

**DA 07-326 ANIMAL ESTABLISHMENT - DOG KENNELS AT LOT 6
DP 526085, 354 ABERGLASSLYN ROAD, ABERGLASSLYN
RECOMMENDATION: APPROVAL**

File No: 07-326
Attachments: Locality Plan
Development Plans
Submissions
Responsible Officer: David Simm
Manager - Development & Environment
Author: Rebecca Moroney
Senior Town Planner
Applicant: Jeffrey Hunter Walton
Proposal: Animal Establishment
Location: Aberglasslyn
Zone: 1(b) Secondary Rural Land

EXECUTIVE SUMMARY

Development consent is sought from Council for an Animal Establishment consisting of Dog Kennels at 354 Aberglasslyn Road, Aberglasslyn. The subject land is zoned 1(b) Secondary Rural under the provisions of the Maitland Local Environmental Plan, 1993.

The application entails the conversion of an existing colourbond shed into dog kennels. The subject property has an existing approval for dog kennels, which allows for the keeping of up to twelve (12) greyhounds on the land. This application is not seeking approval for any additional dogs, but rather a change to the location and management of the existing approved activity.

Animal establishment is a permissible form of development in the 1(b) Secondary Rural Land Zone with Council consent.

The proposed development was advertised in accordance with Council policy for a period of 14 days. Two (2) submissions were received during the notification period. These submissions relate mainly to concerns with noise. The applicant has provided an acoustic assessment that satisfactorily addresses the concerns raised.

It is considered that the proposed development is suitable in the locality and will not significantly detract from the existing amenity.

OFFICER'S RECOMMENDATION

THAT:

DA 07-326 Dog Kennels Lot 6 DP 526085, 354 Aberglasslyn Road, Aberglasslyn (Cont)

DA 07-326 for an Animal establishment consisting of Dog Kennels on Lot 6, DP 526085, 354 Aberglasslyn Road, Aberglasslyn be approved, subject to the conditions of consent set out in the attached schedule.

INTRODUCTION

Council is in receipt of a development application that is seeking to convert an existing machinery shed to kennels for the purpose of accommodating up to twelve (12) greyhounds.

BACKGROUND

On 16 March 2000, Council approved an "Animal Establishment" for the purpose of "Breeding Kennels for Basset Hounds" (DA99-1175). The subject land was subsequently sold, with the new owner using the kennels for the purpose of accommodating Greyhounds. Following several complaints and investigation from Council officers, the applicant amended the original development application with a s96 application to allow for the keeping of greyhounds as opposed to Basset Hounds. As such, the subject land is currently used as an approved "animal establishment" that allows for the keeping of up to twelve (12) Greyhounds (LD 99-1175).

Council approved a machinery shed on the subject premises in November 2004 (DA 04-4094). Some concern was raised during the assessment of this application with respect to the possibility of the shed being used for more dog kennels. In response to these concerns, a condition of consent for this approval specified that the subject shed was not to be used for "housing animals or any other purpose other than indicated on the approved statement of environmental effects".

Subsequent complaints were received by Council alleging that the subject shed was being used for the housing of Greyhounds. Council Officers investigated these complaints and advised the applicant to formalise the use of the machinery shed for kennels through the development application process.

PROPOSAL

It is proposed to convert the existing Colorbond shed into kennels to house no more than twelve (12) greyhounds on the subject site. The internal surface of the existing shed is to be treated in accordance with the recommendations of the acoustic report. The nine proposed dog kennels located inside the existing shed will have dimensions of approximately 9.5m x 7.0m with a maximum eave height line of 3.6m. The kennels will sit upon a concrete surface and be constructed of steel mesh. The internal surface of the shed is to be lined with materials recommended in the acoustic report submitted with the application.

PLANNING ASSESSMENT

The proposal has been assessed under the relevant matters for consideration detailed in Section 79C(1) of the Environmental Planning and Assessment Act, 1979 as follows:

DA 07-326 Dog Kennels Lot 6 DP 526085, 354 Aberglasslyn Road, Aberglasslyn (Cont)

Section 79C(1)(a)(i) provisions of any environmental planning instrument

Local Environmental Plan

The subject land is zoned 1(b) Secondary Rural Land under Maitland Local Environmental Plan 1993. The proposed development is defined under the LEP as "Animal establishment" which is a permissible land use in the 1(b) zone with Council consent. The proposal is considered to be consistent with the zone objectives, which are primarily to provide for agricultural uses and animal establishments.

Regional Environmental Plan

Not relevant.

State Environmental Planning Policies

Not Relevant.

Section 79C(1)(a)(ii) any draft environmental planning instrument that is or has been placed on public exhibition

Not Relevant.

Section 79C(1)(a)(iii) any development control plan

Not relevant.

Section 79C(1)(a)(iv) the regulations (to the extent that they prescribe matters for the purposes of this paragraph)

Not relevant.

Section 79C(1)(b) the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality

An assessment of the impacts of the proposed development has been undertaken. It is considered that the proposed conversion of the existing machinery shed to kennels for the purpose of housing the approved Greyhounds on the subject site will not result in a significant impact on either the built or natural environment. The subject shed exists on the property, with no changes to the exterior of the shed proposed.

An acoustic assessment has determined that the proposal will reduce noise impact currently associated with the current use as it will provide a higher standard of accommodation for the existing dogs, with greater sound attenuation properties than the current kennels and will relocate the dogs to an area more remote from surrounding dwellings.

Section 79C(1)(c) the suitability of the site for the development

The subject site is zoned 1(b) Secondary Rural. Adjacent land uses are semi-rural in nature, containing rural buildings and ancillary structures consisting of machinery sheds and other outbuildings. Land uses in the locality are typically rural and include other approved kennels.

DA 07-326 Dog Kennels Lot 6 DP 526085, 354 Aberglasslyn Road, Aberglasslyn (Cont)

Section 79C(1)(d) any submissions made in accordance with this act or the regulations

Public Submissions

The development application and accompanying information were placed on public exhibition for a period of 14 days from 1 March 2007 to 15 March 2007. As a result of the notification process, a total of two (2) submissions were received and are provided as Attachment A to this report.

The main issues raised by the objectors are summarised below and comment provided:

1. *"Noise – neighbours have been subjected to continual barking from dogs kept on the subject site. The noise from the dogs interferes with the residential amenity of the area. Housing the dogs in a large metal shed is likely to increase the noise due to echo."*

Planner's Comment

An acoustic assessment was prepared by a suitably qualified person addressing noise impacts associated with the proposal. It was determined that the conversion of the existing shed to kennels (using materials identified) and the relocation of the animals currently housed on site to the shed would result in a reduction of noise emitted from the site. This is due to the location of the shed (being more remote from adjoining dwellings) and the materials used in its fit-out. It is proposed to impose conditions regarding the use of the kennels that require the dogs to be kept in the kennels between the hours of 6pm to 7am.

2. *"The subject shed was not to be used for the housing of animals (DA 04-4094). Any changed of use from machinery shed to kennels will be inconsistent with the approved Statement of Environmental Effects (DA 04-4094)."*

Planner's Comment

The purpose of this Development Application is to seek a "Change of Use" to allow the subject machinery shed to be converted for the use as kennels. The Environmental Planning and Assessment Act, 1979 allows a change of use application to be made.

3. *"The shed will experience high temperatures and as such will not be very healthy or hygienic for any animal housed in the shed. Furthermore, there will be impacts from the bright lights, activity and noise associated with feeding etc late in the evenings. What controls are in place for the cleanliness and hygiene of the kennel building and surrounds including faeces, waste and wastewater disposal, food storage and preparation and vermin control?"*

Planner's Comment

The shed will be ventilated and double insulated to alleviate the effects of temperature. All activities associated with feeding shall be completed by 6pm, when the dogs will be locked in the kennels. The kennels will be cleaned twice

DA 07-326 Dog Kennels Lot 6 DP 526085, 354 Aberglasslyn Road, Aberglasslyn (Cont)

daily, with all faeces removed. Food is to be kept in sealed containers in order to deter vermin.

4. *"Will there be any landscaping used to screen the building and improve noise and visual barriers?"*

Planner's Comment

The applicant is a participant in Council's TREES Program and has been provided with 30 *Callistemon salignus* and 30 *Casuarina glauca* trees. The subject shed was not required to be landscaped in the original assessment (DA 04-4094) as it was considered that the appearance of the shed was not inconsistent with the rural qualities of the area. The change of use proposed for the shed does not alter its context within the rural landscape. Any further landscaping on the subject site would have no impact on the acoustic quality of the locality.

5. *"The applicant has approval for twelve dogs and is now seeking approval for a further nine kennels."*

Planner's Comment

The application is not seeking approval for any additional dogs to be housed on the site (ie. 12 dogs maximum). The existing kennels are to be used for the isolation of sick dogs etc.

6. *"Greyhounds are large, fast and trained to chase. What guarantee would be given that should they escape, our children and animals will not be harmed?"*

Planner's Comment

Greyhounds are not declared "Restricted Dog" under the provisions of the Companion Animals Act 1998 and none of the dogs housed at the subject premises have been declared "dangerous". Section 15 of the Companion Animals Act requires greyhounds to be muzzled except when the dog is:

- (a) *"in or on any property or vehicle of which the owner of the dog is an occupier or where the dog is ordinarily kept."*

The applicant has provided suitable enclosures to secure the greyhounds. It is considered unreasonable to require any further pre-emptive action from the applicant. There is appropriate recourse in the Companion Animals Act 1998 should the applicant fail to prevent the greyhounds from biting any person or animal.

Submissions from public authorities

Not relevant.

Section 79C(1)(e) the public interest

It is considered that the proposed change of use will provide better accommodation for the dogs whilst reducing existing impacts (eg: noise).

DA 07-326 Dog Kennels Lot 6 DP 526085, 354 Aberglasslyn Road, Aberglasslyn (Cont)

FINANCIAL IMPLICATIONS

This matter has no direct financial impact upon Council's adopted budget or forward estimates.

POLICY IMPLICATIONS

This matter has no specific policy implications for Council.

STATUTORY IMPLICATIONS

Statutory implications relating to assessment of the subject application have been addressed in the body of this report.

CONCLUSION

An assessment of the application has been carried out under Section 79C(1) of the Environmental Planning and Assessment Act, 1979 as amended. The proposed development is considered satisfactory in terms of the relevant matters for consideration under the Act and the development application is recommended for approval.

SCHEDULE OF CONDITIONS**Schedule of Conditions DA 07-326****COMPLIANCE****Reason for Conditions**

The following condition(s) have been applied to confirm and clarify the terms of Council's Approval.

- 1 The applicant shall comply with all conditions within this schedule prior to occupancy of the proposed development.
- 2 The proposed development is to be carried out strictly in accordance with the plans and documentation submitted with the application and any amendments to those plans arising through conditions to this consent.

AMENITY

- 3 There is to be no interference with the residential amenity of the area by reason of the emission of any noise, odour or otherwise.
- 4 All doors and windows must be closed at night (10pm – 6am).
- 5 The east roller door may be left open during the day/early evening, i.e up till 8pm.
- 6 Roof construction shall consist of colorbond roof sheeting with an internal layer of 1 x 10mm plasterboard or 13mm weatherboard. To further assist in low frequency attenuation, all ceiling voids shall contain a layer of fibreglass or rockwool insulation. All gaps between purlins and roof sheeting shall be closed off with Unisil Eaves Filler Strips, bituminous compound, or similar.
- 7 Wall construction is to consist of colorbond wall sheeting with an internal layer of 1 layer 10mm plasterboard or 6mm FC sheeting (Villaboard, Hardiflex) and a cavity infill R2/S2 fibreglass or polyester insulation.
- 8 The existing aluminium window on the north façade is to have a secondary sheet of 6mm glass fixed to the internal frame to create a double glazed window system (i.e 4mm clear float glass x 20mm airspace x 6mm clear float glass). Note that panes must be different thickness to avoid coupled resonance.
- 9 The access door on the west façade is currently sheeted with steel sheet. Apply 1 sheet 6mm FC sheeting, 10mm construction plywood, 10mm plasterboard, or similar, to inside frame of door.
- 10 A loaded vinyl curtain such as 4kg Wavebar must be suspended against the inside surface of the western roller door. The Wavebar may be suspended from a track and moved to the side when required.

DA 07-326 Dog Kennels Lot 6 DP 526085, 354 Aberglasslyn Road, Aberglasslyn (Cont)

- 11** Care should be taken with any future ventilation openings for kennels, as these have the potential to substantially reduce the acoustic performance of the enclosure. Air can be drawn in under the doors leading from the kennels to the runs, although any vents that are located high on the walls or the roof must be designed to minimise noise leakage. Vents should be positioned to allow cross ventilation, although they should be positioned so other parts of the structure interrupt the line of sight between the source and the receiver. A total vent area up to 0.5m² into a shielded area and up to 0.1m² direct to the exterior can be included without specific acoustic design.
- 12** Dogs are to remain in their enclosures between the hours of 6pm to 7am.
- 13** The kennels are to be cleaned twice daily and kept free of damp. Faeces are to be removed from the kennels twice daily and disposed of in an appropriate manner. All food stuffs are to be kept in sealed containers, elevated off the ground. Vermin is to be controlled appropriately.
- 14** The keeping of greyhounds on the subject property associated with the development shall be restricted to twelve (12) dogs only at any time.

Officers Reports

DA 07-326 ANIMAL ESTABLISHMENT - DOG KENNELS AT LOT 6 DP 526085, 354 ABERGLASSLYN ROAD, ABERGLASSLYN

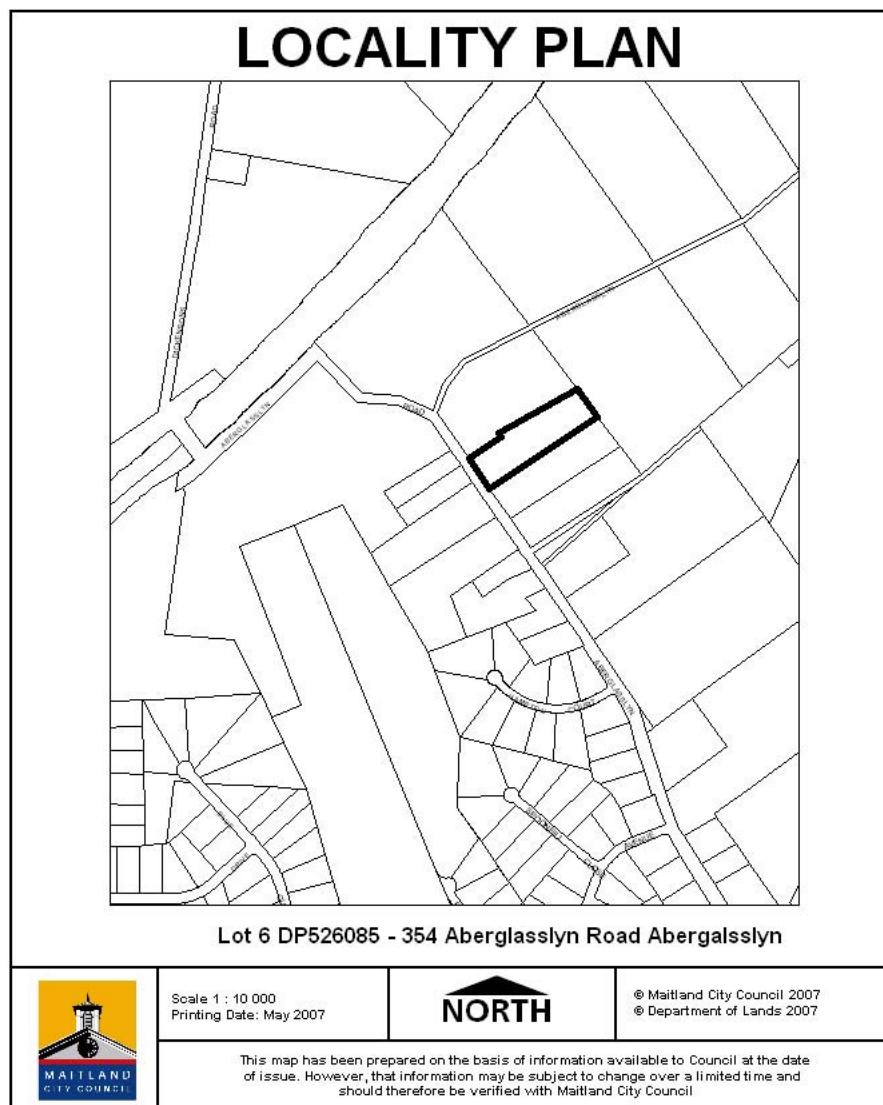
Locality Plan

Meeting Date: 12 June 2007

Attachment No : 1

Number of Pages : 1

DA 07-326 Dog Kennels Lot 6 DP 526085, 354 Aberglasslyn Road, Aberglasslyn (Cont)



Officers Reports

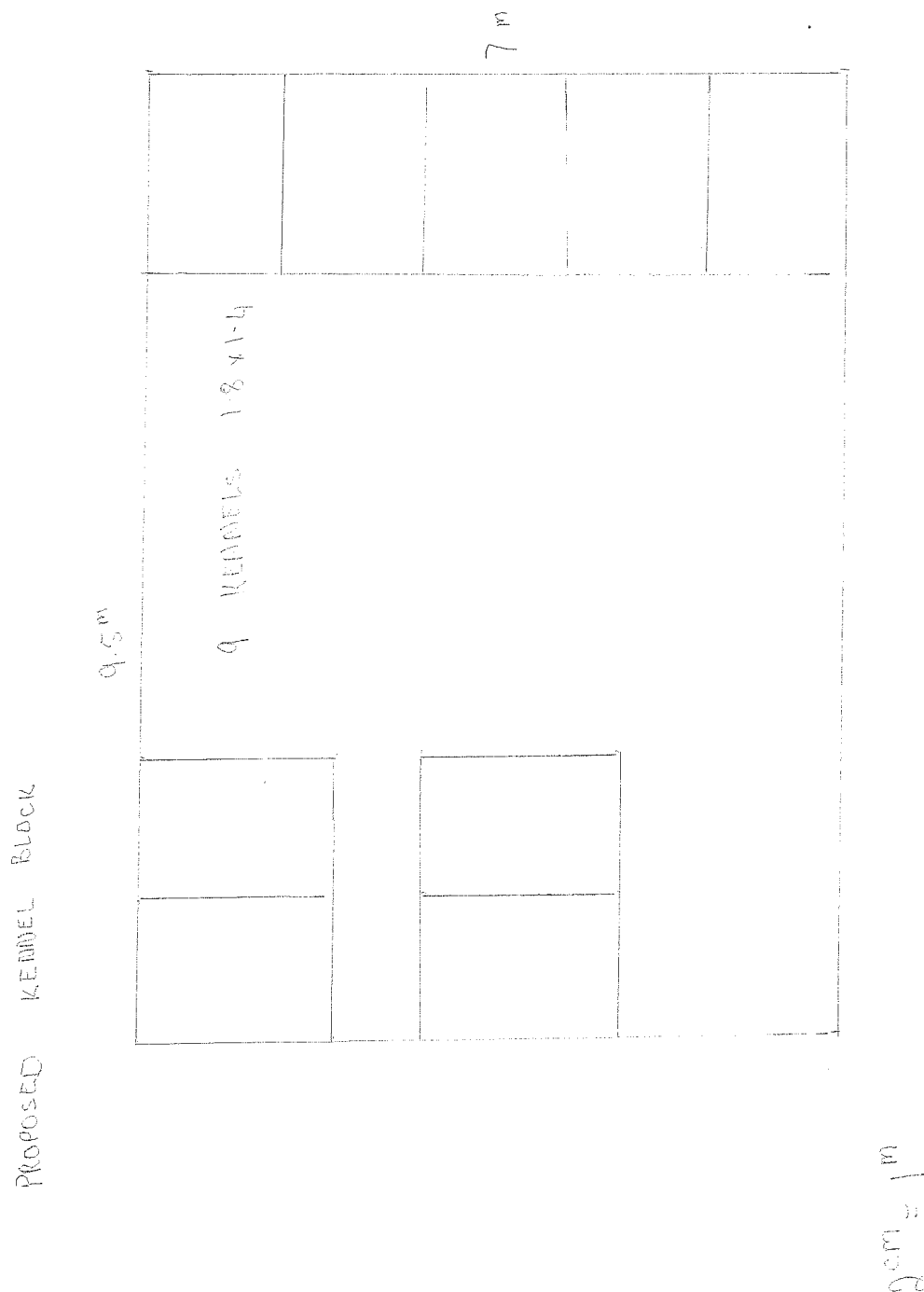
DA 07-326 ANIMAL ESTABLISHMENT - DOG KENNELS AT LOT 6 DP 526085, 354 ABERGLASSLYN ROAD, ABERGLASSLYN

Development Plans

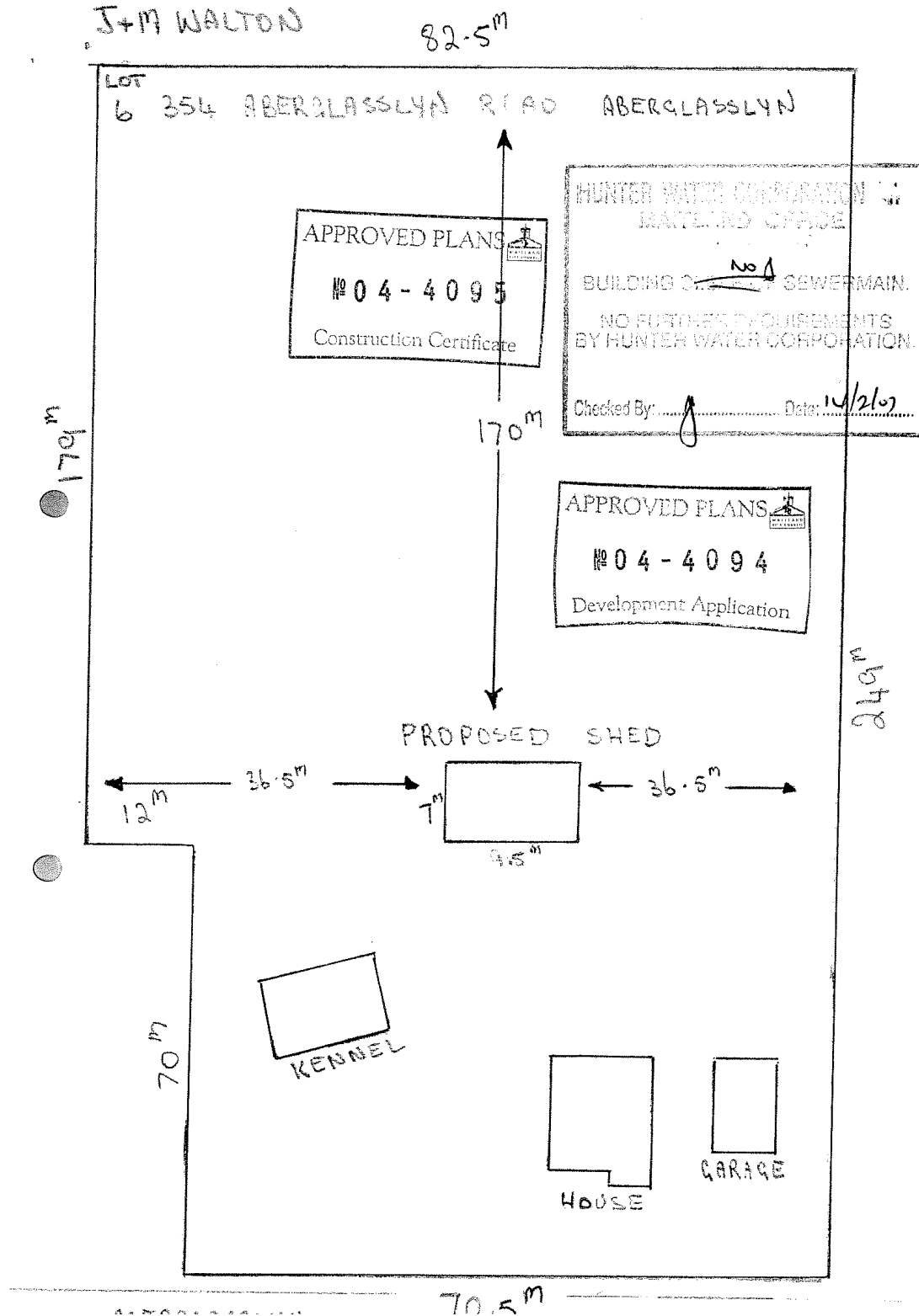
Meeting Date: 12 June 2007

Attachment No : 2

Number of Pages : 3



DA 07-326 Dog Kennels Lot 6 DP 526085, 354 Aberglasslyn Road, Aberglasslyn (Cont)



DA 07-326 Dog Kennels Lot 6 DP 526085, 354 Aberglasslyn Road, Aberglasslyn (Cont)

Building For:

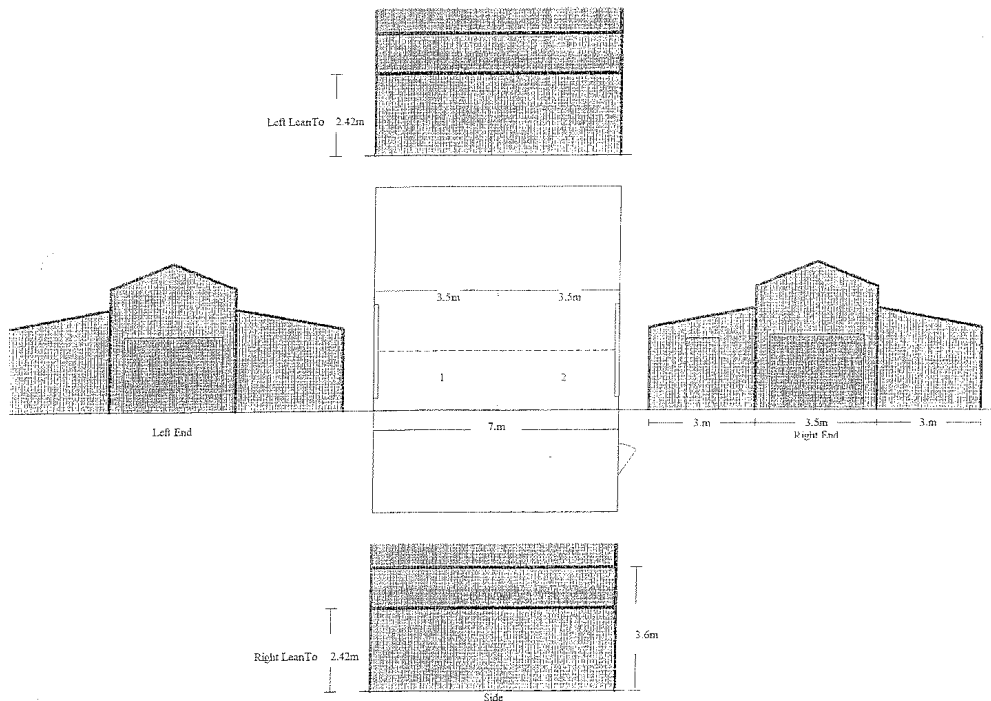
EFF WALTON

54 ABERGLASSYN RD MAITLAND

Produced by:

Inter Valley Garages & Sheds

Lic No 131538

176 OLD NORTH RD
HOCHINVAR 2321

Officers Reports

DA 07-326 ANIMAL ESTABLISHMENT - DOG KENNELS AT LOT 6 DP 526085, 354 ABERGLASSLYN ROAD, ABERGLASSLYN

Submissions

Meeting Date: 12 June 2007

Attachment No : 3

Number of Pages : 5

DA 07-326 Dog Kennels Lot 6 DP 526085, 354 Aberglasslyn Road, Aberglasslyn (Cont)

C:\CIVIL\councildoc.pdf

**PARKE MAHER
SOLICITORS****PARTNERS**David Parke
Terry Maher**CONSULTANT**

Daniel Smyth B.A.; L.L.B. Notary Public Acc Spec (Criminal Law)

26 Church Street, Maitland
P.O. Box 323, Maitland 2320
DX 21607 Maitland
Email: mail@parkemaher.com.au
Telephone (02) 4933 8155
(02) 4933 7366
Facsimile (02) 4933 6382

Our ref: TDM/MW:26 0093

Your ref: DA 07-326
Rebecca Moroney

ABN 64 458 895 342

14 March 2007

Customer Service & Support Officer
Service Planning & Regulation
Maitland City Council
DX 21613
MAITLAND

Dear Sir/Madam,

RE: D/A 07-326
Property: Lot 6 DP 526085
354 Aberglasslyn Road, Aberglasslyn

DOC No.	
15 MAR 2007	MCC
FILE No.	
REFER	

Our Clients: Tony and Jane Edser
352 Aberglasslyn Road, Aberglasslyn

We are instructed by Mr and Mrs Edser who have handed us your letter to them 23 February 2007 for response. As the current application for an "animal establishment" appears to be for consent to kennel greyhounds in a manner inconsistent with the current consents (LD 99-1175) as later modified by consent 17 December 2004 and DA 04-4094 and our clients therefore object principally on the following grounds:-

- History**
there is plenty of correspondence between council and our clients in relation to the continuous breaches in relation to the terms of the current consent. The circumstances that called for the imposition of the conditions of the current consent exist more so today than in 2000 and 2004. Council saw fit to limit the number of dogs to 12. The applicants appear to ignore this restriction and indeed other of the conditions.

There is no need to here list the conditions of the consent.

- Residential Amenity of the Area**
Noise from barking dogs will interfere with the residential amenity of the area. There is evidence before council of the incessant barking of the dogs.

Recently large tracts of land within about 500 metres of the site have been rezoned from Rural Land to Zone (a) Residential. This zoning affirms the appropriateness of councils previous decisions and the conditions imposed.

Liability limited by a Scheme approved under Professional Standards Legislation

KHJ:\260093\T003.DOC

DA 07-326 Dog Kennels Lot 6 DP 526085, 354 Aberglasslyn Road, Aberglasslyn (Cont)

C:\CIVIL\councildoc.pdf

3. The plan attached to councils letter of 23 February 2007 refers to a proposed "shed" whereas the shed is already constructed pursuant to the DA 04 -4094. Any change of use from machinery shed to kennels will be inconsistent with the approved Statement of Environmental Effects as is referred to in councils letter 17 November 2004 a copy of which is attached.

Yours faithfully,

PARKE MAHER SOLICITORS

Per

Terry Maher

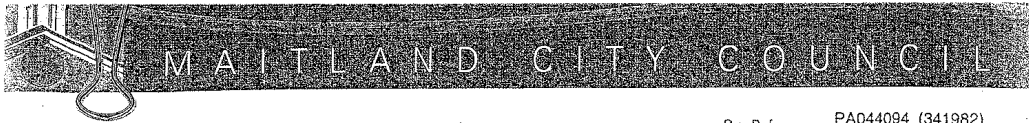
Encl.

Liability limited by a Scheme approved under Professional Standards Legislation

KHJ:\260093\T003.DOC

DA 07-326 Dog Kennels Lot 6 DP 526085, 354 Aberglasslyn Road, Aberglasslyn (Cont)

C:\CIVIL\councildoc.pdf



Our Ref. PA044094 (341982)

Your Ref.

Phone Enquiries: 4934 9700

17 November 2004

T & J Edser
352 Aberglasslyn Rd
Aberglasslyn 2320

Dear Sir/madam,

RE: DA 04-4094, Proposed shed, 354 Aberglasslyn Rd Aberglasslyn

In response to your letter dated 11th September 2004, and our recent phone conversation concerning the proposed development at 354 Aberglasslyn Rd, I wish to advise that the construction of the shed has duly been approved.

Your concerns have been noted, however it is considered that the proposed development is consistent with surrounding development, and that there is no justifiable reason to refuse the development.

Further to your concerns regarding the activities of the applicant and dogs on the property, the matter has been referred to Council's Ian Fletcher who should have been in touch with you by the time you receive this correspondence.

The approved shed has been conditioned so that the applicant is aware that no approval is granted for the shed to be used for any other purpose other than indicated on the approved Statement of Environmental Effects.

Should you have any further concerns in this matter, please contact the undersigned.

Yours faithfully

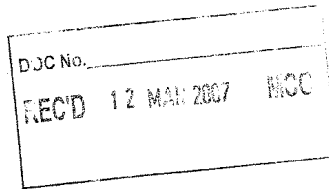
Ian Cunningham
District Health & Building Surveyor

49349862 direct no.

Ph: (02) 4934 9700 Fax: (02) 4933 3209 DX21613 Maitland Email: mcc@maitland.nsw.gov.au www.maitland.nsw.gov.au
All correspondence should be addressed to: General Manager P.O. Box 220 Maitland NSW 2320
Administration Building 285-287 High Street Maitland NSW 2320

DA 07-326 Dog Kennels Lot 6 DP 526085, 354 Aberglasslyn Road, Aberglasslyn (Cont)

C:\CIVIL\councildoc.pdf



A & L Hill

362 Aberglasslyn Rd,

Aberglasslyn.2320

5/3/07

Maitland City Council
PO Box 220
Maitland.2320

Attn Rebecca Moroney.

Re:- DA 07 - 326 Animal Establishment, Lot 6 DP 526085.
354 Aberglasslyn Rd, Aberglasslyn.

Dear Rebecca,

With reference to your correspondence above please be advised that we are vehemently opposed to this application.

We have grave concerns about the noise that will undoubtedly continue to emanate from this shed should dogs be allowed to be housed there. Speaking from experience where we have heard barking coming from the shed that sometimes continues throughout the day and well into the evening until we have sent an S.M.S to the owners(11pm not unusual) advising them of our concerns.

I first voiced our concerns to Tracey Sharp at MCC on the 18/11/04 after receiving a letter dated 10/11/04 Ref DA 99-1175. I was concerned then that the garage was going to be used as dog kennels and the barking will echo excessively in such a large metal shed, then your Ranger Dom McMahon sent a letter/questionnaire dated 7/7/05 regarding Barking dogs which we filled out and faxed back on the 20/7/05.

We are yet to hear or see any undertaking from the subject site to comply with "there being no interference with the residential amenity of the area by reason of the emission of any noise." Item 11. Notice of Determination Ref BS:991175 dated 17/3/2000.

As well as the noise we also have concerns with -high temperatures experienced in our area on such a large metal shed housing any animal cannot be very healthy or hygienic.(Possibly contributing to the barking)
-the bright lights, activity and noise associated with feeding etc.late in the evenings.

-will there be any landscaping used to screen the building and improve noise and visual barriers as most of the original landscaping from the original approved area has been removed!

-Currently they can keep 12 dogs of their own, will another building with 9 extra kennels mean even more dogs onsite?

-What controls are there for a;the cleanliness and hygiene of the kennel building and surrounds.

b;faeces, waste and

wastewater disposal.

c;food storage and preparation.
d;Vermin activity.

-As greyhounds are large, fast and trained to chase, what guarantee would we have that should they escape, our children and animals will not be harmed.

-There is already one Animal Establishment onsite. Are we now going to be subjected to two? If we aren't allowed to have two dwellings on one property surely we

DA 07-326 Dog Kennels Lot 6 DP 526085, 354 Aberglasslyn Road, Aberglasslyn (Cont)

C:\CIVIL\councildoc.pdf

C I R

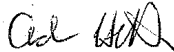
aren't expected to put up with two Animal Establishments on one property.

The original consent period lapsed on the 16/3/05, has it been extended, as we have not recieved any notification?

Should this application be approved, does it overrule the original Notice of Determination LD99-1175 and the later added Section 96 MOfication dated 10/11/04?. How would we know that the applicant is adhering to the required consent conditions throughout the consent period?
What would the duration of the consent period be?

Until satisfactory answers to address our concerns and questions have been supplied we shall continue to be opposed to this application.
Should you require further clarification please contact me on 49 327099 or 0408681122.

Your Faithfully,



Andrew Hill.