

Item No: Addendum Report
Title: Development Application DA/97/2020 - Use of Existing Premises for the purposes of an Animal Boarding and Training Facility - Dog Breeding 604 Ourimbah Creek Road, PALM GROVE

Department: Environment and Planning

Local Planning Panel Meeting

**Central
Coast Local
Planning
Panel**

Reference: DA/97/2020 - D14309839

Author: Amanda Hill, Town Planner

Manager: Salli Pendergast, Principal Development Planner North

Executive: Andrew Roach, Unit Manager Development.

Summary

An application has been received for the use of existing premises for the purposes of an Animal Boarding & Training Facility - Dog Breeding at 604 Ourimbah Creek Road, Palm Grove.

The proposal is for the use of the existing shed known as the Evening House and 10 outdoor dog kennels for the purposes of an animal boarding and training establishment where dog breeding of French Bulldogs will occur.

The Local Planning Panel considered the matter at its meeting of 1 October 2020. The matter was deferred at the meeting pending the submission of an acoustic report undertaken on the design parameters set out by Council's Senior Environmental Protection Officer; amended plans and information that mitigate and ameliorate the noise impacts; and a revised plan of management.

The application has been examined having regard to the matters for consideration detailed in section 4.15 of the Environmental Planning and Assessment Act and other statutory requirements with the issues requiring attention and consideration being addressed in the report.

Applicant	SJH Planning & Design
Owner	Mr K Lewis
Application No	DA/97/2020
Description of Land	Lot 45 DP 2244 604 Ourimbah Creek Road, PALM GROVE NSW 2258
Proposed Development	Use of Existing Premises for the purposes of an Animal Boarding & Training Facility - Dog Breeding
Site Area	68,800.00m ² (6.88 ha)
Zoning	RU1 Primary Production
Existing Use	Dwelling House

Employment Generation	Yes
Estimated Value	\$10,000.00

Background

The Panel considered a Planning Report on the matter at its meeting on 1 October 2020 and resolved as follows:

Panel Decision

The Local Planning Panel deferred the consideration of the proposal to allow:

- 1 Council's Senior Environmental Protection Officer to identify and design the parameters for an acoustic study report that properly addresses the noise impacts of the proposed development. This will identify the shortcomings of the current acoustic report and require measurement of the actual noise currently generated by dogs on the site. This specification is to be provided to the applicant within 7 days of the date of the Panel's decision.**
- 2 Within 3 weeks of the Panel's decision, the applicant is to:**
 - Provide an acoustic report undertaken on the design parameters identified by the Council as per 1 above.**
 - Provide amended plans and information that mitigate and ameliorate the noise impacts on receptors based on the findings of the acoustic report, which includes treatments and a revised plan of management.**

Reasons

- 1 To allow the panel to consider necessary information.*
- 2 In recognition that the land use is permitted in the zone.*
- 3 In the current noise report, dog noise was assessed via a model and not as an actual noise measurement.*

Response to Item 1 of Panels Decision

In accordance with Item 1 of the Panel's decision, Council's Senior Environmental Protection officer prepared a specification for an acoustic study report.

The Acoustic Study Report Specification is as follows:

As the proposal is not considered to be a typical industrial activity where the NPfl can be applied using the LAeq 15MINS, it is recommended that Renzo Tonin & Associates utilise the noise descriptor with a parameter of **LA5**. It is considered that this change would capture and be more reflective of the dog breeding/boarding activities currently being used and more reflective in the findings of the predictive modelling.

Based on the number of objections to the current proposal, it is recommended that Renzo Tonin & Associates also consider the parameters surrounding the definition of "Offensive Noise" under the Protection of the Environment Operations Act. Consideration has to be given to the concerns raised by the community on how the proposal unreasonably interferes with their amenity, eg frequency, impulsiveness etc and how that may be resolved.

The Plan of Management does not provide enough assurance for the monitoring, supervision and stimulation of the dogs, which would prevent excessive barking from occurring.

Response to Item 2 of Panels Decision

In response to the outcome of the Panel meeting of 1 October 2020 and upon receipt of Council's Acoustic Study Report Specification, the applicant requested an extension of time to prepare and submit the documentation required by Item 2 of the Panel's decision. The Panel granted an extension until 13 November 2020.

Receipt of Amended Details

The applicant submitted the following information on 13 November 2020:

- Revise Noise Assessment dated 5 November 2020, prepared by Renzo Tonin & Associates. **(Refer to Attachment 2)**
- An amended plan of the dog kennels proposing acoustic treatment consisting of FC sheets 900mm high on partition walls. **(Refer to Attachment 3)**.
- An amended 'FindAFrenchie Day to Day' Plan of Management. **(Refer to Attachment 4)**.

Neighbour Notification

The development application was notified (in accordance with the provisions of the *Wyang Development Control Plan 2013*) from 26 February 2020 to 11 March 2020 and 45 written submissions were received.

The issues raised in public submissions were addressed in the Planning Report considered by the Panel on 1 October 2020.

It is the view of Council staff that the amended plans/revised details submitted on 13 November 2020 are minor and do not require re-notification. As provided by Clause 2.10c under Chapter 1.2 'Notification of Development Proposals' under *Wyang Development Control Plan 2013*, minor amendments do not require re-notification.

Assessment

In relation to Item 2 of the Panel's decision, the submitted information has been assessed by Council officers. The revised acoustic assessment includes noise measurements of existing noise from dogs barking at the facility.

Comment

Renzo and Tonin have undertaken a further acoustic assessment dated 5 November 2020 of the noise impact from the unauthorised dog breeding facility located at 604 Ourimbah Creek Road, Palm Grove.

The noise modelling predictions presented in this report which use the LA5 are lower than the noise levels predicted in the original acoustic report using LAeq (15min). This appears to be primarily due to the sound power level used in the original report (measurements from similar existing dog kennel) being higher than the sound power level used for the dogs barking in the current report (which was measured on site). This is a more accurate analysis of the dogs on site.

The report does not address the requirement raised by Council staff regarding 'offensive noise'. The Acoustic Study Report Specification required the following to be addressed in relation to 'offensive noise':

Based on the number of objections to the current proposal, it is recommended that Renzo Tonin & Associates also consider the parameters surrounding the definition of "Offensive Noise" under the Protection of the Environment Operations Act. Consideration has to be given to the concerns raised by the community on how the proposal unreasonably interferes with their amenity, eg frequency, impulsiveness etc and how that may be resolved.

The acoustic consultant has not commented on this, despite the noise levels complying with the project trigger level set, that the sound could still be audible and may be classed as offensive by nearby sensitive receivers.

Whilst an inspection conducted by Council staff in June 2020 determined that the barking was audible at a neighbouring property, and from observing the noise logs provided, the noise could be considered offensive. The additional control measures proposed in the plan of management, specifically, regular monitoring of dogs, is likely to reduce the occurrence of barking.

As the measured background noise was 31 for the day, 30 for the evening and 24 for the night time periods, the background noise levels were adjusted to 35 for the day and 30 for the evening and night periods as per the Noise Policy for Industry. If the true background noise levels were used in determining the trigger level, a slightly lower trigger value would be used as a compliance point. This however would not significantly impact the results shown in the current assessment, with the noise levels at all premises, aside from 570 Ourimbah Creek Road remaining compliant.

It is recommended that a 12-month trial period be imposed and be the most favourable outcome for all parties, by allowing the premises to operate and demonstrate minimal impact to the surrounding community with the implementation of new control measures as per the plan of management and amended dog kennel plan, whilst still providing further assessment requirements for the objecting community members. This is due to offensive noise being difficult to determine by an acoustic consultant, who is basing their assessment of modelling noise from the source to the sensitive receivers.

CONCLUSION

The additional information received as requested by the Local Planning Panel on 1 October 2020 has been assessed against the heads of consideration under Section 4.15 of the *Environmental Planning & Assessment Act 1979* and all relevant instruments and policies.

The revised plan of management includes the monitoring of the dogs as follows:

- Dogs are monitored via Arlo Video and Audio Camera Monitoring Systems that detect sound and movement.
- Worker checks dogs in the outdoor kennels for 15 minutes every hour.
- Should the camera monitoring system detect noise from the dogs which may result in offensive noise to the neighbours (eg. barking), then the responsible person will immediately attend to the dogs and depending on the cause of the noise, will separate the dogs if they are in the same pen, give them a toy so that they are occupied and distracted or remove the barking dog altogether. The responsible person will remain with the dogs until they are settled.

The amended plans propose acoustic treatment consisting of FC sheets 900mm high on partition walls of the outdoor dog kennels to mitigate noise generated by barking dogs. The revised acoustic assessment concludes that the dog breeding facility complies with Council's Acoustic Study Report Specification.

The proposed development is permissible in the RU1 Primary Production zone and the additional measures as discussed above will assist in minimizing conflict between land-uses within the zone and land uses within adjoining zones. The RU1 zone allows other appropriate land-uses that are not suited to urban zones such as a dog breeding facility while maintaining the rural character of the land. The existing shed (evening house) and outdoor dog kennels are not considered buildings that detract themselves from the rural character of the land.

It is considered the revised acoustic assessment; updated plan of management that includes additional monitoring of the dogs; and the additional measures to the outdoor dog kennels has provided Council with sufficient information to assess the likely impacts by the proposal. The acoustic and amenity impacts by the proposal could be minimized by good management practices. It is recommended that if development consent is granted that it be for a 12 month period.

RECOMMENDATION

On this basis, it is recommended that approval be granted to DA/97/2020 for Use of Existing Premises for the purposes of an Animal Boarding & Training Facility - Dog Breeding on Lot 45 DP 2244 at 604 Ourimbah Creek Road, PALM GROVE for a twelve (12) month period subject to conditions of development consent within **Attachment 5**.

Should the Local Planning Panel not support the recommendation above, the recommendation under Item 3.1 of the Central Coast Local Planning Report dated 1 October 2020 be supported and the application be refused for the reasons identified within that report.

ATTACHMENTS

1. Central Coast Local Planning Report 1 October 2020 - D14116497
2. Revise Noise Assessment dated 5 November 2020, prepared by Renzo Tonin & Associates - D14297969
3. Amended plan of the dog kennels proposing acoustic treatment consisting of FC sheets 900mm high on partition walls - D14297949
4. 'FindAFrenchie Day to Day' Plan of Management - D14297950
5. Draft Conditions of Development Consent - D13826505
6. Development Plans / Plans for Approval - D14309781