

## Council

Lot 32 Mount Barker Road, Mount Barker -  
Retrospective approval for previously constructed  
aviaries with reduced side boundary setback

Locality plan  
Site plan  
Letter from applicant  
Letter from complainant  
Photographs

Meeting Date: 25 August 2009

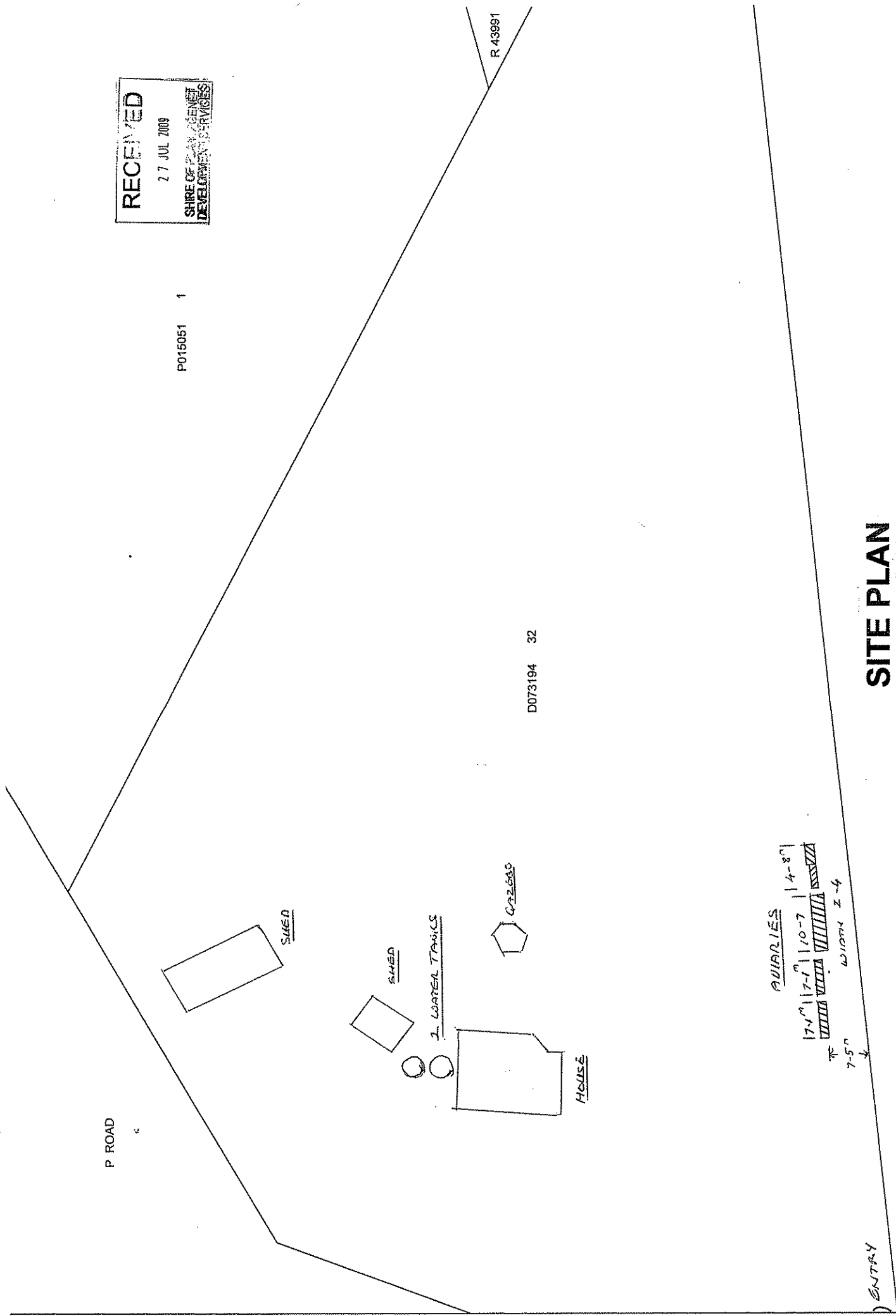
Number of Pages: 9

RECEIVED  
27 JUL 2009  
SHIRE OF BAYLENE  
DEVELOPMENT SERVICES

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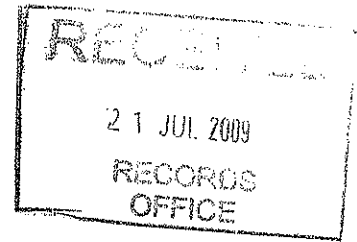


# SITE PLAN

CAR WASH  
TOLLYROG BUS  
260 MT BARKER RD  
MT BARKER 6324

Colin and Bev Wardle  
The Jolly Frog B&B  
Lot 260 Mount Barker Road  
Mount Barker WA 6324

I 54874



20<sup>th</sup> July, 2009

Shire of Plantagenet  
Town Planning

Application for a licence to build aviaries on the southern boundary of Lot 260 Mt Barker Rd, Mt Barker.

The aviaries are purpose built to a specific design for hygiene and cleaning.  
They were constructed in 2007.

1. Materials used:
  - RHS tubing;
  - Trim deck Colourbond;
  - Cement floors.
2. Dimensions:
  - Length – 34 metres
  - Width – 4 metres
3. Cost of construction: \$12 000
4. The aviaries are also landscaped with paths, kerbing and vegetation along the face to enhance their aesthetic appeal.
5. Enclosed are the photos and plan illustrating the structure and position on the property.

Being in a rural environment we were unaware that a permit was required to build aviaries.  
We understood the requirement to be 5 metres from the boundary and not the 20 metres as prescribed.

We apologise for our indiscretions and apply for a permit to build aviaries in present situation.

We operate a Bed and Breakfast business and have a large area of landscaped gardens and lawns. The aviaries are part of the experience we offer our guests who receive a lot of enjoyment from the same. We often have groups of seniors and other visitors who enjoy being shown around the aviaries and gardens.

We take pride in living in Mt Barker and look for every opportunity to promote the area. To illustrate this point and how our reputation of excellence has grown we bring to your attention that we have been chosen to participate in the Australian Open Garden Scheme for November 2009.

We trust you will view this situation objectively and thank you in anticipation of a positive outcome.

Yours faithfully

Colin and Bev Wardle

**Vincent Jenkins**

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**From:** Stuart Peters [tallerak264@bigpond.com]

**Sent:** Thursday, August 13, 2009 7:49 PM

**To:** Vincent Jenkins

**Subject:** letter from Stuart Peters

Stuart & Julie Peters

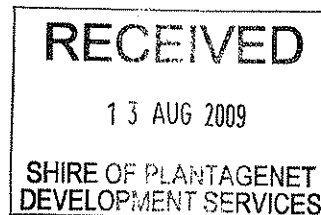
264 Mount Barker Road

PO BOX 356

Mount Barker

Western Australia

6324



10<sup>th</sup> August 2009

Shire of Plantagenet

PO BOX 48

Mount Barker, Western Australia 6324

Attention: Vincent Jenkins

Dear Sir,

**RE: RETROSPECTIVE BUILDING LICENCE APPLICATION FOR AVIARIES AT LOT 32, MOUNT BARKER HILL ROAD, MOUNT BARKER**

We, Stuart and Julie Peters are the next door neighbours residing at 264 Mount Barker Road, Mount Barker and are such the persons the most affected by this Application.

We wish to object to the Application by Colin and Bev Wardle.

Dealing with the aspect as per Application:

Concerning the materials used it is respectfully disagreed that colour bond has been used as stated and that the plating used is zincaluminium and unpainted.

It is severely placed in doubt that the Applicants were not aware that they required a permit to build the aviaries or not in a boundary of 20 metres prescribed as it is standard practice to include Schedule 5, Rural Residential Zone- Provisions Relating to Specified Areas for Mount Barker Hill to any sale of property in the Mount Barker Hill area and further by Clause 12.0 of the said Schedule every new owner in the area purchasing should be deemed to have knowledge of the requirements as set out.

8/14/2009

Furthermore Schedule V Rural residential Zones Regulations Clause 4.2 is very clear that no building shall be erected within 20 metres of any Lot boundary unless certain specific

requirements exist. The Applicants have sited their building within 5 metres of the boundary this ludicrously small distance from our boundary being quarter of the acceptable distance.

Schedule V Rural Residential Zones- Provisions Clause 4.0 makes it clear that a person shall not construct, erect or commence to construct or erect a building within 20 metres of any boundary. The fact that no such commencement of erection prior to approval being granted is stipulated it is respectfully submitted that it is outside of the Council's ability to grant Retrospective Permission for Existing Structures under the Schedule V Rural Residential Zones- Provisions.

It is further contended that the aviaries constructed by the Applicants offends Schedule V Rural Residential Zones- Provisions 4.0(!!!) as it has been built in a manner which destroys the amenity of the area wherein that it has been constructed in a place where it creates excessive noise or potential of excessive noise damaging to the general ambience of rural living.

The Applicants have on three occasions been found to create excessive and unacceptable noise from the aviaries because of the place it is situated and the amount of birds held within. On each occasion only a temporary solution could be obtained by removing the noisiest of the birds to a different area but as the problem is constantly reoccurring it would appear as if the birds are being brought back once the noise compliant monitoring ceases or alternatively that the birds remaining in the aviaries then again increase the noise levels again attain unacceptable high levels. On three occasions the specific noise levels were monitored and found to be unacceptable and excessive by the Shire's own Environmental Officer and in each case the steps taken to alleviate the problem only alleviated it temporarily.

A further problem caused by the vast amount of birds held within the aviaries is that large amounts of rodents are attracted to the area and because of the proximity to the boundary of our Lot transgresses onto our Lot and is a nuisance upon our Lot. From the fact the multiple rodents are attracted to the aviaries it is respectfully placed I doubt whether the aviaries do qualify for the purpose of easy cleaning and cleanliness as specified by the Applicants in the application.

Our main objection to the granting of this Retrospective Building Licence is that the placement is too close to our Lot's boundary placing aviaries within effective 25 metres from our residence. The noise factor is the main issue as it is clearly audible from within our property being a constant noise from birds from sun-up till sun-down and is further aggravated by the noise associated in cleaning and feeding the birds.

The noise situation is such that we are starting to suffer permanent anxiety and trauma and though we enjoy life in the Shire of Plantagenet and our property this enjoyment has been ruined by the unreasonable noise created by caged birds in those buildings. The fact that only temporary relief could be obtained by moving some birds out is evidence that a noise problem will persist and continue to persist at the aviaries if they are at all in use and still situated within five metres of our boundary.

It is our respectful submission that the only possible solution to noise problems as well as the impact on the environment problem is to remove them from this location. It is respectful submission that if a retrospective approval of the aviaries in the specific location is granted there will be a continual noise and environmental problem emanating there from and that the Shire of Plantagenet would effectively have consented to a retrospective approval of buildings which should never have been built and tacitly thereby have consented to breaches of Environmental Protection Act 1986 and Environmental Protection (Noise) Relations 1997.

It is respectfully submitted that there is substantial other area's upon the Applicant's property to where the aviaries can be relocated where it would not breach planning regulations and Environmental Protection Act or Regulations.

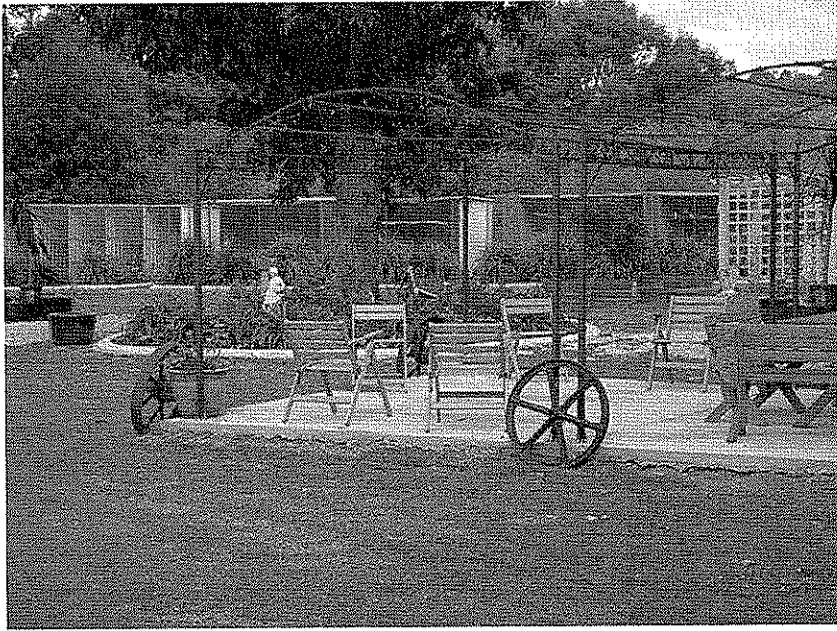
We trust you will take these objections into consideration in considering the Application for Retrospective Approval.

8/14/2009

Yours Faithfully

Stuart & Julie Peters

8/14/2009



View of bird aviaries, surrounding garden and outdoor entertainment area



View of build quality and building material, landscaping and curb footpath



View from bird aviaries towards adjoining property of Mr and Mrs Peters showing screening vegetation, water tank and dwelling in background.



View showing bird aviary cement stand, screening vegetation and area between the bird aviaries and adjoining lot boundary.