex of 3.5 metres, or where*
- 2 The subject premises already contain an existing Class 10a shed that exceeds a floor area of 40m<sup>2</sup>.”*

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

Section 50 (2) of the Standard Building Regulation 1993 states that applications mentioned in Section 50 (1) must be assessed by the local government for the amenity and aesthetics impact of the proposed building work.

Section 50 (3) states that the local government may refuse an application to which subsection (2) applies 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 lot with one street frontage. The site is developed with existing class 1 and 10 buildings.

*C Development in the neighbourhood.*

An inspection of the neighbourhood indicated the majority of properties are developed with Class 1 buildings. There are examples of colourbond garages to the rear of many properties in the defined neighbourhood (as shown on the plan) A search of selected properties indicated the following:-

- Adjoining property to the right – house with double car accommodation included and separate 90m<sup>2</sup> five bay garage to the rear. Certifier approved March 2004.
- Adjoining property to the left – house with separate 152m<sup>2</sup> shed located in the middle of the lot. Certifier approved August 2004 – Council has unanswered questions regarding garage approval.
- Property five lots to the left - house with 81m<sup>2</sup> garage. Approved March 2004.
- Property two lots to the right – no house and large garage (in area and height) - with no record of approval.
- Property in *withheld* – 800m<sup>2</sup> lot – Council approved extension to existing garage with increased height (approx 3m opening) to allow housing of boat – garage area 84m<sup>2</sup>.
- Numerous other properties in *withheld* (800ms lots) have both class1 and 10 buildings.

**Reasons for the Decision**

Section 50.3 of the Standard Building Regulation 1993 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 Council decision states that the proposal would “*have an adverse effect and be in conflict with the amenity and aesthetics of the area*”.

The decision does **not** state the proposal would be in **extreme** conflict.

The applicant/owner purchased the (4037m<sup>2</sup>) property as a rural property on the understanding that, with a larger than normal residential lot, he could erect a suitable garage to house his large boat and ‘tinny’ and also have an enclosed space for hobby/equipment etc.

Unlike the property adjoining there is no car accommodation in the existing class 1 building. The owner’s vehicles are parked in the existing 9m x 7m garage adjacent to the house.

Applying Council policy of not allowing a second shed if there is an existing shed that exceeds 40m<sup>2</sup>, would be unreasonable in this instance, as if the car accommodation was part of the house (like the property on the right), the second shed up to 54m<sup>2</sup> would be allowed.

The owner submitted that he intended linking the existing garage to the house with a roofed connection. This connection needs detailed consideration, as the gutter lines are at different levels and to be successful, in the Tribunal’s opinion, requires the expertise of a registered design consultant or architect.

The existing house and garage, with an aesthetically designed connection, would appear as one building and this would greatly assist in satisfying Council’s policy.

The Tribunal considered the size of the proposed garage 12m x 12m (144m<sup>2</sup>).

After taking into account the existing garages, within the neighbourhood, which are visible from the subject property (ranging from 81m<sup>2</sup> to 152m<sup>2</sup>), the Tribunal considered that the size would **not** be in **extreme** conflict with the aesthetics and/or amenity of the neighbourhood.

However, the Tribunal considered the American barn roof design and height of the proposal at 5m to the ridge-line to be in **extreme** conflict with the existing and proposed development (residential subdivision) in the neighbourhood.

The applicant agreed it was possible to lower the roof to approximately 4m overall to the ridge-line and still allow sufficient door clearance to accommodate his boat (3m).

In view of Council’s approval for the subdivision of one acre blocks, as shown on the residential subdivision plan, it is now unlikely that a road will be located at the rear of the subject block.

“*withheld* subdivision plan” supports this assumption.

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

- A
- (i) The existing house is to be linked to the existing shed by some means so that, when viewed from *withheld*, they both appear as one building.
  - (ii) The owner/applicant obtains documented professional advice from a registered Design Consultant or Architect on how the above link is best carried out;
  - (v) The documented advice is attached to the amended building application for the proposed new garage.
  - (vi) The linking of the house and shed is to be carried out within 6 months of approval being given for the proposed new garage.
- B
- (i) The garage is to be reduced in overall height and have a straight gable roof from the gutter to the ridge-line.
  - (ii) The garage to measure 2.9 metres high at the external wall gutter line from the existing concrete floor level and be approximately 4 metres high above the floor at the finished ridge line.
  - (ix) It shall be located in its current position i.e 8 metres from the rear boundary and 10 metres from the side boundary.
  - (x) It shall have maximum dimensions of 12 metres x 12 metres as existing.
  - (xi) It shall be finished in a colorbond material as shown in the application.
  - (xii) Landscaping shall be carried out and maintained between the proposed garage and the rear boundary similar to that provided to the side boundaries.
  - (xiii) The application being modified and a development approval being obtained.
  - (xiv) Compliance with all other requirements of Queensland Building legislation including disposal of stormwater drainage to the satisfaction of Mirani Shire Council.

The Council representative agreed that a garage, 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* the Tribunal decided to change the decision appealed against and, with the consent of the owner, allow a garage subject to the above conditions.

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**Leo F Blumkie**  
**Building and Development**  
**Tribunal Chairperson**  
**Date: 3 February 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 and Planning  
PO Box 31  
BRISBANE ALBERT STREET QLD 4002  
**Telephone (07) 3237 0403: Facsimile (07) 32371248**

