

RECOMMENDATION

**ITEM 2.3: RESOLUTION
VOTING REQUIREMENT: SIMPLE MAJORITY**

**MOVED: COUNCILLOR DUFTY
SECONDED: COUNCILLOR SUTTON**

- 1) **THAT Council resolves to ISSUE a Notice of Planning Scheme Consent for an over height and oversize outbuilding at 30 Silverstar Court, Millbrook subject to the following condition:**
- a) **No activity occurring at the Lot that may cause a detriment to the amenity of the area by reason of noise, smell, fumes or smoke.**

CARRIED 11-1

Record of Vote

Against the Motion: Councillor Bostock

BACKGROUND

1. On the 30 April 2012, the City received a notification (not complaint) letter from a 'Millbrook' resident. The letter stated the following:

It has come to my attention that a property...on Special Rural Development listing, may have put up a shed that greatly exceeds the allowable limit for that block...I wish to remain anonymous in this matter.
2. The City undertook a site visit, assessed its records and concluded that an outbuilding has been constructed at 30 Silverstar Court without approval.
3. The owner was advised of the infringement with the City's Town Planning Scheme and was given two options: either demolish the structure; or submit a retrospective application to clarify the following details:
 - Engineer certification to determine if the structure has been developed in accordance with engineering standards; and
 - Design details, including the height of the outbuilding and the total floor area of all outbuildings at the property to determine compliance with the City's Outbuilding Policy.
4. The owner was advised that: failure to address the non-compliance can result in a Planning infringement NOTICE being served on the property owner/occupier consisting of a \$500 penalty as prescribed under the Planning and Development Regulations 2009; and or Legal proceedings being commenced against the property owner/occupier of the land without further notice.
5. The owner has subsequently submitted a retrospective application with details to show the floor area, height and structure dimensions.

DISCUSSION

6. On assessment of the details submitted, the following has been concluded:
- The outbuilding is over the floor area and height permitted in the City's Outbuilding Policy (for an outbuilding on a 'Special Rural' property greater than 4ha); and
 - The outbuilding has been certified by an engineer and is therefore compliant with engineering regulations.

GOVERNMENT CONSULTATION

7. No government consultation was required.

PUBLIC CONSULTATION / ENGAGEMENT

8. The application was referred to adjoining landowners for comment. The following two comments were received:
- *as the immediate neighbours of the applicant we are more than happy to give our view on its construction. Boringly so, we feel that the decision for approval should be based solely on the safety of the structures construction. I am yet to have noticed its presence from the road or our house and despite even stopping to look am unaware of its location. We have no objection at all to the proposed structure.; and*
 - *no objections to the oversized outbuilding at 30 Silverstar Court, that you are dealing with. Yours sincerely Maria De Groot, 724 Hazzard Road, Millbrook.*

STATUTORY IMPLICATIONS

9. The subject site is 4.4ha in area and is zoned 'Special Rural' (No.3B) under Town Planning Scheme No. 3.
10. The City's Outbuilding Policy adopted under Clause 6.9.4 of Town Planning Scheme 3 states;
- a) A Town Planning Scheme Policy shall not bind the council in respect of an application for Planning Consent, however, it may require the Council to advertise its intention to relax the provisions of the policy once in a newspaper circulating in the district stating that submissions may be made to the Council within 21 days of the publication thereof.*
 - b) Council shall take into account the provisions of the policy and objectives which the policy was designed to achieve and any submission lodged, before making its decision."*

STRATEGIC IMPLICATIONS

11. This item relates to the following elements of the City of Albany Strategic Plan (2011/2021):
- Key Focus Area**
Organisational Performance
 - Community Priority**
Policy and Procedures
 - Proposed Strategies**
 - *Develop clear processes and policies and ensure consistent, transparent application across the organisation.*

POLICY IMPLICATIONS

12. The development exceeds the provisions detailed in Table 1 of the Outbuilding Policy:

TABLE 1: OUTBUILDING SPECIFICATIONS			
Zoning	Max. Wall Height	Max. Ridge Height	Max. Floor Area (combined floor area of all outbuildings on lot)
Special Rural Zone (Lots 4ha or greater)	4.2 metres	4.8 metres	240m ²

13. The total outbuilding floor area at the subject property amounts to 244m², which is 4m² over the City’s Outbuilding Policy maximum floor area limit (240m²) for outbuildings on Special Rural properties (Lots 4ha or greater). This constitutes a 1.66 percent variation to the Policy.
14. There are three outbuildings at the property, two of which have been approved. The two approved outbuildings are 16m² and 120m² in area, which amounts to a total of 136m². The unapproved outbuilding is 108m² (9x12m).
15. The height of the outbuilding to the top of the roof is 5.12m, which is 320mm over the maximum height limit (4.8m) set in the City’s Outbuilding Policy, which constitutes a 6.66 percent variation to the Policy. The wall height of the outbuilding is 4m, which is compliant with the maximum 4.2m wall height defined in Table 1 of the Outbuilding Policy.

RISK IDENTIFICATION & MITIGATION

16. The risk identification and categorisation relies on the City’s Risk Management Framework.

Risk	Likelihood	Consequence	Risk Analysis	Mitigation
<i>The applicant appeals to a State Administrative Tribunal if the proposal is refused.</i>	<i>Likely</i>	<i>Minor</i>	<i>Medium</i>	<i>If a decision is made to refuse the application, sound reasoning is required to provide solid defence at a State Administrative Tribunal and an infringement NOTICE may need to be issued.</i>

FINANCIAL IMPLICATIONS

17. There are no financial implications relating to this item.

LEGAL IMPLICATIONS

18. If Council refuses the application, reasons are to be given and staff may be required to defend those reasons at a State Administrative Tribunal.

ALTERNATE OPTIONS

19. The following options are available:
 1. Support the application with or without conditions;
 2. Refuse the application and require demolition.

20. If the proponent fails to comply with a decision that requires the outbuilding being demolished, the City will need to issue an infringement notice and/or undertake legal proceeding at a Magistrates Court.

SUMMARY CONCLUSION

21. Staff have recommended that the application is approved as it is not expected to impact on the amenity of the area:
 1. The development is majority screened from view by vegetation;
 2. The variations to the Outbuilding Policy for height and floor area are minimal;
 3. Neighbours have no objections to the development; and
 4. The development complies with engineering standards.

Consulted References	:	Council's Outbuilding's Policy Town Planning Scheme No. 3
File Number (Name of Ward)	:	A54837 (Kalgan Ward)
Previous Reference	:	Nil