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**JURISDICTION** : TOWN PLANNING APPEAL TRIBUNAL

**CITATION** : MAS & ANOR and SHIRE OF HARVEY  
[2003] WATPAT 49

**CORAM** : MR J JORDAN

**HEARD** : DETERMINED ON THE DOCUMENTS

**DELIVERED** : 29 JULY 2003

**FILE NO/S** : APP 123 of 2003

**BETWEEN** : SADIE ILENE MAS  
JOHN MAS  
Appellants

AND

SHIRE OF HARVEY  
Respondent

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*Catchwords:*

Shed extension - Retrospective approval - Objective of Rural Residential Zone

*Legislation:*

Nil

*Result:*

Appeal allowed subject to conditions.

*Category:* B

**Case(s) referred to in decision(s):**

Nil

**MR J JORDAN:**

- 1 This is an appeal against the Council's refusal to grant retrospective planning approval for a 96m<sup>2</sup> extension to an existing machinery shed and for a second-hand sea container being used as a secure lock-up at Lot 111 Australind Road, corner Cathedral Avenue, Leschenault. Lot 111 is owned by Mrs S I Mas.
- 2 The shed extension extends some 7.8 metres from the existing shed to provide additional covered space and to cover the sea container.
- 3 The Council refused the application for the following reasons:
  - “1. The extensions to existing approved shed will result in over two times the floor limit as stipulated by Council Policy 19.2.3.
  2. The proposed extensions are to be utilised for a use which Council has not issued planning approval for.
  3. The proposed use of the extensions are not consistent with the policy of the zone in which it is located and has the potential to impact on the amenity of the locality.”
- 4 Lot 111 has an area of 7.27ha and is zoned *Special Rural - Landscape Protection* in Shire of Harvey District Planning Scheme No 1 (“**DPS1**”).
- 5 Policy 19.2.3 is said by Council to stipulate that, within a Special Rural Zone, outbuildings, singly or in aggregate, are not to exceed 120m<sup>2</sup> in floor area.
- 6 The Policy Statement for development in the ‘Special Rural – Landscape Interest’ zone is quoted by the Council as:

“Primarily rural development which will retain the scenic character of the area along Cathedral Avenue, to provide for a unique lifestyle, whilst minimising impacts on the estuary and associated flora and fauna.”

**Council**

- 7 Documents submitted by the Council give the following background to this matter.

- (a) In 1998 the owner applied for and was granted planning approval to increase the area of the shed on Lot 111 to 160m<sup>2</sup> from the 120m<sup>2</sup> allowed under Council policy.
- (b) In 2001 Council was made aware that the second-hand sea container had been placed on the land and the shed had been extended. In May 2001, Council issued a Notice under section 10 of the *Town Planning & Development Act* (the Act), requiring the owner to remove the steel-framed/clad structure attached to the approved shed and to relocate the sea container to within the approved shed or from the property.
- (c) The Appellants lodged an appeal against the section 10 notice with the Minister for Planning and Infrastructure, as was then available under the Act. Investigation revealed there to be no right of appeal as there was no power within DPS1 to grant retrospective planning approval.
- (d) Amendment No.47 to DPS1 gazetted 8 February 2002 included new cl2.8 which provided for approval of unauthorised existing development.
- (e) The owner then lodged a fresh application for approval of the shed extension and sea container. It is the refusal of this application in August 2002 that led to the current appeal.

- 8 Council planning staff recommended to the Council that planning approval not be granted. The staff reported that the shed is used for the storage of equipment associated with a contracting business and storage of a caravan and other property. The sea container is utilised to provide a safe lock-up area for the equipment associated with the business. Currently no residence is located on the property and the property is used primarily for the storage of equipment. Staff recognised the business has been operating for a number of years, but felt these types of contracting businesses should be located within the industrial areas of the Shire.
- 9 It is noted that in response to this report and recommendation, the Health, Building and Town Planning Committee resolved to recommend to Council retrospective planning approval be granted for the existing sea container and shed extension. This approval would be subject to the following conditions:

- The sea container and lean-to are well kept screened
  - The issue of a building licence
  - Machinery and materials not to be stored in the open
  - No bulk fuel or chemical supplies are to be kept on the property without the permission and approval of the appropriate agencies.
- 10 There is nothing in the Minutes to reveal why the Committee resolved differently from the recommendation put to it by the Council officer.
- 11 At its meeting of 13 August 2002 Council resolved to refuse to grant retrospective planning approval for the application. The extract of the Minutes of the Council contain only the resolution and no explanation for rejecting the Committee's recommendation and deciding as recommended by the Planning Officer.

### **The Appellants**

- 12 The Appellants dispute that the proposed extensions are to be utilised for a use for which Council has not issued planning approval. It is stated that this shed is used as a machinery shed to house tractors, a slasher, superspreader and truck. The Appellants say the business is not operated from the shed, it is run from Mr Mas's home.
- 13 Mrs Mas also disputes that the shed extension is not consistent with the policies of the zone. She says the shed is at the very rear of the block, surrounded by trees, structurally well built and hidden from the road. The shed, it is said, would not have the potential to impact upon the amenity of the locality. Mrs Mas supplied photographs showing the shed.

### **Conclusion**

- 14 The appeal before the Tribunal is for an extension to an existing shed and for a sea container to be used as a secure lockup within that shed extension. It is noted that the shed extension is to help house 'tractors, a slasher, superspreader and truck' owned by Mr Mas. The sea container is to keep secure unnamed equipment owned by Mr Mas.
- 15 Council and the Appellants have disagreed on the use that might be made of the development the subject of the appeal. The Tribunal has not had presented to it any specific evidence on, and has not considered, whether or not a business is being run from Lot 111. The running of a business,

whether with or without planning approval, has not been part of the deliberations of this Tribunal. Any decision made on this appeal is not to be construed as either support for or rejection of any other activity that might be conducted from Lot 111 now or in the future. Any unresolved issues other than the development the subject of this appeal remain to be addressed between the parties.

- 16 The Council, in its section 10 notice of May 2001, said placing the sea container inside a shed would satisfy its requirements. The sea container is therefore not seen to be an issue if it is located within a shed. The issue to be resolved is whether the shed extension can be approved.
- 17 The Planning Officer's report to Council states that Lot 111, at 7.3ha in area, is different from the lot size usually associated with Special Rural type areas (minimum 1ha with reticulated water, 2ha without).
- 18 The addition is to a shed already approved as oversize. Drawing 202-439 shows the shed to be situated approximately 260 metres from the Cathedral Avenue frontage and 106 metres from the Australind Road frontage. The shed extension is on the far side of the existing shed from Australind Road. The Planning Officer's report to Council included the comment that 'it is recognised that the existing structures have minimal impact on the landscape amenity of the area'.
- 19 Having regard to the area of Lot 111, the distance to the shed from Cathedral Avenue and the comments made on the limited impact this shed has on the locality, it is concluded that this development is not inconsistent with the objectives of the zone.
- 20 The appeal is therefore allowed. Council's Health, Building and Town Planning Committee recommended conditions be imposed on any approval. Council is to provide the Appellants with any conditions within seven days. If the parties are not agreed on the conditions the Tribunal will receive submissions on the conditions in dispute.