



Hawkesbury City Council

ordinary meeting business paper

date of meeting: 28 August 2007

location: council chambers

time: 5:00 p.m.

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CITY PLANNING

Item: 164 **CP - Support of Camden Council's request for a Motion at the LGA Annual Conference re Licensing of AWTs Service Agents - (95494, 96330, 79348)**

Previous Item: 216, Ordinary (12 September 2006)

REPORT:

The purpose of this report is to seek Council assistance in supporting Camden Council's Motion to the Local Government Association Annual Conference for the State wide licensing of On-site Sewage Management System service agents by the Department of Fair Trading, including but not limited to Aerated Wastewater Treatment Systems (AWTS) and Greywater Treatment Systems (GTS).

Background

In 2006 Council supported a similar Motion that was put forward at the Local Government Association Annual Conference by Camden Council (refer to copy provided). Camden Council has made a minor modification to the Motion to ensure that all on-site sewage management systems that require regular servicing are encompassed.

A response regarding this Motion has been provided by The Hon. Paul Lynch MP (refer to copy provided). The response does not sufficiently address the issue of accountability of these service agents. Similarly, the ability of Council to ban an agent found to provide inadequate maintenance does not exist.

It is difficult and resource intensive for a Council to set minimum criteria that service agents are required to meet to work in their Council area, however only licensing of these agents by the Department of Fair Trading will enable government and the community to hold these service agents responsible for their actions.

Current Situation

Camden Council has reviewed the response provided by The Hon. Paul Lynch MP addressing the previous Motion placed before the Local Government Association in 2006. The model referred to in this response currently used by the Hunter Septic Tank Action Group is used to set minimum criteria for service agents and sets benchmark requirement for these service agents; however it does not resolve the issue of the lack of accountability of these agents in the event of poor workmanship.

Council is not in a position to prohibit service agents from working in the Local Government Area (LGA) in the event of poor workmanship as current legislation does not provide Council the authority to hold these service agents in any way accountable for their work.

If Council were to prohibit a particular service agent from operating within the LGA, then Council would become responsible for the consequences of such action. Regulation of this issue remains the responsibility of State Government and can only be done through the licensing of these service agents by the Department of Fair Trading.

It is hoped that by raising this Motion at the Local Government Association Conference for the second time, attention can be brought to encourage the government to deal with this matter.

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Conclusion

The licensing of AWTS service agents is crucial in regulating the quality of service being provided to our community. By making the service agents accountable through the Department of Fair Trading for their workmanship, Local Councils and the community can be satisfied that the servicing of AWTS state wide is being done to a standard stipulated by the Department of Fair Trading. The licensing of service agents will also further assist in reducing the risks that AWTS have on the environment and public health.

This problem remains a State wide issue and Council will need to continue to push for the regulation of these service agents by State Government through a licensing system regulated by the Department of Fair Trading.

Conformance to Strategic Plan

The proposal is deemed to conform with the Strategic Directions (Environment) set out in Council's Strategic Plan i.e:

"Implement plans and controls to manage and reduce waste and promote the environmental health of the City."

Funding

Nil impact on budget.

RECOMMENDATION:

That Council support the Motion put forward by Camden Council at the 2007 Local Government Association Annual Conference:

"That the Association call on the NSW State Government to introduce a system of licensing of all service agents of on-site sewage management systems (including but not limited to Aerated Wastewater Treatment Systems and Greywater Treatment Systems) by the Department of Fair Trading."

ATTACHMENTS:

- AT - 1 Copy of report to Camden Council dated 23 July 2007.
- AT – 2 Response from the Hon. Paul Lynch MP.
- AT – 3 Copy of original report to Council dated 12 September 2006.

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AT - 1 Copy of report to Camden Council dated 23 July 2007

ORDINARY COUNCIL

ORD02

SUBJECT: LICENSING BY STATE GOVERNMENT OF ON-SITE
SEWAGE MANAGEMENT SYSTEM SERVICE AGENTS -
MOTION TO LOCAL GOVERNMENT ASSOCIATION
ANNUAL CONFERENCE

FROM: Director Development and Health

FILE NO: Binder: Human Resources/Local Government Association
Conference 2007

PURPOSE OF REPORT

The purpose of this report is to put forward a Motion to the 2007 Local Government Association Annual Conference. At the 9 July, 2007 Meeting, Councillors were requested to lodge any proposed Motions for submission to the 2007 LGA Conference with the General Manager and as at the closing date, none had been received. Council staff have, however, prepared the following report and seek Council support to put forward the Motion to the 2007 Conference.

In essence, the Motion calls for state wide licensing of on-site sewage management system service agents by the Department of Fair Trading, including but not limited to Aerated Wastewater Treatment Systems (AWTS) and Greywater Treatment Systems (GTS).

BACKGROUND

Council has previously placed this motion before the Local Government Association Conference held in 2006 (**refer to copy provided with the Business Paper Supporting Documents**). However it is noted that minor modifications have been made to the motion to ensure that all on-site sewage management systems that require regular servicing are encompassed.

A response has been provided by The Hon. Paul Lynch MP regarding this motion, however the response is not satisfactory in that it has not sufficiently addressed the issue of accountability of these service agents. Similarly, the ability of a Council to ban an agent found to provide inadequate maintenance does not exist. (**Refer to copy provided with the Business Paper Supporting Documents**).

It is difficult and resource intensive for Council to set minimum criteria that service agents are required to meet to work in the Council area, however only licensing of these agents by the Department of Fair Trading will enable government and the community to hold these service agents accountable for their actions.

MAIN REPORT

Council has reviewed the response provided by The Hon. Paul Lynch MP addressing the previous motion placed before the Local Government Association in 2006. The model referred to in this response currently used by the Hunter Septic Tank Action Group is used to set minimum criteria for service agents and sets benchmark requirements for these service agents; however it does not resolve the issue of the

This is the report submitted to the Ordinary Council Meeting held on 23 July 2007 - Page 1

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lack of accountability of these agents in the event of poor workmanship.

Council is not in a position to preclude service agents from working in the LGA in the event of poor workmanship as current legislation does not provide Council the authority to hold these service agents in any way responsible for their work.

If Council were to prohibit a particular service agent from operating within the Local Government Area (LGA), then Council would become accountable for the repercussions of such action. Regulation of this issue remains the responsibility of State Government and can only be done through the licensing of these service agents by the Department of Fair Trading.

It is hoped that by raising this motion at the Local Government Association Conference for the second time, attention can be brought to bear on government to deal with this matter.

CONCLUSION

The licensing of AWTS service agents is crucial in regulating the quality of service being provided to our community. By making the service agents accountable through the Department of Fair Trading for their workmanship, Local Councils and the community can be satisfied that the servicing of AWTS NSW wide is being done to a standard stipulated by the Department of Fair Trading.

This problem remains a State wide issue and Council will continue to push for the regulation of these service agents by State Government through a licensing system regulated by the Department of Fair Trading.

RECOMMENDED

That Council submit the following Motion to the 2007 Local Government Association Annual Conference:

"That the Association call on the NSW State Government to introduce a system of licensing of all service agents of on-site sewage management systems (including but not limited to Aerated Wastewater Treatment Systems and Greywater Treatment Systems) by the Department of Fair Trading."

ATTACHMENTS



Response from Council Report (Sup
Minister (Sup Doc) Doc)

RESOLUTION

Moved Councillor Elliott, Seconded Councillor Johnson that Council submit the following Motion to the 2007 Local Government Association Annual Conference:

"That the Association call on the NSW State Government to introduce a system of licensing of all service agents of on-site sewage management systems (including but

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not limited to Aerated Wastewater Treatment Systems and Greywater Treatment Systems) by the Department of Fair Trading."

THE MOTION ON BEING PUT WAS CARRIED.

ORD189/07

ACTIONS

Link to CRMS document

CRMS: 4357511 25/07/2007, 10:27:22 AM

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AT – 2 Response from the Hon. Paul Lynch MP



The Hon. Paul Lynch MP

Minister for Local Government
Minister for Aboriginal Affairs
Minister Assisting the Minister for Health (Mental Health)

Clr Genia McCaffery
President
Local Government Association of NSW
GPO Box 7003
SYDNEY NSW 2001

| | |
|-------------------------------------|----------------|
| Local Government Association of NSW | |
| Shires Association of NSW | |
| 18 JUN 2007 | |
| SGU..... | CORP..... |
| POLICY..... | RB..... |
| WPLACE..... | NO ACTION..... |
| FILE No. A95/0016-06 | |

Ref: 05/0357
MIN: 07/6707
Doc ID: A94461

06 JUN 2007

Ref #154

Dear Clr McCaffery

I am writing in reply to your letter dated 14 December 2006 to the former Minister for Fair Trading, Ms Diane Beamer, MP regarding the introduction of a system for licensing aerated wastewater treatment system service agents, which has been referred to me for reply direct. The delay in reply is regretted.

The NSW Government has carefully considered requests from the industry and local government for a state-wide accreditation scheme for aerated wastewater treatment system service technicians. Due to the diverse range of environmental conditions across NSW, it is considered that councils are best placed to determine the acceptable level of expertise and experience required by technicians to service the ever-increasing range of on-site sewage management systems in their areas.

The acceptability of service agents is a decision that is most appropriate for local councils to determine and should be developed in consultation with the aerated wastewater treatment system industry in their area.

Councils are able to develop a minimum set of criteria for determining acceptable service agents in their area. Any service agent operating in the area should be able to apply to the council for inclusion on the council's list of acceptable service agents, provided they meet the minimum set of criteria. This process assists councils manage the cumulative risk associated with the management of on-site sewage management systems in their areas.

Governor Macquarie Tower, 1 Farrer Place, Sydney NSW 2000
Phone: (61 2) 9228 3333 Fax: (61 2) 9228 5551

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A number of regional groups of councils have developed sets of minimum criteria that apply to their collective circumstances and address cross-boundary issues in relation to service technicians. An example of this regional co-operation is the Hunter Septic Tank Action Group, which includes representatives from a number of councils in the Hunter region.

I trust this information is of assistance.

Yours sincerely

A handwritten signature in dark ink, appearing to read 'Paul Lynch', written in a cursive style.

Paul Lynch MP
Minister

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AT – 3 Copy of original report to Council dated 12 September 2006

EXTERNAL SERVICES

Item: 216 ES - Support of Camden Council's request for a Motion at the LGA Annual Conference re Licensing of AWTS Service Agents - (95494, 96330, 79348)

REPORT:

The purpose of this report is to seek Council assistance in supporting Camden Council's Motion to the Local Government Association Annual conference for the State wide licensing of Aerated Wastewater Treatment System (AWTS) service agents by the Department of Fair Trading. The motion reads as follows:

"That council put forward the motion to the Local Government Association Annual Conference which calls on the NSW State Government to introduce a system of licensing of Aerated Wastewater Treatment System (AWTS) service agents by the Department of Fair Trading."

Background

The NSW Health is responsible for the accreditation of all domestic AWTS. This accreditation specifies the design, construction and performance requirements of the system. As a condition of the accreditation of these systems NSW Health requires that these systems be serviced at regular intervals (most systems are required to be serviced every three months) by a representative of the company or a service contractor or company acceptable to the Council.

NSW Health, in the certificate of accreditation for each system, specifies that each service by the service agent shall include a check of all mechanical, electrical components and functional parts of the system, including:

- The chlorinator (where installed) and replenishment of the disinfectant, or a UV Disinfection Unit (where installed).
- All pumps, the air blower, fan or air venturi.
- The alarm system.
- Slime growth on the filter media.
- Operation of the sludge return system.
- The effluent irrigation area.
- On-site testing for free residual chlorine, pH and dissolved oxygen.
- Check on sludge accumulation in septic tank (or primary treatment chamber) and the clarifier where appropriate (can be done annually).

Council is often presented with complaints from the community regarding the poor workmanship of some of the service agents that are servicing AWTS. It is not uncommon for Council to receive complaints that service agents are not conducting a complete maintenance inspection and are just dropping chlorine tablets into the system and then leaving the site. Having completed over one thousand inspections of these systems, Council inspectors have often come across systems that have no form of disinfection at time of inspection. Occasionally there is evidence of poorly maintained systems that have been recently serviced.

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Service agents are responsible for inspecting the entire system, including the tank(s) and the related effluent application area (irrigation area), however Council is aware that many of these service agents are also neglecting to inspect the irrigation areas, with some systems basically having no irrigation at all except an open-ended hose. However, due to the lack of a regulated system, which allows registration, and therefore accountability of service agents, Council is powerless to take action.

Current Situation

It is compulsory for all AWTs owners to have their system serviced; the servicing of these systems generally costs the property owner upwards of \$300 per year. Due to the fact that these service agents are not required to be licensed by the Department of Fair Trading, the property owners have no quality assurance that the service being conducted on their system is being completed in a satisfactory manner.

As previously mentioned, the State Government is responsible for the accreditation of these systems, however once the system is accredited there appears to be a lack of accountability by the Department of Fair Trading and NSW Health in regards to the ongoing operation and performance of the systems.

The lack of accountability of AWTs service agents is a statewide issue. If a service agent operates in a certain manner in the Hawkesbury LGA then they should operate in the same manner or under the same rules within other LGAs. The licensing and regulation of AWTs service agents is a State Government function and there needs to be a change in policy to have these service agents licensed by the State.

It is considered that these service agents should be regulated in the same manner as other trades such as plumbers, builders and the like. Over the past decade many NSW councils have made numerous approaches to various government agencies to have this approach adopted, but all have been met with a non-committal response. It would not be appropriate for councils to be responsible for registration of agents as this would be an unfair burden on operators who would be required to register with all councils where they do work. In the case of some of our local agents, this would be likely to require registration with Penrith, Blue Mountains, Baulkham Hills as well as Hawkesbury (they may even have to register with other councils as well), each of which may have similar but perhaps not identical requirements.

Legislation does not permit Council to hold these service agents in any way responsible for their work. It is hoped that by raising this motion at the LGA Conference, pressure can be brought to bear on government to deal with this matter.

Conclusion

The licensing of AWTs service agents is crucial in regulating the quality of service being provided to our community. If the systems are not serviced correctly then the health of rural people across the State is put at risk, not to mention the environmental impacts related to poorly functioning systems. Since this is a Statewide issue the motion to get the State Government to commit to a more regulated regime for the licensing of AWTs service agents requires the support of the Local Government and Shires Association.

The licensing of AWTs service agents by the Department of Fair Trading will result in:

- An increase in the accountability of these service agents.
- State wide standards put in place for the servicing of AWTs.
- Support for Local Government in resolving issues with service agents not adequately servicing systems.
- Support for owners of systems when they have not been provided with an appropriate level of service.
- A regulated service being provided to the community.

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By making the service agents accountable through the Department of Fair Trading for their workmanship, local councils and the community can be satisfied that the servicing of AWTS state wide is being done to a standard stipulated by the Department of Fair Trading. The licensing of service agents will also further assist in reducing the risk that AWTS have both on the environment and public health.

Conformance to Strategic Plan

The proposal is deemed to conform with the objectives set out in Council's Strategic Plan i.e:

"Implement plans and controls to manage and reduce waste and promote the environmental health of the City."

Funding

No impact on budget.

RECOMMENDATION:

That Council support the Motion put forward by Camden Council at the Local Government Association Annual Conference, which calls on the NSW State Government to introduce a system of licensing of AWTS service agents by the Department of Fair Trading.

ATTACHMENTS:

There are no supporting documents for this report.

oooO END OF REPORT Oooo

oooO END OF REPORT Oooo

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Item: 165 **CP - Development Application for Colour Bond Fence and Retaining Wall - 20 William Cox Drive, Richmond NSW 2753 - (DA0197/07, 78735, 100500, 96329, 95498)**

Previous Item: RM, Ordinary (14 August 2007)
144, Ordinary (31 July 2007)

Development Information

Applicant: Mr P G and Mrs V Millington
Owner: Mr P G Millington
Stat. Provisions: Hawkesbury Local Environmental Plan 1989
Hawkesbury Development Control Plan
Area: 566 m2
Zone: Hawkesbury Local Environmental Plan 1989 - Housing
Advertising: 12 June 2007 to 26 June 2007
Date Received: 13 April 2007

Key Issues: ♦ Part of work commenced without approval
♦ One submission received

Recommendation: Approval

REPORT:

Introduction

Development consent is sought for a 1.8m colorbond fence and the use of a retaining wall. The retaining wall that is subject to this application is currently in existence.

On 29 May Council made the following resolution:

"That Development Applications seeking approval for buildings already under construction or completed without consent be the subject of a report to Council and not approved under delegated authority."

In accordance with the above resolution, in respect to retrospective approvals, the application is being reported to Council.

Description of Proposal

The proposed 1.8m high colourbond fence is to be located on the northern and eastern property boundary with a return back to the residence. This brings the fence in line with the front of the building.

The retaining wall is a minimum of 540mm high to a maximum height of 860mm along the North eastern and south eastern boundaries.

The property is such that there is a definite difference between the level of the block and Council's footpath. The land appears to have been previously retained by a retaining wall and the land would have been cut at the time of subdivision.

The property is a corner block and the dwelling is situated to face the corner rather than one or the other of the streets. The right hand corner of the residence is closest to Grand Flaneur Drive having a set back of

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7.5m. The left-hand corner having a setback of four metres, with this side being the largest side and the front entry of the residence facing William Cox Drive.

The dwelling is positioned to front the corner of the allotment with very little usable rear yard.

The applicant has proposed the fence in order to eliminate a security problem, create a useable space and provide for a front area that is aesthetically in keeping with the district.

The reasons given by the applicant for the application are:

- Majority of open space is located forward of the dwelling. The applicant is trying to make use of the side yard.
- The position of the dwelling does not provide a reasonable rear yard.
- The existing neighbours garage blocks the northerly aspect and overshadows the small rear yard.
- With an increasing family a secure yard is needed for the children.
- The existing telephone box on the corner provides a lot of noise and the front lawn is used as a short cut by pedestrians.
- The telephone box is a security problem to the property as without a clear boundary the booth occupants have access into the applicant's property.

Background

The applicant originally proposed a fence to the side boundary and in line with the front of the building. During assessment of the application it was brought to the Council's attention that landscaping was occurring.

The applicant was retaining the existing front yard. As the levels proposed were a maximum height of 860mm, a development consent was required.

The owner of the property was approached and advised that approval was required and that the work was to cease. The applicant claimed that they were not aware that approval was required. The owner considered that the work was landscaping, similar to what is in the street, and as such did not require consent.

Once informed, the application was subsequently amended and renotified. However, subsequent inspection revealed that the retaining wall was completed and the footpath made safe.

As the work had been done without Council approval the application is required to be reported to Council.

Statutory Framework - Unlawful Structures

The Environmental Planning and Assessment Act 1979 does not make provisions for development consent to be granted retrospectively but under section 109A of the Act there is a distinction between the *unlawful erection of a structure* and the *unlawful use of land or a structure*. Section 109A reads:

1. *the use of a building, work or land which was unlawfully commenced is not rendered lawful by the occurrence of any subsequent event except:*
 - (b) *the granting of development consent to that use.*

Therefore, the development application is required to be considered on its merits and should the use of the structures be deemed consistent with relevant planning controls then an application for a Building Certificate is required to be submitted to Council.

As previously mentioned, the Act does not provide for retrospective approval for unlawful structures but a person may obtain a Section 149 Building Certificate from Council. The certificate differs from a development consent or building approval for a structure, in that it confers certain forms of legal immunity on the structure (Section 149E of the Act) rather than granting consent for the structure. It is important to note that the Section 149 certificate does not make an unlawful structure lawful but simply makes it immune from certain types of legal action for a period of seven years.

Matters for Consideration Under Section 79(c) of the Environmental Planning and Assessment Act 1979

a) The provisions of:

i) any environmental planning instrument (ie LEPs, REPs & SEPPs)

The proposal is not inconsistent with any relevant REPs or SEPPs.

Hawkesbury Local Environmental Plan 1989

Hawkesbury Local Environmental Plan (LEP) 1989 applies to the land.

The aims and objectives of this plan are:

- (a) to provide the mechanism for the management, orderly and economic development and conservation of land within the City of Hawkesbury,*
- (b) to provide appropriate land in area, location and quality for living, working and recreational activities and agricultural production,*
- (c) to protect attractive landscapes and preserve places of natural beauty, including wetlands and waterways,*
- (d) to conserve and enhance buildings, structures and sites of recognised significance which are part of the heritage of the City of Hawkesbury for future generations, and*
- (e) to provide opportunities for the provision of secure, appropriate and affordable housing in a variety of types and tenures for all income groups within the City.*

The development is consistent with the general aims and objectives of this plan.

The subject property is zoned **Housing** under Hawkesbury Local Environmental Plan 1989

The objectives of this zone are as follows:

- (a) To provide for low density housing and associated facilities in locations of high amenity and accessibility,*

Comment:

This objective does not relate to this proposal

- (b) to protect the character of traditional residential development and streetscapes,*

Comment:

It is considered that the proposal is compatible with the scenic quality of the area and will not have a detrimental impact upon the locality.

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- (c) *to ensure that new development retains and enhances the existing character,*

Comment:

It is considered that the proposal is compatible with the scenic quality of the area and will not have a detrimental impact upon the locality.

- (d) *to ensure that development is sympathetic to the natural amenity and ecological processes of the area,*

Comment:

It is considered that the proposal is compatible with the scenic quality of the area and will not have a detrimental impact upon the locality.

- (e) *to enable development for purposes other than residential only if it is compatible with the character of the living area and has a domestic scale and character,*

Comment:

It is considered that the proposal is compatible with the area and is domestic in scale and character.

- (f) *to control subdivision so that the provision for water supply and sewerage disposal on each resultant lot is satisfactory to the Council,*

Comment:

This objective does not relate to this proposal

- (g) *to ensure that development does not create unreasonable economic demands for the provision or extension of public amenities or services.*

Comment:

This objective does not relate to this proposal

Under Clause 9 b) of the LEP from the land Matrix set out the fence and the retaining wall are

"development that requires consent, but may be exempt or complying"

As the retaining wall is to be located along the boundary, it does not fit the exempt or complying development criteria and therefore is permitted only with Consent.

A fence along a side boundary is deemed exempt under Councils LEP and as it is behind the line of the building is permitted to be 2.4 metre above ground.

However, in this instance the fence proposed is 1.8m from the inside ground level and will be a maximum of 2.6 metre from the footpath due to the difference in the existing levels.

The applicant is proposing a variation of a further height of 260mm. This height would only extend for a distance of approximately four metre.

As both the material and colour of the fence and wall are different, this would breakup the overall appearance of the structure. Also there is a tree located on the footpath which would add to the aesthetics of the proposal. However, to further reduce the overall bulk of the fence and wall combination, it is also recommended that the proposed fence be set back, inside the subject property, a minimum of 0.5 metre from the retaining wall to enable landscaping of the setback area.

As the corner location of the property is prominent when entering the estate, in order to reduce to bulk it is recommended that the fence be reduced to 1500mm from the internal ground level.

As the pedestrians line of sight would not extend into the applicants yard, privacy would still be achieved.

The backfill that would be required to tidy up behind the retaining wall (less than 300mm depth) is deemed exempt under the Council's LEP 9B Exempt Table.

An engineers Certificate for the wall would not be required as the wall is not greater than one metre. However, as the work has been undertaken without approval or construction inspections, a statutory declaration that the work has been completed to the manufactures specifications is required.

- i) **any draft environmental planning instrument that is or has been placed on public exhibition and details of which have been notified to the consent authority**

There are no relevant draft EPI's that affect the land or the proposal.

- iii) **any development control plan applying to the land**

Hawkesbury Development Control Plan 2002

Part A, Chapter 1 - Purpose and Aims

The proposed development is considered to be consistent with the general aims and objectives of Hawkesbury Development Control Plan 2002.

Part A, Chapter 2 – General Information

It is considered that sufficient information has been submitted with the application for Council to assess the application.

Part A, Chapter 3 - Notification

The application was notified to adjoining property owners and occupiers in accordance with the requirements of Hawkesbury Development Control Plan 2002. The notification period extended between 3 May 2007 to 17 May 2007 and notification for the revised plans between 12 April 2007 to 26 April 2007. In response to this notification two written submissions were received from the same respondent.

Residential Development

Fencing and retaining Walls

Part D, Chapter 1.19 of the DCP relates to (front) fences and retaining walls.

The Aim of this section of the DCP states:

To ensure that fences and boundary retaining walls should be compatible with the character of the location and integrated with the design of the buildings.

The retaining wall design is considered to be in character with the other walls in the area, and colorbond fencing is typical for the district.

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The rules of the DCP and a comparison of these rules with the proposed development is set out in the following table:

| DCP Provisions | Proposed Fence | Comments |
|---|--|--|
| Front fences where not screening private open space walls are to be a maximum height of 1.2m if solid. | Proposed fence is located on side road boundary and is to screen private open space. | Complies. Proposal is screening private open space. |
| Solid front fences may be 1.8m high and articulated if: <ul style="list-style-type: none"> The site is on a main or arterial road, The site is not located within an established heritage character, The length is limited to 75% of the frontage where private open space fronts the street and some surveillance is maintained from the front dwelling, and Fences do not exceed 10m in length without some articulation or detaining to provide visual interest. | <p>Not located on main road</p> <p>Site not located within an established heritage character</p> <p>The proposed fence length is approximately 8.2m along a boundary of 15.8m. The equates to approximately 52% of the boundary length.</p> <p>Total length of the proposed fence is approximately 8.2m.</p> | <p>Not applicable.</p> <p>Not applicable.</p> <p>Complies. Only 52% of boundary.</p> <p>Complies. Less than 10m.</p> |
| The integration of trees and natural vegetation with the fence line is desirable | No landscaping proposed. | Condition proposed to include landscaping between wall and fence. |
| The setback of the fence will be used for landscaping. | | Condition proposed |
| Solid fences are to be 1 metre from the front boundary where not part of private open space. | Proposed fence is to be part of open space. | Complies |
| Retaining walls shall: <ul style="list-style-type: none"> Not be taller than 500mm; Not cut through roots of any tree top be retained. | <p>Wall height varies from 0 - 0.86m.</p> <p>Wall does not disturb tree roots.</p> | Height of wall is considered a minor variation due to the existing landform. |

As seen in the above table comparison, the proposed fence complies with four of the six requirements. The remaining two requirements are proposed to be conditioned to comply by requiring the fence to be set back 0.5m from the boundary and the setback area to be landscaped. This would make the fence comply with all the relevant rules of the DCP.

Whilst the retaining wall does exceed the height controls by 0.36m, it is considered that this variation is acceptable in this case due to the nature of the existing landform and that the wall is consistent with the objectives of Section 1.19 of the DCP.

Photos (Photos 1 to 4) of the retaining walls in the district will be displayed on the board in the Council Chambers.

These retaining walls are containing the front yards, where the land has been cut to create the footpath. Stone and brick are predominate in the area. However, the property beside the applicants has its' land retained by a koppers log wall approximately 700mm high.

Photos 5 to 7 (Refer to the board in the Council Chambers) show the applicants property with the wall under construction. The close proximity of the telephone box, the location of the respondents driveway and the small section that is proposed to be fenced, in relation to the wide clear frontage of the dwelling.

iv) Any Matters Prescribed by the Regulations

There are no matters discernable that are prescribed by the Regulations that affect the development.

b) The Likely Impacts the Development, Including Environmental Impacts on Both the Natural and Built Environments, Social and Economic Impacts in the Locality

The development is not considered to be out of character with the surrounding landscape and it is unlikely that the development will have any adverse environmental impact on the locality.

Noise and Vibration

The development will contribute to the reduction of noise to the existing residence and the amenity of the property.

Safety, Security and Crime

The development will have significant benefit to applicants property as both the retaining wall and the fence define the boundary and prevent the constant trespass on the property that the applicant is experiencing due to the telephone box on the footpath.

c) The Suitability of the Site for the Development

The site is suitable for the development. It is noted that there is a subsurface drain constructed as part of the retaining wall, that discharges at the northern property boundary. A condition is proposed to require this discharge to be directed to an approved stormwater discharge point.

d) Any Submissions Made in Accordance with the EPA Act or Regulations

Two Submissions by the same respondent were received by Council during the exhibition period.

Respondent:

"Application is not consistent with Hawkesbury Development Control Plan"

Comment

The proposal is considered to be consistent with the objectives of the DCP. A comparison with the "rules" of the DCP also indicates that the proposal generally complies with the DCP or conditions to comply have been proposed.

Respondent:

"Plan provided by the applicant to Council does not reflect of the nature of the work to be carried out."

Comment

The amended Plans indicate the work to be done.

Respondent:

"Safety issues regarding egress from my property to the street."

Comment

Line of sight when reversing a vehicle from a driveway is across the footpath area and is not taken across a neighbouring property. The fence would not impact on the line of site for the egress from the adjoining property. However, the applicant has chosen to splay the corner adjacent to the respondent's driveway in order to address the respondents concerns.

Respondent:

"Loss of streetscape amenity."

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Comment;

The fence and retaining wall are not out of character with the area. This is evident in the photos that will be displayed in the Council Chambers. In order to improve the proposed situation a condition to setback the fence to permit some landscaping is also proposed.

Respondent;

"The Hawkesbury City Council DCP 1.9.f provides for walls to be not taller than 500mm"

Comment

Under Clause 9 b) of the LEP from the land Matrix set out for the fence and the retaining wall are "development that requires consent, but may be exempt or complying". The DCP provisions provide guidelines to ensure development is compatible to the area. As the retaining wall is to be located along the boundary, it does not fit the exempt or complying development criteria and therefore requires Consent. The proposed retaining wall and fence are considered to be consistent with similar development in the local area.

Respondent;

"The plans provided show no provision for fill at 20 William Cox Drive"

Comment

The plans provided indicate the work to be done. The block is being tidied up in a similar manner to adjoining and surrounding properties. The retaining wall will contain the existing cut of the property and in parts the area behind the wall back filled to provide a level lawn. The backfill that would be required to tidy up behind the retaining wall and forms part of this proposed development consent.

e) The Public Interest

The matter is not considered to be contrary to the general public interest.

RECOMMENDATION:

That:

- A. A penalty notice be issued under the Environmental Planning and Assessment Act for breaches of the Act, and
- B. Development Application No. DA0197/07 for a retaining wall and fence be approved subject to the following conditions:

General

- 1. The development shall take place in accordance with the stamped plans, specifications and accompanying documentation submitted with the application except as modified by these further conditions.
- 2. No excavation, site works or building works shall be commenced prior to the issue of an appropriate Construction Certificate.
- 3. The development shall comply with the provisions of the Building Code of Australia at all times.
- 4. The development shall comply with the Environmental Planning and Assessment Act, 1979 at all times.

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5. Any part of the fence between the Grand Flaneur Drive property boundary and the alignment of the existing building is to be no higher than 1500 mm above the existing internal ground level or the top of the existing retaining wall, whichever is the lower, and is to be set back a minimum of 0.5m from the property boundary. This setback area is to be landscaped with appropriate native species.

Prior To Commencement of Works

6. Submit to Council a statutory declaration that the work has been completed to the manufactures specifications.
7. The fence shall be set out by a Registered Surveyor. The Survey Certificate of the fence showing the position of the fence under construction and in compliance with the approved plans shall be lodged with the principal certifying authority. Any easements must be shown on the Survey Certificate.
8. At least two days prior to commencement of works, notice is to be given to Hawkesbury City Council, in accordance with the Environmental Planning and Assessment Regulation.
9. Toilet facilities (to the satisfaction of Council) shall be provided for workmen throughout the course of building operations. Such facility shall be located wholly within the property boundary.
10. The approved plans must be submitted to a Sydney Water Quick Check agent or customer Centre to determine whether the development will affect Sydney Water's sewer and water mains, stormwater drains and/or easements, and if further requirements need to be met. Plans will be appropriately stamped. For quick Check agent details, please refer to the web site www.sydneywater.com.au, see Building Developing and Plumbing then Quick Check or telephone 13 20 92.
11. The consent authority or a private accredited certifier must either:
 - Ensure that Quick Check agent/Sydney Water has appropriate stamped the plans before the issue of any Construction Certificate; or
 - If there is a combine Development/Construction Certificate application or Complying Development, include the above condition as one to be met prior to works commencing on site.

During Construction

12. All necessary works being carried out to ensure that any natural water flow from adjoining properties is not impeded or diverted.
13. Site and building works (including the delivery of materials to and from the property) shall be carried out only on Monday to Friday between 7:00am - 6:00pm and on Saturdays between 8am – 4pm.
14. The site shall be kept clean and tidy during the construction period and all unused building materials and rubbish shall be removed from the site upon completion of the project. The following restrictions apply during construction:
 - (a) Stockpiles of topsoil, sand, aggregate, spoil or other material shall be stored clear of any drainage path or easement, natural watercourse, footpath, kerb or road surface and shall have measures in place to prevent the movement of such material off site.
 - (b) Building operations such as brick cutting, washing tools, concreting and bricklaying shall be undertaken only within the site.
 - (c) Builders waste must not be burnt or buried on site. All waste (including felled trees) must be contained and removed to a Waste Disposal Depot.

ORDINARY MEETING

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15. Mandatory inspections shall be carried out and Compliance Certificates issued only by Council or an accredited certifier for the following components or construction:

Note: Structural Engineer's Certificates, Drainage Diagrams and Wet Area Installation Certificates are NOT acceptable unless they are from an accredited person.

- (a) on completion of the works;

Use of the Development

16. Any external lighting shall be directed in such a manner so that no nuisance is caused to adjoining properties or to drivers on surrounding streets.
17. The proposed development is not to cause stormwater to be concentrated or discharged onto another property. In this regard, the subsurface drain currently ending at the northern property boundary is to be redirected to discharge to an existing approved stormwater drain.

Advisory Notes

*** The applicant is advised to consult with:

- (a) Sydney Water Corporation Limited
- (b) Integral Energy
- (c) Natural Gas Company
- (d) a local telecommunications carrier

regarding their requirements for the provision of services to the development and the location of existing services that may be affected by proposed works, either on site or on the adjacent public roads.

*** Should any aboriginal site or relic be disturbed or uncovered during the construction of this development, all work should cease and the National Parks and Wildlife Service consulted. Any person who knowingly disturbs an aboriginal site or relic is liable to prosecution under the National Parks and Wildlife Act 1974.

*** The applicant shall make themselves aware of any User Restriction, Easements and Covenants to this property and shall comply with the requirements of any Section 88B Instrument relevant to the property in order to prevent the possibility of legal proceedings against them.

ATTACHMENTS:

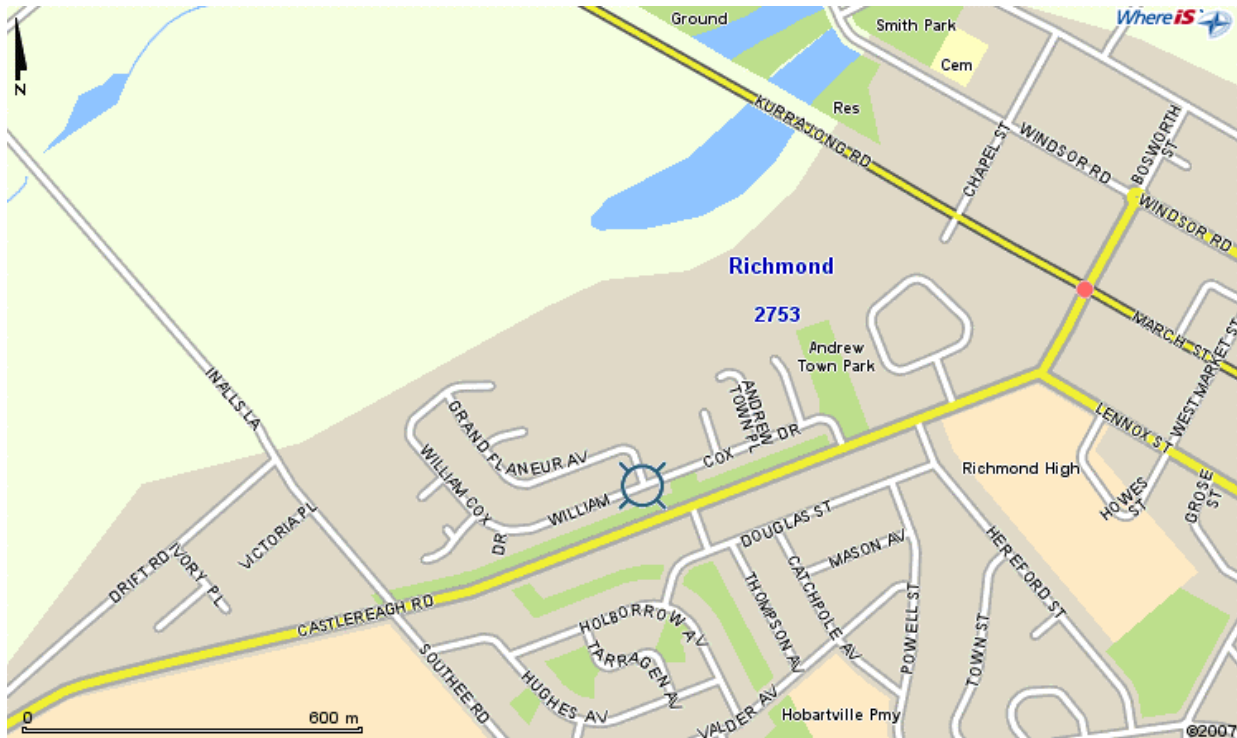
AT - 1 Locality Plan

AT - 2 Site Plan

ORDINARY MEETING

Meeting Date: 28 August 2007

AT - 1 Locality Plan



Meeting Date: 28 August 2007

[illegible]

oooO END OF REPORT Oooo

ORDINARY MEETING

Meeting Date: 28 August 2007

SUPPORT SERVICES

Item: 168 SS - Exemption from Rating - 187H Upper Colo Rd, Wheeny Creek - (95496)

REPORT:

An application has been received from Carroll & O'Dea Lawyers who act for the Trustees of the Marist Brothers requesting exemption from rating for the property known as 187H Upper Colo Rd, Wheeny Creek (Lot 46 DP 751632), Property Number 2007. A copy of the letter dated 3 August 2007 from Carroll & O'Dea Lawyers is provided as Attachment1.

The Trustees of the Marist Brothers owns and conducts Marist Youth Care whose main works involve the care of homeless children. The property is used for the purposes of providing camping visits under adult supervision to the children under the care of Marist Youth Care.

Application for rate exemption is made in accordance with Section 556 (h) of the Local Government Act, 1993 which provides as follows:

"S.556 - The following land is exempt from all rates, other than water supply special rates and sewerage special rates:

(h) land that belongs to a public benevolent institution or public charity and is used or occupied by the institution or charity for the purpose of the institution or charity."

It is recommended that exemption from rating be granted from 1 July 2007.

The rates for 2007/2008 total \$440.48 and will need to be abandoned once the rate exemption is approved.

Conformance to Strategic Plan

The proposal is deemed to conform with the objectives set out in Council's Strategic Plan i.e:

"Objective: Compliance with all relevant legislation"

Funding

Funding for this proposal will be from the Rates Budget.

RECOMMENDATION:

That:

1. The Trustees of the Marist Brothers be granted exemption from rating from 1 July 2007 for the property known as 187H Upper Colo Road, Wheeny Creek.
2. An amount of \$440.48 be written off in respect of rates for the period 1 July 2007 to 30 June 2008.

ATTACHMENTS:

AT - 1 Letter from Carroll & O'Dea Lawyers dated 3 August 2007.

ORDINARY MEETING
Meeting Date: 28 August 2007

AT - 1 Letter from Carroll & O'Dea Lawyers dated 3 August 2007

YOUR REF:

CUR REF: SAC:71013

CONTACT:

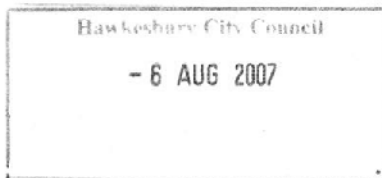
PARTNER: Tony Carroll

Direct Line: 9291 7102
Email: tcarroll@codea.com.au

**CARROLL
& O'DEA
LAWYERS**

3 August 2007

Rates Clerk
Hawkesbury City Council
DX 8601 WINDSOR



Dear Sir

APPLICATION FOR RATE EXEMPTION
CLIENT/OWNER: TRUSTEES OF THE MARIST BROTHERS
PROPERTY: NUMBER 20072
187H UPPER COLO ROAD, WHEENY CREEK BEING LOT 46 DP751632

We act for *Trustees of the Marist Brothers* which is a Body Corporate under the Roman Catholic Church Communities' Lands Act, 1942 and which owns the above property.

Our client has asked us to write to you to seek exemption from Council Rates from 1 July 2007 under the provisions of Section 556(h) of the Local Government Act, 1993. In this regard, our client is a public charity and the property is being used for the purposes of that charity.

Our client owns and conducts Marist Youth Care whose main works involved the care of homeless children.

The property is currently used for the purposes of providing camping visits under adult supervision to the children under the care of Marist Youth Care.

We would appreciate if you could give favourable consideration to this application and advise if any further information is required.

Yours faithfully
Carroll & O'Dea
Per:

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SYDNEY MELBOURNE BRISBANE ADELAIDE PERTH

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