

PENRITH CITY COUNCIL

MAJOR ASSESSMENT REPORT

| | |
|------------------------------|-----------------------------------------------------------------------------------------|
| Application number: | DA17/1344 |
| Proposed development: | Continued Use of the Site for a Greyhound Boarding, Training and Breeding Establishment |
| Property address: | 38 - 44 Keech Road, CASTLEREAGH NSW 2749 |
| Property description: | Lot 17 DP 223614 |
| Date received: | 21 December 2017 |
| Assessing officer | Lucy Goldstein |
| Zoning: | RU4 Primary Production Small Lots - LEP 2010 |
| Class of building: | N/A |
| Recommendations: | Refuse |

Executive Summary

Council is in receipt of a development application seeking consent for the continued use of the site as a greyhound boarding training and breeding establishment at 38-44 Keech Road, Castlereagh.

A previous consent (DA12/1295 as amended by DA12/1295.01) granted approval for the use of the site as a greyhound boarding, training and breeding establishment, with retrospective approval of an existing shed, dam works and associated site works. However, Condition No. 2 of DA12/1295.01 restricted the use of the site to a 12 month trial period from the date of determination of DA12/1295.01, requiring the applicant to submit a new application to Council for the continued use of the site.

Given that the application DA12/1295.01 was determined on 6 May 2014, the twelve (12) month trial period lapsed on the 6 May 2015. Notwithstanding this, it is understood that the development continued to operate beyond the trial period without development consent. In response to a noise complaint relating to dog barking, Council undertook a compliance investigation relating to the subject development. As a result of this investigation, the current application was lodged seeking development consent for the continued use of the site.

Key issues raised:

- The subject site does not meet the requirements for animal boarding and training establishments under Penrith Development Control Plan 2014, specifically the site has a frontage of less than 90m (being approximately 70m), and proposes kennels less than 150m to an existing residential dwelling (located within approximately 130m).
- Notwithstanding the above non-compliances, consent (DA12/1295.01) was granted on a 12 month trial basis given that documentation was submitted providing acoustic modelling to demonstrate that the proposal was capable of achieving acceptable noise levels, subject to imposing conditions requiring a range of noise mitigation measures to be implemented.
- The current application was accompanied by further acoustic assessments which conclude the noise impact from 24 pups (full capacity of pups) in the outdoor kennel area achieves one (1) decibel below the noise criteria, and as such complies with the noise criteria.
- However, the accompanying acoustic assessment identifies that cumulative noise impacts (when dogs in the indoor and outdoor kennels bark simultaneously) the noise levels during the night time period exceed the night time noise criteria by 1 decibel.
- As a result of this finding, the acoustic assessment report prepared by Day Design dated 26 September 2018 recommends the number of pups be reduced to 19 in order to comply with the noise criteria.
- Notwithstanding the above, there is uncertainty regarding the development noise level impacts in relation to the sleep disturbance criteria. The application has not satisfactorily explained the noise level recordings that exceed 48dBA for periods longer than 90 seconds. It is noted that the sleep disturbance criteria has been identified as 48dBA within the Acoustic Assessment prepared by Day Design dated 26 September 2018.
- During the exhibition period of the application, three (3) submissions from the adjacent and adjoining properties were received relating to nuisance dog barking among other matters.

As there was some uncertainty regarding delegations between the Local Planning Panel and Council officers to determine the application with respect to the cumulative number of submissions received across the various applications, the application was reported to the Local Planning Panel for determination on 26 September 2018. This recommended was for refusal. The Panel as a consequence of the recommendation and representations from the applicant suggesting that the Panel did not have jurisdiction to determine the application, deferred the matter for Council to seek legal advice. As outlined within the Statement of Reasons from the Panel, which is available on Council's website, members of the Panel did share the concerns raised by Council officers regarding site suitability of the site for the proposed use but requested that the additional acoustic information tabled during the Panel meeting be assessed before any position is formed on the application. In response and following deferral, legal advice was received which confirmed that Council officers retain delegation to determine the application and the additional acoustic information tabled during the Panel meeting, was subsequently considered and is addressed within this report.

As a consequence of the acoustic issues identified, the community submission received, and noting that an additional two (2) formal noise complaints have been lodged with Council regarding nuisance dog barking (4 November 2015, 3 February 2017), it is considered that it has not been sufficiently demonstrated that the proposed nature scale of development is suitable for the site with specific regard to acoustic impacts.

An assessment under Section 4.15 of the Environmental Planning and Assessment Act 1979 has been undertaken, and given the above unresolved matters, the application is recommended for refusal.

Site & Surrounds

The subject site is situated on the eastern side of Keech Road, Castlereagh, approximately 300m from its intersection with East Wilchard Road. Keech Road is a cul-de-sac road, with the subject lot being second from the end of the road.

The site is regular in shape, with a front and rear width of approximately 70m, lot depth of approximately 290m, and total land area of 2 hectares. The site is orientated in a westerly direction and has a gentle slope from the front to the north eastern corner.

The site has an existing dwelling and rural shed located at the front of the site. The site is intermittently vegetated towards the rear of the site, with a small dam located in the north-eastern corner of the site.

The surrounding area is characterised by rural/ residential development.

Background Information

Council's records indicate that the following events have occurred in relation to the site:

- **19 October 2012** A formal complaint was registered with Council regarding land clearing at 38-44 Keech Road Castlereagh.
- **21 November 2012** A site inspection was undertaken by Council's Development Compliance officers, which confirmed unauthorized works had occurred on the site including extensive land clearing, erection of a shed, and dam works.
- **25 September 2013** Development consent (DA12/1295) was granted for the use of the site for a greyhound boarding, training and breeding establishment with retrospective use of an shed, dam works and associated site works. It is noted that the consent for the use of the site was limited to a 12 month trial period.
- **6 May 2014** A modification application (DA12/1295.01) to amend condition 2 and condition 7 was granted approval. This consent permitted the increase in the number of greyhounds on the site to twelve (12) adult greyhounds and twenty-five (25) pups, and limited the consent to a 12 month trial period from the date of determination of DA12/1295.01.
- **4 November 2015** A community disputes and grievances was lodged regarding nuisance dog barking at the site (Ref. DC15/0908)
- **3 February 2017** A formal noise complaint was registered with Council regarding dog barking at the site (Ref. AC17/0206).
- **21 December 2017** The current development application was lodged seeking approval for the continued use of the site.

Proposal

The application seeks consent for the following works

- Continued use of the site as a greyhound boarding, training and breeding establishment including up to 12 adult greyhounds and 24 pups;
- Approval of an existing exercise 'round yard' located at the rear of the site.

It is noted the original application included retrospective approval for a shed, dam works and associated site works. Given the trial period applies to the use of the site only, rather than physical works, this application does not consider the shed, dam works and associated site works, as consent was previously granted for these works under DA12/1295.

Plans that apply

- Local Environmental Plan 2010 (Amendment 4)
- Development Control Plan 2014
- State Environmental Planning Policy No 55—Remediation of Land
- Sydney Regional Environmental Plan No.20 - Hawkesbury Nepean River

- **Section 4.15 - Evaluation**

The development has been assessed in accordance with the matters for consideration under Section 79C of the Environmental Planning and Assessment Act 1979, and having regard to those matters, the following issues have been identified for further consideration:

Section 79C(1)(a)(i) The provisions of any environmental planning instrument

State Environmental Planning Policy No 55—Remediation of Land

Clause 7 of the State Environmental Planning Policy No 55—Remediation of Land, requires the consent authority to consider, when determining an application for development, whether the land is contaminated and if the land is contaminated, whether the land is suitable in its contaminated state (or will be suitable after remediation) for the purpose for which the development is proposed to be carried out.

In review of historic aerial photographs and an inspection of the site, it can be seen that fill material has been imported onto the property. There is a light coloured fill which appears to be used as an additional driveway entrance on the western portion of the property. The origin and contamination status of the fill is not known and Council cannot, with certainty, be satisfied that the site is not contaminated. However, in respect to this application, it is noted that no building works are proposed that would disturb the soil.

Sydney Regional Environmental Plan No.20 - Hawkesbury Nepean River

An assessment has been undertaken of the application against relevant criteria with Sydney Regional Environmental Plan No 20—Hawkesbury-Nepean River (No 2—1997) and the application is satisfactory subject to recommended conditions of consent.

Local Environmental Plan 2010 (Amendment 4)

| Provision | Compliance |
|--------------------------------|----------------------------------|
| Clause 2.3 Permissibility | Complies - See discussion |
| Clause 2.3 Zone objectives | Does not comply - See discussion |
| Clause 4.3 Height of buildings | Complies - See discussion |

Clause 2.3 Permissibility

Under Penrith Local Environmental Plan 2010, the site is zoned RU4 Primary Production Small Lots. The proposal is defined as an 'Animal boarding or training establishment' meaning 'a building or place used for the breeding, boarding, training, keeping or caring of animals for commercial purposes (other than for the agistment of horses), and includes any associated riding school or ancillary veterinary hospital.'

The proposal is a permissible land use in the zone, with Council consent.

Clause 2.3 Zone objectives

The proposal is inconsistent with the following objective of the RU4 Primary Production Small Lots zone:

- *To minimise conflict between land uses within this zone and land uses within adjoining zones.*
In considering the surrounding residential land uses, the application has not satisfactorily demonstrated that the development will generate acceptable noise levels, and as such not result in adverse amenity impacts. Given this uncertainty, the proposed nature and scale of development is not supported. This is outlined further within the assessment report in relation to Penrith Development Control Plan 2014 compliance and likely Impacts.

Clause 4.3 Height of buildings

The proposal does not involve building works, and as such no changes to existing building heights are proposed.

Section 79C(1)(a)(iii) The provisions of any development control plan

Development Control Plan 2014

| Provision | Compliance |
|----------------------------------------|----------------------------------------------------------------------|
| D1.1. Rural Character | N/A |
| D1.2. Rural Dwellings and Outbuildings | N/A |
| D1.3. Farm buildings | N/A |
| D1.4 Agricultural Development | Does not comply - see Appendix - Development Control Plan Compliance |
| D1.5. Non-Agricultural Development | N/A |

Section 79C(1)(a)(iv) The provisions of the regulations

The application does not propose building works, and as such, the application is satisfactory in regards to the Regulations.

Section 79C(1)(b)The likely impacts of the development

Acoustic Impacts

Whilst it is acknowledged that the application was supported by acoustic assessments which conclude that the development complies with relevant noise criteria levels, the application has not clearly demonstrated that the development is satisfactory in respect to sleep disturbance criteria.

The accompanying Environmental Noise Impact Assessment (ENIA) provides an acoustic assessment of the development in operation, measured over a period of seven days. The ENIA concludes that the operations of the facility comply with the established noise criteria. However, the following issues were raised in respect to this acoustic assessment:

- The assessment measured noise levels for 6 pups and two dogs in the outdoor kennel area, whereas the application initially sought consent for 24 pups in the outdoor kennel area. As such the assessment did not accurately reflect noise impacts associated with the development.
- The assessment did not consider cumulative noise levels.
- The assessment did not provide an assessment of distressed dogs/pups.

- When considering the noise level graphs included in support of the report, noise levels exceeding 48dBa occur on the site overnight, and it appears that periods of barking extend for longer than 90 seconds as suggested in the discussion regarding night time barking.

In response to the above limitations of the report, a further Letter titled *3-44 Keech Road, Castlereagh Greyhound Facility Acoustic Assessment* prepared by Day Design dated 26 September 2018 was submitted to Council. This additional information satisfactorily addressed the matter of cumulative noise levels, noise levels at maximum capacity, and assessment of distressed dogs/pups. However, the matter of sleep disturbance has not been satisfactorily addressed. Further to this, the acoustic assessment uses a number of noise descriptors interchangeably in the assessment of night-time noise and sleep disturbance, without providing comment as to whether the noise descriptors correlate or how this data should be interpreted. As a consequence it has not been sufficiently demonstrated that the development complies, or can comply, with the established criteria.

The application has also not satisfactorily explained the noise level recordings that exceed 48dBA for periods longer than 90 seconds.

The accompanying noise level graphs show that the following noise recordings at the residential receptor exceed the sleep disturbance criteria of 48dbA (as identified within *3-44 Keech Road, Castlereagh Greyhound Facility Acoustic Assessment* prepared by Day Design dated 26 September 2018). The below noise level recordings appear to correlate with spikes in noise levels from the outdoor kennel area and/or indoor kennel area. These include

- *Night 1 22/8/2017 to 23/08/2017*
6:00am to 6:05 = above 60 leq1 second
- *Night 2 23/8/2017 – 24/08/2017*
5.58am to 6.04am = above 60 leq1 second
- *Night 4 24/08/2017 to 25/08/2017*
5.58am to 6.04am = above 60 leq1 second

Due to the above issues, and noting that three (3) submissions from the immediate adjacent and adjoining lots have been received identifying disruptive dog barking from the site, two of which specifically identify night time barking disturbing sleep, the application has not satisfactorily demonstrated that the development is suitable for the site in regards to acoustic impacts.

Water Management

In respect to water management, the application is considered capable of complying subject to conditions. To ensure that waste associated with the greyhounds is not carried with water and dispersed into the surrounding environment, potentially causing both adverse environmental and amenity issues, conditions of consent should be applied if the application was supported, prohibiting the hosing out of the shed and outdoor kennels, and requiring dry cleaning methods that limit the use of water.

Access, Traffic and Transportation

The proposal is unlikely to generate significant increases in traffic and will have minimal impact on the local road system.

Tree Management

The site is mapped as containing *Castlereagh Scribbly Gum Woodland* which is listed as a *Vulnerable Ecological Community* under the *Threatened Species Conservation Act 1995*. It is noted the site has undergone significant unauthorised clearing and has been subject to compliance action from Council as a result of the activities. The current application however does not propose the further removal of any vegetation.

Section 79C(1)(c)The suitability of the site for the development

The application has not demonstrated that the site is suitable for the proposed scale of development in respect to generating acceptable noise levels without adverse impact on neighbouring properties. As such, the proposed use is considered incompatible with surrounding and adjoining residential land uses.

Section 79C(1)(d) Any Submissions

Community Consultation

In accordance with Clause 4.4 of Appendix F4 of Penrith Development Control Plan 2014, the application was notified to nearby and adjoining residents.

Council notified seven residences in the area, and the public exhibition occurred between 8 January 2018 and 31 January 2018. Council received three (3) submissions in response.

The following issues were raised in the submissions received and have formed part of the assessment.

| Issue Raised | Comments |
|--------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p><i>Loss of Amenity:</i></p> <ul style="list-style-type: none"> Noise (during day and night periods) Odour | <ul style="list-style-type: none"> Noise impacts are noted. Refer to discussion under 'Likely Impacts' in this report. To mitigate impact of potential odour generated by dog waste, conditions of consent could be recommended if the proposal was supported requiring the shed and outdoor kennel to be cleaned by dry methods only, limiting the use of water, so that waste is not dispersed across the site. |
| <ul style="list-style-type: none"> Non-compliance with Penrith DCP 2014 | <ul style="list-style-type: none"> Noted. The site does not comply with the required 90m frontage, and kennels are proposed within 150m of an existing dwelling. |

Referrals

The application was referred to the following stakeholders and their comments have formed part of the assessment:

| Referral Body | Comments Received |
|------------------------------------------|--------------------------|
| Environmental - Environmental management | Not supported |

Section 79C(1)(e)The public interest

The application is not considered in the public interest for the following reasons:

- The application has not satisfactorily demonstrated that the proposal is satisfactory in respect to sleep disturbance and night time noise levels. The accompanying Environmental Noise Impact Assessment (ENIA) provides an acoustic assessment of the development in operation, measured over a period of seven days.
When considering the noise level graphs included in support of the report, noise levels exceeding 48dBa occur on the site overnight, and it appears that periods of barking extend for longer than 90 seconds as suggested in the discussion regarding night time barking. The application has not satisfactorily explained the noise level recordings that exceed 48dBA for periods longer than 90 seconds.
- Further to the above, the acoustic assessment uses a number of noise descriptors interchangeably in the assessment of night-time noise and sleep disturbance, without providing comment as to whether the noise descriptors correlate or how this data should be interpreted. As a consequence it has not been sufficiently demonstrated that the development complies, or can comply, with the established criteria.
- It is noted that three submissions were received during the exhibition period of the application, with each submission raising concern regarding nuisance dog barking among other matters. In addition to these submissions received, it is noted that two (2) additional formal noise complaints relating to nuisance dog barking were lodged with Council (4 November 2015, 3 February 2017).

In considering the community submissions received and formal noise complaints, in conjunction with the unresolved matters regarding the supporting acoustic assessments, the development in its current form is not considered to be in the public interest.

Conclusion

In assessing this application against the relevant environmental planning policies, being Penrith Local Environmental Plan 2010 and Penrith Development Control Plan 2014, the proposal does not satisfy the aims, objectives and provisions of these policies.

It has not been satisfactorily demonstrated that the development will not result in adverse levels of noise, and as such the proposal is not considered in the public interest or suitable for the site. Given this, the application is recommended for refusal, for the attached reasons.

Recommendation

1. That development application DA7/1344 for the continued use of the site as a greyhound boarding training and breeding establishment at 38-44 Keech Road Castlereagh be refused for the following reasons:

Refusal

1 X Special 02 (Refusal under Section 4.15C(1)(a)(i) of EPA Act 1979)

The application is not satisfactory for the purpose of Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act as the proposal is inconsistent with the following provisions of Penrith Local Environmental Plan 2010:

- The proposal is inconsistent with the objectives of the RU4 Primary Production Small Lots, specifically '*To minimise conflict between land uses within this zone and land uses within adjoining zones.*'

2 X Special 04 (Refusal under Section 4.15(1)(a)(iii) of EPA Act 1979)

The application is not satisfactory for the purpose of Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act as the proposal is inconsistent with the following: provisions of Penrith Development Control Plan 2014

Chapter D1 Rural Land Uses, Section 1.4.4. Animal Boarding or Training Facilities

- The site does not meet the required lot frontage of 90m for animal boarding or training establishments;
- The site does not meet the required minimum 150m required from kennels to an existing dwelling or potential dwelling site;
- The proposal is inconsistent with the objective "*To ensure that properties are large enough to support the required facilities and allow for sufficient setback from boundaries, adjacent land uses and public areas to minimise impacts.*"

3 X Special 07 (Refusal under Section 79C(1)(b) of EPA Act 1979)

The application is not satisfactory for the purpose of Section 4.15C(1)(b) of the Environmental Planning and Assessment Act in terms of the likely impacts of the development.

- It has not been satisfactorily demonstrated that the noise levels generated by the development, can be managed at an acceptable level.

4 X Special 08 (Refusal under Section 79C(1)(c) of EPA Act 1979)

The application is not satisfactory for the purpose of Section 4.15(1)(c) of the Environmental Planning and Assessment Act as the site is not suitable for the proposed development. The application has not sufficiently demonstrated that the site is suitable for the proposed scale of development due to its proximity to existing dwellings (being less than 150m) and generating adverse noise impacts on surrounding residential properties.

5 X Special 10 (Refusal under Section 4.15(1)(e) of EPA Act 1979)

The application is not satisfactory for the purpose of Section 4.15 (1)(e) of the Environmental Planning and Assessment Act as the proposal has not demonstrated the development is satisfactory in respect to sleep disturbance and night time noise levels. As such the proposal is not in within the public interest.

6 X Special 9 (Refusal under Section 4.15C(1)(d) of EPA Act 1979)

The application is not satisfactory for the purpose of Section 4.15C(1)(d) of the Environmental Planning and Assessment Act due to matters raised in submissions which include:

- Excessive levels of noise generated by dog barking, relating to the use of the site as a greyhound boarding, training and breeding establishment.

Appendix - Development Control Plan Compliance

Development Control Plan 2014

D1 Rural Land Uses

Chapter D1 Rural Land Uses, Section 1.4.4 Animal Boarding Or Training Establishments

The proposal does not meet the development controls under Penrith DCP 2014 relating to animal boarding and training establishments, specifically the site has a frontage less than 90m (being approximately 70m), and the proposed kennels are located within 150m from an existing residential dwelling (located approximately 127m from the adjoining dwelling to the south).

It is noted that the above non-compliances were identified in the assessment of the original development application DA12/1295. However, notwithstanding these non-compliance, consent was granted on a 12 month trial basis given that documentation was submitted providing acoustic modelling to demonstrate that the proposal was capable of achieving acceptable noise levels, and subject to the imposition of conditions requiring a range of noise mitigation measures be implemented. This condition was not complied with and the use continued operation beyond the stipulated trial period as an unauthorised land use.

The current application which stemmed from compliance investigations was supported by further acoustic assessment/documentation which conclude the noise impact from 24 pups (full capacity of pups) in the outdoor kennel area achieves one (1) decibel below the noise criteria, and as such complies with the noise criteria. However, the accompanying Acoustic Assessment dated 26 September 2018 identifies that cumulative noise impacts (when dogs in the indoor and outdoor kennels bark simultaneously) the noise levels during the night time period exceed the night time noise criteria by 1 decibel. As a result of this finding, the acoustic assessment report prepared by Day Design dated 26 September 2018 recommends the number of pups be reduced to 19 in order to comply with the noise criteria.

Notwithstanding the above, the application has not satisfactorily explained the noise level recordings that exceed 48dBA for periods longer than 90 seconds. It is noted that the sleep disturbance criteria has been identified as 48dBa within the Acoustic Assessment prepared by Day Design dated 26 September 2018

Further to this, the acoustic assessment uses a number of noise descriptors interchangeably in the assessment of night-time noise and sleep disturbance, without providing comment as to whether the noise descriptors correlate or how this data should be interpreted. As a result of this it has not been sufficiently demonstrated that the development complies with the established noise criteria

Due to the historic non-compliant activities on the site to date, the issue raised above, and noting that three (3) submissions from the immediate adjacent and adjoining lots have been received identifying disruptive dog barking from the site, two of which specifically identify night time barking disturbing sleep, the application has not satisfactorily demonstrated that the development is suitable for the site in regards to acoustic impacts. As such, the proposal is not supported.