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Statutory Planning	Development Applications
Land & Environment Court	Development Feasibilities
Land Rezoning	Valuation
Flora/fauna Assessment	Bushfire assessment
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Environmental Impact Assessment	Traffic Surveys

Ref: 131133

25 June 2018

Mr Andrew Kearns
Manager Strategic Planning
Hawkesbury City Council
PO Box 146
WINDSOR NSW 2756

By email: council@hawkesbury.nsw.gov.au

Dear Mr Kearns,

**Your ref: LEP010/16
Planning Proposal Lot 3 DP 747089
74 Longleat Lane, Kurmond**

I refer to your letter of 29th May 2018.

You have requested evidence of the following:

- The past uses of the building identified as a dwelling located on proposed Lot 11.
- That the past use as a dwelling was lawful.

My initial view that that the two houses on the land were lawful is based on inspection of design, age, knowledge of local planning law as it has evolved and also the indication from the landowners that the secondary house was used periodically as a house and also partly as a dairy building where dairy products were stored for the small dairy herd that was kept on the land many years ago. The house was also used as a studio in conjunction with the main house but as indicated also used for occasional accommodation. My view was that the secondary house was of an age that would have predated any need for planning

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approval and was probably built prior to any planning requirements for the former Shire of Colo being the local government provider in times past.

The secondary house has its own access and street address; electricity supply; effluent disposal system; and, on occasions, has had its own garbage and recycle collection and is capable of again being used for accommodation purposes.

That the secondary house might have been used for storage or as a studio does not distinguish any lawful residential ability.

My view that the secondary house is lawful is backed up by the officer's report to Council at its meeting of 9th August 2016. The report indicates, inter alia, the following:

"During a site inspection of the property, it was noted that the two dwellings were an age that would pre-date the introduction of the first planning instrument in the locality; being Interim Development Order No 1 – Shire of Colo which was gazetted on 13th March 1964. It is therefore considered that both dwellings are lawful."

Your letter indicates, and you seem to place importance on the fact, that the owners at the time of your subsequent heritage inspection indicated that they bought the property approximately 25 years ago and that at that time the building was used as a "dairy building" and that they had been using it as a studio. As mentioned such additional uses does not negate the lawfulness of use of the building as a dwelling. Your report indicates that the building predated planning controls. Since the introduction of planning controls, dwelling-houses have been a lawful land use from then to now. Sometimes requiring consent, sometimes not. There is no evidence that the building is unlawful however there is evidence that the building has been used as a dwelling periodically for some time and prior to when consent was required. Because dwellings have been permissible since IDO No 1 and since no consent was required prior to this date then there are no existing use right provisions applicable. There is no statutory abandonment time. In fact, it would not have mattered if the building had not been used as a dwelling since IDO No 1 providing that it had been used at some time prior to introduction of IDO No 1. The building has, however, been used as an occasional dwelling even by the current landowners and can be used as such again.

I agree that Council had information that the secondary dwelling was lawful at the time of its decision to support the Planning Proposal. However, this was only a minor matter of consideration with the main reasons being covered in the Planning Proposal of the consistency of the proposal with Council's strategies at the time. Even if the secondary dwelling was not lawful (which is not the case) then the

Planning Proposal could (and probably would) have been supported at the time as had many other proposals in the nearby locality.

If Council had any evidence that the secondary house had issues of lawfulness then it should have been raised either prior to lodging of the application or at the time of officer's assessment. I point out that council has required further specific studies of the owner as a result of its recommendations to the Gateway committee. This has resulted in considerable further cost to the owner on the understanding that both Council officers and Council were happy with the proposal.

It is clear that the secondary house is old, has been used for other uses but has also been used as a house and that such use could again take place without reference to Council.

I trust that the above satisfies your request for information and I look forward to further process of the Planning Proposal in accordance with Council's resolution of support.

Yours faithfully,

A handwritten signature in blue ink, appearing to read 'Glenn Falson', with a stylized flourish at the end.

Glenn Falson
BA; LG(Ord4); DTCP; M.Env0L; MPIA