



Hawkesbury City Council

ordinary meeting business paper

date of meeting: 11 September 2007

location: council chambers

time: 5:00 p.m.

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SECTION 4 - Reports for Determination

CITY PLANNING

Item: 176 CP - Hawkesbury Development Control - Part E Chapter 5 - Pitt Town - (87959, 92177, 95498)

REPORT:

A formal submission has been received from the Johnson Property Group seeking amendments to the Pitt Town Chapter of the Hawkesbury Development Control Plan (DCP). Correspondence had been previously received from Brown Consulting and the Johnson Property Group seeking variations through the development assessment process. Given the significance of the proposed amendments, it was determined that a formal request would be required to amend the DCP. The submission was received on 18 July 2007.

In summary, the Johnson Property Group seeks variations to the DCP relating to road provisions for Bathurst Street and Bootles Lane.

Background

The Pitt Town Chapter of the DCP was adopted by Council at its meeting of 15 November 2005 following extensive community and government agency consultation. Architectus (representing the Johnson Property Group) developed the initial masterplan and survey work that included the retention of the windbreak along Bathurst Street and Bootles Lane. Council adopted Version 3 of the Masterplan, including the retention of the windbreak trees, at its meeting of 2 December 2003 and this formed the basis of the preparation of the LEP, DCP and Section 94 Plan.

Amendments Requested by the Johnson Property Group

The correspondence received from the Johnson Property Group requests amendments to the DCP in Section 4.6.3 - Bathurst Street between Buckingham Street and Bootles Lane and Section 4.6.5 - Bootles Lane. The requested amendments are contained within the table below. The table also contains the current adopted provisions.

Comparison of Current and Proposed Provisions:

Section of Chapter 5	Current provision	Johnson Property Group requested amendment
4.6.3 (a)	The road reserve for this section of Bathurst Street is to be widened to 30m on its eastern side to incorporate the existing windbreak trees within a 10m verge.	<i>The road for this section of Bathurst Street is to be widened to incorporate the existing windbreak trees within a 10m verge.</i>
4.6.3 (b)	Vehicle access to lots on the eastern side of Bathurst Street is to be provided either from the east or via a 5m wide service road between the lots and the windbreak trees.	<i>Vehicle access to lots on the eastern side of Bathurst Street is not to be provided from the west through the existing windbreak trees.</i>

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Section of Chapter 5	Current provision	Johnson Property Group requested amendment
4.6.5	The section of Bootles Lane fronting proposed new lots on one side, is to be widened on the southern side to a 34m wide road reserve shown in Figure E4.10. The road reserve is to include a 4m footway on both sides of an 11m carriageway. A 10m verge is to be provided on the southern side of the road reserve that incorporates the existing windbreak trees and a 5m wide service road constructed to the south of the trees to provide street access and frontage to the proposed lots where required to avoid tree removal for driveway crossovers.	<i>The section of Bootles Lane fronting proposed new lots is to be widened on the southern side to a 34m wide road reserve as shown in Figure E4.10. The road reserve is to include a 3.5m footway on one side of each 7m single lane carriageway. A 13m verge is to be provided as a median within the road reserve that incorporates the existing windbreak trees.</i>

The attachments to this report indicate the DCP requirements for Bootles Lane and the requested change from the Johnson Property Group.

The Johnson Property Group requests that the changes are required on Bathurst Street to "eliminate the service road and to prevent any access through the trees". In relation to Bootles Lane, the following reasons are given:

- *more of the windbreak trees will be retained by creating a 13m wide central median, where there will be no damage caused by the road being constructed too close to the root system of the trees*
- *there will be less incursions through the windbreak for traffic movement. The only areas of the windbreak that will be removed are at each end to provide safe, vehicular sight distance and through the link between Bona Vista and Fernadell, that will maintain the "view line" along Hawkesbury Street.*
- *providing a single carriageway either side of the trees will negate the need for a service road, which means lots will be fronting Bootles Lane. This also means that the potential traffic and serviceability issues associated with the service road are no longer applicable.*
- *the road reserve width will remain at 34 metres.*

Assessment of the Proposed Changes

General Comments

Council will recall that in the preparation of the Amendment 145 to Hawkesbury LEP 1989 significant work was carried out to ensure that the conservation value of Pitt Town was protected and enhanced. This work involved representatives from the NSW Heritage Office, Johnson Property Group (through Mr G Brooks) and Council officers. Subsequently, Architects (representing the Johnson Property Group) developed the initial masterplan that included the retention of the windbreak along Bootles Lane. Council adopted a version 3 of the Masterplan, including the retention of the windbreak trees, at its meeting of 2 December 2003.

Further, support from the NSW Heritage Office for Amendment 145 to Hawkesbury LEP 1989 was conditional, based on both the LEP and DCP including provisions to ameliorate the likely impact of the residential subdivision on Pitt Town cultural heritage significance.

It is noted that there appears to be some discrepancy between the original survey work provided by the Johnson Property Group and the current survey provided by Brown Consulting. This results in the existing Casuarina trees not aligning with the proposed 10m median in the DCP.

Proposed Amendments to the Road Layout on Bootles Lane and Fernadell Property.

It is considered that the proposed amendments from the Johnson Property Group do not comply with the aims of the DCP. Whilst some flexibility may exist in the rules of the DCP, this is only where the aims can be fully satisfied. In relation to street design, the DCP is clear that:

- The street design creates a rectilinear urban structure consistent with the original crown land grants in the area;
- The street design retains the boundaries of historic land grants and early subdivision;
- The street scale and design is appropriate for its functional role;
- An efficient and interconnected road system is to be established to service the area;
- Significant vegetation and historic fence lines are retained within road reserves where appropriate.

The rules contained within the DCP are also clear that the street layout must comply with the Pitt Town Development Plan and the road hierarchy must comply with Figure 4.4.

Bootles Lane has been designed as a medium collector road, that is, one of the major roads through the subdivision. It should therefore be clearly identifiable in appearance and purpose as a major road. Splitting the road with the windbreak trees in the centre of the road would not fulfil this provision. Further, traffic movements are complicated by the creation of "left only turns" due to the windbreak being proposed in the middle of Bootles Lane. The DCP currently allows for a flow of traffic through the windbreak to be maintained in the verge adjacent to the Bootles Lane.

Discrepancy in Survey Work

As previously noted there is some discrepancy in relation to the location of the trees in Bootles Lane between the original survey work provided by the Johnson Property Group and the current survey provided by Brown Consulting. This results in the existing Casuarina trees not aligning with the proposed 10m median in the DCP. Design principles to overcome this issue can be applied, during the Development Application process, to ameliorate this error. These principles were provided in the letter to Brown Consulting on 4 June 2007 as follows:

- *The road layout and lot design set out in the Development Plan in the DCP (Figure 4.2) is to be applied. In this regard the lots shall front Bootles Lane/service road and not as indicated proposed Option 2 where the rear of the lots front Bootles Lane.*
- *Retention of the windbreak trees within the road reserve. The windbreak trees are an important historic feature and as noted above were considered important features in the cultural landscape by all the key stakeholders, including the NSW Heritage Office and the proponent developer. It was recognised that the trees should be maintained as the most prominent elements in the local landscape.*
- *Consideration may be given to the partial removal of trees and replanting sections with mature specimens, immediately behind the existing trees. The replanting would then ensure the trees are located within the 10m verge as proposed in the DCP. If this solution is chosen, replanting should occur early and prior to the removal of the existing trees.*
- *Retention of a service road fronting Bootles Lane.*
- *There may be some variation of the location of the kerb and guttering to facilitate the retention of the windbreak vegetation.*

It was suggested to Brown Consulting that consideration could be given to a minor reduction to the width of the road reserve in this locality provided the above principles can be achieved and that this matter could be dealt with during the development assessment process.

Recommendations

Council has two options in this matter:

Option 1

Retain the current provisions of the DCP and allow minor amendments through the development assessment process. This would allow for the discrepancy in the original survey work and minor alterations that comply with the objectives of the DCP.

As noted above, the DCP clearly articulates the desired future character of Pitt Town and was adopted by Council in December 2003. The current DCP will ensure that development is sympathetic with the existing village and set an appropriate standard of urban design for future development. If Council wants to ensure that these standards are maintained, then only minor alterations to the DCP should be made.

Option 2

Amend the DCP as requested by the Johnson Property Group. This will require further consultation with the government agencies, a public exhibition and a further report back to Council. It is anticipated that this work will take approximately 4-6 months to complete due to the requirement to gain the Heritage Office concurrence. However, given the previous advice from the Heritage Office it is unlikely that the proposed amendments will be supported.

Council should also be aware that changing the DCP may jeopardise the current draft amendment to Hawkesbury LEP 1989 to seek additional lots at Pitt Town as recently resolved by Council. This is due to the previous requirements of government agencies not being adhered to.

Should Council proceed with option 2, amendments will also be required to the section 94 plan as the road works proposed have not been accounted for. This matter would need to be further investigated and included within the section 94 plan.

Conclusion

It is considered that the proposed amendments should not be supported for the reasons outlined under option 1. Any minor amendments should be considered in accordance with the existing principles in the DCP and outlined in this report. Adherence to the existing principles in the DCP would allow any minor changes to the DCP "Rules" to be addressed via the development application process.

Conformance to Strategic Plan

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

"Objective: Establish processes and develop flexible plans that will enable the City to respond to change."

Funding

There are no funding implications, however should Council resolve to amend the DCP, there may be some associated costs.

RECOMMENDATION:

That the Hawkesbury Development Control Plan, Part E, Chapter 5 - Pitt Town not be amended as requested by the Johnson Property Group.

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ATTACHMENTS:

- AT - 1** Current Provision Contained within Hawkesbury DCP - Part E Chapter 4 - Pitt Town - Bootles Lane
- AT - 2** Proposed Amendments by the Johnson Property Group - Bootles Lane

**AT - 1 Current Provision Contained within Hawkesbury DCP - Part E Chapter 4 - Pitt Town -
Bootles Lane**

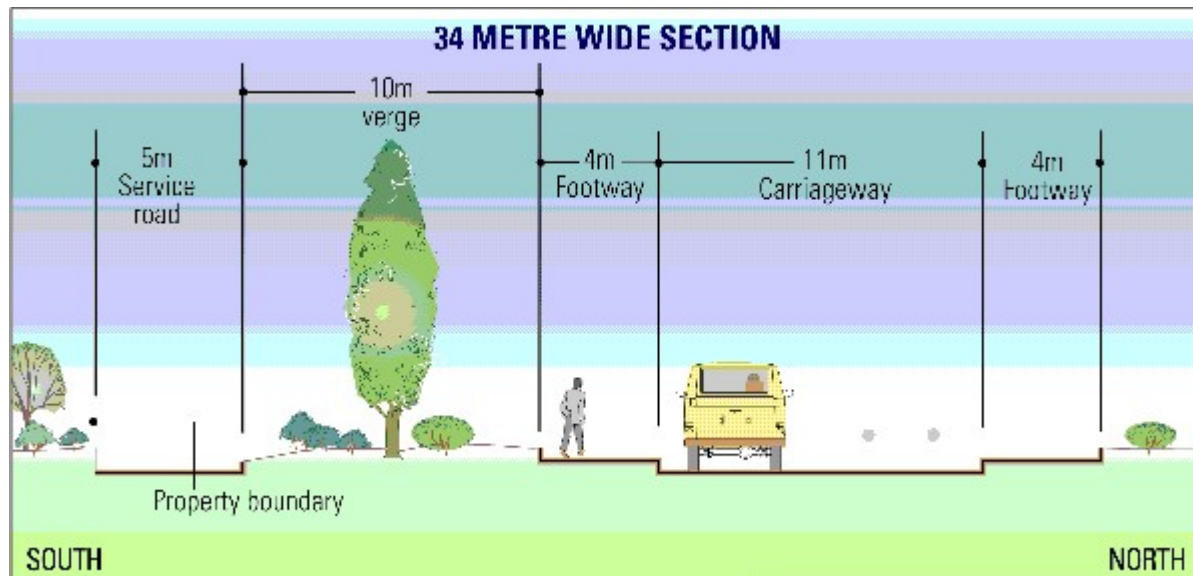
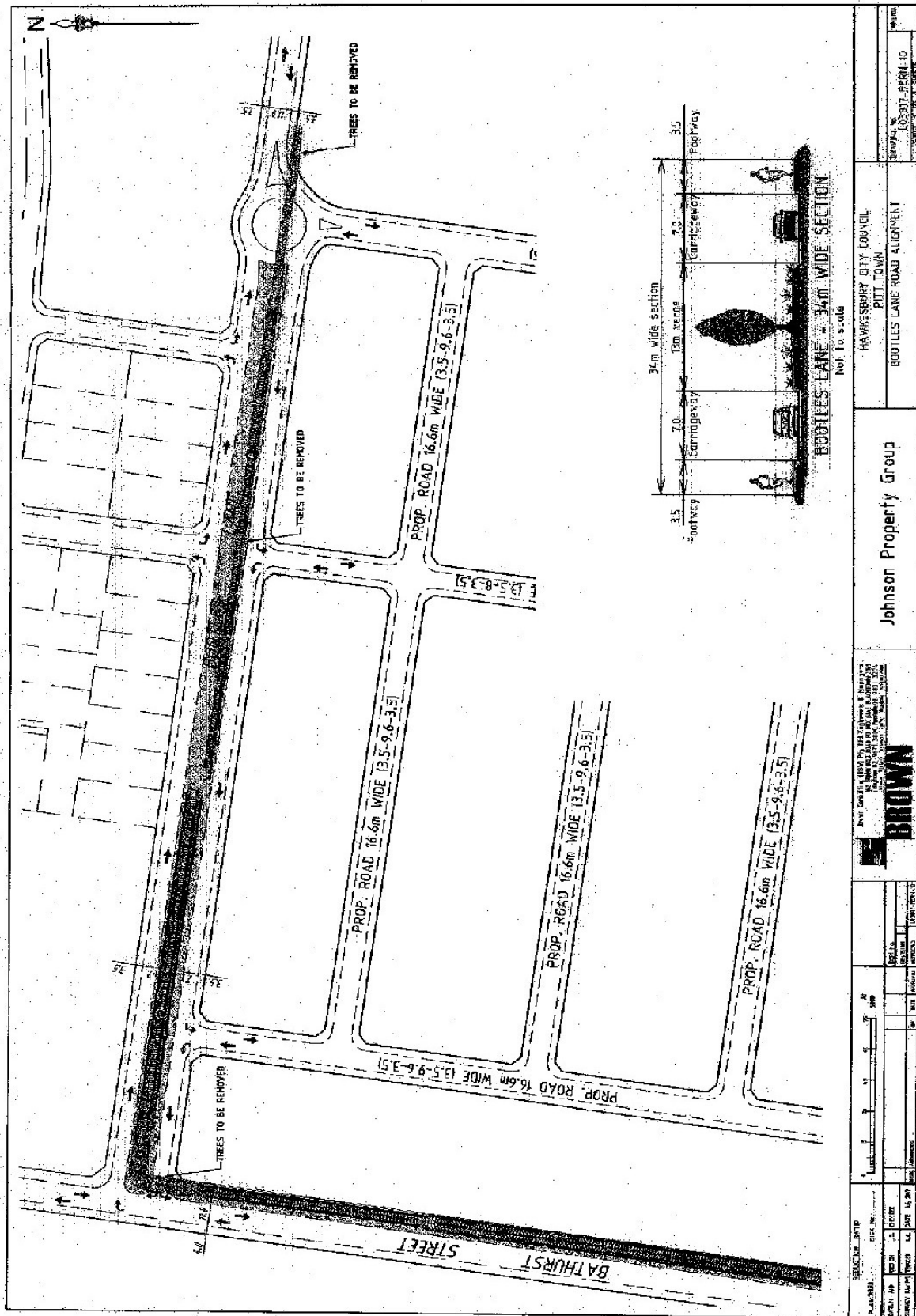


Figure E4.10 a: Bootles Lane Design Concept - 34m Wide Section

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AT - 2 Proposed Amendments by the Johnson Property Group - Bootles Lane



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Item: 177 **CP - Shed Less Than 170sqm - Lot 31, DP205933 and Lot 32, DP205933 - 475-477 Kurmond Road, Freemans Reach - (DA0362/07, 20176, 95498)**

Development Information

Applicant: Mr RJ Richardson
Owner: Mr RJ Richardson
Zone: Rural Village
Advertising: 9 July 2007 to 23 July 2007
Date Received: 28 June 2007

Key Issues: ♦ Approval for Use

Recommendation: Approval

REPORT:

Introduction

The applicant is seeking approval for the use of the existing structure as a shed.

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

Description of Proposal

The structure as constructed is composed of two sections. One section is 7.6m X 5.1m and the second section is 8.5m X 3.7m. The total footprint of the structure is 72m². The maximum height to the apex is 3.9m.

The structure is located 4.7m from the closest property boundary and situated behind the existing residence.

Photos of the structure are available in the Council Chamber.

Background

The applicant owns both 475 and 477 Kurmond Rd. The property is known as 475 Kurmond Rd. The structure is located on Lot 31, 477 Kurmond Rd.

The applicant has indicated that the structure was built over a period of time, between 1991 and 1996.

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 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 subject property is zoned Rural Village under Hawkesbury Local Environmental Plan 1989.

The Planning Instruments which are considered to control development on the site are;

- Sydney regional Environmental Planning Policy 20.
- Hawkesbury City Council Local Environmental Plan 1989. (HELP)

Comment

The proposal is not inconsistent with the relevant Planning Instruments.

Hawkesbury Local Environmental Plan 1989 (LEP)

Relevant clauses from HLEP 1989:

Clause 2 - Aims, objectives etc,

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.*

Comment

The proposed development is considered to be consistent with the general aims and objectives as outlined in Clause 2 of the LEP. The development is consistent with the general aims and objectives of this plan.

Clause 9 -Carrying out development,

- (1) *Unless otherwise provided by this plan, the Land Use Matrix set out at the end of this clause specifies the following for each zone:*

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- (c) *Development that requires consent where "C" is shown for that development.*

Comment

Clause 9 land use matrix identifies that sheds may be erected on the site with formal consent.

Clause 9A - Zone Objectives,

- (1) *Before granting consent to development within a zone the Council must be of the opinion that carrying out the development is consistent with the relevant objectives of the zone in which the development is to be carried out.*

Comment

The proposed development is consistent with the objectives of the zone

Clause 24 - Development within Zone No. 7(d) or in the Rural Village, Environmental Protection-Agricultural Protection (Scenic) or Environmental Protection- Mixed Agriculture (Scenic) Zone.

Comment

Clause 24 (3) requires that Council consider the height and proposed siting of the building and the colour of a proposed building.

The location, size and height of the proposed shed is considered to be acceptable.

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

The objectives of this zone are as follows:

- (a) *to maintain the rural character of the village and to ensure buildings and works are designed to be in sympathy with the character of the village,*

Comment

The structure is screened from the road.

- (b) *to protect hilltops, ridge lines, river valleys, rural landscapes and other local features of scenic significance by controlling the choice and colour of building materials and the position of buildings, access roads and landscaping,*

Comment

The structure is lower than the road and is green in colour, blending in with the surrounding vegetation.

- (c) *to enable development for purposes other than residential only if they are compatible with the character of the village,*

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 does not detract from the existing rural 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.

- (e) *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

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- (f) *to control outdoor advertising so that it does not disfigure the rural landscape,*

Comment

This objective does not relate to this proposal

- (g) *to ensure that development occurs in a manner that satisfies best practice guidelines for the protection of water catchments, water quality, land surface conditions and important ecosystems.*

Comment

The roof water is directed to a tank and the surface water is controlled by best practice methods.

- 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*

The site is affected by the draft LEP that deals with the conversion of the Hawkesbury LEP 1989 to the Standard Template LEP. The proposed development is consistent with that draft LEP. Apart from that 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 5 July 2007 to 23 July 2007. In response to this notification **NO** submissions were received.

Part D Specific Development

Chapter 8 - Erection of Rural Sheds

The aims and objectives of this chapter are:

- *To enable the erection of sheds on rural properties within the Hawkesbury City Council area in a manner which compliments e rural character of the landscape and has minimal impact on the scenic qualities*
- *To provide design principles for the erection of rural sheds, ie:*
 - *siting of the building*
 - *size (floor area and height) of the shed;*
 - *form (shape) of the building;*
 - *colour of the building materials;*
 - *type of building materials; and*
 - *landscaping.*

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Development Control Assessment

Design Principles	The Proposal	Compliance
Siting		
Sheds shall be located no closer to the road than the existing dwelling house on the property.	Shed located behind the existing residence	Complies
Cut and fill shall be limited to 2m of cut and 900mm of fill	No cut and fill	Complies
Sheds are not to be erected on land which has a slope in excess of 10%	Slope not in excess of 10%	Complies
The erection of rural sheds should involve minimal disturbance to native vegetation.	No trees removed	Complies
Size		
The maximum of sheds in the Rural Living zones shall not exceed 170sqm. The cumulative total of all buildings shall not exceed 170sqm on any one property in these zones.	The shed has a floor area less than 170m ²	N/A Rural Village Zone
In zones Mixed Agricultural, 7(d), Environmental Protection Agricultural (EPA), & 7(e) the applicant will need to justify the size of any shed exceeding 170m ² in terms of the use of the shed and the land, as well as measures taken to minimise the impact on neighbours and the general area.	N/A	N/A
Height		
The total height of a rural sheds erected in Rural Living zones shall be no more than 5 metres or no higher than the height of the ridgeline of the dwelling house on the same property, whichever is less.	N/A	Zone Rural Village
In other zones, the total height of rural shed exceeding 5 metres shall be justified in terms of the use of the shed and the visual impact of the development.	Maximum Height -3.9m	Does not exceed 5m Complies.

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Design Principles	The Proposal	Compliance
The total height of "barn style" sheds may exceed 5m based on individual merit.	N/A	N/A
Form		
Rural sheds with standard roof form will be limited to rectangular shapes.	Standard Form	Complies
Sheds of other roof forms, for example barn style, will be encouraged.	Standard Form	Complies
Colour		
The colour of a rural shed will match or blend in with those of existing buildings.	Colour- Green	Blends with the existing landscaping
On vacant land the colour for rural sheds shall be taken from the natural environment.	N/A	N/A
Type of Building Materials		
Building materials used in the construction of rural sheds are to be new, prepainted and non-reflective	Corrugated iron- painted	Complies
The use of corrugated iron will be considered subject to size, height, design and location of the rural shed.	Appearance aesthetically suitable	Complies
Any part of a building below the 1-in-100 year flood level is to be constructed of flood compatible material.	N/A	N/A
Landscaping		
Plantings are to be a mix of trees, shrubs and ground cover.	Existing plants & shrubs	Complies
Trees shall include species that at maturity have a height above the ridgeline of the shed.	Existing trees above the ridge height	Complies
Shrub mass shall provide adequate screening.	Adequate screening existing	Complies

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Design Principles	The Proposal	Compliance
Plants endemic to the area are to be chosen.	Existing species.	Complies

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, and 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.
The relevant matters under Section 79C are discussed below.

Context And Setting

The structure is located behind and to the side of the residence.

Access, Transport and Traffic

The property has an existing cottage. No change to the traffic or access would occur.
Access to the site is considered satisfactory.

Heritage

No Heritage impact. No heritage sites are within the vicinity

Noise and Vibration

It is not expected that the proposed development will result in offensive noise or vibration.

Natural Hazards

Possible bushfire hazard. This risk is the same as the existing residence and is deemed minor.

Safety, Security and Crime

The structure adds to the security of the property as the rear yard is screened and the applicant has an area to lock away any tools or equipment.

Construction

No construction. Structure is already built.

Cumulative Impact

The development is compatible with the surrounding land uses and no negative cumulative impact is expected.

c) **The Suitability of the Site for the Development**

The site is suitable for the development.

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

No submissions were received by Council during the exhibition period.

e) **The Public Interest**

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

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Conclusion

The proposed development demonstrates satisfactory compliance with the provisions of Hawkesbury Local Environmental Plan 1989 and Hawkesbury Development Control Plan

Conformance to Strategic Plan

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

"Objective: A prosperous community sustained by a diverse local economy that encourages innovation and enterprise to attract people to live, work and invest in the City"; and

"Sustainable and liveable communities that respect, preserve and manage the heritage, cultural and natural assets of the City".

Funding

No impact on budget.

RECOMMENDATION:

That the Development Application No. DA0362/07 for the use of structure as a shed at Lot 31, DP205933 and Lot 32, DP205933 475-477 Kurmond Road, Freemans Reach be approved subject to the conditions following:

General Conditions

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. The approved use shall not commence until all conditions of this Development Consent have been complied with.
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.

Prior to Commencement of Works

5. A structural engineers certificate certifying the structure is capable of withstanding the loads likely to be imposed upon it, including wind loadings.

During Construction

6. 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) prior to occupation of the building;

Use of Development

7. No internal or external alterations shall be carried out without prior approval of Council.

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8. The shed shall not be occupied for human habitation/residential, industrial or commercial purposes.

Advisory Notes

*** 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 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.

ATTACHMENTS:

AT - 1 Locality Plans

AT - 2 Floor Plan and Elevations

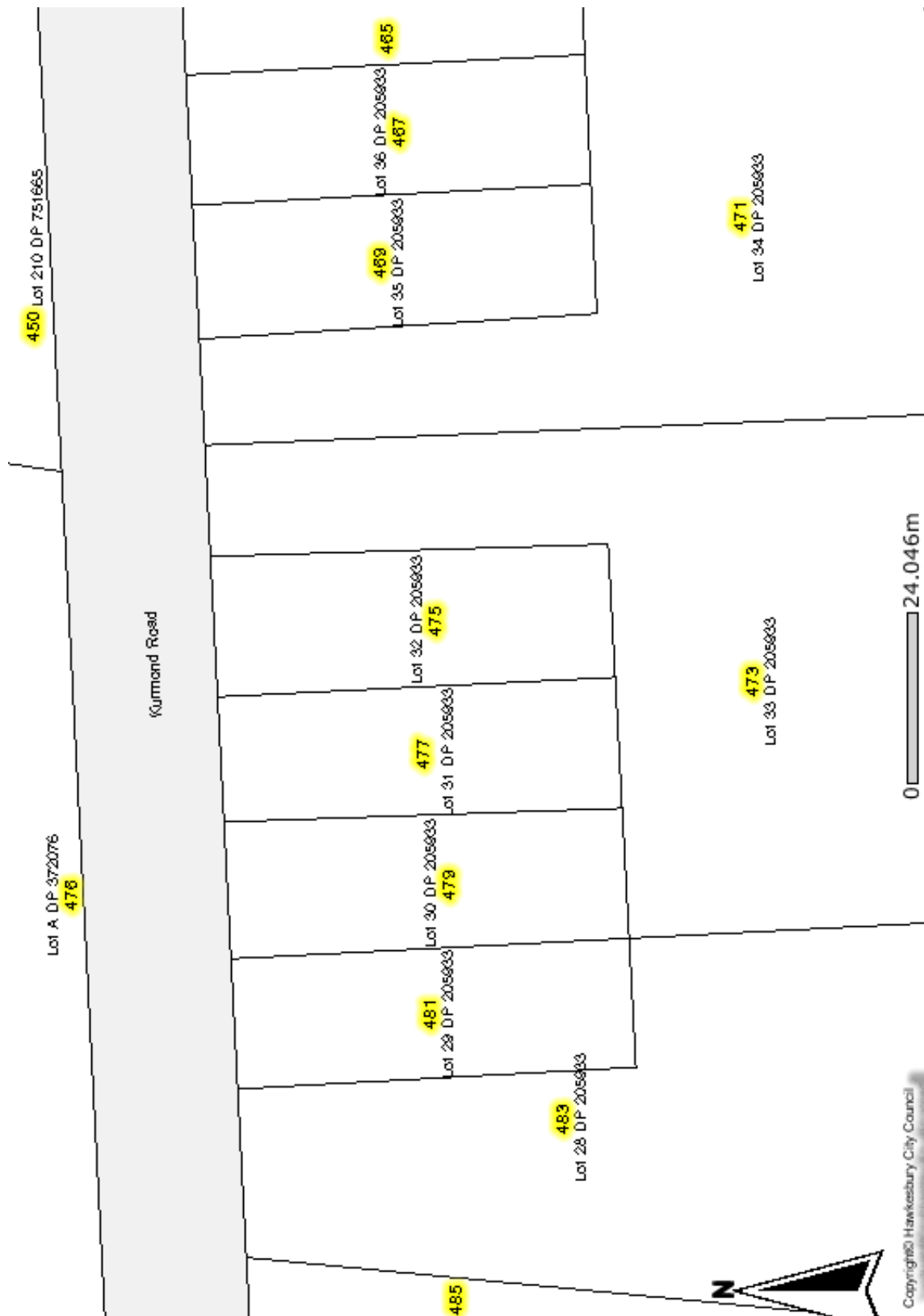
AT - 3 Site Plan

AT - 4 Photographs of the Shed Structure

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At - 1 Locality Plans



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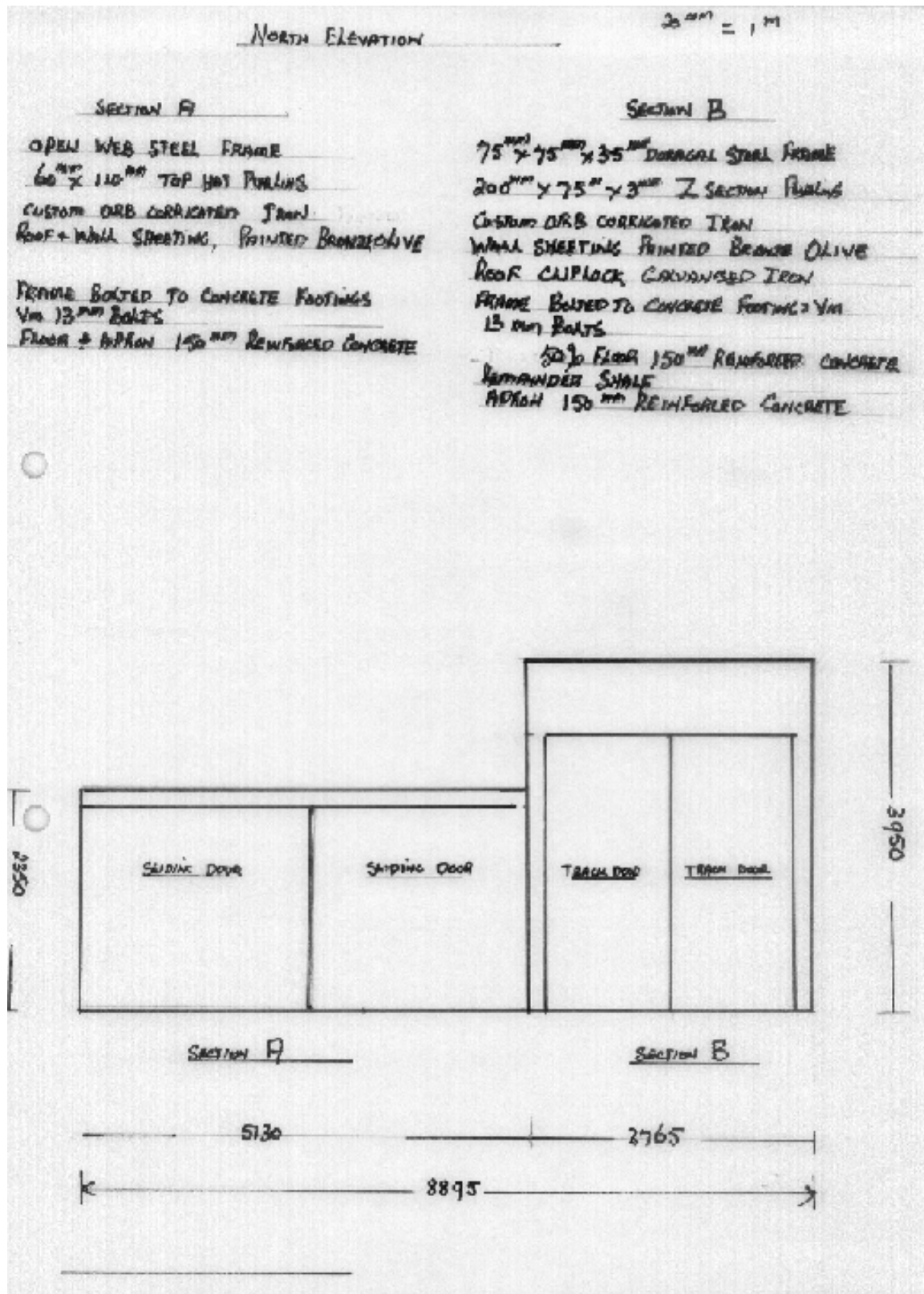


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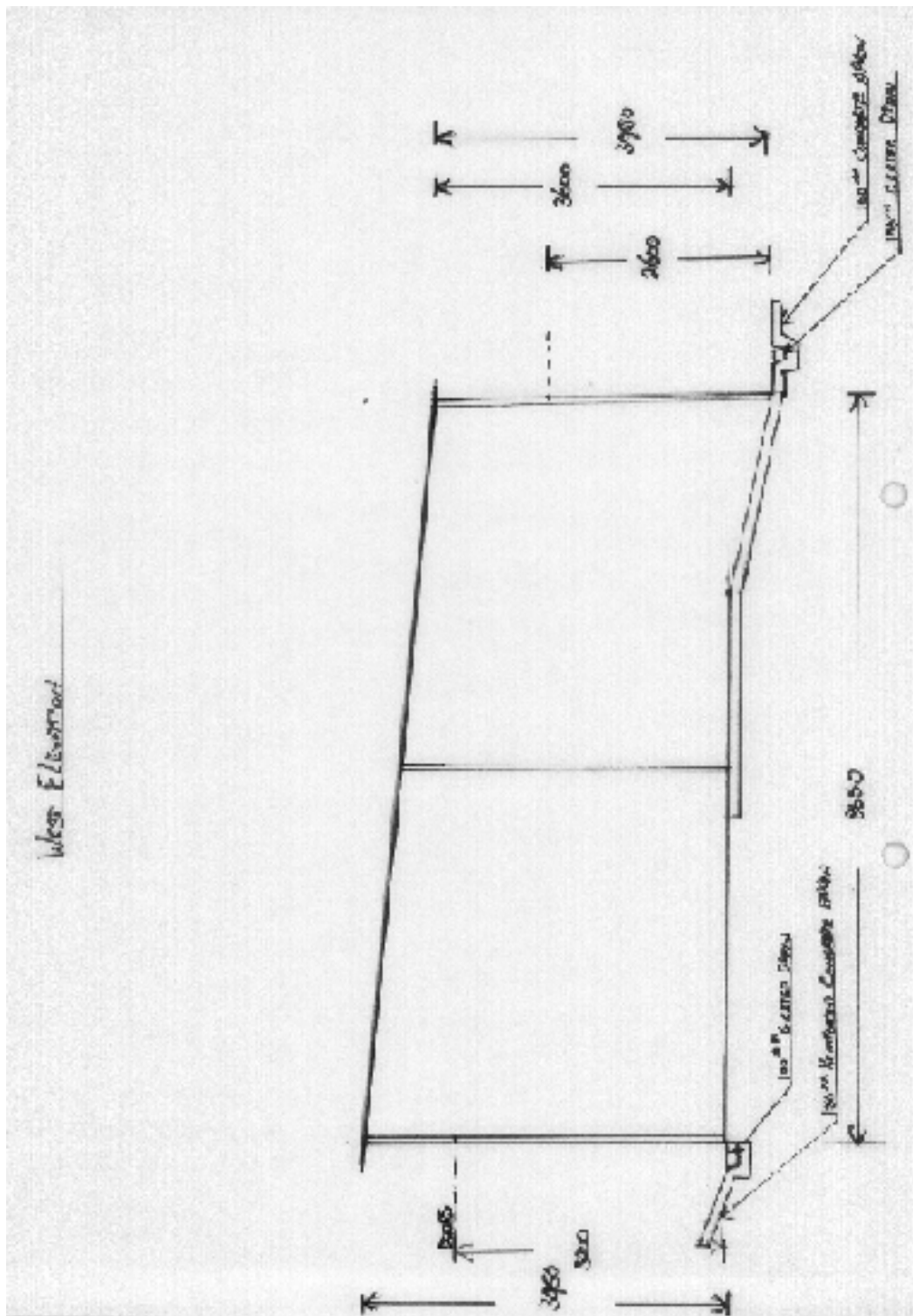
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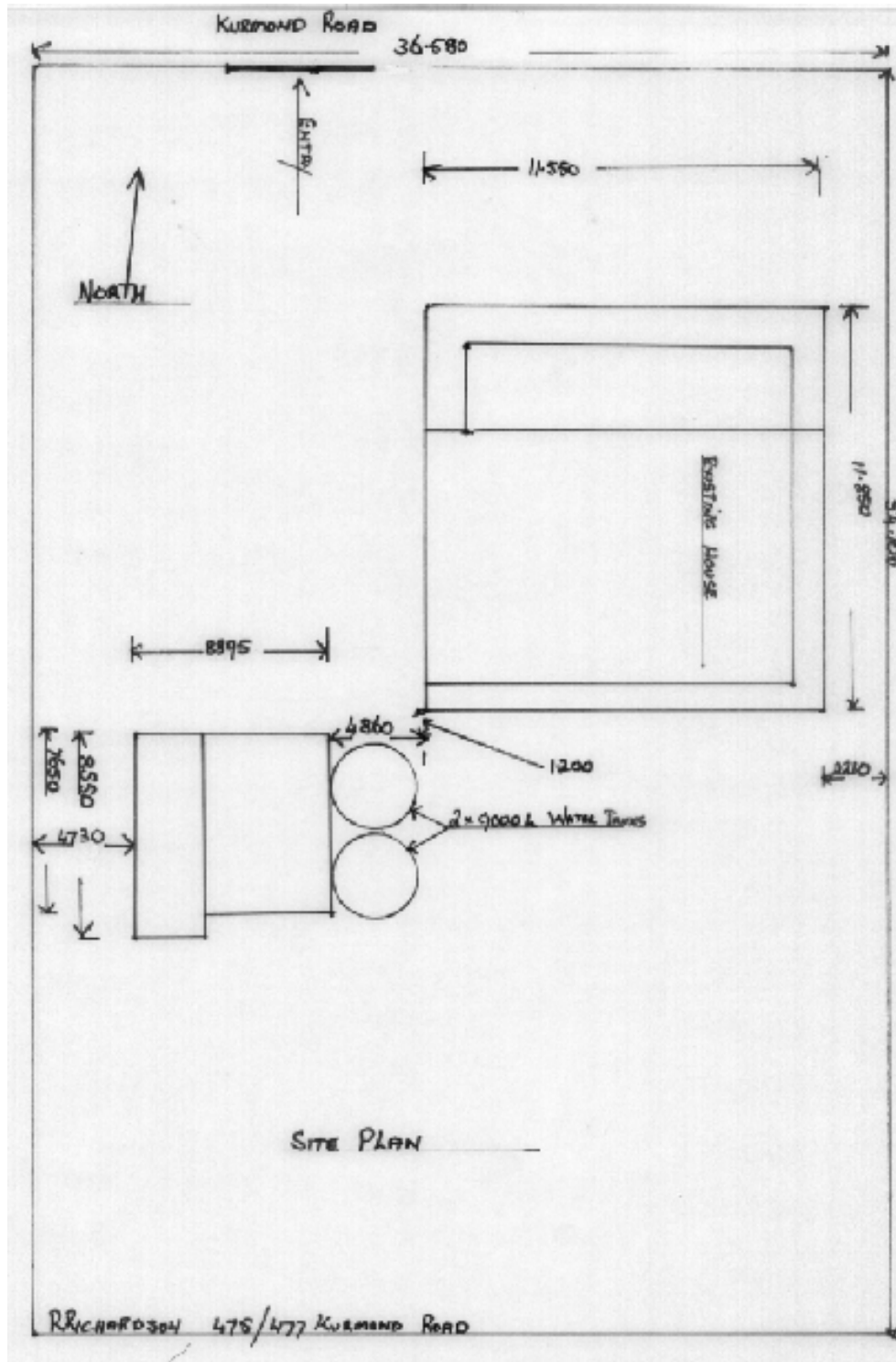
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At - 3 Site Plan



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At - 4 Photographs of the Shed Structure



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Item: 178 **CP - Shed Less Than 150sqm, Lot 1 DP 996881 Part Lot 25 DP 752032, 43 Triangle Lane, Richmond Lowlands NSW 2753 - (DA0258/02A, 95498, 76278)**

Development Information

Applicant: Streamline Building Systems (Aust) P/L
Owner: Bucephalus Enterprises Pty Ltd
Stat. Provisions: Environmental Planning and Assessment Act Pty Ltd
Hawkesbury Local Environmental Plan 1989
Hawkesbury Development Control Plan
Area: 5.464H
Zone: Environmental Protection - Agriculture Protection (Scenic) under Hawkesbury Local Environmental Plan 1989.
Advertising: No requirement to be notified
Date Received: 5 June 2007

Key Issues: ♦ Development Without Consent

Recommendation: Approval

REPORT:

Introduction

Approval is sought under Section 96 of the Environmental Planning and Assessment Act 1979 to modify Development Consent 0258/02. The modified works have been undertaken without approval.

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

Description of Proposal

The application relates to the approval of the use of an addition to an existing rural shed. The size of the existing shed is 130 square metres. The addition is 30 square metres in area and consists of a store room and a covered verandah area. The use of this part of the shed is consistent with the use of the remainder of the shed for storage of equipment used in association with the use of the land - being agriculture and horse keeping.

Background

25 February 2002 Development Application received in respect of a proposed shed - DA0258/02.
6 September 2002 Inspection carried out on premises for reinforced concrete slab of shed.
5 June 2007 Section 96 Modification Application lodged with Council.

The works were undertaken around December 2003. The owner advises that the existing shed suffered substantial damage in a storm event and the builders were engaged to rectify the damage. The builder had over-ordered materials and offered to construct the addition for a small price.

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 149A 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 149A 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 from the date of issue.

PLANNING ASSESSMENT OF SECTION 96

The modifications are considered to be substantially the same development approved by the Development Consent. The increase in floor area of thirty (30) square metres is not considered to be significant and has a minor impact.

Matters for consideration under Section 79(c) of the Environmental Planning and Assessment Act 1979

The relevant matters for consideration under Section 79C of the Environmental Planning and Assessment Act, 1979, are addressed as follows:

- a) **the provisions of:**
 - i) **any environmental planning instrument (i.e LEPs, REPs & SEPPs)**

The environmental planning instruments which apply to the subject land are:

- Sydney Regional Environmental Planning Policy (SREP) 20
- Hawkesbury Local Environmental Plan 1989 (HLEP)

It is considered that the proposal is consistent with the aims and objectives of the Planning Instruments.

Relevant clauses from HLEP 1989:

Clause 24 - Development in certain environmental and other zones

The proposal is consistent with this clause as development consent for the work, is now being sought from Council. The addition to the shed is of low scale and the scenic quality of the area is preserved.

Clause 25 - Development of flood liable land

The proposal is consistent with the provisions of this clause as the development is considered to be non-habitable and is an addition to an existing rural shed structure.

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Clause 37A - Development of land identified on Acid Sulphate Soils Planning Map

The development is located within close proximity to Class 4 land for the purposes of this clause. However, the proposal is not considered to impact upon the watertable or acid-sulphate soils and in this regard, the proposal is considered to be consistent with the provisions and intent of this clause.

ii) 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

Apart from the draft LEP to convert the Hawkesbury LEP 1989 to the Standard Template, there are no draft environmental planning instruments that relate to the land or affect the proposal.

iii) any development control plan applying to the land

Hawkesbury Development Control Plan 2002 applies to the land. An assessment of the proposal against the Development Control Plan follows.

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 not required to be notified to adjoining property owners and occupiers in accordance with the requirements of Hawkesbury Development Control Plan 2002.

Rural Sheds

The aim of this Chapter is to enable the erection of sheds on rural properties in a manner that compliments the rural character of the landscape and has minimal impact on the scenic qualities of an area and to provide design principles for the construction of these buildings.

It is noted that Amendment No. 108 to Hawkesbury Local Environmental Plan 1989 was gazetted since the adoption of Hawkesbury Development Control Plan 2002 that had the effect of changing a number of zone names amongst other changes. Accordingly, the land currently zoned Environmental Protection - Agriculture Protection (Scenic) was previously zoned Environmental Protection (Scenic) 7(d1). As such the application has been considered on the provisions relating to this zoning in the Development Control Plan.

The following is an assessment of the proposal against these design principles:

Design Principles	The Proposal	Compliance
Siting		
Sheds shall be located no closer to the road than the existing dwelling house on the property.	There is no dwelling located on this property. The shed is setback approximately 347 metres from Triangle Lane and 200 metres from Ridges Lane.	YES.

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Design Principles	The Proposal	Compliance
Cut and fill shall be limited to 2m of cut and 900mm of fill	No alterations to ground levels.	YES
Sheds are not to be erected on land which has a slope in excess of 10%	The land is generally flat	YES
The erection of rural sheds should involve minimal disturbance to native vegetation.	No vegetation was required to be removed.	YES
Size		
In Environmental Protection zones the applicant will need to justify the size of any shed exceeding 170m ² in terms of the use of the shed and the land, as well as measures taken to minimise the impact on neighbours and the general area.	The structure is associated with the use of the land.	YES
Height		
In other zones, the total height of rural shed exceeding 5 metres shall be justified in terms of the use of the shed and the visual impact of the development.	The maximum height of the proposal is 3 metres.	YES
The total height of "barn style" sheds may exceed 5m based on individual merit.	Barn style shed existing	YES
Form		
Rural sheds with standard roof form will be limited to rectangular shapes.	Rectangular shape proposed	YES
Sheds of other roof forms, for example barn style, will be encouraged.	Skillion roof over proposal to match in with barn style roof.	YES
Colour		
The colour of a rural shed will match or blend in with those of existing buildings.	There are no other sheds in the vicinity of the subject shed. The colour of the shed is cream.	YES
On vacant land the colour for rural sheds shall be taken from the natural environment.	Existing shed	N/A

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Design Principles	The Proposal	Compliance
Type of Building Materials		
Building materials used in the construction of rural sheds are to be new, prepainted and non-reflective	The materials used are new.	YES
The use of corrugated iron will be considered subject to size, height, design and location of the rural shed.	N/A	N/A
Any part of a building below the 1-in-100 year flood level is to be constructed of flood compatible material.	The shed is constructed of steel posts and metal cladding. It is considered to be flood compatible materials.	YES
Landscaping		
Plantings are to be a mix of trees, shrubs and ground cover.	Landscaping has been provided.	YES
Trees shall include species that at maturity have a height above the ridgeline of the shed.	Maximum suggested height of proposed landscaping is approx. 3 metres.	YES
Shrub mass shall provide adequate screening.	The proposed plants would provide sufficient screening	YES
Plants endemic to the area are to be chosen.	Proposed plants are considered suitable.	YES

iv) any matters prescribed by the regulations

There are no matters discernable that are prescribed by the regulations that apply to the development.

b) the likely impacts the development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality

The proposal is located in a rural landscape and the addition to the shed does not detract from the context and setting of the existing shed, the landscape or the rural character of the area. There is no increased impact in terms of access, traffic or transport. There are no heritage listed items in the vicinity of the proposal and there is no likely adverse impact upon water or soils resources.

The likely impacts of the development are considered to be minor and would not result in any demonstrable impact upon the natural or built environment.

c) the suitability of the site for the development

The site is suitable for the development.

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d) any submissions made in accordance with the EPA Act or Regulations

The application was not required to be notified under Hawkesbury Development Control Plan. No submissions were received.

e) the public interest

The proposal is not against the public interest.

Conclusion

In view of the above matters for consideration and given the location of the structure and the relatively low impact of the structure, the development is considered worthy of Council support.

Conformance to Strategic Plan

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

"Objective: A prosperous community sustained by a diverse local economy that encourages innovation and enterprise to attract people to live, work and invest in the city", and

"Sustainable and liveable communities that respect, preserve and manage the heritage, cultural and natural assets of the City".

Funding

No impact on budget.

RECOMMENDATION:

That Council approve Modification Application No. 0258/02A for a rural shed subject to the following additional conditions to be imposed upon the development consent:

1. *Condition 4a.* A Section 149A Building Certificate Application is to be lodged with Council for the structure.
2. *Condition 4b.* A structural engineer shall inspect, certify and provide a certificate, which is to be submitted to Hawkesbury City Council certifying that the structure is capable of withstanding the loads likely to be imposed upon it, including wind loadings.
3. *Condition 11.* No internal or external alterations shall be carried out without prior approval of Council.
4. *Condition 12.* The development shall be limited to the area shown on the submitted plans.
5. *Condition 13.* The subject development, including landscaping, is to be maintained in a clean and tidy manner.
6. *Condition 14.* The shed shall not be occupied for human habitation/residential, industrial or commercial purposes.

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ATTACHMENTS:

AT - 1 Locality Plan

AT - 2 Site Plan

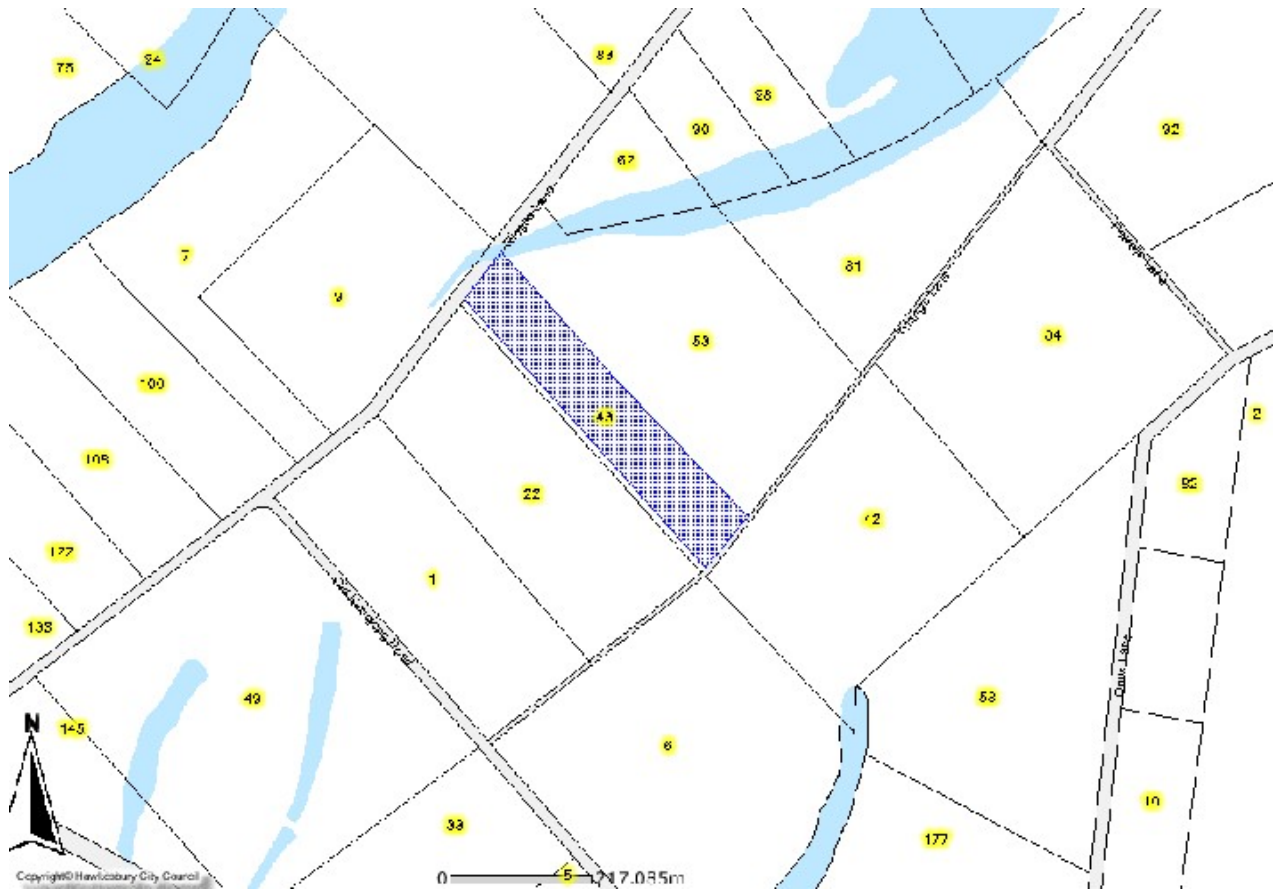
AT - 3 Elevation

AT - 4 Floor Plan

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Meeting Date: 11 September 2007

AT - 1 Locality Plan



Meeting Date: 11 September 2007

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Meeting Date: 11 September 2007

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ORDINARY MEETING

Meeting Date: 11 September 2007

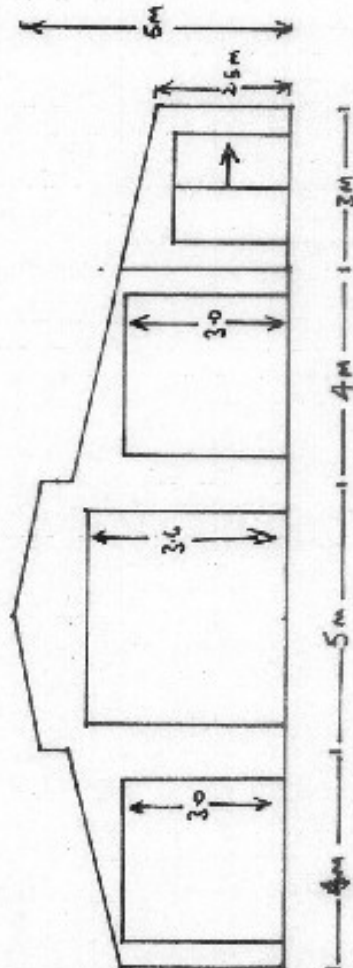
A3 TRAMMELLE LN
RICHMOND LOWLANDS

MODIFICATION TO APPROVAL
SHED.

ADDITIONAL AWNING TO
RIGHT SIDE OF SHED.

DA NO 0258/02

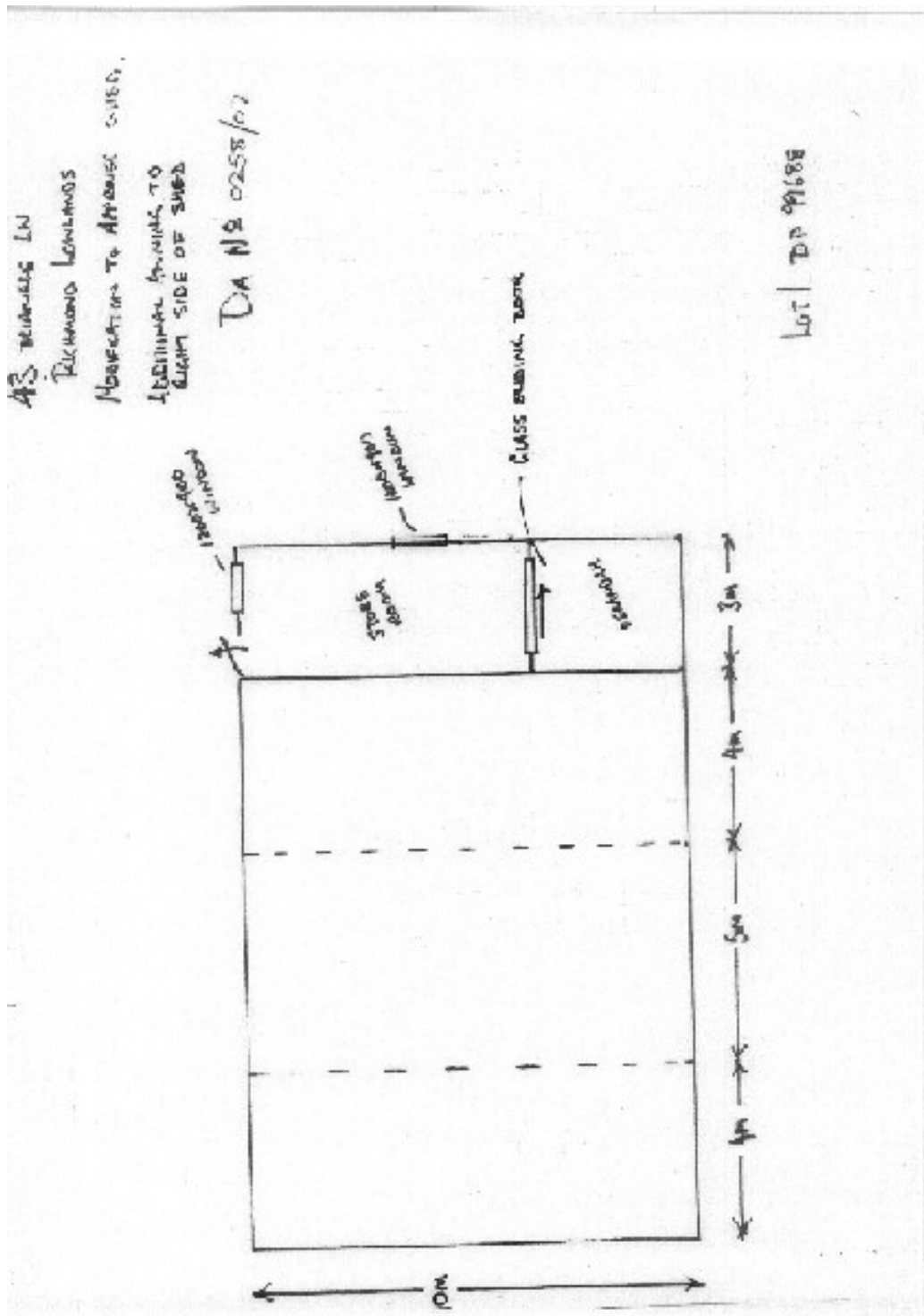
LOT 1 DP 996881



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AT - 4 Floor Plan



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ORDINARY MEETING

Meeting Date: 11 September 2007

SUPPORT SERVICES

Item: 180 SS - Exemption from Rating - 14A Moray Street, Richmond - (93125, 95496)

REPORT:

An application has been received from Father John Hogan of St Monica's Richmond on behalf of the Trustees of the Roman Catholic Church for the Diocese of Parramatta requesting exemption from rating for the property at 14A Moray St, Richmond (Lot 1 DP 507956), Property Number 6375.

The property is used for the purposes of the priest's residence.

Application for rate exemption is made in accordance with Section 555 of the Local Government Act, 1993 which provides as follows:

"S.555 (1) The following land is exempt from all rates:

(e) land that belongs to a religious body and is occupied and used in connection with:

(ii) a building used or occupied solely as the residence of a minister of religion in connection with any such church or building;"

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

The rates for 2007/2008 total \$1,239.16 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 Roman Catholic Church for the Diocese of Parramatta be granted exemption from rating from 1 July 2007 for the property known as 14A Moray St, Richmond.
2. An amount of \$1,239.16 be written off in respect of rates for the period 1 July 2007 to 30 June 2008.

ATTACHMENTS:

AT - 1 Letter from Fr John Hogan dated 24 July 2007.

ORDINARY MEETING

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At - 1 Letter from Fr John Hogan dated 24 July 2007

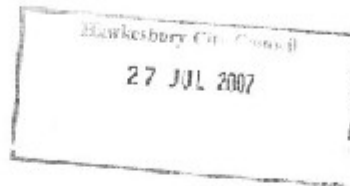
The Parish of Richmond

St Monica's Richmond
St Gregory's Kurrajong

To Bourke Street
RICHMOND NSW 2753
Phone: 02 4578 1410
Fax: 02 4588 6091
Email: admin@stmonica.com.au

24 July 2007

Rates & Property Department
Hawkesbury City Council
PO Box 145
WINDSOR NSW 2756



To the Manager

Application for exemption from 2006/2007 Council Rates
14A Moray Street Richmond- Customer ref 43754.

I request an exemption from 2007/2008 Council Rates for the above property. Accordingly I advise the following information in relation to our application for exemption made under Section 132 of the Local Government Act.

Units 1 and 2 of 14A Moray Street - Presbytery (Priest's Residence).

As at 12 December 2005 this building is occupied 100.00% by The Parish of Richmond.

Should you require any further information, please do not hesitate to contact this office.

Yours faithfully

A handwritten signature in cursive script, appearing to read 'John Hogan'.

Fr John Hogan
Parish Priest

RECEIVED

oooO END OF REPORT Oooo

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Item: 182 SS - Proposal to Establish Additional Alcohol Free Zones, Kurmond Village Shopping Centre - (13708, 74637, 14592, 95496)

REPORT:

Council has received an Application for an Alcohol Free Zone in the vicinity of Kurmond Village Shopping Centre, from Christopher M Edwards Solicitors on behalf of their client Ms Sharon Hoffman.

Ms Hoffman intends to open a bottle shop/liquor store within the Kurmond Village Shopping Centre at Shop 1, 519 Bells Line of Road, Kurmond.

Currently, there are no established Alcohol Free Zones in Kurmond and, accordingly, it is requested by Christopher M Edwards Solicitors on behalf of Ms Hoffman that Council give consideration to the proposed establishment of an Alcohol Free Zone in the following nominated area;

- The carpark and service roads of Kurmond Village Shopping Centre at 519 - 521 Bells Line of Road, Kurmond.

This nominated area is shown in the plan attached as *Attachment 1* to this report.

The reason for the proposed establishment of an Alcohol Free Zone in the abovementioned area is to reduce the incidence of possible anti-social and/or irresponsible behaviour, including but not limited to:

1. Littering;
2. Vandalism/Graffiti; and
3. Noise Pollution.

If approved, the proposed Alcohol Free Zone would be established in line with Council's resolution dated 30 January 2007 for the re-establishment of Alcohol Free Zones in the Hawkesbury Local Government Area, for the period from the present date until 31 December 2009.

In accordance with the Ministerial Guidelines on Alcohol Free Zones, a verbal consultation has been conducted with Mr Barlow, Licensing Co-ordinator of Windsor Police Station. Mr Barlow has verbally advised that the proposed establishment of an Alcohol Free Zone in an area located adjacent to outlets supplying alcohol, where drinkers may congregate, is strongly supported.

Accordingly Windsor Local Area Command raise no objections and support Council in considering the proposal for the establishment of an Alcohol Free Zone in the nominated area.

If this proposal is accepted, Council officers will undertake the necessary advertising and consultation in accordance with the Ministerial Guidelines on Alcohol Free Zones. Upon expiration of the consultation period regarding the proposal, the matter will again be reported to Council.

Conformance to Strategic Plan

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

"Objective: Working in partnership with community and government to implement community plans to meet the social, health, safety, leisure and cultural need of the city."

"Objective: Respond to crime and public safety issues."

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Funding

This proposal, if approved, will require advertising by way of a public notice in the local newspaper. The cost of which would be funded from Component 22 of the 2007/2008 Budget.

RECOMMENDATION:

That:

1. In accordance with the provisions of the Local Government Act, 1993, it is proposed that consumption of alcohol in the carpark and service roads of Kurmond Village Shopping Centre at 519 - 521 Bells Line of Road, Kurmond, be prohibited for the period from the present until the 31 December 2009, by the proposed establishment of this additional Alcohol Free Zones in the Hawkesbury Local Government Area.
2. Consultation with interested parties be undertaken regarding the proposed establishment of the Alcohol Free Zone in accordance with Ministerial Guidelines on Alcohol Free Zones.
3. Public notification (an advertisement in the Hawkesbury Independent) be undertaken for the proposed establishment of the Alcohol Free Zone in accordance with Ministerial Guidelines on Alcohol Free Zones.
4. Details of Council's resolution be conveyed to the applicant's representatives, Christopher M Edwards Solicitors.
5. Upon completion of the public consultation period, the matter be reported to Council for further consideration.

ATTACHMENTS:

AT - 1 Plan Showing the Nominated Area of the Proposed Alcohol Free Zone

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AT - 1 Plan Showing the Nominated Area of the Proposed Alcohol Free Zone

Proposed Alcohol Free Zone -
Kurmond Shopping Village
519-521 Bells Line of Road, Kurmond



oooO END OF REPORT Oooo



ordinary
meeting

end of
business
paper

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