



Building and Development Tribunals
Queensland Government

Department of Local Government, Planning,
Sport and Recreation

APPEAL
Integrated Planning Act 1997

File No. 03-05-050

BUILDING AND DEVELOPMENT TRIBUNAL - DECISION

LOCAL GOVERNMENT: Mirani Shire Council

SITE ADDRESS: *withheld* – “the subject site”

APPLICANTS : *withheld*

NATURE OF APPEAL: Appeal under Chapter 4 of Part 2 of the *Integrated Planning Act 1997* and Section 21 of the *Standard Building Regulation 1993*, against a decision of the Mirani Shire Council, as advised to the applicants by letter dated 15 July 2005, to refuse an application for amenity and aesthetics assessment preparatory to allowing construction of a shed on land at “the subject site”.

DATE AND PLACE OF HEARING: 2.00 pm on Monday 3 October 2005.

TRIBUNAL: Nigel Daniels, Chairperson.
Trevor Maltby, Representative of the Local government Association Queensland.
Greg Dempster, Representative of the Queensland Master builder’s Association.

PRESENT: *withheld*, appellant
withheld, appellant.

Neil de Bruyn, Mirani Shire Council
Lorraine Garnham, Mirani Shire Council.

DECISION:

Under the provisions of the *Integrated Planning Act 1997*, section 4.2.34, the Tribunal **sets aside** the decision of the Mirani Shire Council appealed against and makes a decision replacing the decision set aside, as follows:

The application made by *withheld*, stated by Mirani Shire Council to have been received on 1 June 2005, to construct a shed in colorbond walls and roof together with landscaping, is approved.

REASONS:

Council's resolution of 27 April 2005 requires that applications for amenity and aesthetics must be made for large sheds, but does not expressly prohibit large sheds.

Council's policy of 21 January 1998 does not expressly prohibit large sheds but does clearly require large sheds to comply with certain standards stated in the policy.

The Tribunal is of the opinion that the aesthetics of the shed, when built, will not be in extreme conflict with the character of the building's neighbourhood.

MATERIAL CONSIDERED:

- The application requesting the amenity and aesthetics assessment.
- Letter 15 July 2005 from Mirani Shire Council to *applicants* advising of Council's decision on the application for amenity and aesthetics assessment.
- Form 10 – Building and Development Tribunals Appeal Notice from *applicants*, received by the Registrar on 01 September 2005, and material attached to the Notice.
- The report on the application for amenity and aesthetics assessment, considered by the Mirani Shire Council at its meeting 2005.01.07 dated 13 July 2005.
- Verbal submission by the applicant / appellant at the hearing.
- Verbal submission by the Council's representative, at the hearing.
- Information gained by inspection of the site and inspection of the neighbourhood.
- Council's policy "Oversized Sheds" dated 21 January 1998.
- Council's resolution "Local Government about Amenity and Aesthetics" dated 27 April 2005.
- The *Building Act 1975*
- The *Standard Building Regulation 1993*.
- The *Integrated Planing Act 1997*.

FINDINGS OF FACT:

1. Council's resolution dated 27 April 2005, resolved to apply Section 50(1) of the *Standard Building Regulation 1993*, to 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 54sqm, dimensions of 9m X 6m or a maximum height to roof apex of 3.5m, or where
2. the subject premises already contain an existing class 10a shed that exceeds a floor area of 40 sqm.

2. The effect of the resolution is to require class 10a sheds which exceed the parameters stated in the resolution to be subject to amenity and aesthetics assessment. The resolution does not prohibit larger sheds but merely requires that they be assessed.

3. Assessment must be against the criteria in Section 50(3) of the *Standard Building Regulation 1993*, that a local government may refuse an application to which subsection (2) applies only if-

- a. the building or structure, when built, will have an extremely adverse effect on the amenity or likely amenity of the building's or structure's neighbourhood, or
- b. the aesthetics of the building or structure, when built, will be in extreme conflict with the character of the building's or structure's neighbourhood.

(Subsection (2) references section 50(1))

4. Council's policy of 21 January 1998 does not prohibit sheds exceeding the parameters set out in the policy. However the policy does set out the conditions under which such sheds will be approved.

5. The provisions of Section 50(3) of the *Standard Building Regulation 1993* require that there should be "extremely adverse effect" or "extreme conflict" if the application is to be refused.

Nigel Daniels,
Chairperson, Building and Development Tribunal

Trevor Maltby,
Tribunal Member.

Greg Dempster,
Tribunal Member.

Date: 17 October 2005.

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:-

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