



Brighton Council

MINUTES OF THE **PLANNING COMMITTEE MEETING**
OF THE BRIGHTON COUNCIL HELD
IN THE COUNCIL CHAMBER, COUNCIL OFFICES
GAGEBROOK AT 5.00P.M. ON WEDNESDAY,
12TH JUNE, 2012

PRESENT: Cr Gray (Chairperson); Cr Garlick; Cr Geard; Cr Owen and Cr Taylor.

IN ATTENDANCE: Cr Curran; Mrs J Banks (Manager Governance & Human Services) and Miss J Tyson (Planning Officer).

1. APOLOGIES:

Cr Geard moved, Cr Taylor seconded that Cr Foster be granted leave of absence.

CARRIED

VOTING RECORD

In favour	Against
Cr Garlick	
Cr Geard	
Cr Gray	
Cr Owen	
Cr Taylor	

2. QUESTION TIME & DEPUTATIONS:

There was no requirement for question time.

3. DECLARATION OF INTEREST:

In accordance with Part 5, Section 48 of the *Local Government Act 1993*, the Chairman of a meeting is to request Councillors to indicate whether they have, or are likely to have an interest in any item on the agenda; and

Part 2 Regulation 8 (7) of the Local Government (Meeting Procedures) Regulations 2005, the Chairman of a meeting is to request Councillors to indicate whether they have, or are likely to have, a pecuniary interest in any item on the agenda.

Accordingly, Councillors are requested to advise of any interest they may have in respect to any matter appearing on the agenda, or any supplementary item to the agenda, which the Council has resolved to deal with, in accordance with Part 2 Regulation 8 (6) of the Local Government (Meeting Procedures) Regulations 2005.

There were no declarations of interest.

4. COUNCIL ACTING AS PLANNING AUTHORITY:

In accordance with the provisions of Part 2 Regulation 25 of the Local Government (Meeting Procedures) Regulations 2005, the intention of the Council to act as a planning authority pursuant to the *Land Use Planning and Approvals Act 1993* is to be noted. In accordance with Regulation 25, the Council will act as a planning authority in respect to those matters appearing under Item 4. on this agenda, inclusive of any supplementary items.

4.1 APPLICATION FOR PLANNING APPROVAL - PARTIAL CHANGE OF USE TO ANIMAL BREEDING, BOARDING AND TRAINING (DOG BREEDING) AND SIGNAGE, 555 TEA TREE ROAD, TEA TREE

FILE REFERENCE: DA 2012/60

AUTHOR: Planning Officer
(Miss J Tyson)

Applicant: C Zanardi

Owner: C & R Zanardi

Location: 555 Tea Tree Road, Tea Tree

Application no.: DA 2012/60

Zoning: *Rural zone* Brighton Planning Scheme 2000 (the planning scheme)

Date accepted: 16 May 2012

Date advertised: 19 May 2012

Decision required 26 June 2012

Discretion(s):

Use (Animal Breeding, Boarding and Training)

Proposal:

This application seeks to formalise an existing dog breeding operation on a small rural property in Tea Tree Road. Several small dog breeds are kept on the site and puppies are sold to the public.

The dogs are contained in a reasonably large fenced area around the house and are mainly housed in small sheds fitted for the purpose. They also have access to the dwelling most of the time. No changes to the current arrangement are proposed.

The application also seeks permission to erect a small sign advertising dogs for sale. The sign would be 62cm long and 40cm high.

Background:

The site is currently being used for the purpose of dog breeding and this application seeks to formalise the use.

A kennel licence will also need to be obtained from Council for the activity to continue.

Site and Locality:

The subject land is a relatively small rural parcel accessed from Willowbrook Road. The site is developed with a dwelling and outbuildings. It is directly surrounded by agricultural land with other smaller properties nearby along Tea Tree Road. The closest neighbouring dwelling is approximately 400m from the dwelling on the subject site.



Figure 1: A recent aerial image of the subject site.

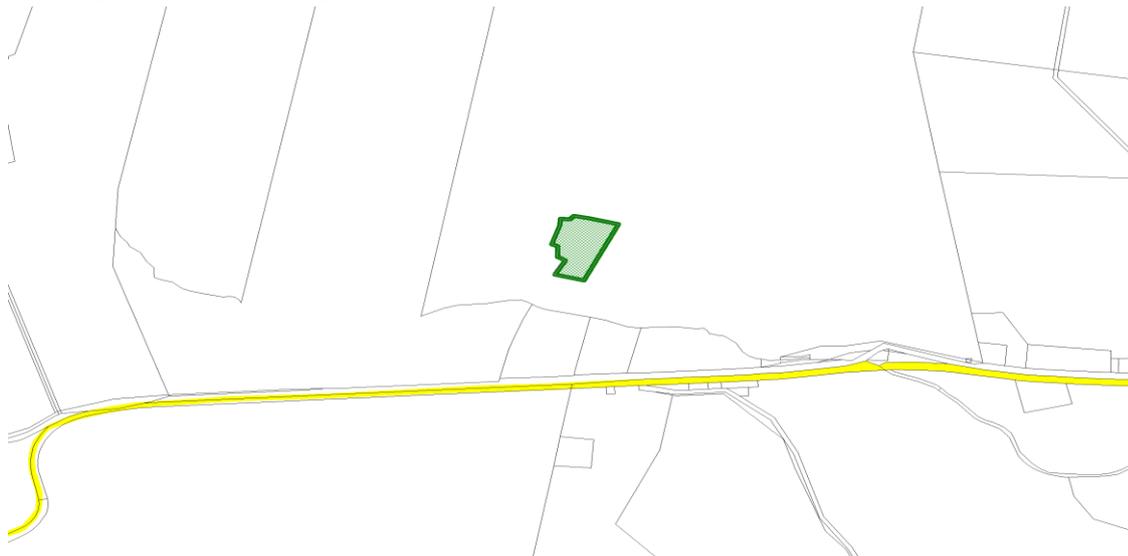


Figure 2: The zoning of the subject locality.

Consultation:

The application was subject to the 14 day statutory notification period. The proposal is discretionary because of the use.

One (1) representation (Attachment B) was received during the statutory notification period. The concerns raised in the representations are outlined and addressed as follows:

Concerns Raised	Planning Response
Representor 1:	
The property is at the back of our property and we have concerns about the yapping dogs that we are already subject to.	Nuisance created by excess noise is an environmental health issue.
For the last 12 months we have endured the noise of barking and howling dogs but have not complained as we are in a rural area and expect to hear some animal noises from time to time.	See above.
The picture in the application states that the dogs would have the entire property to exercise and the possibility of the dogs roaming the area and endangering wildlife and stock is of concern.	The dog enclosure does not extend over the whole property, it is a fenced area around the house. Council’s Animal Control officer has advised that it is of a suitable standard.

The issues raised within the objections are considered further within this report.

Risk Implications:

Section 63A of the Act provides that a planning authority that fails to take all reasonable steps to ensure that its planning scheme is complied with may be liable to a fine of up to \$50,000.

Financial Implications:

There are no significant financial implications.

Other Issues:

This report details the basis and reasons for the recommendation. An alternative decision by Council will require a statement of the reasons for the decision in order to maintain the integrity of the planning approval process and to comply with the intent of the Judicial Review Act 2000. In addition, section 25 of the Local Government (Meeting Procedures) Regulations 2005 provides that the General Manager is to ensure that the reasons for a decision by a Council acting as a planning authority are recorded in the minutes of the meeting.

Assessment:

Strategic Plan

The Council's Strategic Plan provides for a future with practical and effective land use strategies that will be achieved by focusing on the following key area¹: -

1. *A land use and development strategy to provide a long-term approach that produces sustainable and measurable economic, environmental (built and "green") and social benefits for the municipal area and the region.*

The proposal is considered consistent with Council's Strategic Plan as it represents an appropriate use for a rural area that will not impact upon the built or green environment.

Objectives of the Resource Management and Planning System of Tasmania

Section 5 of the Act provides that Council is obliged to further the Objectives of the Resource Management and Planning System of Tasmania (RMPS) set out in Schedule 1 of the Act when determining an application for planning approval. The Objectives of the RMPS are -

- a) *to promote the sustainable development of natural and physical resources and the maintenance of ecological processes and genetic diversity; and*
- b) *to provide for the fair, orderly and sustainable use and development of air, land and water; and*
- c) *to encourage public involvement in resource management and planning; and*
- d) *to facilitate economic development in accordance with the objectives set out in paragraphs (a), (b) and (c); and*

¹ Brighton Council: *Strategic Plan 2006 – 2016*, Brighton Council, Gagebrook, 2006.

- e) *to promote the sharing of responsibility for resource management and planning between the different spheres of Government, the community and industry in the State.*

The proposal is consistent with the objectives of Schedule 1 of the Act.

State Policies

Clause 3.3 (a) of the Planning Scheme requires Council to take into consideration any State planning policies before granting or refusing planning approval and Section 13(1) provides that where inconsistency occurs between State Policy and Planning Scheme the Policy takes precedence.

State Coastal Policy 1996

The State Coastal Policy 1996 (Coastal Policy) applies to the coastal zone, which includes all State waters and land within 1 km from the High Water Mark (HWM).² The subject land is not located within 1 km from the HWM of either the Derwent Estuary or Jordan River estuary, and the Coastal Policy does not apply to the land.

State Water Quality Policy 1997

The State Policy on Water Quality Management 1997 (Water Quality Policy) requires that a use or development be consistent with the physical capacity of the land so that the potential for erosion and subsequent water quality degradation is minimised.

The application is for a change of use only and will not result in any further site disturbance.

The State Policy on the Protection of Agricultural Land 2009

The subject land is located in a residential zone and established suburb and it is therefore considered that the Agricultural Policy does not apply to the land.

National Environmental Protection Measures (NEPM's)

No NEPM's are applicable to this proposal.

Planning Scheme

The land is located within the Rural zone of the Planning Scheme.

Scheme Objectives

The Rural Objective of the Planning Scheme as detailed under Clause 2.4 of the Scheme is reproduced as follows:

- (a) *To promote rural pursuits as an integral part of the Municipality's economic and employment base.*

²State Coastal Policy Validation Act 2003

- (b) *To ensure the higher quality agricultural land remains for agricultural production.*
- (c) *To promote agricultural activities that are compatible with the conservation of soil, water and vegetation resources.*
- (d) *To encourage the protection of marginal agricultural land with landscape value from undue development pressure.*
- (e) *Recognition of land with higher productivity values inter-related to the recycling of effluent as an initiative by Council allows for more intensive forms of crop production to be achieved. These areas have been identified as such and will continue to be reserved and protected from encroachment of non-agricultural uses.*

The proposal is for a minor change of use for the purpose of breeding small dogs. It is considered that this activity will not impact on any agricultural use of surrounding properties and is appropriate for the area.

Zone

The proposed dog breeding activity meets the definition of 'Animal Breeding, Boarding and Training use', which is 'discretionary' under the Table of Uses pursuant to Clause 6.6.3 when it is not for horse breeding or training within the Brighton Horse Overlay.

Clause 6.6.1 of the Scheme provides that the purpose of the Rural zone is: -

- (a) *An integrated approach to land management.*
- (b) *Development of new sustainable rural enterprises through value adding to products at source.*
- (c) *Promotion of economic development compatible with rural activities and land capability.*
- (d) *Improvement of existing agricultural techniques.*
- (e) *Protection and enhancement of the bio-diversity of the area.*
- (f) *To ensure that subdivision promotes effective land management practices and infrastructure provision.*

It is considered that the proposal does not conflict with these objectives.

Decision Guidelines

Council must consider the following decision guidelines before deciding on an application within the Rural zone under Clause 6.6.2: -

In addition to the matters listed in Clause 3.3, Council must consider the following matters before deciding on an application:-

- (a) *General issues*
 - (i) *any Catchment or Land Protection Strategy and policies applying to the land including the State Policy on the Protection of Agricultural Land 2000;*

(ii) the capability of the land to accommodate the proposed use or development, addressing site quality attributes including soil type, soil fertility, soil structure, soil permeability, aspect, contour and drainage patterns;

(iii) how the use or development relates to rural land use, rural diversification and natural resource management; and

(iv) whether the dwelling is integral to the operation of the rural activity conducted on the land.

(b) Rural issues

(i) the maintenance of farm production and the impact on the rural economy;

(ii) whether the site is suitable for the use or development and the compatibility of the proposal with adjoining and nearby farming and other land uses;

(iii) the farm size and the productive capacity of the site to sustain the rural enterprise and whether the use or development will have an adverse impact on surrounding land uses;

(iv) the need to prepare an integrated land management plan; and

(v) the impact on the existing and proposed rural infrastructure.

(c) Environmental issues

(i) an assessment of the likely environmental impact on the natural physical features and resources of the area and in particular any impact caused by the proposal on soil and water quality and by the emission of noise, dust and odours;

(ii) the impact of the use or development on the flora, fauna and landscape features of the locality;

(iii) the protection and enhancement of the natural environment and the character of the area, including the retention of vegetation and fauna habitat and the need to revegetate land including riparian buffers along waterways, gullies, ridge lines, property boundaries, discharge and recharge areas; and

(iv) the impact on the character and appearance of the area or features of architectural, historic or scientific significance or of natural scenic beauty or importance.

(d) Design and siting issues

(i) the design, colours and materials to be used and the siting, including the provision of development and effluent envelopes for any building or works;

(ii) the impact of the use or development on the existing and surrounding rural uses;

(iii) the location of any building or works with respect to the natural environment, major roads, vistas and water features and the measures to be undertaken to minimise any adverse impacts; and

(iv) the location and design of existing and proposed roads and their impact on the landscape and whether the use or development will cause significant traffic generation which will require additional traffic management programs to be initiated.

Where relevant it is considered that the proposal is consistent with these considerations.

Development Standards

The proposal is for a change of use only and does not include any new development.

Amenity

Clause 3.3(e) of the Planning Scheme requires Council to take into consideration the character of the locality, the existing and future amenities of the neighbourhood and the effects of the development on the amenity of the area.

The concerns of the representor are mainly in relation to amenity, particularly the impact of noise from barking dogs. The use exists so the issuing of a permit will not change the current situation. The site is in a rural area and is relatively distant from neighbours. It is considered an appropriate site for the use and the level of noise is unlikely to constitute a nuisance as defined in the Environmental Management and Pollution Control Act 1993. A standard condition relating to noise is included in the recommendation.

When an application for a kennel licence is made it will also need to be advertised and the public can make further comment. If noise continues to be a problem it can be investigated by Environmental Health and Animal Control.

Services

Clause 3.4(l) of the planning scheme requires Council to take into consideration the availability and provision of utility services, including water, sewerage, drainage and electricity when considering the application.

The property is appropriately serviced and the change of use will not require any changes to the current arrangement.

Traffic and Access:

The proposal is considered acceptable from a traffic and access point of view.

Engineering report

With respect to engineering assets, Council's Project Engineer advises that the proposal constitutes a minor change of use that will have no impact on engineering assets.

No changes to the existing services including access, stormwater, water or sewer are required.

Conclusion

This application seeks to formalise an existing use, being breeding of dogs on a rural property. The application is for a partial change of use only and will not result in any development other than a small sign. It is considered that this is an appropriate site for such a use and there is no planning reason for it not to continue. The dogs are contained in a fenced area and provided with appropriate housing. They are all small breeds that are not likely to be a threat to stock if they were to get out. The concerns of the representor in regard to noise are noted but it is not considered to be an adequate reason to refuse this change of use.

The proposal is recommended for approval, subject to condition.

Options:

1. Issue a written approval specifying the conditions (if any) imposed upon the use or development in accordance with the recommendation; or
2. Issue a written approval providing alternative or additional conditions (if any) imposed upon the use or development; or
3. Issue a written refusal for the use or development stating the reasons for refusal.

RECOMMENDATION:

That the application submitted in accordance with Part 3 of the Local Government (Building and Miscellaneous Provisions) Act 1993 and Part 4 of the Land Use Planning and Approvals Act 1993 for land at 555 Tea Tree Road, Tea Tree, described in Folio of the Register Volume 133831 Folio 1, to be developed by a Partial change of use to Animal Breeding, Boarding and Training (dog breeding) and Signage, and associated works approved subject to the following conditions:

General

- (1) The use or development must be carried out substantially in accordance with the application for planning approval, the endorsed drawings and with the conditions of this permit and must not be altered or extended without the further written approval of Council.
- (2) This permit shall not take effect and must not be acted on until 15 days after the date of receipt of this permit unless, as the applicant and the only person with a right of appeal, you notify Council in writing that you propose to commence the use or development before this date, in accordance with Section 53 of the *Land Use Planning and Approvals Act 1993*.

- (3) This permit includes approval for one (1) sign with dimensions of 62cm x 40cm that must be erected on the subject land. No further signage may be erected without further approval from Council.

Noise

- (4) Noise emissions from the use or development must not exceed a time average acoustic environmental quality objective weighted sound pressure level ($L_{Aeq,T}$) of 5 dB(A) above the background level, adjusted in accordance with Standards Australia: AS 1055, *Acoustics - Description and measurement of environmental noise*, Standards Association of Australia, Sydney, 1997 when measured at the boundary with another property. All methods of measurement must be in accordance with relevant Australian Standards and DPIWE (2003): *Draft Noise Measurement Procedures Manual*, Department of Primary Industries, Parks, Water and Environment.

Services

- (5) The developer must pay the cost of any alterations and/or reinstatement to existing services, Council infrastructure or private property incurred as a result of the development. Any work required is to be specified or undertaken by the authority concerned.

THE FOLLOWING ADVICE APPLIES TO THIS PERMIT:

- A. This permit does not imply that any other approval required under any other legislation or by-law has been granted.
- B. **If you notify Council that you intend to commence the use or development before the date specified above you forfeit your right of appeal in relation to this permit.**
- C. **This planning approval shall lapse at the expiration of two (2) years from the date of the commencement of planning approval if the development for which the approval was given has not been substantially commenced. Where a planning approval for a development has lapsed, an application for renewal of a planning approval for that development shall be treated as a new application.**

DECISION:

Cr Geard moved, Cr Garlick seconded that the recommendation be adopted.

CARRIED

VOTING RECORD

In favour	Against
Cr Garlick	Cr Owen
Cr Geard	Cr Taylor
Cr Gray	

The meeting closed 5:15 p.m.

Confirmed:

(Mayor)

Date:

19th June 2012