



Location of shed indicated by foundation pad and corner pegs

2. SUMMARY

To assess and recommend determination of DA149/19. with recommendation for approval subject to conditions.

3. LOCATION OF THE PROPOSAL

Legal Description : Lot 1 DP 1183582
Property Address : 76 Glenrock Place HARTLEY NSW 2790



4. ZONING

The land is zoned R5 Large Lot Residential under the *Lithgow Local Environmental Plan 2014* (LEP). The objectives of the R5 zone are:

- *To provide residential housing in a rural setting while preserving, and minimising impacts on, environmentally sensitive locations and scenic quality.*
- *To ensure that large residential lots do not hinder the proper and orderly development of urban areas in the future.*
- *To ensure that development in the area does not unreasonably increase the demand for public services or public facilities.*
- *To minimise conflict between land uses within this zone and land uses within adjoining zones.*
- *To limit development to areas in reasonable proximity to the settled town centres of Lithgow, Wallerawang and Portland to strengthen settlement hierarchy.*

- *To maintain or improve the water quality of receiving water catchments.*

The proposal is generally consistent with these objectives and is largely consistent with the prevailing built form in the locality. The proposed shed/garage will have some immediate impacts on the scenic qualities of the locality. The shed will have external colours that will enable it to blend into the surrounding vegetation. It will not protrude above the dominant tree height in the area and will be screened by a row of pine trees along the site boundary. The proposal will not result in the loss of views from adjoining properties towards the dominant and iconic backdrop of the Blue Mountains escarpment.

5. PERMISSIBILITY

The proposed development comprises a detached shed/garage which will be used and occupied in association with the residential use of the land (subject to the erection of a future dwelling house on the site). The proposal is ancillary to the residential use of the land which is permissible with consent and is consistent with the zone objectives.

The shed is intended for domestic use only and the applicant has stated it is for the storage and security of personal items. If granted, any development consent would need to be conditioned to restrict the use of the shed to domestic/personal use only and that no authority is given for any commercial or industrial use.

5.1 POLICY IMPLICATIONS (OTHER THAN DCP's)

Policy 7.5 Notification of Development Applications

Due to the size of the proposed shed, adjoining landowners were notified of the application and given the opportunity to comment on the proposal. Two submissions were received in response and are discussed in further detail later in this assessment report.

Policy 7.7 Calling in of Development Applications by Councillors

This application was "called in" under this policy and Councillors were notified in the business paper for the Ordinary Meeting held on 28 October 2019. The assessment of this application is being reported to the 25 November 2019 Ordinary Meeting of the Council for determination.

At the 28 October 2019 Ordinary Meeting, Council resolved:

- 1. The calling in of Development Application DA 149/19 be noted.*
- 2. A site inspection be organised and a viewing be organised from the adjoining property and reported to the November meeting.*

The site was inspected by Councillors and staff with the applicants present on 4 November 2019. Arrangements were also made to view the site from each of the objectors premises to gain a perspective of the potential visual impacts of the proposal.

5.2 FINANCIAL IMPLICATIONS

Section 94A (Section 7.12) Development Contributions Plan 2015

Council's Section 94A (Section 7.12) Development Contributions Plan 2015 applies to certain development and levies contributions towards public infrastructure. The estimated cost of the proposal is \$82,747.00. Under the provisions of the plan, development with an estimated cost less than \$100,000.00 is not subject to development contributions.

5.3 LEGAL IMPLICATIONS

Conveyancing Act 1919

There are no positive covenants or restrictions on use imposed on the site under this act that affect the proposed development.

Environmental Planning and Assessment Act 1979

In determining a development application, a consent authority is required to take into consideration the matters of relevance under Section 4.15 of the *Environmental Planning and Assessment Act 1979*. These matters for consideration are as follows:

5.3.1 Any Environmental Planning Instruments

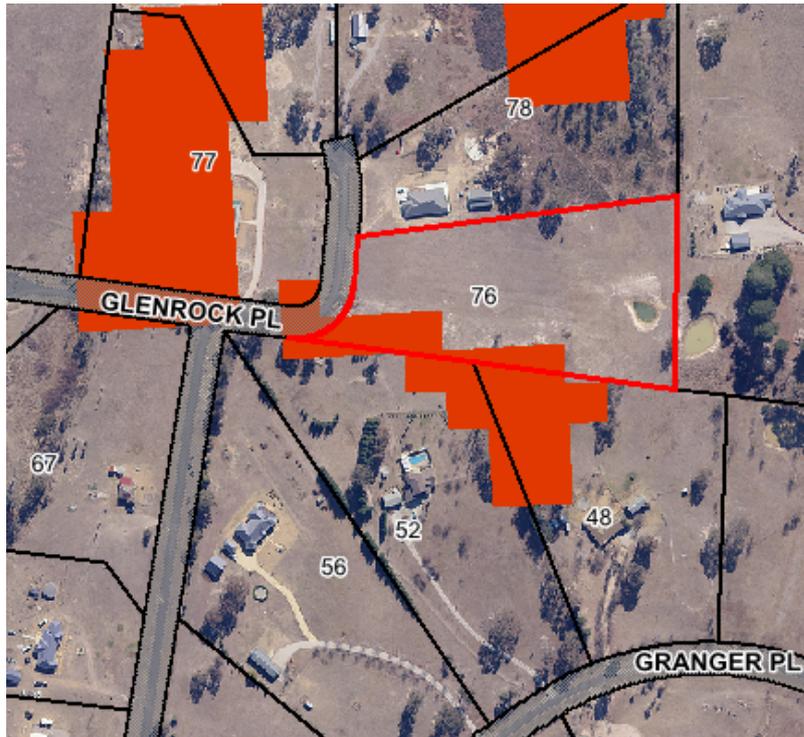
Lithgow Local Environmental Plan 2014

LEP 2014 – Compliance Check		
Clause		Compliance
Land Use table	R5 Large Lot Residential	Yes
7.3	Stormwater management	Yes
7.4	Terrestrial biodiversity	Yes
7.5	Groundwater vulnerability	Yes
7.10	Essential Services	Yes

The land is in the R5 Large Lot Residential zone and the development is consistent with the zone objectives (see further commentary above). The development is considered permissible with consent, being a domestic shed on a residential allotment that will be ancillary to the intended future use of the land for residential purposes (a future dwelling will be erected on the site subject to separate approval).

Adequate provision is made for the management and disposal of stormwater with appropriate consent conditions to be imposed regulating this and achieving consistency with the objectives of LEP clause 7.3.

The land is mapped as containing terrestrial biodiversity along the southern boundary of the land (see map extract below)



Extract from LEP terrestrial biodiversity map

The proposed shed is sufficiently clear of existing vegetation and will not require the removal or direct impacts on existing vegetation and is therefore consistent with the objectives of LEP clause 7.4.

The site is within the area identified as having groundwater vulnerability. No direct impacts are expected to result on groundwater as a result of the development and consistency with the objectives of LEP clause 7.5.

The land has connections to appropriate essential services and is consistent with LEP clause 7.10.

State Environmental Planning Policy 44 – Koala Habitat Protection

The area of the land exceeds 1 hectare and the provisions of this SEPP are applicable. The land contains scattered native vegetation and is predominantly managed semi-rural land. The land is not considered to have a high potential for koala habitat and no vegetation will be removed as a result of the proposed development. The proposal complies with the requirements of this SEPP.

State Environmental Planning Policy No 55—Remediation of Land

The land has been subject to recent subdivision for rural residential purposes. There is no knowledge of any past use of the land that would result in its contamination or any previous use that would require the remediation of the land. The proposal is consistent with the objectives of this SEPP.

State Environmental Planning Policy (Sydney Drinking Water Catchment) 2011

The land is within the Sydney Drinking Water Catchment and the provisions of this SEPP apply. The proposal will achieve a neutral or beneficial effect on water quality and complies with the requirements of this SEPP. Details of the Water NSW NorBE assessment is provided below.

NorBE Assessment

Assessment Summary

General Information

Consultancy -
Consultant -
Consultant reference number -
DA number **DA149/19**
Assessing officer **lachlan.sims@lithgow.nsw.gov.au**
Council **Lithgow City**
Development class **Buildings/farm buildings no wastewater**
Date of assessment **10/31/2019 9:33:46 AM**

Lot	Section	Plan
1		1183582

Assessment Summary

NorBE status **Submitted**
System outcome **Satisfied** User outcome **Satisfied**
SCA concurrence outcome
Determination outcome **Pending** Determination date

Pre-Assessment

Located within Sydney drinking water catchment? **Yes**
Is development consistent with any existing SCA S88 instruments on title? **N/A**
Crown perpetual leasehold land? **No**
Water quality impact ? **No**
Concentration of flow of water? **No**
Flow of water impeded? **No**
Discharge of pollutants? **No**
Any other matter? **No**
Documentation is complete? **Yes**
Does Water Cycle Management Study meet SCA/Council requirements? **Yes**
Description **Domestic shed on rural residential property**

Assessment notes

No notes

5.3.2 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

Nil.

5.3.3 Any Development Control Plan

Nil.

5.3.4 Any planning agreement that has been entered into under Section 7.4, or any draft planning agreement that a developer has offered to enter into under Section 7.4?

Nil

5.3.5 Any matters prescribed by the regulations that apply to the land

The development has been referred to Council's Building Officer for assessment under appropriate regulations. It is considered that as a result of this assessment the development will comply with the provisions of the regulations subject to conditions of consent.

5.3.6 The likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality

Adjoining Landuse: The surrounding area is predominantly rural residential in nature with dwelling houses and ancillary outbuildings situated on large lots. The proposal is consistent with the surrounding landuses and the predominant character of the locality. The proposal is not expected to result in any unreasonable land use conflict.

Services: The land is sufficiently serviced with formed road access and connectivity to reticulated electricity.

Context and Setting: The proposed development is within an established rural residential environment with predominantly residential uses on large lots characterised by dwelling houses, ancillary outbuildings (including large sheds on some lots similar to the proposal). The proposal is generally consistent with the prevailing built form of the locality.

Access/ traffic: Adequate vehicular access exists.

Flora and Fauna: No proposed clearing is required and the development will have no impact on flora or fauna.

Social and Economic Impact: The proposed shed is generally in keeping with the provisions of the planning instrument and is reasonably compatible with other similar development in the locality. Although the shed is generally considered compatible with the established and desired future character of the locality, its location will be highly visible from adjoining properties until planted vegetation matures. Objections to the proposal have been received in relation to the visual prominence of the shed and its potential impact on existing views. This aspect of the proposal is addressed further

below. In general, the proposal is expected to result in a neutral social and economic impact.

Soils: The proposed development will have no significant impact on soils. No substantial earthworks are required.

Water: The proposed development has been assessed using the NorBE tool as required by the *State Environmental Planning Policy (Sydney Catchment Drinking Water) 2011* with a result of satisfied. Therefore, with appropriate conditions of consent, it is considered that the development will have minimal impact on water.

Air and Microclimate: There will be no significant impact on air or microclimate. Standard consent conditions will be imposed requiring that dust suppression be used during construction works to minimise impacts on the surrounding area.

Waste: Some construction waste is expected and will be regulated in consent conditions. The land will be eligible for domestic waste collection once the development is complete.

Natural Hazards: The land is not flood prone. The land is classified as having bushfire risk (grassland). Because the proposal is for a non-habitable building and is more than 10m from a dwelling, no bushfire assessment is required and a Bushfire Attack Level (BAL) rating assessment is not needed. The site of the shed and its immediate surrounds are sufficiently managed to minimise the bushfire risk to the development.

Noise and Vibration: There are no nearby sources of noise or vibration that would impact detrimentally the proposal. The proposal is not expected to cause any noise issues in the surrounding area, given it is for domestic use. Consent conditions will be imposed on the approval limiting the use for domestic purposes only.

5.3.7 The Suitability of the site for the development

The proposal is for a domestic shed in which the landowner intends to store personal items associated with the residential occupation of the land. The shed has been located on the site to facilitate the future construction of a dwelling (subject to separate approval). The proposal is generally considered suitable for the site and is compatible with the character of the surrounding locality.

5.3.8 Any submissions made in accordance with this Act or the Regulations

The proposal was referred to Council's Building Officer for review and comment. No objection is raised subject to the application of consent conditions which are included in Schedule A.

Notification of the proposal was provided to adjoining landowners giving them the opportunity to comment on the proposal. Two submissions were received in response, including a supplementary submission prepared on behalf of one of the submitters by a professional planning consultant. The primary issue raised in the submissions relates to the visual impacts of the proposed shed and its impacts on the views currently enjoyed by the adjoining properties.

A summary of the issues raised and comments in response are provided in the table below.

Issue Raised	Comments
Concern raised as to the possible use of the shed given its size	The applicant has stated the shed is for private, domestic use only. As is Council's standard practice for domestic sheds, the approval will be conditioned to limit its use in this regard.
Visual intrusion of 24m length shed facing adjoining living areas	It is acknowledged the proposal will be visually intrusive given its location relative to the adjoining land. The applicant has planted a landscape screen along the boundary of the site and has setback the shed 5m from the boundary in an attempt to minimise the long term impacts.
Shed is out of scale with surrounding structures on narrow parcel of land	The shed is generally compatible and consistent with a number of other developments of a similar nature in the locality.
Overbearing and imposing structure	Sheds of a similar size have been approved on other lots within the R5 zone. The shed has been sited to enable the future dwelling on the site as well as to achieve an appropriate setback from the road frontage and away from the lower, wetter areas of the site.
Obstruction and loss of views, replaced with wall of metal with minimal articulation	It is acknowledged the shed will initially be visually dominant until the screen plantings achieve maturity. The proposed colour of the shed (woodland grey) will enable it to blend in with the prevailing treeline of the wider locality. The height of the shed will not exceed the height of the established trees in the locality and will not block the long distance views across the site towards the Blue Mountains escarpment.
Reduce property value due to size, bulk and scale	Property valuation is not a consideration in the assessment of environmental impacts of development under the <i>Environmental Planning and Assessment Act 1979</i> .
Directly in line with living areas and bedrooms	As previously stated, the shed has been sited to enable the best use of the land given its constraints and the intended future dwelling site. The shed will be located approximately 80 metres from the nearest dwelling on the adjoining land.

<p>No colours shown on the plans for the structure or roofing which may be reflective</p>	<p>The applicant has proposed an external colour of 'woodland grey' which is of low reflectivity and will blend with the prevailing vegetation in the wider locality.</p>
<p>Is setback just 5 metres from boundary</p>	<p>A 5 metre setback is considered appropriate in the circumstances. Increasing the setback would not reduce the overall visual impact of the shed and would compromise the capacity of the site to accommodate the proposed dwelling.</p>
<p>Structure is unsightly and not in keeping with the nature of the locality</p>	<p>The proposed shed has been professionally designed and will be constructed to a professional standard. The shed is not inconsistent with similar recently issued approvals in the R5 zone.</p>
<p>Landscape screening insufficient</p>	<p>Landscape screening has been implemented in advance of the shed construction and comprises Leighton pines which are fast growing and will provide a sufficient screen for the shed when mature. The pines are commonly used in the locality for screen planting and windbreaks and are considered sufficient to screen the shed in the long term. Appropriate consent conditions can be imposed to ensure the maintenance and upkeep of the screening in perpetuity.</p>
<p>Landscape screening may not survive and/or will be susceptible to disease</p>	<p>Screen planting has been established as noted above which is intended to provide a visual screen and softening of the visual impacts of the shed over the longer term. Concern has been raised that the species chosen may not survive in the location and will be susceptible to disease or dieback. This concern is noted and it is considered appropriate to condition the approval that sufficient and adequate screen planting is to be established and maintained on the site in perpetuity. This will place the obligation on the applicant (or any future owner of the property) to ensure the screen plantings are kept on site and are replaced in the event of any failure.</p>
<p>Placement of rainwater tanks will further increase bulk and scale</p>	<p>The application proposes rainwater tanks to mitigate stormwater runoff impacts and to enable the storage of water on the site. Details of their location is not specified on the DA plans. A consent</p>

	<p>condition can be imposed to ensure the tanks are placed at the rear and to the north of the shed to minimise visual impact.</p>
<p>Suggests better location for shed or its reorientation</p>	<p>The applicant has placed the shed on the site having regard for the site constraints and to facilitate the future construction of a dwelling on the site. The shed location is consistent with the established building setback on the street and is not located further to the rear of the site due to slope, drainage and access.</p>
<p>Use is prohibited in the zone</p>	<p>Council has historically allowed the erection of domestic sheds on R5 land without the existence of a dwelling (or dwelling approval) on the proviso that the shed remains for domestic use only with the intention of remaining ancillary to a future dwelling on the site.</p>
<p>Inconsistent with zone objectives</p>	<p>The proposal is considered consistent with the zone objectives as addressed in this report. The shed is considered generally appropriate in a large lot, rural residential context and will enable the landowner to store personal items. Overall, the impacts on the scenic qualities of the locality will be minimal once screen planting is established.</p>
<p>Reference to caselaw and impact on views</p>	<p>It is acknowledged the proposed shed will have an immediate visual impact when viewed from properties adjoining the site. The shed will remain lower than the prevailing tree line in the locality and will not block the existing, iconic views of the distant escarpment and mountains from surrounding dwellings. The case referred to has then been taken to establish a Planning Principle that can assist in development assessment. However, the principle referred to by the consultant is taken in isolation. The principle states "With a complying proposal (<i>which this is</i>), the question should be asked whether a more skilful design could provide the applicant with the same development potential and amenity and reduce the impact on the views of neighbours. If the answer to that question is no, then the view impact of a complying development would probably be considered acceptable and</p>

	the view sharing reasonable". In this instance, as the suggested alternative design would impact on the applicant's development potential, the answer must be No. Consequently, when applying the Planning Principle, the view impact would be considered acceptable and the proposal is generally consistent with the planning principles established by the Land and Environment Court.
--	---

5.3.9 The public interest

The proposal has been assessed against the relevant regulatory requirements and is considered generally to be in the public interest.

6. DISCUSSION AND CONCLUSIONS

The proposal is considered to generally comply with the relevant provisions of the applicable Environmental Planning Instruments. The identified visual impacts have been considered in this assessment and will be reasonably mitigated. As such it is recommended that development consent is issued subject to the conditions outlined below.

7. ATTACHMENTS

Schedule A- Conditions of consent.

8. RECOMMENDATION

THAT development application DA 149/19 is approved subject to conditions set out in Schedule A.

Report prepared by: Lachlan Sims

Supervisor: Jim Nichols

Signed:.....

Signed:.....

Dated:.....

Dated:.....

REASONS FOR CONDITIONS

The conditions in Schedule A have been imposed for the following reasons:

- To ensure compliance with the terms of the relevant Planning Instruments
- To ensure no injury is caused to the existing and likely future amenity of the neighbourhood
- Due to the circumstances of the case and the public interest.
- To ensure the structural integrity of the development.
- To ensure the protection of the health and safety of the occupants of the development.
- To protect the environment.
- To prevent, minimise, and/or offset adverse environmental impacts.

- To ensure there is no unacceptable impact on water quality.
- To ensure adequate provision is made for bushfire safety.
- To ensure adequate soil conservation and protect against movement of soil and sediments.

Schedule A

Conditions of Consent (Consent Authority)

Please Note: It should be understood that this consent in no way relieves the owner or applicant from any obligation under any covenant affecting the land.

ADMINISTRATIVE CONDITIONS

1. The development shall take place in accordance with the approved development plans containing Council's approved development stamp and all associated documentation submitted with the application, except as modified in red by Council and/or any conditions of this consent.
2. Approval is for a domestic shed/garage only and the structure shall not be used, fitted or occupied for industrial, commercial or residential purposes under any circumstances.
3. The structure is to be located wholly within the confines of the property boundary and in accordance with approved site plan

External colours

4. The approved external colour of the shed is "Woodland Grey".

Landscape screening

5. Landscape screening is to be implemented and maintained in perpetuity along the full length of the shed/garage on its southern elevation. The screening is to comprise vigorous, fast growing plant species that are appropriate for the environmental conditions of the site and will achieve an adequate level of visual screening.

Site preparation

6. Alterations to the natural surface contours must not impede or divert natural surface water runoff and not result in nuisance to adjoining property owners.
7. Any fill material imported to the site must comprise virgin excavated natural material (VENM) within the meaning of the *Protection of Environmental Operations Act 1997* (POEO) or any other waste-derived material the subject of a resource recovery exemption under cl.51A of the *Protection of the Environment Operations (Waste) Regulation 2005* that is permitted to be used as fill material.
Note: Any waste-derived material the subject of resource recovery exemption received at the development site is to be accompanied by documentation as to the material's compliance with the exemption conditions and must be provided to the Principal Certifying Authority.
8. Any cut and fill areas are to be retained/stabilised to Council's satisfaction as soon as possible after excavation works and prior to the issue of the Occupation Certification.
9. Measures shall be implemented to minimise wind erosion and dust nuisance in accordance with the requirements of the manual – "Soils and Construction" (2004) (Bluebook).

PRIOR TO COMMENCEMENT OF CONSTRUCTION WORKS

Construction Certificate

10. A construction certificate is required prior to commencement of any site or building works.
Note: Council as your Principal Certifying Authority has issued this certificate concurrently with the development consent. Therefore this requirement is fulfilled.

Notification of commencement

11. Prior to commencing any construction works, Council is to be notified at least two days prior of the intention to commence building works, in accordance with Section 81A(2)(c) of the Act in Form 7 of Schedule 1 of the Regulations.

Sediment and erosion controls

12. To contain soil and sediment on the property, controls are to be implemented prior to clearing of the site vegetation and the commencement of site works. This is to include the installation of a sediment fence with returned ends across the low side of the site so that all water flows through. These shall be maintained at no less than 70% capacity at all times. Drains, gutters, roadways etc., shall be kept clean and free of sediment. Soil erosion fences shall remain and must be maintained until all disturbed areas are restored by turfing, paving, revegetation.

Signage

13. Prior to the commencement of any works on the land, a sign/s must be erected in a prominent position on the site:
 - a. Showing the name of the principal contractor (if any) for any building work and a telephone number on which that person can be contacted outside working hours.
 - b. Stating that unauthorised entry to the work site is prohibited and
 - c. Showing the name, address and telephone number of the principle certifying authority for the work.

The sign/s are to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.

REQUIREMENTS DURING CONSTRUCTION

14. A copy of the stamped and approved plans, development consent and the construction certificate are to be on the site at all times.

Construction work hours

15. All work on site shall only occur between the following hours:

Monday to Friday	7.00am to 6.00pm
Saturday	8.00am to 1.00pm
Sunday and public holidays	No work

Stormwater

16. Roof water drains shall be connected to the proposed water tanks with overflow to Council's satisfaction so as not to cause a nuisance to adjoining property owners.
17. All excavations and backfilling associated with the approved works must be executed safely and in accordance with appropriate professional standards. All excavations must be properly guarded and protected to prevent them from being dangerous to life or property.
18. Prior to any building works commencing a suitable Waste Container with a lid for the deposit of all building rubbish and litter must be provided and emptied as soon as full. Building rubbish and litter must be contained on the building site
19. That minimal disturbance is caused to the site during construction works and any disturbed areas including embankments are to be generally made good and revegetated in accordance

with the approved landscaping plan, prior to the issue of the Occupation Certificate. Any excavated and filled areas are graded and drained and all constructed batters are to be topsoiled, and turfed. Batters exceeding a ratio of 3 horizontal to 1 vertical must be retained with retaining walls, stoneflagging or terracing prior to occupation. (Note retaining walls that do not comply with the exempt requirements outlined in State Environmental Planning Policy (Exempt and Complying Development Codes) 2008, and over 600mm in height require Development Consent

PRIOR TO OCCUPATION OR USE

20. The garage/shed must not be occupied or used until an Occupation Certificate has been issued by the Principal Certifying Authority.
21. The conditions of consent must be complied with prior to the issue of an Occupation Certificate Principal Certifying Authority. All necessary information to comply with the conditions of consent must be submitted prior to the occupation of the building

ADVISORY NOTES

Compliance with Building Code of Australia

- AN1. All building work must be carried out in accordance with the provisions of the Building Code of Australia.

Building inspection schedule

- AN2. To ensure structural integrity, the maintenance of minimum health standards, the management of the buildings surrounds and the protection of the environment, compliance certificates are to be issued at significant stages throughout the construction period. These stages are:
- a) Pier holes/pad footings, Reinforcing steel in position and before concrete is poured (slab, footings, lintels, beams, columns, floors, walls and the like).
 - b) Stormwater drainage between building and discharge point (drainage pipes, soakage pits and the like) prior to covering.
 - c) Frame and completion of the development and sign off to all conditions of the consent including landscaping, prior to occupation and use.

At each inspection, erosion and sediment control measures and site management will be inspected.

Note: forty-eight (48) hours notice shall be given to Council prior to inspections.

Construction

- AN3. The shed is to be designed and constructed to the site specific ground snow load and wind load and erected in accordance with the structural and manufacturers details designed by the Approved Practising Structural Engineer.
- AN4. The shed is to be securely bolted at its supports and fixed rigidly at its base
- AN5. Owing to the area being subject to high wind velocities from time to time, every precaution is to be taken to ensure the building and the roof cladding are effectively secured. Manufacturer's details and directions for anchorage and fixing are to be adhered to.
- AN6. That glazing comply with the provisions of Part 3.6, Building Code of Australia, Housing Provisions. The serviceability design wind pressure and the ultimate strength test pressure of the glazing must be suitable for the wind load for the site. Certification is to be provided to Council at frame stage.

Prior to occupation

AN7. Prior to the use/occupation of the structure an Occupation Certificate must be issued by the Principal Certifying Authority (PCA). In this regard an application must be lodged with the PCA in conjunction with any request to carry out a final inspection.

Reference to the Building Code of Australia

AN8. A reference to the Building Code of Australia is a reference to that Code as in force on the date the application for the relevant Construction Certificate is made.