

**Minutes of the
Local Planning Panel Meeting
Held in the Council Chamber
2 Hely Street, Wyong and
Remotely - Online
on 03 August 2023**

Panel Members

Chairperson	Jason Perica
Panel Experts	Stacey Brodbeck Stephen Leathley
Community Representative/s	Lynette Hunt

Central Coast Council Staff Attendance

Dr Alice Howe	Director Environment and Planning remotely via <i>Teams</i>
Andrew Roach	Unit Manager Development Assessment
Emily Goodworth	Section Manager Employment and Urban Release
Katrina O'Malley	Development Planner Employment and Urban Release
Jon Scorgie	Senior Environmental Protection Officer Environment and Public Health
Rachel Gibson	Team Leader Civic Support
Lisa Martin	Civic Support Officer
Angela Russell	Civic Support Officer

The Chairperson, Jason Perica, declared the meeting open at 12:03pm and advised in accordance with the Code of Meeting Practice that the meeting is being recorded.

The Chair read an acknowledgement of country statement and outlined meeting procedures.

Apologies

The Panel noted that no apologies have been received.

Public Forum

The following people addressed the Panel:

Item 2.1 – Development Application DA/97/2020/A – 604 Ourimbah Creek Road, Palm Grove

1. Gaye Murrills – FOR
2. Michael Tatam – FOR
3. Brian Davies - FOR
4. Gary Chestnut – FOR
5. Vanne-Maree Wilkinson – FOR
6. Patrick Murphy – FOR
7. Greg McGill – FOR
8. John Dawson – FOR
9. Tony Voller – FOR
10. Tom Madden – FOR
11. Zoe Wall – FOR
12. Julie Terry – FOR
13. Lisa Ryan – FOR
14. Sam Tatam – FOR
15. Kris Lewis and Jonathon Degenhardt - AGAINST

(Note – “For” and “against” is relative to the recommendation for refusal, not the application itself)

The Local Planning Panel public meeting closed at 2:30pm.

The Panel then moved into deliberation following the Panel meeting, which concluded at 3:44pm.

PROCEDURAL ITEMS

1.1 Disclosures of Interest

The Panel Members confirm that they have signed a declaration of interest in relation to the matter on the agenda for this meeting.

PLANNING REPORTS

2.1 Development Application DA/97/2020/A - 604 Ourimbah Creek Road, PALM GROVE

Site Inspected Yes

Relevant Considerations As per Council assessment report

Matters/Material Considered

- Documentation with application
- Council assessment report and advice
- Submissions, written and verbal (latter at the meeting)
- Site Visit

Council Recommendation Refusal

Panel Decision ***That the Local Planning Panel refuse the Modification Application DA/97/2020/A – 604 Ourimbah Creek Road, Palm Grove, in accordance with Section 4.16 of the Environmental Planning and Assessment Act 1979 (“the Act”) after having regard to the matters for consideration detailed in Section 4.55 and 4.15 of the Act, for the reasons below:***

- 1 The Panel notes that the 15-month trial period ceased some time ago and that during the trial period it was apparent that the dog capacity of the facility was significantly less than the approval allows. Further, the operation of the animal boarding and training establishment for dog breeding during the trial period failed to satisfactorily demonstrate that the facility can be managed and operated so as to avoid unreasonable noise impacts on residents in the locality.
- 2 Based on the insufficient and inconsistent information provided by the Applicant, the Panel is not in a position to support the application. Inadequate information has been submitted to identify and address the likely impacts

of the development as required by Section 4.15(1)(b) of the Environmental Planning and Assessment Act 1979 as follows:

- a) No site plan showing the areas of the site used in conjunction with the animal and boarding facility (dog breeding) has been provided, nor proper comparison to the DA as approved.
- b) No detailed plans showing the location and layout of all structures associated with the proposed use on the site (intrinsic to the proposed use, as opposed to any retrospective approval of the structures themselves) including:
 - the evening house and attached food preparation and quarantine area.
 - outdoor pens.
 - location of all hardstand areas and retaining wall details in association with the use.
 - location and type of all timber fencing associated with the use.
 - location of any rooms within dwelling that are associated with the dog breeding operation.
 - location of staff break out room.
- c) An updated acoustic report that considers and addresses the following (after consultation and agreement on methodology and approach with Council's Environmental Health Officer):
 - Not to be undertaken at a time where surrounding environmental noise (e.g. cicadas) has the potential of influencing the quality of the sampling data.
 - Simultaneous sampling at the source and at sensitive residential receivers.
 - Consider worst-case scenarios where the maximum capacity of dogs sought (and able to be accommodated on site while meeting RSPCA guidelines) are barking in the exercising yards.
 - Sampling data to be weighted to criteria that is reflective of dogs barking, e.g. LA10.
 - Consideration of elevated properties and surrounding residences, where noise may travel laterally.
 - Consideration of the physical geographical landscape, (i.e. valley landform and whether sound is amplified).

- Consideration of different climatic conditions that may influence the intensity of sound.
 - Consideration of the movement of dogs between and during specific activities, e.g. overnight to daytime pens (and vice versa) and to and from the pens to the exercise yards
 - Physical or management recommendations to implement after considering and addressing the above, including considering any ongoing permanent monitoring.
- d) An updated plan of management.
- e) A bushfire report addressing timber fencing installed on the site and any bushfire measures to be implemented.
- f) Details in the Statement of Environmental Effects that addresses relevant planning requirements and demonstrating the proposal is substantially the same development. The SEE also does not clearly identify and address the works which are intrinsic to the proposed use, and a qualitative and quantitative assessment of the changes relative to the original development consent.

Explanation of Decision

While the terms of the decision are above, some explanation of the consideration by the Panel is warranted given the interest in the application.

The Panel agreed with the assessment of Council staff about the shortcomings of the proposal and submitted information, as outlined in the assessment report (and above). The Panel was not satisfied the proposal as submitted could or should be approved. The applicant's representative at the Panel meeting requested the application be deferred. The Panel was not supportive of this. Instead, the Panel agreed with the recommendation and with various submissions that finality to the application was warranted given the history at the site, the lapsing of a trial period some time ago, the application shortcomings and nature of outstanding information.

At the same time, the Panel was not of the view that a use for an animal and boarding facility (dog breeding) at the site was necessarily wholly unsuitable. The use is specifically permitted in the zone. There were a large number of submissions which raised concern and objection to the use of a dog breeding facility, based on animal welfare grounds. The Panel visited the facility and saw no evidence or reason to suspect ill-treatment of

dogs, nor poor facilities to accommodate the dogs (and noted the RSPCA had been involved in terms of upgrades and animal welfare checks). In terms of ethical views against animal breeding, these views are understood and respected. However, the use is legal in NSW and the Panel could not take such concerns into account regarding this application. The number of submissions objecting to the ethics of a legal use, whether 900, 1000 or more, did not constitute "public interest" within the meaning of Section 4.15 of the Environmental Planning and Assessment Act 1979, in the Panel's view. Laws regarding legal uses can only be changed through legislation, not DAs (or Modifications).

The key environmental consideration for the proposal is noise impact. This was a difficult issue for the Panel. There were a large number of written and verbal concerns raised regarding noise impacts from the facility, including detailed logs, and the Panel did not believe such concerns were contrived or manufactured. The Panel also agreed with the Council's Environmental Health Officer that the nature of noise from barking dogs (and their level of offence or impact) may be difficult to measure by conventional methods, which usually averages noise measurements over a 15-minute period. Also, during the trial period the facility did not operate at its full capacity. The DA had approval for up to 30 dogs. At the time of noise measurement at the site during the trial there were 10 dogs, and at the time of the site visit by the Panel (after the trial ceased) there were 15 dogs. This is a third to a half of the permitted capacity, necessitating noise modelling and forecasting, which is invariably less accurate than actual measurement. Conversely, the Panel was also informed that during 4 site visits by Council's Environmental Health Officer to surrounding land/sites, barking dogs could not be heard or could not be easily heard. It seems likely, based again on the information before the Panel, that noise impacts most commonly occur at the times of moving dogs to and from the night and day kennels (mid-morning and late afternoon/early evening), when moving the dogs to the outdoor play grassed areas adjoining the day kennels and from occasional visitors (as heard by the Panel). This is also unlikely to be constant or predictable. On balance, the Panel was satisfied that the use had caused adverse noise impacts to the amenity of surrounding land and these impacts had not been adequately mitigated or managed during the trial period.

Votes

The decision was unanimous.