

2 DEVELOPMENT OF THE LAND FOR AN OUTBUILDING AND USE OF THE LAND FOR ANIMAL KEEPING (5 DOGS) AT 72 GAINSBOROUGH AVENUE LANG LANG

FILE REFERENCE INT175128

RESPONSIBLE GENERAL MANAGER Andrew Paxton

AUTHOR Mary Rush

RECOMMENDATION

That a Notice of Decision to Grant Planning Permit T160655 be issued for development of the land for an outbuilding and animal keeping (5 dogs) at 72 Gainsborough Avenue, Lang Lang VIC 3984 subject to the conditions attached to this report.

Attachments

- | | | |
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| 1 | Locality plan | 1 Page |
| 2 | Copies of objections circulated to councillors only | 10 Pages |

EXECUTIVE SUMMARY:

APPLICATION NO.:	T160655
APPLICANT:	Lachlan Wright
LAND:	72 Gainsborough Avenue, Lang Lang VIC 3984
PROPOSAL:	Development of the land for an outbuilding and use and development of the land for animal keeping (5 dogs)
PLANNING CONTROLS:	Low Density Residential Zone-Schedule 2 (LDRZ2) Design and Development Overlay-Schedule 1 (DDO1) Vegetation Protection Overlay-Schedule 1 (VPO1)
NOTIFICATION & OBJECTIONS:	The application has been advertised pursuant to Section 52 of the <i>Planning and Environment Act 1987</i> . Seven (7) objections have been received to date.
KEY PLANNING CONSIDERATIONS:	Amenity
RECOMMENDATION:	Notice of Decision to grant permit

BACKGROUND:

Planning Permit T030982 was issued on 30 March, 2004 for the subdivision of land into 37 lots.

SUBJECT SITE:

The site is located on the southern side of Gainsborough Avenue Lang Lang.

A crossover is located adjoining the western boundary and a four (4) metre wide drainage and sewerage easement runs along the rear boundary.

The site is vacant and the topography of the land is flat.

The main characteristics of the surrounding area are:

- North Across Gainsborough Avenue are low density residential lots with some being developed with single dwellings
- South Large rural residential properties used for grazing
- East Vacant low density residential lots
- West Vacant low density residential lots

PROPOSAL:

An application has been received for the development of the land for an outbuilding and use and development of the land for animal keeping.

The proposed outbuilding measures 12 metres by 7.5 metres, with a 3m awning and will have a gable roof with a maximum height 5.2m, constructed in 'Colourbond' weatherboard. The outbuilding is proposed to be constructed three (3) metres from the eastern boundary and over 40 metres from the front boundary. The shed requires a planning permit as there is a building envelope that requires any buildings to be five (5) meters from the side boundaries (the dwelling does not require a planning permit).

The applicant proposes to keep five (5) Shar Pei dogs on the land. They currently have two (2) intact males and two (2) intact females and may acquire a fifth dog of either sex in the future or have a fifth dog on the land which would be boarded for mating purposes only.

It is proposed to have up to two litters per year but not more than one litter at any one time. The applicant has stated the activity is a hobby of the owner and not a commercial activity.

The applicant has advised that the dogs are primarily inside dogs, being kept inside the dwelling with a small verandah area fenced to allow outside access.

The applicant has been granted a Local Laws permit to live in a caravan and use the outbuilding for storage whilst the dwelling is under construction. Council has granted this approval on the site for up to 12 months, and the applicant is in the process of obtaining consent from Council's Building Department to construct an outbuilding on vacant land.

The applicant has submitted a site plan showing that they propose to construct a 1.8 metre high paling fence around the perimeter of the site and on either side of the proposed dwelling with an internal gate delineating the front and back yard. It is noted that the fencing is not part of the planning application, and has not been assessed.

The applicant also proposes to construct an internal fence at a minimum of one metre from the boundary fence as an external fence to house the dogs and limit any interaction with the property boundary fences. This area will be the dog yard and will include kennels to house the animals when exercising in the yard.

PLANNING SCHEME PROVISIONS:

State Planning Policy Framework (SPPF)

The relevant clauses of the SPPF are:

- Clause 11 Settlement
- Clause 16 Housing

Local Planning Policy Framework (LPPF)

The relevant clauses of the LPPF are:

- Clause 21.03 Settlement and Housing
- Clause 21.06-1 Design and Built Form

Relevant Particular/ General Provisions and relevant incorporated or reference documents

- Clause 65 Decision Guidelines

Zone

The land is subject to the Low Density Residential Zone-Schedule 2 (LDRZ2).

Overlays

The land is subject to the following overlays:

- Design and Development Overlay-Schedule 1 (DDO1)
- Vegetation Protection Overlay-Schedule 1 (VPO1)

PLANNING PERMIT TRIGGERS

The proposal for the development of the land for an outbuilding and the use and development of the land for animal keeping (5 dogs) requires a planning permit under the following clauses of the Cardinia Planning Scheme:

- Pursuant to Clause 32.03-1 a planning permit is required to use the land for animal keeping.
- Pursuant to Clause 32.03-4 a planning permit is required for buildings and works associated with a section 2 use (animal keeping)
- Pursuant to Clause 42.03-1 a planning permit is required for a building or works within five (5) metres of a side boundary.

PUBLIC NOTIFICATION

The application has been advertised pursuant to Section 52 of the Planning and Environment Act 1987, by:

- Sending notices to the owners and occupiers of adjoining land.

Council has received seven (7) objections to date.

The key issues that were raised in the objections are:

- Number of dogs
- Noise
- Smell
- Traffic
- Visual amenity (front fencing, size of outbuilding, reduced setback)

REFERRALS

No referrals were required.

DISCUSSION

The Low Density Residential Zone provides the ability for Council to consider a planning permit for animal keeping for up to five (5) animals as a Section 2 permit required use, including any associated buildings and works.

The proposal is consistent with the definition of animal keeping which includes the keeping and breeding of domestic animals.

The proposal was advertised and seven (7) objections have been received. In response to the grounds of objections the following can be concluded:

- **Number of dogs**

The applicant proposes to keep a maximum of five (5) dogs on the site at any one time. A condition can ensure this maximum number is met.

The applicant proposes to have not more than one litter of puppies at any one time due to the demanding work load associated with raising a litter of puppies such as feeding, cleaning etc.

Once the puppies are four (4) months of age they will not be permitted to remain on the land as they would be counted as part of the total number of animals permitted by the planning permit. A condition can ensure this requirement.

Only the breed Shar Pei will be allowed to be breed on the land. A condition can ensure this requirement.

In conclusion it is not considered that five (5) animals is excessive if they are well managed/disciplined and appropriate conditions are placed on any planning permit restricting numbers, breed and appropriate noise/waste controls. The keeping of five (5) animals is a Section 2 permit required use in the Low Density Zone and the current proposal is in accordance with this limit.

- **Noise**

Several objections have raised concerns over noise associated with the truck owned by the applicant, and dogs barking.

There are no planning permit triggers for the truck or trailer and therefore this cannot form part of the decision making for this application. However, the truck and trailer are owned by the applicant and is his commuter vehicle, driven to and from work sites.

The storage of a commuter vehicle is ancillary to the use of the dwelling and does not require planning permission.

It is up to the owner to insure that they comply with EPA noise regulations and comply with the covenant in relation to storage of the vehicle, again this is not part of the planning permit approval or assessment.

If the dogs are managed efficiently, there is no suggestion that noise would be a significant issue. The fencing proposed around the yard and on either side of the dwelling will block the view of the dogs to the adjoining yards and the streetscape, which would reduce the visual stimulus to barking.

- **Offensive odours**

The owners propose to use a composting worm system to decompose animal waste which breaks down the waste to a harmless organic product which would not produce any offensive odours. A condition would be placed on any permit issued requiring the submission of a waste management plan to Council's satisfaction.

- **Traffic**

Objectors have raised concerns over the movement of the owner's commuter vehicle to and from the site. As previously stated, a commuter vehicle whether a truck or otherwise, is ancillary to the residential use of the land and does not require planning permission.

Prospective purchasers of the dogs would only attend the site by appointment and with a potential of around 12 puppies per year, the numbers of visitors to the site would be minimal.

- **Visual amenity**

Objectors have raised concerns over the visual impact of the 1.8 metre high fence proposed along the front boundary and on the eastern and western side boundaries up to the yard proper. There are no planning permit requirements for fencing, the side fencing is a civil matter, however a 1.8m front fence will require a building permit and any permission would be assessed under the Building Act.

The application originally had the outbuilding exceeding the 120 square metre limit imposed by the Design and Development Overlay-Schedule 1, by 3 metres (123 square metres proposed). The applicant has reduced the size of the outbuilding to 90 square metres. This has resulted in the three (3) metre setback from the boundary that triggers a permit for the outbuilding only requiring a planning permit. The outbuilding is proposed to be constructed three (3) metres from the eastern boundary which is a reduction in the five (5) metres required by the Overlay by two (2) metres.

It is not considered that the location of the outbuilding will result in any significant visual impact to the site to the east, given the boundary fence and the three (3) metres between the fence and the outbuilding which gives ample room for effective screen planting. A condition can be placed on any permit issued requiring screen planting.

- **Safety**

Several objectors are concerned about safety of residents in relation to the potential for dog attack. The applicant has proposed appropriate fencing around the site, it is also noted that the breed is considered friendly and the applicant has advised that when the animals are outside the home, they will be on leashes for their own protection, as the dogs are expensive show dogs. The applicant has advised that for the past 9 years of undertaking their hobby they have never had one dog escape.

Clause 65 Decision Guidelines

The proposed use and development is a hobby of the owner and consistent with the residential nature of the area. The proposal is consistent with the State and Local Planning controls which identify that use and development in residential areas should be consistent with the character of the area.

The proposal is consistent with the zone and the overlays applicable to the site.

The proposed use is a specified permit required section 2 use within the Low Density Zone which signifies that it is a use which has been determined to be consistent with the residential character of the area. Currently a land owner within the Shire who lives on a site of 4000m² can have four dogs without requiring an excess animal permit (Local Laws permit). The current proposal requires a Planning Permit for the breeding aspect of the proposal. Subject to appropriate permit conditions, it is considered that the current proposal will be consistent with the orderly planning of the area as it is associated with the residential use of the site.

Subject to appropriate permit conditions relating to number of dogs on site, breed, noise and odour it is considered that the use and development will not have a significant impact on the amenity of the nearby residents.

CONCLUSION

The proposal is considered to be consistent with State and Local planning policies, the Zone and Overlays applicable to the site and the orderly planning of the area.

It is recommended that a Notice of Decision to Grant a Permit for application T160655 be issued for the Development of the land for an outbuilding and animal keeping (5 dogs) at 72 Gainsborough Avenue, Lang Lang, subject to the following conditions

CONDITIONS

1. Before the development starts, plans to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the plans will be endorsed and will then form part of the permit. The plans must be drawn to scale with dimensions. Three copies must be provided. The plans must be generally in accordance with the plans submitted to Council but modified to show:
 - a. An amended plan showing an internal fence sited a minimum of 1 metre from the boundary fences along the east, west and south boundaries incorporating the proposed exercise yards/outdoor kennels at the rear of the property so to restrict any access for the dogs along the neighbouring boundary fences.
 - b. Elevation plans of the proposed outbuilding showing cladding in weatherboard materials.
2. The use and development as shown on the endorsed plans must not be altered without the written consent of the Responsible Authority.
3. This permit allows the use of the land for the keeping/breeding of Shar Pei dogs only.
4. No more than 5 dogs (excluding offspring) may be kept on the property at any time without written consent from Responsible Authority.
5. All offspring from the 5 dogs must be removed from the property within 16 weeks of birth unless with written consent of the satisfaction of the Responsible Authority
6. Offensive odours must not be discharged beyond the boundaries of the premises.
7. Noise emitted from the premises must not exceed the recommended levels as set out in Noise from Industry in Regional Victoria (NIRV; EPA Publication 1411, 2011).
8. All animal waste generated must be disposed of on-site in a hygienic manner, or disposed of off-site at an approved waste disposal facility.
9. If the waste is to be disposed of on-site, the applicant must submit a detailed proposal of how the applicant intends to manage the waste hygienically, and in a manner that will not cause a nuisance.
10. All feed is to be stored in vermin-proof structures to the satisfaction of the Responsible Authority.
11. The use and development must be managed to the satisfaction of the responsible authority so that the amenity of the area is not detrimentally affected, through the:
 - (a) Transport of materials, goods or commodities to or from the land.
 - (b) Appearance of any building, works or materials.
 - (c) Emission of noise, artificial light, vibration, smell, fumes, smoke, vapour, steam, soot, ash, dust, waste water, waste products, grit or oil.
 - (d) Presence of vermin.

12. Before the development is occupied, a permanent screen of trees and shrubs must be planted between the outbuilding and the eastern boundary to provide an effective visual screen to the satisfaction of the Responsible Authority.
13. The outbuilding may only be used for the storage of vehicles and goods related to domestic activities being carried out on the property. The outbuilding may not be used for human habitation.
14. Storm water must not be discharged from the site other than by means of an underground pipe drain discharged to an approved outlet to the satisfaction of the Responsible Authority.

Permit Expiry

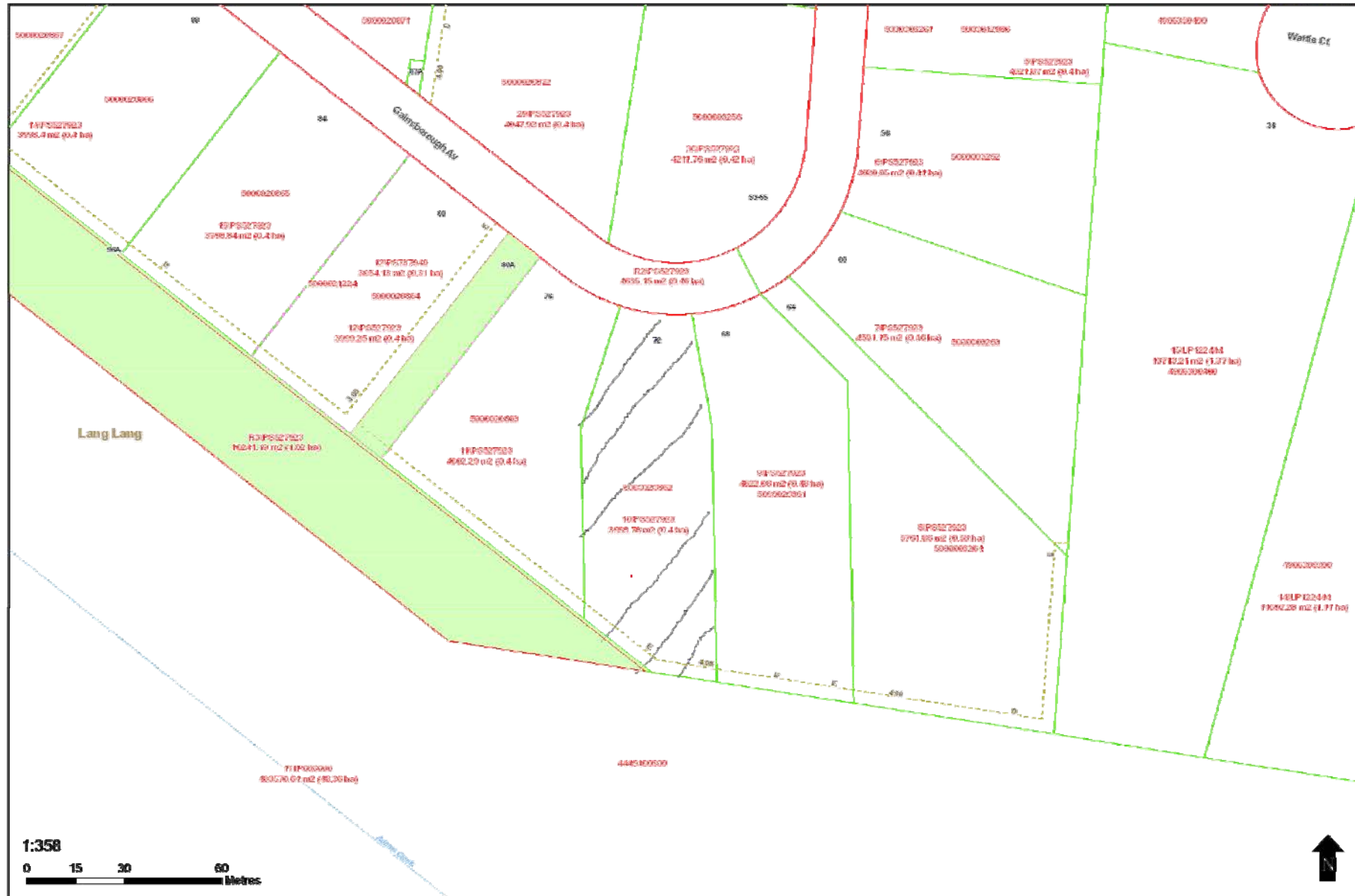
This permit will expire if one of the following circumstances applies:

- a. The development and use are not started within two years of the date of this permit.
- b. The development is not completed within four years of the date of this permit.

The Responsible Authority may extend the periods referred to if a request is made in writing before the permit expires, or within six months afterwards if the approved development has not commenced and twelve months if the approved development has commenced

Permit Notes

A Building Permit may be required for this development. To obtain a building permit you will need to contact a registered building surveyor.



Data Source: State & Local Government. © CARDINIA SHIRE COUNCIL

13/01/2017