

MINUTES

PLANNING COMMITTEE MEETING No. 239

Thursday 27 March 2025
6pm

City Hall

ALSO LIVE STREAMED ON THE CITY'S WEBSITE:

www.geelongaustralia.com.au/meetings

PANEL:

Cr A Katos (Chair)
Cr T Sullivan (Deputy Chair)
Cr R Story
Cr C Burson
Cr E Sinclair
Cr E Kontelj

PRESENT

Present: Cr A Katos (Chair)
Cr T Sullivan (Deputy Chair)
Cr R Story
Cr C Burson
Cr E Sinclair
Cr E Kontelj

Council Officers: Sally Beers, Principal Statutory Planner
Rory O’Loughlen Team Leader Statutory Planning
John Rush, Coordinator Statutory Planning
Joanne Van Slageren, Manager City Development
Jacquilyn Douglas, Manger Council and Corporate Governance

Opening: The Chair declared the meeting open at 6:08pm.

1. PROCEDURAL MATTERS

Acknowledgement Of Country

The Committee acknowledges the Wadawurrung People as the Traditional Owners of the Land, Waterways and Skies. We pay our respects to their Elders, past, present and emerging. We Acknowledge all Aboriginal and Torres Strait Islander people who are part of our Greater Geelong community today.

1.2. Introduce the Panel Members

1.3. Apologies

Cr S Kontelj, Cr A Aitken, Cr E Wilkinson, Cr R Nelson, Cr M Cadwell,

1.4. Declarations of Conflicts Of Interest

NIL

1.5. Confirmation of Minutes

Moved: Cr Story

Seconded: Cr Burson

That the Minutes of the Planning Committee Meeting held on 26 June 2024 and 27 February 2025 be confirmed.

CARRIED

2. MATTER(S) FOR CONSIDERATION

2.1. PP-33-2024 36 Kanyanya Avenue, Clifton Springs

| | |
|------------------------|--|
| Application No: | PP-33-2024 |
| Applicant: | J A Gillett & H M Whiteside |
| Subject Land: | 36 Kanyanya Avenue, Clifton Springs |
| Zone: | General Residential Zone 1 |
| Overlays: | Design & Development Overlay DDO14 |
| Existing Use: | Single dwelling with detached garage and existing animal enclosures. |
| Proposed Use: | Use and Development of Land to Keep and Breed up to 5 Small Domestic Animals (Dogs). |

Summary

- The subject site is located on the southern side of Kanyanya Avenue, Clifton Springs. It is an irregular shaped allotment, with a street frontage of approximately 32m, a maximum width of approximately 28m and an area of approximately 596m².
- The site contains a single dwelling and shedding. Since purchasing the property in 2023, the owners have undertaken buildings and works to establish a dog breeding business on the land. These works include converting the existing garage and outdoor areas into dog pens. To date these buildings and works have not received planning approval however these works form part of the application to be considered.
- The application states that at present only 2 dogs are currently kept on site at any one time and, therefore, in accordance with the planning scheme requirements no planning permit is currently required for the use of 2 domestic animals.
- It is relevant to note that the applicant also operates nearby properties at 142 Bay Shore Avenue and 137 Bay Shore Avenue Clifton Springs and these properties are used for the same dog breeding business.
- With respect of the use for dog breeding at 142 Bay Shore Road Council considered an application for a Certificate of Compliance relating to existing use rights for dog breeding. Council ultimately resolved to refuse this application and the applicant has exercised their right to appeal to VCAT Council's decision that this business has existing use rights. These properties are approximately 160m to the north of the subject site.
- It is noted the breeding business at 142 Bay Shore Avenue currently has a domestic animal business permit - DAB 66 that is currently due to expire on 9 April 2025.
- The subject site at 36 Kanyana Avenue is located on a residential street within a General Residential 1 Zone. Due to the shape of the allotment, the subject site abuts 4 residential properties.
- In a broader context, the subject site forms the northern part of the Clifton Springs established residential area and is set in a suburban streetscape characterised by a predominance of similarly low rise (1-2 storey) detached single dwellings.
- It is also relevant to note that lot sizes in this area generally range between 500-600m². The General Residential 1 Zone however supports more intensive residential development in this area. Over the coming years, there will likely be an increase in medium density development in this area.
- The application submitted seeks approval to Use and Development of Land to Keep and Breed up to 5 Domestic Animals (Dogs).
- If this application is successful, the applicant has advised they will relocate their domestic animal breeding business, Cavoodles and Poodles from Helen Pty Ltd, from 142 Bay Shore Avenue Clifton Springs to the subject site. They propose to only keep two animals at their property at 142 Bay Shore and up to 5 animals at their property at 36 Kanyama Avenue.

- The proposed use would be conducted principally within the existing dwelling and in the existing former garage. The former garage now incorporates 3 enclosed pens with access to outdoor spaces alongside the eastern side and rear of the existing garage. An additional fourth pen is located in the laundry of the dwelling. The laundry is to have a doggy door, which allows access to an outdoor space. This space will house 2 dogs.
- The overall care of the dogs would be the responsibility of the owner (Ms Whiteside), who resides at 142 Bay Shore Avenue.
- An 'Operations Manager', dogs trained by Ms Whiteside, would be kept at the site and the Operations Manager would be responsible for the care of the dogs. Ms Whiteside would regularly attend the property to supervise and oversee the dogs' care.
- The adjoining property at 8 Jetty Road is the site closest to the proposed use of the land for indoor and outdoor pens (converted garage) and has habitable room windows and secluded private open space adjacent to this space.
- The application is accompanied by an acoustic report and domestic animal management plan, details of which are discussed in the body of this report, that explains the proposed operations and management controls to be put in place.
- The application was referred externally to the EPA, CCMA, Barwon Water and internally to Council's Local Laws (Animal Management), Environmental Health, Waste and Engineering Departments.
- All Departments have not objected to the use of the land for dog breeding subject to conditions of permit, if one is issued. That said, Local Laws have raised barking dogs are a significant concern for neighbouring residences, particularly in a residential area. This is based on the potential for noise disturbances and the impact on the community and the amenity of the area.
- As part of the planning process the application underwent public notice to landowners and occupiers in the surrounding area and a sign was placed on site.
- As a result, 18 objections were received (mainly from residents located in close proximity to the subject site). In addition, 1 letter of support was received. The applicant also included 7 letters of support with their submission.
- A summary of the reasons for objections include:
 - The use is not appropriate in the residential area
 - Noise from barking dogs
 - Inadequacy of the acoustic report
 - Light spill
 - Odour and potential for vermin
 - On street parking and increased traffic
 - The business is run in conjunction with other properties at 142 Bayshore and 137 Bayshore Avenue. Dogs associated with this business are transported between properties which further impacts on the amenity of the area, increasing the scale of the business in a residential area.

- If the application is approved, any permit will be hard to enforce given the applicant operates this business also from nearby properties.
 - The business is not managed properly
 - No assurance that an onsite manager will be present on site. The overall care of the dogs would be the responsibility of Ms Helen Whiteside who does not reside on site
 - Helen Whiteside has tried to bribe neighbours to support this application.
 - Property devaluation
- This application has been assessed against the requirements of the Greater Geelong Planning Scheme, including the decision guidelines in the General Residential Zone, the Municipal Planning Strategy and Planning Policy Framework
 - In the purpose of the General Residential Zone it allows for consideration of a limited range non-residential uses, that serve local community needs in appropriate locations.
 - The Municipal Planning Strategy (MPS) and the Planning Policy Framework (PPF) aim to limit the extent of commercial incursions into residential areas. It is important to protect the amenity of residential areas from noise, light and odour and limit the scale of the business to be compatible with the residential character of the area.
 - The attached report assesses the application in accordance with the Planning Scheme provisions and determines on the balance of matters to be considered that the application does not adequately address the decision guidelines outlined in the Greater Geelong Planning Scheme and as such it is recommended to be refused. The reasons for refusal are as follows:
 - The acoustic report and the domestic animal management plan do not provide confidence that the proposed use will ensure the amenity of the area is not significantly affected, particularly in regards to noise management. Key issues include:
 - The submitted acoustic report was not undertaken in the subject site, but rather at the property at 142 Bay Shore Avenue., this site has a different site context.
 - The acoustic qualities of the overnight pens in the converted garage at 36 Kanyanya were not tested in the acoustic report. The garage would have less acoustic attenuation than the dwelling at 142 Bay Shore Ave. Given the proximity of the neighbouring habitable room windows, the acoustic qualities of the garage/pens should have been considered.
 - The acoustic report states the location of adjoining neighbouring windows is 'technically irrelevant.' On the contrary, officers consider an assessment of the acoustic qualities of the converted garage (as mentioned) and its location adjacent to the open space and habitable rooms of neighbouring dwellings (in particular, 8 Jetty Rd) are highly relevant to the assessment of the appropriateness of the use in this location.
 - The acoustic report links the control of noise to the effectiveness of an on-site manager to control dog behaviour/barking. The Manager will not reside on the land and this does not provide confidence that the use of the land can be appropriately administered.
 - This is a relatively tight residential site with 4 residential properties that abut the site. Neighbours currently complain of noise related to barking, howling and whimpering. This causes them distress and lack of sleep.
 - The acoustic report likens noise to typical situations of having domestic dogs. However, the intensity of the use here relates to a higher number of dogs such that it requires planning permission, and becomes a separate land use for the purposes of the planning scheme. There is a correlation between the number

of dogs and amenity impacts, eg dogs arousing each other. It also means that the particular attributes of the land and surrounds need to be considered (unlike typical domestic situations). It is noted that this land has been set up to breed and keep dogs with an unknown manager at this time. Based on this the primary purpose of the land would be to keep and breed dogs, with the use of the land for a dwelling being more of a secondary use.

- The noise made from dogs is sporadic and behavioural. It is not like a continuous noise from machinery. Rather, it is a short impulsive noise that may occur infrequently or a series of short bursts emanating from one or more animals in sequence. This sporadic noise was not tested or considered in the acoustic report. Sporadic noise, particularly at night, can create an amenity concerns, particularly in residential areas.
 - The outdoor pens rely on boundary fencing for noise mitigation. Neighbours have stated the use of their yards can arouse dogs. Residential uses (and amenity) should have primacy over non-residential uses. There have been a number of VCAT cases (referred to in the body of this report) that permitted dog breeding in residential areas, are located on larger residential allotments where larger buffers would be likely (and normal residential activities would not typically arouse dogs).
 - Council has received complaints about noise (barking dogs) in relation to the applicant's properties at 142 Bay Shore Ave, 137 Bay Shore Ave and the subject site. An on-site manager has not been able to prevent dogs from barking and prevent complaints from being received. Based on this the existing business has created amenity concerns for neighbours.
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- Whilst there is a community benefit as part of the overall business it is noted that the benefit will serve a wider catchment area. It does not provide this use is a net community benefit to the immediate residential area, as directed by the scheme.
 - The subject site and surrounds are located in a General Residential Zone that is capable and encouraged for future residential growth. If the proposed use is supported, it has the potential to create further conflict in the neighbourhood.
 - The use is nested under Agriculture under the Greater Geelong Planning Scheme. This use for Agriculture is generally more appropriately located in a Farming Zone or other land where appropriate buffers to sensitive uses can be provided. A larger property would enable the applicant to locate their entire business on one site, rather than use numerous residential properties.
 - For the reasons listed above and in the body of this report, it is respectfully requested that the application be refused based on the grounds listed.

Recommendation

That the Responsible Authority having considered all matters which the Planning and Environment Act 1987, requires it to consider decides to Refuse to Grant a Planning Permit for Use and Development of Land to Keep and Breed up to 5 Domestic Animals (Dogs) at 36 Kanyanya Avenue, CLIFTON SPRINGS on the following grounds.

Moved: Cr Sullivan

Seconded: Cr Burson

CARRIED

1. The proposal is contrary to the purpose and decision guidelines of the General Residential Zone as:
 - a. The use and development are not compatible with residential use by maintaining a high quality residential environment for residents;
 - b. The non residential use does not materially serve the needs of the local community; and
 - c. In time, more intensive residential development will occur in this area exacerbating the potential for conflict for the use in this location.
2. The proposal is contrary to the Municipal Planning Strategy and the Planning Policy Framework, including the objective and decision guidelines contained in Clause 2.03-3 (Amenity - Residential) and Clause 13.07-1L-01 (Non residential uses in residential areas) of the Greater Geelong Planning Scheme as:
 - a. The non residential use does not materially serve the needs of the local community;
 - b. The use is not compatible with the residential character and amenity of the neighbourhood;
 - c. The use does not protect the amenity of the area particularly in regards to noise; and
 - d. The non residential use is inappropriately located and will create unreasonable amenity impacts for current and future residents.
3. The proposal is contrary to Clause 65.01 of the Greater Geelong Planning scheme as it has not been demonstrated that the proposal will result in the orderly planning of the area.
4. The proposal is contrary to Clause 71.02-3 (Integrated Decision Making) of the Greater Geelong Planning scheme as the proposal does not result in a net community benefit.

REPORT

PERMIT TRIGGER:

A planning permit is triggered for this application pursuant to the following clauses of the Greater Geelong Planning Scheme:

| Planning Scheme Clause No. | Description of what is allowed |
|-----------------------------------|---|
| 32.08-2 | Use the land for domestic animal husbandry (other than domestical animal boarding). |
| 32.08-10 | Construct a building or carry out works for a Section 2 Use. |

LAND USE DEFINITIONS

Pursuant to Clause 73.03 of the Planning Scheme **Domestic Animal Husbandry** is defined as:

- *Land used to keep, breed, board or train domestic animals.*

Pursuant to Clause 73.04 of the Planning Scheme domestic animal husbandry is nested in the Agriculture group.

RESTRICTIVE COVENANT OR SECTION 173 AGREEMENT:

The subject site is burdened by a Restrictive Covenant/Section 173 Agreement. However, it ceased to apply on 31 December 1979.

OFFICER DIRECT OR INDIRECT INTEREST:

No officer involved in the preparation of this report declared a general or material conflict of interest.

SITE/LOCALITY:



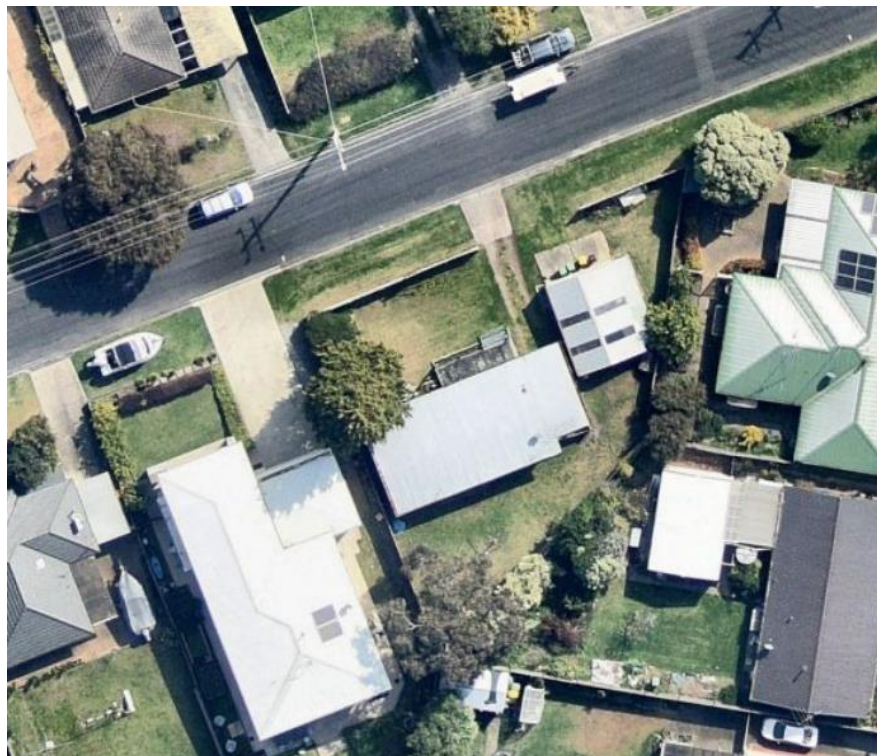
Locality map – 36 Kanyanya Avenue, CLIFTON SPRINGS

The subject site is located on the southern side of Kanyanya Avenue, Clifton Springs.

It is an irregular shaped allotment, with a street frontage of approximately 32m, a maximum width of approximately 28m and an area of approximately 596m². The site has a fall of approximately 2m from the front of the site to the rear. The site is accessed from Kanyanya Avenue via a single crossover as seen below:



Aerial photo (taken October 2024) – source: Nearmap



Aerial photo (taken September 2023- source: Nearmap)



Subject site- Weave 2023

The site contains a single dwelling and shedding.

Since purchasing the property in 2023, the owners have undertaken buildings and works to establish a dog breeding business.

The works include:

- Reconstruction of the front fence. This fence assists the proposed business on site, as it:
 - provides less stimulus for dogs to bark as they will be less aware of people or animals walking past; and
 - Prevents neighbours from clearly seeing activities on site.
- Converting the existing garage and outdoor areas into dog pens. *Applicants report seeks retrospective planning approval for these buildings and works.*
- Concreting the internal driveway, including the area in front of the garage (indoor dog pens). *Applicants report seeks retrospective planning approval for these buildings and works.*

The following site photographs are provided for context:



Photo of subject site (taken on 9 February 2024) detailing new high front fence.



Figure 2 – View northeast along rear boundary toward rear of existing garage

Photo of subject site by the applicant outlining work undertaken for fencing pens.



Figure 4 – View southwest along rear boundary

Photo of subject site taken by the applicant outlining work undertaken for fencing pens.



Figure 5 – View along eastern boundary / Eastern elevation of existing garage

Photo of subject site taken by the applicant outlining work undertaken for fencing pens and converting garage into indoor pens.

As noted the applicant states that only 2 dogs are currently kept on site at any one time and, therefore, no planning permit is currently required for this use. However, more than two pens have been established on site and the use hereby proposed is for 5 dogs on site.

It is acknowledged that complaints have also been received regarding barking dogs. This is currently being separately investigated by Council's Planning Enforcement and Local Laws Departments.

It is relevant to note that the applicant also owns nearby properties at 142 Bay Shore Avenue and 137 Bay Shore Avenue that have been reported to be used for the same dog breeding business.

These properties are also subject to investigation due to noise complaints from barking dogs. These properties are approximately 160m to the north of the subject site.



Locality plan of properties owned by the applicant that are being investigated for the establishment of a dog breeding business.

The applicant resides at 142 Bay Shore Avenue and their dog breeding business at 142 Bay Shore Avenue currently has a domestic animal business permit- DAB 66 that expires on 9 April 2025.

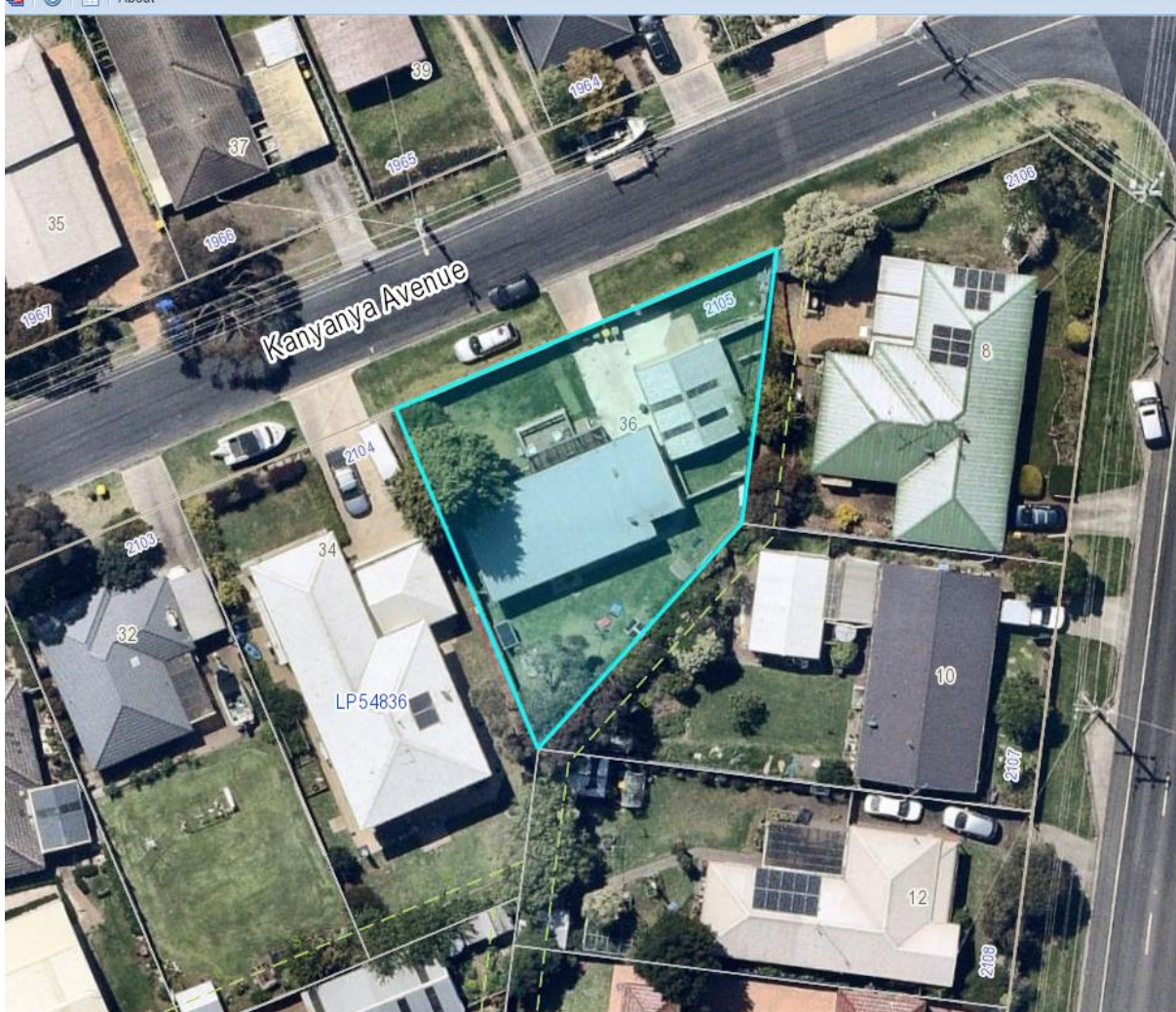
The applicant sought to establish that the business has existing use rights. However, Council refused this application (a Certificate of Compliance application) relating to these existing use rights, and this is currently the subject of a VCAT appeal.

The Certificate of Compliance application that is currently before VCAT notes that the owner, *Ms Whiteside* is registered under the *Domestic Animals Act 1994* to keep up to 10 fertile female dogs at the Land plus males, immature dogs (less than 12 months old) and pups, in accordance with the annual audits by Council.

This is the maximum number of dogs that can be kept under this license.

However, the current number of dogs registered in 2024 is 5.

The subject site is located on a residential street within a General Residential 1 Zone. Due to the shape of the allotment, the subject site abuts 4 residential properties, as seen below.



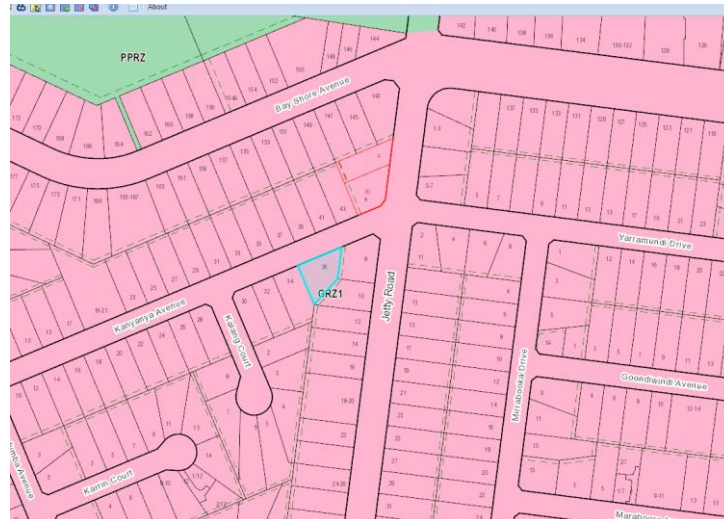
The adjoining property at 8 Jetty Road is closest to the indoor and outdoor pens (converted garage) and has habitable room windows and secluded private open space adjacent to this space.

In a broader context, the subject site forms the northern part of the Clifton Springs established residential area and is set in a suburban streetscape characterized by a predominance of similarly low rise (1-2 story) detached single dwellings.

It is also relevant to note that lot sizes in this area generally range between 500-600m².

As seen below, to date there have been limited applications lodged for medium density housing in this area, with the closest being located at 12 Karrin Court, 131m to the southwest of the subject site. Number 1/12 Karin Court has a minimum lot size of 197.5m².

The General Residential 1 Zone however supports more intensive residential development in this area. Over the coming years, there will likely be an increase in medium density development in this area. The scheme supports this outcome.



A cadastral map of the subject site and lot sizes surround the subject site

The Subject Site benefits from good access to a range of services and facilities, as well as the foreshore, a network of public open space, reserves, and walking tracks approximately 170 meters toward the north, that can be utilized for exercising the dogs.

PROPOSAL:

- Use and Development of Land to Keep and Breed up to 5 Small Domestic Animals (Dogs)

Background

This applicant seeks to relocate their small scale, domestic animal breeding business, Cavoodles and Poodles from Helen Pty Ltd, from 142 Bay Shore Avenue, Clifton Springs to the subject site.

If this application is successful, the applicant proposes to only keep two animals at their existing property at 142 Bay Shore and up to 5 animals at their property at 36 Kanyanya Avenue.

Pursuant to Clause 32.08-2 (General Residential 1 Zone), no planning permit is required to keep up to 2 animals on site associated with domestic animal husbandry.

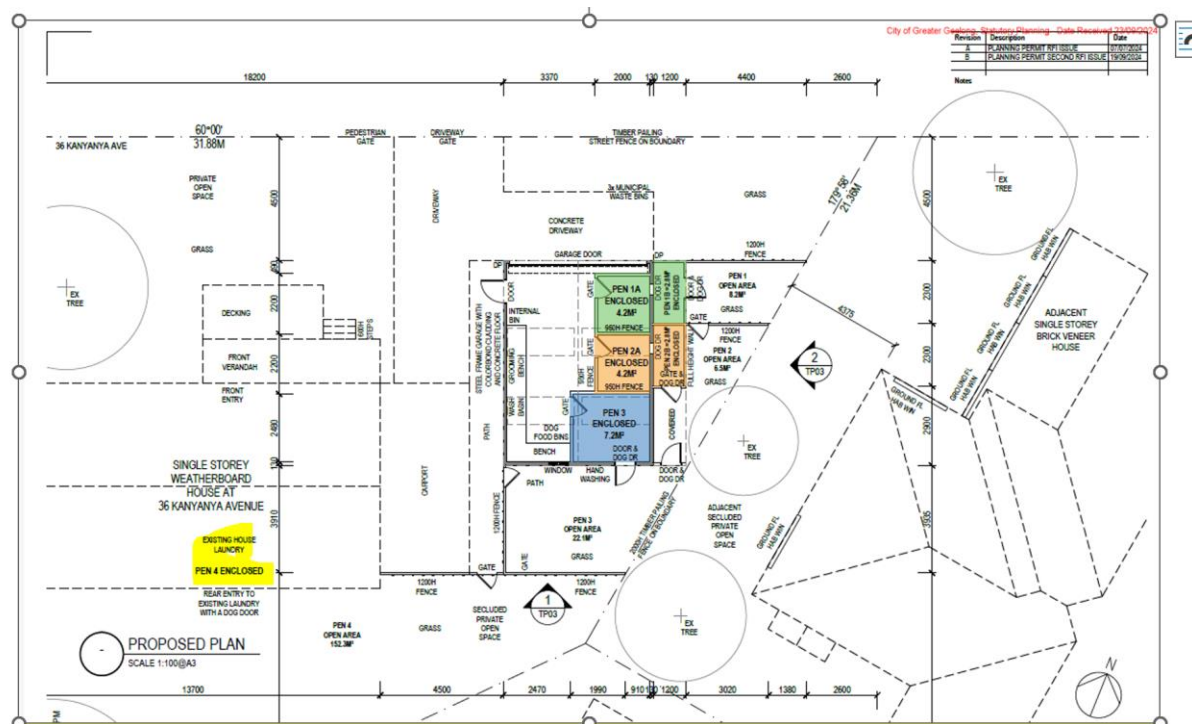
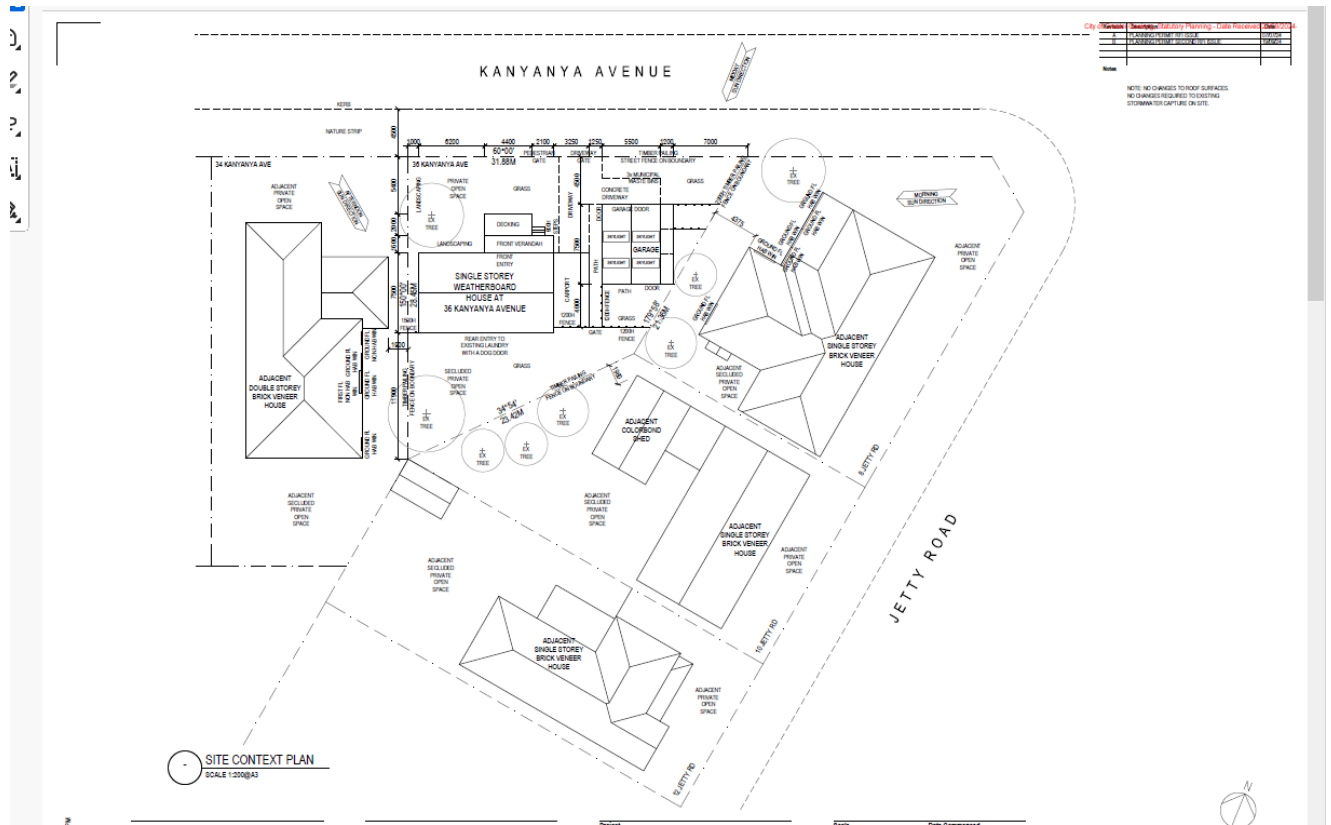
A more detailed summary of the background and history of the existing business, is available at: www.cavoodlesandpoodles.com.au.

Proposed use and development

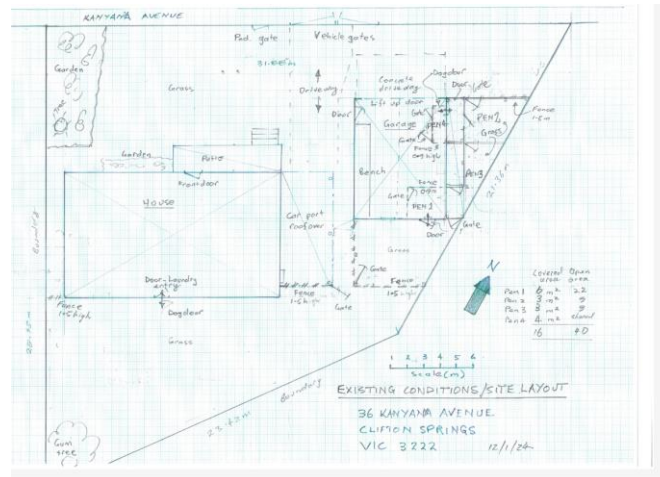
The proposal hereby lodged seeks a planning permit to keep and breed up to five (5) small domestic animals (dogs), approximately 4-8 kilograms in weight, alongside the existing residential use of the subject site.

The proposed use would be conducted principally within the existing dwelling and in the existing former garage, which incorporates access to outdoor spaces alongside the eastern side and rear of the existing garage, as shown on the plans below:

Proposed site plan



Proposed floor layout



Existing site plan

The following information outlines how the dog breeding business will be managed:

- **Number of dogs/animals on site**

- The total number of dogs proposed to be kept at the Site will not exceed five (5) dogs at any one time.
- One (1) dog will likely be a domestic pet kept within the existing dwelling, with up to four (4) dogs rotated as part of an ongoing breeding program
- No other animals will be kept on site.

- **Number of litters**

- It is expected that dogs might deliver up to 8 litters in a 12-month period
- A litter might typically comprise approximately three (3) to five (5) pups
- A maximum of two (2) litters will be on Site at any one time.
- Except in rare circumstances, all mating and whelping activities associated with the proposed use will occur off-site (at a veterinary practice or third location).
- During the birth to 10 week growing period, a litter and mother would be isolated from other dogs and / or cared for off-site, as appropriate, to maintain a quiet, secure place for puppies, including in the instance of visitors attending.
- The pups would be kept on site only until such time as they were old enough to be transferred to new homes, generally around 8-10 weeks

- **Staff:**

- The overall care of the dogs would be the responsibility of Ms Whiteside, who resides approximately 160m from the subject site and would be available when needed.

- An operations manager/tenant will reside in the dwelling and be overseen by Ms. Whiteside. The operations manager would be available onsite day and night to care for the dogs.
- The dogs' specific medical requirements would be attended to typically off-site, at the Newtown Veterinary Clinic.
- **Management of dogs**
 - The indoor and outdoor areas for dog keeping, principally comprising the converted garage space and outdoor penned areas, would be cleaned daily by the Operations Manager
 - During the day, the dogs would have access to the integrated indoor and outdoor penned spaces.
 - The outdoor pens would generally not be accessible to dogs between 10.00 pm and 7.00 am.
 - The dogs would be taken on regular walks for exercise and to socialize outside the property
 - Feeding time would generally be avoided between 10.00 pm and 7.00am.
 - The Operations Manager would be responsible for, but not limited to, the following:
 - Observing and ensuring the health and wellbeing of the dogs;
 - Carrying out any directions of Ms. Whiteside and the veterinary practitioner, as required;
 - Monitoring pregnant dogs;
 - Maintenance and collation of daily records, as required;
 - Daily feeding, watering, and inspection of dogs;
 - Maintaining the overall level of hygiene in the premises, including the disposal of waste;
 - Implementation of a cleaning schedule;
 - Provision of prompt first aid and arrangements for veterinary attention for animals, if required;
 - Supervision and attendance to dogs daily exercise requirements; and
 - Reporting to Ms. Whiteside.
- **Visitation**
 - No more than one single family would be permitted to visit the Subject Site at a time, by appointment only, generally between 9am and 6pm 7 days a week. Visits would be limited to 6 visits per week.
 - Each family would typically visit the pup twice during the 8-10 week period and again to collect the pup for adoption. Visits would last for approximately 30 minutes to view a puppy.

- **Waste**

- Waste would be collected from the grassed areas usually twice each day and disposed of in bags (separate from domestic waste) into the municipal bins.

- **Noise**

- Any noise generated by the proposed use (e.g. dogs barking) would be required to comply with relevant legislation and EPA requirements.
- The applicant has submitted an acoustic report with this application. The report notes:
 - *Acoustic testing, including 8-days continuous monitoring of Ms Whiteside's existing dog breeding operation at a nearby property, with generally comparable conditions and number of dogs present observed no obvious barking events. "If the Applicant's breeds do bark, it is clearly very infrequent and likely to be no more than what would occur from any normal domestic keeping of dogs."*
 - *The empirical recordings obtained as part of the acoustic testing provide that relevant Noise Protocol limits would inherently be complied with by the proposed use, if the dogs were similarly managed as part of the proposal.*
 - *It is recommended that any dogs known to bark will be housed with the caretaker / Operations Manager withing the dwelling / Laundry Pen.*
- A domestic animal husbandry management plans has been submitted with this application.
- Ms Whiteside and /or the Operations Manager would be reasonably available onsite to address any complaints or concerns raised by neighbours.
- Ms Whiteside would be contactable via telephone and or email as required and would make herself available to put in to action any steps necessary, including via the Operations Manager, to respond to any particular concern raised.

- **Lighting**

- The provision of outdoor lighting for safety and security purposes will be provided on site. Lighting would be managed to an appropriate level to avoid the potential for any adverse off-site amenity impacts.

- **Parking**

- The proposal retains the dwelling's existing carport and driveway area. These spaces can provide for at least 2-3 vehicles to park onside.

Other

The application was supported by two letters of support from local veterinarians.

Domestic animal breeders are required to register with the Council and comply with the *Code of Practice for the Operation of Breeding and Rearing Businesses (2014)*.

The applicant advised that this process and the conduct and regulation of breeders in line with the Code is beyond the scope of assessment under the *Greater Geelong Planning Scheme*.

PERMIT/SITE HISTORY:

The following permits/site history is applicable to this application:

- As previously noted, there are three (3) properties owned by the applicant, all in close proximity to each other, being 142 Bay Shore Avenue, 137 Bay Shore Avenue and 36 Kanyanya Avenue Clifton Springs, for the use of the land for dog breeding.
- The applicant resides at 142 Bay Shore Avenue. Planning permit application PP-742-2022 was lodged for 142 Bay Shore Avenue seeking approval for the variation of a restriction on the title that limits commercial activities being conducted (and allow the dog breeding business).
This application was ultimately withdrawn.
- The applicant then applied for a Certificate of compliance for existing use rights (15+ years) for dog breeding at 142 Bay Shore Avenue Clifton Springs. The applicant lodged two (2) applications for the Certificate of Compliance to seek to confirm existing use rights, being PG-2370-2022 and PG-825-2023. Both applications were refused.
- The applicant appealed the decision to refuse the Certificate of Compliance for PG-825-2023. The VCAT hearing (P16-2024) for this application is set for a full hearing on 19 and 20 May 2025.
- The applicant’s representatives however have advised that if the application at 36 Kanyanya Avenue (PP-33-2024) is successful:
 - the application for the Certificate of Compliance for 142 Bay Shore Avenue will not be pursued at VCAT; and
 - that any dog breeding on 142 Bay Shore Avenue will be brought into compliance with the Scheme (ie no more than 2 dogs).

REFERRALS:

SECTION 52:

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| Authority: | EPA |
| Response: | <p>Thank you for your correspondence supplied in relation to the above planning permit application, referred to Environment Protection Authority (EPA) on 02 of February 2024.</p> <p>EPA is not a determining referral authority under Section 55 of the Planning and Environment Act 1987.</p> |

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| | <p>The proposal is described as a small scale, domestic animal breeding business, Cavoodles and Poodles from Helen Pty Ltd, which is seeking to relocate its existing operation in Clifton Springs.</p> <p>EPA understands that the use is described within the Section 2 Uses, of Clause 32.08 (of the General Residential Zone) as ‘domestic animal husbandry other than domestic animal boarding, must be no more than 5 animals’ where a Planning Permit is required.</p> <p>While there are a range of amenity (noise) and waste management risks associated with these types of facilities, it is EPA’s view that these risks can be assessed by the Responsible Authority.</p> <p>EPA recommends that the following publications are considered in determining this application:</p> <ul style="list-style-type: none"> • Refer to EPA publication 1254.2: Noise control guidelines. 1254.2: Noise control guidelines Environment Protection Authority Victoria (epa.vic.gov.au) • Refer to the Agriculture Victoria web page for relevant codes of practice: https://agriculture.vic.gov.au/livestock-and-animals/animal-welfare-victoria/domestic-animals-act/codes-of-practice <p>We trust this information will support council in assessing this application and in understanding the risks that will need to be considered.</p> |
| <p>Officer Comment: Noted.</p> | |

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| Department: | CCMA |
| Response: | <p>Corangamite Catchment Management Authority (Corangamite CMA) understands this application relates to a use and development of land to breed dogs: wastewater runoff being directed to the underlying ground water at 36 Kanyanya Avenue Clifton Springs Vic 3222.</p> <p>Flood extents and levels for the 1% Annual Exceedance Probability (AEP) flood event have been modelled for this area through the Clifton Springs & Drysdale Flood Study (2022). Corangamite CMA’s assessment of the above information has determined that the property is not within the 1% AEP floodplain.</p> <p>There is no proposal to discharge wastewater runoff to the underlying ground water in the documentation provided. Corangamite CMA does not have any information on groundwater to base our assessment or statutory responsibility for groundwater.</p> <p>In consideration of the above information Corangamite CMA does not object to the granting of a permit.</p> <p>Please Note:</p> <ul style="list-style-type: none"> • This document contains floodplain management advice only and has been based on the most up to date information available. This advice may change if new information becomes available. • The 1% AEP flood is not the maximum possible flood. A flood larger in height and extent, than the 1% AEP flood, may occur in the future. Climate change is expected to result in significant changes in storm and flooding behaviour. The information currently available suggests that |

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| | <p>extreme rainfall events that drive major flooding are likely to increase in frequency and severity.</p> <ul style="list-style-type: none"> Corangamite CMA has not assessed this application in relation to stormwater management or impacts on the capacity of stormwater drainage infrastructure in the area. Council, as the drainage authority, is the responsible authority for managing stormwater flood risk, including applying the planning requirements of Clause 56 of the Victorian Planning Provisions' Practice Note 39 to ensure that new developments do not have significant third-party impacts due to increased runoff from impervious surfaces. |
| <p>Officer Comment: No objection, no condition. Noted.</p> | |

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| Department: | Barwon Water |
| Response: | <p>I refer to your letter received 24 July 2024 concerning the proposed development and wish to advise that the Barwon Region Water Corporation, pursuant to Section 52 of the Planning and Environment Act, does not object to the granting of a planning permit.</p> <p>Barwon Water are not responsible for this catchment, Clifton Springs is within the Corangamite Region, therefore we have no comment.</p> |
| <p>Officer Comment: No objection, no condition. Noted.</p> | |

INTERNAL REFERRALS

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| Department: | Council's Local Laws |
| Response: | <p><i>After reviewing the amended plans, they appear to comply with the relevant Code of Practice for Breeding Establishments. Specifically, the minimum requirement of 7 square meters within the indoor area of the existing garage, which will house three dogs in individual pens, satisfies the necessary space standards. Additionally, the proposed arrangement of keeping two dogs inside the existing dwelling also complies with the regulations.</i></p> <p><i>Additionally moving forward the applicant should be aware that there are many components within the Code of Practice for Breeding Establishments that must be complied with in order to be granted a Domestic Animal Business Permit. It is important to ensure that all aspects of the code are fully met prior to applying for the Domestic Animal Business Permit.</i></p> <p><i>However, barking dogs are a significant concern for neighbouring residences, particularly in a residential area. Given the potential for noise disturbances and their impact on the community and the impact on the amenity and value of the area.</i></p> |
| <p>Officer Comment: Noted. Barking dogs can create an amenity concern for neighbours if not adequately controlled, and the applicant must comply with all aspects of the Code of Practice.</p> | |

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| Department: | Health Department |
| Response: | <p>Comments from Unit After reviewing the previous responses, the noise complaint associated with this site, would be managed by the Animals team, as the Animals team have noise monitoring devices for acoustic testing.</p> <p>Env Health has no regulations on the design of the animal waste, however, it must not create a nuisance or impact the Environment. There is a general condition around solid waste, but liquid waste would be best dealt with by Barwon Water via sewer.</p> <p><u>Non-Standard Conditions:</u></p> <p>As per acoustic report titled “36 KANYANYA AVE, CLIFTON SPRINGS Acoustic Report for Town Planning Application” dated 24 April 2024.</p> <ol style="list-style-type: none"> 1. Dogs should be housed within buildings between 10pm-7am (with the exception of when dogs are walked off-site). Exercise yards should not be used during the hours of 10pm-7am. All doors to buildings housing dogs should remained closed between 10pm-7am. 2. Feeding time should also be avoided between 10pm-7am; and 3. Any dogs known to bark are housed with the caretaker (within the dwelling laundry so that they can be managed efficiently). <p><u>Standard Conditions:</u></p> <p><u>Noise Management</u> The premises must reasonably comply with all noise legislation and regulations in force including EPA publication 1254.2 “Noise control guidelines”</p> <p><u>General Amenity</u> The amenity of the area must not be detrimentally affected by the use or development through the:</p> <ul style="list-style-type: none"> ○ Transport of materials, goods or commodities to or from the land; ○ Appearance of any building, works or materials; ○ Emission of noise, artificial light, vibration, odour, fumes, smoke, vapour, steam, soot, ash, dust, waste water, waste products, grit or oil; ○ Presence of vermin; <p>to the satisfaction of the Responsible Authority.</p> <p><u>Regular Waste Removal</u> All waste material must be regularly removed from the site to the satisfaction of the Responsible Authority.</p> <p><u>Animal developments:</u></p> <p><u>Nuisance</u> The kennels, yards and runs must be kept clean at all times and must not cause nuisance to any person on any adjoining properties by way of offensive odour, to the satisfaction of the Responsible Authority.</p> |

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| | <p><u>Odour</u> Pest control measures must be put in place to minimize pest issues.</p> <p><u>Waste</u> All solid waste stored on site must be regularly disposed of so as not to cause nuisance to any persons on adjoining properties to the satisfaction of the Responsible Authority.</p> <p><i>Notes: Environmental Health has considered the information submitted with the application for a planning permit at the abovementioned property. Environmental Health has no objection to the granting of a planning permit providing the following notes are included within:</i></p> <p><u>Noise</u> Ensure compliance with any Commercial Noise regulations, Councils Local Laws and obtain permits where and when required.</p> |
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Officer Comment:
Noted.

Department: Waste

Response: Space for bin storage and presentation is satisfactory. Waste Management Plan details are adequate. Additional waste from 5 small dogs is minimal even though the breeding is really a commercial venture, albeit there are probably a number of dwellings in COGG that have 5 or more dogs.

Recommended Permit Conditions (Without Prejudice)

- Animal manures must be placed in red lidded garbage bin for landfill, not green or food waste bin.
- Bin to be cleaned and disinfected regularly.

Officer Comment:
No objection, subject to conditions

Department: Engineering

Response: I have looked through the history and believe they have addressed concerns regarding the wastewater/stormwater discussion. I can also see it's been referred to the RA's as requested who have come back with no concerns. I believe we should still condition for clarity that the stormwater runoff is to not be polluted as per the history. It appears they removed the soakage drainage, as well as the spoon drain directing stormwater towards it from the plans entirely.

I do still however have concerns with the crossing. From what I can see, a 9m vehicle crossing currently exists on site which is out of character for the surrounding neighbourhood and non-standard. This needs to be shown on plans and to be reconstructed to a minimum 3.5m width and in line with design note 4 as directed by Raghdah multiple times at this point.

- Show the vehicle crossing on plans; It must be reconstructed to 3.5 m wide in accordance with the requirement and standard of the City of Greater Geelong – Desing Note 4.

Recommended Permit Conditions (Without Prejudice)

Standard Conditions

Drainage:

The site must be drained to the satisfaction of the Responsible Authority and no concentrated storm water may drain or discharge from the land to adjoining properties.

Drainage & Vehicular Access:

Prior to the occupation of the dwellings, the developer must:

- a) Construct the site stormwater system including separate connection for existing dwelling into the underground drain/Kerb and channel in Kanyanya Ave, or other nominated point/s as approved by the Responsible Authority. The stormwater connection must be in accordance with City of Greater Geelong Standard Drawings.
- b) Construct a 3.5 m wide vehicular crossing in accordance with the requirements and standards of the City of Greater Geelong.
- c) Remove any redundant vehicular crossings with kerb and channel and the footpath/nature strip area reinstated to match existing construction in the street;

all to the satisfaction of the Responsible Authority.

Note:

1. *Construction of the site stormwater connection/s is to be inspected by Council Representative prior to any backfilling. An appropriate fee equivalent to 3.25% of total cost of civil works, excluding GST (a minimum fee of \$100 applies if the 3.25% amount is less than \$100), is to be paid to Council for inspection. Relevant evidential documentation of the cost is to be provided.*

2. *All internal property drainage must be designed and constructed to satisfy AS/NZS 3500.*

3. *A Vehicle Crossing Permit must be obtained prior to commencement of works.*

Stormwater Quality / Management

The site stormwater system must be designed and installed such that;

- a) The site stormwater discharge is not increased by the proposed development. An appropriate on site detention system designed in accordance with the Infrastructure Design Manual may be required;
- b) Runoff is to be treated to achieve current best practice pollutant removal targets by connection to an appropriate Water Treatment Facility, with capacity to treat at least a 3 month ARI storm event, unless approved otherwise by the Responsible Authority. The Water Treatment Facility must be maintained to the satisfaction of the Responsible Authority.

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| | <p><u>Alternate Drainage Condition</u></p> <p>The site shall be drained to the satisfaction of the responsible authority and no storm water, sullage, sewerage or polluted drainage shall drain or discharge from the land to adjoining properties.</p> <p>Property drainage shall comply with AS/NZS 3500.3</p> <p>NOTE A pre-commencement meeting with Council’s engineering department is required to be undertaken prior to works starting. To organise this meeting please contact 5272 4426</p> |
| <p>Officer Comment: No objection, subject to conditions</p> | |

AMENDMENT OF THE PROPOSAL PRIOR TO PUBLIC NOTIFICATION:

The applicant made a request to amend the application pursuant to Section 50 of the Planning and Environment Act 1987 on 25 April 2024, 30 July 2024 and 23 September 2024.

Council accepted the amendment. The amendment made the following changes to the application:

- An amended application form that included the proposed fencing and works to existing garage detailed on accompanying plans associated with the proposed use of the site to keep and breed up to 5 domestic animals (dogs).
- Inclusion of an acoustic report and an additional addendum
- Amended plans to address issues raised in Councils further information letter
- A written response to issues raised in Council’s further information letter

The plans dated 23 September 2024 are the plans that form the basis of this report.

PUBLIC NOTIFICATION:

The application is not exempt from the notice requirements of Section 52(1)(a), (b) and (d), the decision requirements of Section 64(1), (2) and (3) and the review rights of Section 82(1) of the Act and pursuant to Section 52 of the Planning and Environment Act 1987 the following forms of advertising were undertaken:

- Notices were sent to owners and occupiers of adjoining land (including opposite) and as shown on the map below:

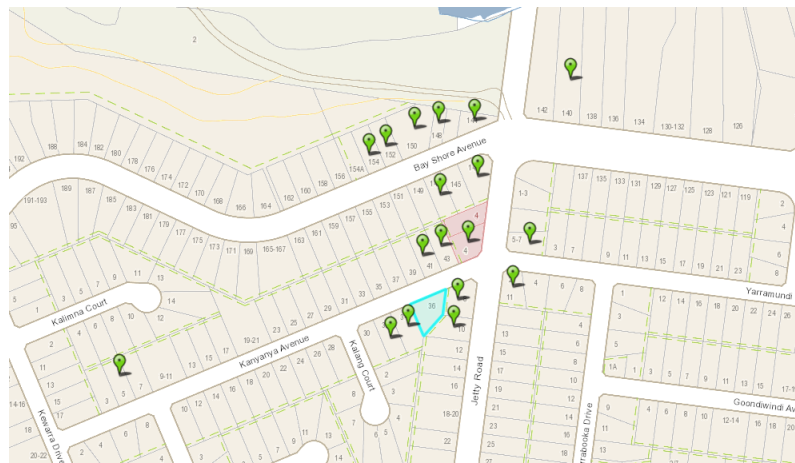


Advertising map

- An A2 sign was placed on the land as shown above (see the red pin)

18 Objections have been lodged with Council.

The location of the objectors is shown below:



Subject site and location of objectors.

CONSULTATION:

A consultation meeting was not held between the applicant, council officers, and objectors as the applicant chose to respond to objection concerns in writing.

The applicant's response was sent to objectors to consider.

No objections were withdrawn.

Additional comments however were received from 4 existing objectors.

AMENDMENT OF THE APPLICATION FOLLOWING PUBLIC NOTIFICATION

The application was not amended following public notification.

On 15 January 2025 the applicant added to their submission and provided a letter from:

- An adjacent property owner at 1 Jetty Road, Clifton Springs, who has resided on site for 25 years. They note:
 - There is only occasional barking which is the same for most houses in the area
 - There is no odour.
 - Traffic in the street has never been affected by people visiting her property.
- A neighbour at 133 Bay Shore Avenue, Clifton Springs, who has resided on site for 14 years. He has visited her home and often walks past her property and never noticed odours or disturbing noise
- An ex-veteran that has purchased a puppy and notes it is a great companion dog and does not bark 24/7 and Helen is a good breeder.
- A retired police officer who was injured on duty. She notes:
 - Helen is a good breeder
 - She brought a puppy from Helen. The puppy is now an assistance dog to help mediate the effects of disability/ post traumatic stress,
 - Helen does not operate a puppy farm
 - Helen does not financially benefit from dog breeding but gains joy from breeding
 - Helen is a community minded person who respects the law
- A person who purchased a puppy from Helen during Covid. They note that at all times when they visited the site, the premises was immaculate and any mature dogs present were well kept and well behaved and loved by Helen. The puppy has enriched their life.
- A letter from a solicitor who purchased two puppies and confirms Helen is a good breeder. During their visits to the site, they did not hear the dogs bark or notice odour.
- A letter from the veterinarian from Newtown Veterinary Clinic who notes Helen:
 - is a good breeder, her premises is maintained to high standards,
 - proactively addresses concerns regarding noise pollution, undergoing a formal noise check and passing with compliance.

The decision to shut down her business would have significant negative consequences, not only for her as an individual but also for the wider community. Moreover, her business positively impacts small businesses like ours, which provide veterinary care to her puppies. Closing her business would not only deprive clients of a trusted breeder but also harm local economic activity

The applicant notes the letters of support are provided in response to the officer recommendation to refuse the application. The letters were provided to demonstrate a net community benefit associated with the business. They also note that the Acoustic Report and the Domestic Animal Management Plan, submitted as part of the application demonstrate that the application is worthy of support.

OBJECTIONS:

The concerns of objectors are summarized and commented on below:

1. Objection - Use is not appropriate in a residential area

- This business needs to be on rural land or industrial area and not residential. The size of the allotment is not large enough to accommodate so many animals.
- The use will disrupt our quite peaceful lifestyle beside the bay.

Response

The appropriateness of this use in a residential zone is a relevant consideration. As noted in the discussion below, the General Residential Zone requires that any non-residential use demonstrate that it will not negatively impact the amenity of the residential area. It is considered that this has not been adequately demonstrated.

2. Objection – Noise from Barking dogs

- This is a quite area and we do not want the constant barking of dogs.
 - Business has commenced on site without a permit and barking dogs have created an amenity concern.
- a. *Adjoining neighbour at 8 Jetty Road, Clifton Springs*
 - i. The on site manager has not prevented dogs from barking.
 - ii. Dogs bark at night, including 3am in the morning
 - iii. Dogs bark when neighbour is spending time in the garden, hanging washing or walking to the wood pile for fire wood.
 - iv. Hearing puppies barking and crying in the night can be heard from their bedrooms and sunroom, as well as their outdoor entertainment area. The kennels are constructed within 5.4m of two bedrooms and 9m from the sunroom.
 - v. During Easter this year, that whilst the puppies may have been cared for by a caretaker, there was consistent barking and noises with the puppies left alone for long periods of time.
 - b. *Adjoining neighbour at 10 Jetty Road, Clifton Springs*
 - i. They can hear the dogs howling at all hours. The noise is unacceptable and sleep is disrupted.
 - c. *Adjoining neighbour at 34 Kanyanya Avenue, Clifton Springs*
 - i. The residents already have a number of dogs on the property, that bark when we go outside, also starts their own dog barking through the fence. The residents do nothing to reprimand the dogs for their barking.
 - ii. Our bedrooms are also located on the side adjoining their rear yard and already interferes with our sleep.
 - iii. We own a German Shephard that lives prominently inside, however when she goes out into the yard, the dogs start barking, and then she starts barking. She is well trained and recalls when she is reprimanded and stops, however the residents do nothing to stop theirs. Any additional dogs onsite is only going to create more disturbance.

- d. *Neighbour opposite at 43 Kanyanya Avenue, Clifton Springs*
- i. Notes the barking dogs instigate other dogs to bark in the area.
- e. *Neighbour opposite at 43 Kanyanya Avenue, Clifton Springs*
- i. Notes noise from barking dogs is excessive
- f. *Neighbor at 147 Bayshore Avenue*
- i. They experience the dogs barking all the time. It drives neighbours crazy and they fear that someone might take the law into their own hands if the Council does not take complaints seriously and vote down these applications.
- g. *Neighbour at 144 Bayshore*
- i. The worst times for barking is when mating occurs. They can, and have, barked and howled all night.
- h. *Neighbour at 145 Bay Shore Avenue*
- i. We are a double storey home and in direct path of travelling noise to this property.
 - ii. There is a significant amount of barking whimpering etc. emanating from 36 Kanyanya Ave as far back as April 2024.
 - iii. It is the same property owners of the property at 142 Bay Shore Avenue Clifton Springs. This property has been an issue with noisy dogs for years not months with constant complaints to Council
 - iv. The owner (if present) can't control the dogs crying during the night. There is little expectation that a care taker will be able to do any better at the new location.
- i. *Adjoining Neighbour to the applicant's existing business at 142 Bay Shore Avenue Clifton Springs (140 Bay Shore Avenue)*
- i. The applicant also owns nearby properties at 142 Bay Shore Avenue and 137 Bay Shore and also use these properties to run their business.
 - ii. Barking dogs at their property at 137 Bayshore Ave.
 - On 26 & 27 January 2024 the dogs were left overnight. The dogs were barking and unsupervised. There is no residence on this land.
 - With no residence onsite clearly shows lack of caring and no supervision for the welfare of the animals.
 - Barking dogs at their property at 142 Bayshore Ave.
 - COGG is inundated with ongoing issues in relation to barking.
 - Dogs were barking at all hours, and stressed to due to be left for long periods at both properties .
 - Neighbors experienced difficulty sleeping at night due to barking dogs.
- *Neighbor adjacent to their existing business at 142 Bayshore (144 Bayshore Avenue)*
 - Excessive barking at 36 Kanyanya st, and the property at 142 Bay Shore Ave.
 - We approached the owners regard noise and received an insult. They did not address the noise issue. I have complained to Council in 2022. Other neighbours have complained as well.

Response

The amenity impact of barking dogs is a relevant consideration and discussed later in this report.

3. Objection- Inadequate acoustic report

- a. How relevant is the test at 142 Bay Shore Ave, when one of the applications is for 36 Kanyanya Av? The two properties are not comparable.
- b. What purpose is the “Domestic Animal Management Plan” if it’s based on the acoustic report that has potential for so much manipulation.
- c. It is impossible to judge when dogs are going to be barking and at what they bark at. By the time a caretaker wakes to silence dogs, the damage to the surrounding neighbourhood has been done.
- d. The acoustic report did not consider sporadic barking and its impact to amenity

Response

The adequacy of the acoustic report and proposed management of noise is a relevant consideration and discussed later in this report.

4. Objection - Light spill

- a. The outdoor pens will require more than normal suburban outdoor lighting both for late night medical needs and for security reasons.
- b. With the need for the extra lighting required to ensure the dogs are well, safe and secure all night the properties at 8 and 10 Jetty road are sure to be impacted by the lights.

Response

In the event that this application is supported, conditions could be applied to any permit to prevent light spill into neighbouring properties.

5. Objection - Odour from dog breeding business and potential for vermin

- a. It is not reasonable to expect the small grass pens to absorb all the smells from that many dogs urinating etc. over that period of time. The waste washed from the inside pens will end up either hosed into the already smelly grass pens; or hosed into the storm water system, both very unsuitable options and neither will completely contain the odours.
- b. The applicant has advised the objector that waste water will be connected to the sewer drain with council approval. Barwon Water however has advised this is highly illegal.
- c. *Adjoining neighbour at 8 Jetty Road, Clifton Springs*
 - i. The grassy areas used for the puppies exercise, play, and toilet areas butts up against their back fence, right next to their outdoor entertainment area, sunroom and bedrooms. My very real concern is not just for the noise (as already stated), and smell, but that vermin will soon follow.
 - ii. The applicant has been observed shovelling dog poo over her back fence and down the cliff edge at her Bay Shore Ave property

Response

In the event that this application is supported, conditions could be applied to ensure waste and vermin do not create an amenity concern. Non compliance with these conditions however is an issue.

6. Objection- On Street parking associated with dog breeding business and increased traffic

- a. On street parking is an issue as the property is close to an intersection.
- b. Cars associated with the use are parked on the nature strip. Less space for locals to park.
- c. During summer many vehicles with boat trailers park this end of the street which leaves little opportunity for visitors and local residents to park. The residents at 36 Kanyanya Ave park their vehicles on the street and not within their property.

Response

This is a relevant planning consideration that is discussed later in this report.

7. Objection- This business seems to be a larger operation

- a. Business is registered in South Yarra
- b. The applicant moves dogs from the subject site to her home at 142 Bay Shore Avenue and another nearby property they own at 137 Bay Shore Avenue, Clifton Springs. These properties are used for her dog breeding business.
- c. *Neighbour opposite at 41 Kanyanya Avenue, Clifton Springs*
 - i. Notes this puppy farm business seems to be a large operation. That has already been conducting business without the proper permits or approvals for a long time, and at various properties in close proximity. The amount of dogs being moved between these properties (Bayshore Avenue and Kanyanya Avenue) is unclear.
- d. *Neighbour opposite at 43 Kanyanya Avenue, Clifton Springs*
 - i. Notes as for the numbers of breeding dogs and puppies who knows as dogs are moved from Kanyanya to Bayshore at all times of the day by foot and motor vehicle. A deliberate action to confuse neighbours on exactly what numbers are on the properties they own.
- e. *Adjoining Neighbour to the applicant's existing business at 142 Bay Shore Avenue Clifton Springs (140 Bay Shore Avenue)*
 - i. Notes the planning report notes *Mating at offsite i.e. Veterinary or Third location* (separate to 36 Kanyanya Ave.) Is third location to be 142 Bayshore or 137 Bayshore which they own nearby and have permanent kennels at both locations. Previously they have moved dogs without Council knowing from 142 Bayshore to 137 Bayshore.
 - ii. This practice of moving animals around will be difficult for COGG to police.
- f. *Neighbor adjacent to their existing business at 142 Bayshore (144 Bayshore Avenue)*
 - i. Notes with 5 breeding dogs at 36 Kanyanya they could keep another 2 dogs at 142 Bay Shore, and just swap them around at will.

Response

If a permit is granted and dogs are moved between properties, it could make it more difficult for Council officers to monitor the number of dogs on a property and confirm any conditions on permit and the requirements of the Greater Geelong Planning Scheme are being met.

8. Objection- Business is not appropriately managed

a. Neighbour opposite at 43 Kanyanya Avenue, Clifton Springs

- i. Over the past 20 years the applicant has run the puppy farm without any of the legal requirements with full Council knowledge.*
- ii. Over that time the applicant has continued to make life difficult for neighbours*

b. Neighbour opposite at 41 Kanyanya Avenue, Clifton Springs

- i. Unsecured perimeter: They have personally had to retrieve pups from the road, and return them to the property*
 - ii. Irresponsible breeding Two pups under 8 months old have apparently been impregnated accidentally, within the last few months*
 - iii. Query the number of litters recorded to authorities with regard to their business at 142 Bay Shore Ave. Is it really up to 8 litters in a 12 month period?*
- c. Adjoining Neighbour to the applicant's existing business at 142 Bay Shore Avenue Clifton Springs (140 Bay Shore Avenue)- complaint about existing business at 142 BayShore and new proposal*
- i. Over several years the applicant has demonstrated that they do not comply with regulatory obligations or care for the immediate community & wellbeing in their dog breeding activities.*
 - ii. The dogs are stressed because they are not walked daily, which causes a lot of the barking*
 - iii. They have used untrained on site managers in the past. One manager received complaints of dog noises. It was the first time they had done housesitting. They actually removed two dogs to their residence to avoid complaints.*
 - iv. The applicant has dogs stored at 137 Bayshore (opposite their dwelling at 142 Bay Shore) and yells across the road to calm the dogs is attempt to supervise the dogs*
 - v. Five neighbors complain to council of continual barking noise and mistreatment of dogs*

d. Neighbor adjacent to their existing business at 142 Bayshore (144 Bayshore Avenue)

- i. Our bedroom is located approximately 80 meters from where the dogs are currently located. In the warmer months we sleep with windows open and have experienced the applicant's dogs barking most of the night. Our bedroom is not that much farther from the new location so given a unfavourable wind we will experience the same thing.*
- ii. Around 1 month ago there were approximately 12 Dogs and Puppies on site at 142 Bay Shore Ave. This is when they are not supposed to have more than 2 dogs there.*
- iii. Many of the barking episodes in the past have been dogs suffering "isolation anxiety" when owners or carers leave the property*

Response

Alleged non compliance noted and this is discussed later in this report.

9. Objection- Will the onsite manager be appropriately trained and be present on site?

- a. A future manager of the operation should be referred to in their application, with evidence of past skills for managing a dog breeding business, particularly as the owners spend a lot of time overseas.
- b. Elsewhere in the application it states the Manager will "reasonably reside" at the property. What does "reasonably" mean? Who will be responsible for stopping dogs barking when the Manager is not there? Who will cover holiday leave and sick leave times?

Response

This is a relevant planning consideration and discussed later in the report.

10. Objection- Breeding dogs

- a. If the permit is granted for 5 breeding dogs, and Cavoodles fall out of favour, then what is preventing the permit holders to breed with 5 Alsatians, if they become flavour of the Month.

Response

In the event at a permit was issued, the permit can specify the dog breed the permit relates to.

11. Objection- Alleged bribery by applicant to nearby residents

Response

This application is be assessed against the policy requirements of the Greater Geelong Planning Scheme. A key consideration is whether the use and development is consistent with the residential character of the area.

12. Objection- Hard to enforce

- a. Litter size It is impossible to correctly assume the size of a dog's litter. The permit is for 5 dogs. But on reading the attached reports, it allows for up to two litters of pups. Which could be in excess of 10.
- b. Visitations
 - i. Visiting Times 9am- 6pm, 7 days a week..... how will Council police that ?
 - ii. Single family at a time.....how will council police that?
 - iii. Visits 6 per week.... How will council police that??

Response

If a permit is granted and dogs are moved between between properties, it could make it more difficult for Council officers to monitor the number of dogs on a property and confirm any conditions on permit and the requirements of the Greater Geelong Planning Scheme are being met.

13. Objection- Conflicting statements in advertised information

- a. On one page it states the breeding business is "seeking to relocate its operation in Clifton Springs." However on another page it states 'mating and whelping activities will occur off site (at a veterinary practice or third location". Is that third location the Bayshore property? If so, is the business relocating or extending?
- b. On one page it states "The total number of dogs proposed to be kept at the Site will not exceed 5 at any one time" and yet it goes on to say up to 2 litters of 3 to 5 puppies may be on the site "infrequently". This means up to 10 puppies as well as 5 dogs could be on the property at times. It is not clear whether we will have 2 dog breeding establishments with up to 5 dogs and some puppies in close proximity to each other. That would be totally unacceptable in a quiet residential area

Response

Noted the applicant transfers dogs to different properties they own in the vicinity of the subject site. This will create confusion for enforcement.

In the event at a planning permit was issued, conditions can be applied to control the number of dogs on site to 5 (ie dogs over 12 months old) and the number of litters in a similar manner that was applied for a dog breeding business in a General Residential Zone in the VCAT decision *Angelovski v Whittlesea CC [2023] VCAT 247 (9 March 2023)*.

14. Objection- Planning Enforcement

- a. With all building work for the puppy farm having been completed at the subject site with exercise yards extending to neighbours fence, it is predicted that the puppy farm has been operating in some way since before the end of 2023 without any consultation
- b. If the ban at 142 Bay Shore Ave dog breeding business and limit of 2 dogs per property is not being monitored and prosecuted, what measures are to be taken by CoGG to ensure the proposed business will be randomly and often inspected.
- c. If this application ends up at VCAT, the applicant proposes to operate pending the appeal. This should not be allowed. A hearing could take up to two years to set a hearing date. The fact that council has allowed the puppy farm to operate for over twelve months and not acting on a complaint received by neighbour of adjoining property also needs to be addressed
- d. Enforcement issues relating to their dog breeding business at 142 Bay Shore Ave Clifton Springs
 - i. This business has been operating for many years without a planning permit
 - ii. The property has a Restrictive Covenant which does not allow the running of a Business and the owners were clearly aware of the restrictive covenant as they tried to enforce that restrictive Covenant on other neighbours with court action. They have no regard for the Law in this situation
 - iii. Numerous complaints have been made to Council and Local Laws.
 - iv. Council's Planning Enforcement Officer has advised that currently the owners of 142 Bayshore are only allowed two animals on their Premises. The House sitter has been seen by a number of neighbors walking 4 dogs. There are also two cats on the premises who wander into other properties consistently. There is always more animals on property than allowed. Penalties not enforced.

- v. The applicants spend annually many months away from their property overseas in many cases, there has been a lack stable supervised staff to look after the dogs.
- vi. Helen has been caught disposing rubbish on neighbors bin.
- vii. Poor Hygiene
 - 1. A web post advertising for a house sitters/dog minders at 142 Bay Shore Avenue Clifton Springs shows that the applicant has little regard to hygiene protocol, suggesting tenants can dispose of the dog poo by throwing it down the cliff
 - 2. This has been going on for years and difficulty to police by the Council. This has caused a rat infestation at our property at 140 Bayshore Avenue and also at 138 Bayshore Avenue.

Response

Alleged non compliance noted. Council's Planning Enforcement and/or Local Laws Department are currently investigating complaints made at 142 Bay Shore Avenue, 137 Bay Shore Avenue and 36 Kanyanya Avenue Clifton Springs.

14 - Objection: Property Devaluation

- This would have a major impact on our future Sale of our Property.

Response

Property Devaluation is not considered a valid planning consideration.

PLANNING ASSESSMENT:

ZONE:

The purpose of the General Residential Zone 1 is to:

- *To implement the Municipal Planning Strategy and the Planning Policy Framework.*
- *To encourage development that respects the neighbourhood character of the area.*
- *To encourage a diversity of housing types and housing growth particularly in locations offering good access to services and transport.*
- *To allow educational, recreational, religious, community and a limited range of other non-residential uses to serve local community needs in appropriate locations.*

DECISION GUIDELINES

General

- *The Municipal Planning Strategy and the Planning Policy Framework.*
- *The purpose of this zone.*
- *The objectives set out in a schedule to this zone.*
- *Any other decision guidelines specified in a schedule to this zone.*
- *The impact of overshadowing on existing rooftop solar energy systems on dwellings on adjoining lots in a General Residential Zone, Mixed Use Zone, Neighbourhood Residential Zone, Residential Growth Zone or Township Zone.*

Non-residential use and development

- *Whether the use or development is compatible with residential use.*
- *Whether the use generally serves local community needs.*
- *The scale and intensity of the use and development.*
- *The design, height, setback and appearance of the proposed buildings and works.*
- *The proposed landscaping.*
- *The provision of car and bicycle parking and associated accessways.*
- *Any proposed loading and refuse collection facilities.*
- *The safety, efficiency and amenity effects of traffic to be generated by the proposal.*

OVERLAY:

The purpose of the DDO14 is *to ensure that the siting, height and visual bulk of dwellings achieves a reasonable sharing of views between properties to significant landscape features such as the coast (ocean and foreshore), Corio Bay, Barwon River, Central Geelong, Barrabool Hills and the You Yangs.*

A permit is not required for buildings and works other than to construct a dwelling which is more than 7.5 metres above natural ground level (excluding any television antenna, chimney or flue) or extend a dwelling where the extension is more than 7.5 metres above natural ground level (excluding any television antenna, chimney or flue).

Response

No permit is required under this overlay as the building does not exceed 7.5m above NGL.

CULTURAL HERITAGE MANAGEMENT PLAN (CHMP):

The Aboriginal Heritage Regulations 2018 specify the circumstances in which a cultural heritage management plan is required for an activity or class of activity. Division 2 of the Aboriginal Heritage Regulations 2018 specifies exempt activities which do not require a cultural heritage management plan.

Areas of cultural heritage sensitivity are defined within Divisions 3 and 4 of the Aboriginal Heritage Regulations 2018. Division 3 does not identify the site or part of the site as within an area of cultural heritage sensitivity. High impact activities are defined within Division 5 of the Aboriginal Heritage Regulations 2018.

In accordance with the above assessment, a cultural heritage management plan is not required.

LANDFILL GAS RISK ASSESSMENT

The subject site is not located within 500 metres of an identified former landfill site, a risk assessment is not required.

DEVELOPMENTS IN BUSHFIRE PRONE AREAS

The site is not located within a designated bushfire prone area

THE MUNICIPAL PLANNING STRATEGY

Clause 2.03 Strategic Directions

- **Clause 2.03-1 Settlement**

- **Bellarine Peninsula**

Strategic directions include to :

- *Support and preserve the individual character, identity, role and function of each Bellarine Peninsula township.*

- **Clause 2.03-3 Environmental Risk and amenity**

- **Amenity- residential**

- The policy basis states: *Non-residential uses can reduce the amenity of residential areas through impacts from traffic, car parking, hours of operation, appearance and noise. In order to maintain the residential character and amenity of an area it is important that non-residential uses are well-located and managed. To protect residential areas it is important to discourage the encroachment of incompatible uses.*
- **Strategic Direction** is to:
 - *Encourage a balance between the need for goods and services that serve local residents and workers and the potential for negative impacts on residential amenity.*

THE PLANNING POLICY FRAMEWORK (PPF):

The following Victorian Planning Policies are applicable to this application:

- **Clause 11 Settlement**

- **Clause 11.01- Victoria**

- **Clause 11.01-1S Settlement**
- **Clause 11.01-1R Settlement- Geelong G1**
- **Clause 11.01-1L-01- Settlement- Greater Geelong**

- **Clause 11.02-Managing growth**

- **Clause 11.02-1S – Supply of urban land**

- **Clause 11.03- Planning for Places**

- **Clause 11.03-6L-01 Bellarine Peninsula**

- **Objectives**

- *To ensure development responds to the identity and preferred character of the individual township in which it is located.*

- *Consider as relevant:*
 - *Directing shops, offices, taverns and larger medical centers (5 or more practitioners) to commercial zones.*
 - *Supporting commercial uses in residential zones within a 400 meter radius of an existing commercial zone only where the use cannot be reasonably located within the nearby commercial zone.*
- **Amenity strategies**
 - *Protect the amenity of the surrounding area from:*
 - *Noise, light and odours emitted from the site.*
 - *Disturbance associated with the hours of operation.*
 - *Manage the loading and unloading of vehicles to minimise detrimental impacts on residential amenity.*
- **Amenity policy guidelines**
 - *Consider as relevant:*
 - *Encouraging non-residential uses to locate on sites where they will not unreasonably affect the amenity of the surrounding residential area due to existing conditions or locational attributes.*
 - *Whether noise attenuation measures should be provided.*
 - *Designing or locating all external noise sources (such as air-conditioning, heating, plant equipment etc) to minimise noise emissions to adjoining properties.*
 - *Limiting loading and unloading of vehicles to between the hours of 8am and 6pm.*
- **Design and siting strategies**
 - *Facilitate the re-use of buildings originally built for non-residential purposes.*
 - *Site and design buildings to respect the siting and layout of adjacent buildings.*
 - *Design development to respect the existing neighbourhood character and reflect a residential scale and appearance, particularly with regard to:*
 - *Building and roof form.*
 - *Building height and setback.*

- *Design detail (including façade articulation, verandahs, window and door style and placement).*
 - *Building materials.*
 - *Colours and finishes.*
- *Locate air-conditioning, heating and plant equipment to avoid being visible from the public realm and adjoining properties.*
- **Design and siting policy guideline**
- *Consider as relevant:*
 - *Whether development is consistent with the following objectives / standards:*
 - *Clause 54.03-1 Street setback.*
 - *Clause 54.04-1 Side and rear setbacks.*
 - *Clause 54.04-2 Walls on boundaries.*
 - *Clause 54.04-3 Daylight to existing windows.*
 - *Clause 54.04-4 North facing windows.*
 - *Clause 54.04-5 Overshadowing open space.*
- **Landscaping strategies**
- *Provide planting on site that maintains the landscape character of the area.*
 - *Retain significant trees where practicable.*
 - *Set aside the front setback of sites for landscaping.*
 - *Provide landscape buffers between adjoining properties and areas used for access and parking on the site.*
- **Landscaping policy guideline**
- *Consider as relevant:*
 - *Providing a minimum 1.5 metre landscaped buffer to separate accessways and car parking areas from adjoining residential properties.*
- **Car parking and traffic strategies**
- *Locate car parking areas so they do not dominate the streetscape by locating them at the side or rear of the site.*
 - *Support uses where the traffic generated by the use can be accommodated within the surrounding street network.*
 - *Support uses that can accommodate parking on site and do not create significant increases in on-street parking demand.*

Response

The subject site is included within a General Residential Zone Schedule 1. The purposes of which include:

- *To implement the Municipal Planning Strategy and the Planning Policy Framework.*
- *To allow educational, recreational, religious, community and a limited range of other non-residential uses to serve local community needs in appropriate locations.*

When considering an application for a non-residential use of the land, the General Residential Zone requires consideration of a number of decision guidelines including:

- *The Municipal Planning Strategy and the Planning Policy Framework.*
- *The purpose of this zone.*
- *Whether the use or development is compatible with residential use.*
- *Whether the use generally serves local community needs.*
- *The scale and intensity of the use and development.*
- *The design, height, setback and appearance of the proposed buildings and works.*
- *The proposed landscaping.*

The Greater Geelong Planning Scheme does not contain specific policies relating to the use of land for domestic animal husbandry. Greater Geelong Council's local laws allow for the keeping of two dogs on a residential property without a local laws permit.

The Municipal Planning Strategy (MPS) and the Planning Policy Framework (PPF) aim to limit the extent of commercial incursions into residential areas. More specifically:

- The policy basis of Clause 2.03-3 (MPS) of the Greater Geelong Planning Scheme states *Non-residential uses can reduce the amenity of residential areas through impacts from traffic, car parking, hours of operation, appearance and noise. In order to maintain the residential character and amenity of an area it is important that non-residential uses are well-located and managed. To protect residential areas it is important to discourage the encroachment of incompatible uses. The strategic direction is to Encourage a balance between the need for goods and services that serve local residents and workers and the potential for negative impacts on residential amenity.*
- The objectives of Clause 13.07-1L.01 are to:
 - *To provide for non-residential uses that serve the needs of the local community.*
 - *To support non-residential uses that are compatible with the residential character, scale and amenity of neighbourhoods.*

In the absence of clear policy guidance with respect to the use of land for domestic animal husbandry, a first principles approach is required. In this case, consideration must be given to the impact of the proposal on the amenity of adjoining properties.

Having regard to the directions above, it is considered that the key questions to consider for this application are whether:

- The use and development is compatible with the residential use of the land.
- The use serves the local needs of the community

Is the use and development compatible with the residential use of the land?

There are very limited number of Tribunal cases involving domestic animal husbandry in residential areas. More often than not these types of businesses are more commonly found in a Farming Zone or on land where there are sufficient buffers to mitigate amenity impacts such as noise and odour.

However, one example found relates to the breeding of 5 French bull dogs on a 531m² property located in a General Residential Zone **Angelovski v Whittlesea CC [2023] VCAT 247 (9 March 2023)**. The applicant sought retrospective approval. In that decision, the Tribunal supported the application largely based on the breed of the dog. French bulldogs are a small dog that were found not to bark as regularly as other breeds.

Other example relates to the keeping and breeding of 5 dogs on a 6355m² property located in a General Residential Zone **Wallworth v Macedon Ranges SC [2023] VCAT 574 (23 May 2023)**. In that decision, retrospective approval was also sought. Council issued a permit as they were satisfied that the use was consistent with the quiet residential amenity of the area. It was noted that there had been no complaints and also no objections to the application. The VCAT hearing was related to a conditions review. The Tribunal noted para 18 and 22 that decision:

The site is in a residential zone. It is a zoning that reflects a certain level of expectation that living in such areas will have a high level of amenity and the expectation that such amenity will be maintained and protected. A use and development of land in such an area under the GRZ1 that has potential to cause an upset to that amenity does require a level of management to ensure that such impacts are appropriately managed and addressed.

It is comforting that it appears the use currently does not detrimentally impact on residential amenity. However, as this is a residential area and not a farming or rural area, closer living for human habitation requires a higher threshold to be considered in terms of residential amenity and how the use and development approved by Council will operate to mitigate any detrimental effects.

In the VCAT decision **White v Macedon Ranges SC [2008] VCAR 973**, the Tribunal member also considered the appropriateness of keeping 5 greyhounds on a 8,046m² residentially zoned property. In that decision the Tribunal considered that the primary and determinative issue when considering an application for the keeping of 5 dogs (greyhounds) in a Residential 1 Zone was whether *the proposed use would be acceptable having regard to the position of neighbouring dwellings and the planning context of the land. The main impact arising from the proposal in terms of the amenity of abutting properties is the potential for noise ... Reasonable amenity expectations must be considered in the context of the residential zoning of the land...* (Para 9).

In that decision the Tribunal noted in para 25 that: *It is also true that the area around the review site displays the characteristics of a low density residential setting rather than a more intense urban form. Nonetheless, the residential amenity expectations in a Residential 1 Zone are properly high. In time, the area around the review site might be further subdivided, particularly if access to reticulated sewerage is achieved.*

In that case the Tribunal concluded in para 28 and 29 that

- *Ultimately, I have decided there are too many uncertainties in relation to the noise impacts associated with the proposal. The location is a sensitive one and the facilities for the greyhounds are very close to the closest abutting dwelling. In the site's physical and planning context, I have not been persuaded the conditions proposed by the Council can achieve an acceptable, sustained, outcome. In time, more intensive development will occur exacerbating the potential for conflict in this location.*
- *Unless a fresh proposal demonstrates the ability to limit noise emissions from dogs within the kennels and on-site to a reasonable and acceptable level, it may simply be that the review site is not one where the impacts of a use such as this can properly be contained in an acceptable manner.*

The findings of the above cases are also considered relevant to the current application. It is important that this proposal:

- Will maintain a high level of residential amenity;
- Will not impact on the future growth of this residential area.

Will the proposal maintain a high level of residential amenity?

The subject site is located in an established residential area, away from a main road and commercial uses. A high quality residential amenity has historically been experienced in this area.

The application is supported by an acoustic report and Domestic Animal Management Plan that explains how the site will be managed.

The proposal is to breed up to 5 domestic animals (dogs) on site, that weigh approximately 4-8 kilograms.

In regards to noise emissions, the accompanying acoustic report notes:

- *It is our experience that puppies do not generate any noise impacts and any material noise impacts would likely come from adult barking dogs.*
- *The number of adult dogs is also not necessarily correlated with noise impacts, because barking events are more relevant to a particular dog's behavior.*
- *It is understood that puppies will be removed (purchased) from the site prior to being classified as an adult breed.*
- *Plans were provided for our review on 24 April 2024 (Amended Plans). The Amended Plans show a number of dog pens and external grassed areas that we understand would be used for exercise during the day.*
- *The pens, garage and laundry shown within the caretaker dwelling would be used to house dogs, including litters, as well as all dogs at night.*

- *Background noise levels were measured at the Bay Shore Avenue property (discussed later in this report), as general ambient noise could be obtained in the area given barking events did not register at that location.*
- *Enfield Acoustics visited the existing use on Bay Shore Avenue on 10 April 2024 to understand the operation and install a long-term unattended noise monitor in the rear yard of that property, for the purpose of establishing whether the dog breeds kept by the Applicant generate any barking events. The noise monitor was retrieved on 17 April 2024.*
- *During the times of inspection, the dogs kept by the Applicant (which included a mix of poodle and cavalier spaniel breeds exercising in the rear yard and kept in pens, including 5 adult dogs) were observed to be quiet. No barking events were observed however domestic dogs on another property on the opposite side of Bay Shore Avenue were observed to barking during our attendance.*
- *Over 8-days of continuous monitoring and review of that data and audio, there were no obvious barking events observed in the recordings, similar to what we observed while on-site. If the Applicant's breeds do bark, it is clearly very infrequent and likely to be no more than what would occur from any normal domestic keeping of dogs. The recordings indicate that the Applicant's dogs either naturally do not bark, or that they are well managed.*
- *Because of the empirical recordings, the Noise Protocol limits would inherently be complied with, assuming dogs are managed the same on the Subject Land. Because the Noise Protocol limits are based on average noise impacts over a 30-minute period, it is also noted that this typically requires some sustained periods of barking (otherwise infrequent or sporadic barking does not typically register as material to the average noise levels).*
- *While we are satisfied that, based on the empirical benchmarking, the Applicant's operation would not generate unreasonable noise impacts in accordance with the Regulations and Noise Protocol, we recommend that a management plan is implemented to help minimize or control any potential barking events, as it is reasonable to expect that this could occur on occasion just like any normal keeping of domestic dogs.*
- *Because there will be a caretaker on-site, we are satisfied that any events that cause a dog to bark could be managed quickly. Regardless, it is generally adopted under best practice that:*
 - *Dogs should be housed within buildings between 10pm-7am (with the exception of when dogs are walked off-site). Exercise yards should not be used during the hours of 10pm-7am. All doors to buildings housing dogs should remained closed between 10pm-7am.*
 - *Feeding time should also be avoided between 10pm-7am; and*
 - *Any dogs known to bark are housed with the caretaker (within the dwelling laundry so that they can be managed efficiently*

Additional comments

- *In the Acoustic Report, noise impacts were considered from the proposed use by an empirical assessment (including noise monitoring) of the permit applicant's existing use on Bay Shore Avenue. That assessment considered the noise impacts external to dwellings, as this is how noise impacts are assessed under all statutory noise polices. The noise measurements were also undertaken within close range to the permit applicant's dogs, which were found to emit no material noise. If anything, I expect that the proposed operation would not be any different to a normal domestic keeping of dogs with respect to potential noise emissions.*

- *To that end, the locations of habitable room windows at adjoining dwellings is technically irrelevant to the acoustic assessment. Having said that, the revised plans show that habitable room windows are setback from boundaries on the neighbouring lands, so there may be some minor practical benefit to this. I otherwise do not consider this to be material to the acoustic assessment already provided and I am therefore satisfied with the amended plans.*

Issues associated with the acoustic report however include:

- The report is based on background noise associated with the existing business at 142 Bay Shore Avenue. This property is closer to the bay and abuts a Council carpark. It may have a different background noise level to the property at 36 Kanyanya Avenue that is located in a residential street.
- It is also noted that the property at 142 Bay Shore Avenue is much larger than the property in Kanyanya Avenue. It is 2144m² in size and has one adjoining neighbour. In comparison, 36 Kanyanya Avenue is 596m² in area with 4 adjoining neighbours. These properties have a different site context.
- The applicant owns properties at 137 Bayshore and 36 Kanyanya Avenue. Neighbours note that dogs are transferred between properties. It is unclear if 5 dogs breeding dogs were present on site over the entirety of the assessment.
- The position of the noise monitor in the back yard was not disclosed. It is unclear how effective it was.
- The acoustic qualities of the overnight pens in the converted garage were not tested. The garage would have less acoustic attenuation than the dwelling at 142 Bay Shore Ave. Given the proximity of the neighbouring habitable room windows, the acoustic qualities of the garage/pens should have been considered.
- The acoustic report states the location of adjoining windows is 'technically irrelevant.' On the contrary, officers consider an assessment of the acoustic qualities of the converted garage (as mentioned) and its location adjacent to the open space and habitable rooms of neighbouring dwellings (in particular, 8 Jetty Rd) are highly relevant to the assessment of the appropriateness of the use in this location.
- The acoustic report likens noise to typical situations of having domestic dogs. However, the intensity of the use here relates to a higher number of dogs such that it requires planning permission, and becomes a separate land use for the purposes of the planning scheme. There is a correlation between the number of dogs and amenity impacts, eg dogs arousing each other. It also means that the particular attributes of the land and surrounds need to be considered (unlike typical domestic situations). It is noted that this land has been set up to breed and keep dogs with an unknown manager at this time. This tends to suggest the primary purpose of the land would be to keep and breed dogs, with the dwelling a secondary use.
- The dogs are to reside in a separate building to the main dwelling at night. It is not possible to know when dogs are going to bark or what they may bark at. By the time the caretaker wakes to manage the dogs, the amenity to the surrounding neighbourhood has already been affected.

- The noise made from dogs is sporadic and behavioural. It is not like a continuous noise from machinery. It is a short impulsive noise that may occur infrequently or a series of short bursts emanating from one or more animals in sequence. This sporadic noise was not tested or considered. Sporadic noise, particularly at night, can adversely impact amenity.
- Compliance with the noise protocol in the acoustic report appears to be based upon the average noise over time. This is not consistent with noise associated with dogs.
- Neighbours note that the dogs bark more intently during breeding and whelping. There is no evidence that this was recorded.
- The outdoor pens rely on boundary fencing for noise mitigation. Neighbours have stated the use of their yards can arouse dogs. Residential uses (and amenity) should have primacy over non residential uses. The majority of VCAT cases referred to, that permitted dog breeding in residential areas, are located on larger residential allotments where larger buffers would be likely, and where normal residential activities would be less likely to arouse dogs.

Additional issues in relation to the management of noise include:

- The acoustic report links the control of noise to the effectiveness of an on site manager to control dog behaviour/barking. The planning report provides no assurance that the dogs will have a competent on site supervisor. Ms Whiteside will not reside on the site and the experience/qualifications of the on site manager are unknown.
- This is a tight residential site with 4 residential properties that abut the site. Neighbours complain of noise related to barking, howling and whimpering. This causes them distress and lack of sleep.
- Council however have received many complaints about noise (barking dogs) in relation to the applicant's properties at 142 Bay Shore Ave, 137 Bay Shore Ave and the subject site. An on-site manager has not been able to prevent dogs from barking and prevent complaints from being received. The existing business has created an amenity concern for the neighbours.
- Monitoring the number of dogs on site associated with this business would be hard to police. Objections outline that dogs are transferred between properties.
- Unlike French Bulldogs, Cavoodles are known to be a very vocal breed and may bark when hungry, bored, anxious or excited. They are also prone to separation anxiety and can bark at night- [Cavoodle Breed Guide | Behaviour & Nutrition | Pet Better with Pet Circle](#). As such, whilst VCAT supported an application to breed 5 French bull dogs in a residential area on a lot of a similar size, this does not mean that breeding cavoodles/poodles would result in the same amenity impact.

Based on the above it is therefore recommended that this application not be supported as it has not been adequately demonstrated that noise can be controlled on site in a manner that respects neighbourhood amenity both now and into the future.

Notwithstanding the above, the application notes that:

- *Of the total five (5) dogs, it is intended that one (1) dog will likely be a domestic pet to be kept within the existing dwelling, with the keeping of up to four (4) dogs rotated as part of an ongoing breeding program associated with Cavoodles and Poodles by Helen Pty Ltd.*
- *At the discretion of Ms Whiteside and subject to the number of dogs accommodated on the Site at any one time, the use of outdoor dog pens and rear garden space by dogs would be rotated to ensure the condition of the spaces remains optimal and provides a high level of amenity for the dogs and the ongoing residential use of the Site.*

Based on these comments, it appears that dogs will continue to be rotated to and from this property as part of a wider business operated by the applicant. As previously explained, the applicant owns two other properties nearby that have been reported to be used as part of this business. These properties are subject to current enforcement investigations, as they have created an on going amenity concern for neighbours.

It is acknowledged that the applicant has been breeding dogs for a long period of time, however there have been multiple reports of non compliance over the years due to barking dogs. Evidence has also been provided regarding management of waste. In the decision **Osborne v LaTrobe CC [2003] VCAT 1785 (29 November 2003)**, a history of non compliance was considered to be a contributing factor in refusing as a dog breeding business on a rural property. The Tribunal noted in para 42 that:

I must be satisfied that the conditions will in fact be met. In this regard I refer to Kaso v City of Coburg (1992) 9 AATR at 128 where the Tribunal stated:

"If we were satisfied that there was a real doubt, having regard to the past and continuing conduct of the applicant as to whether it would adhere to any conditions imposed or that it might otherwise breach the provisions of the Planning Scheme, we think it clear both as matter of principle and on previous decisions of the Appeals Board ... that the Tribunal could, in the exercise of its discretion, determine to allow the appeal and direct that no permit issue." (see also Smith v Shire of Flinders) [\(1983\) 1 PABR 183](#), Hodgetts v Shire of Metcalf [\(1986\) 26 APA 99](#); Bowman v Shire of Woorayl 12 VAPD 116.

Notwithstanding the above, it is noted that the applicant states in their more recent submission that:

- *The acoustic report and assessment submitted as part of the permit application was based on a week of field measurements and prepared using scientific equipment by a professional acoustic engineer. This was done at expense to my clients and in response to Council's request. The report was submitted to Council in April 2024 and in the intervening 8-month period Council provided no comment or feedback about its content or veracity, which might have been addressed if raised.*
- *The proposed Domestic Animal Management Plan submitted to accompany the permit application, including the design of the facilities and proposed operations, was informed by the Health Management Plan prepared in 2019 as part of Council's approval of the DAB permit. The Health Management Plan was signed off by the (then) supervising vet and updated, as necessary. As with the acoustic report, no feedback has been provided by Council raising issue with the content of the proposed plan during the current permit application process, which might have been addressed if raised.*

In response the following is noted:

- The applicant requested that application be advertised prior to referral comments being received. Referral comments, particularly Local Laws, consistently raised noise from barking dogs as a significant concern.
- The objectors clearly outlined the inadequacies of the acoustic report that should be addressed. The applicant reviewed comments and chose not to undertake an acoustic investigation on the subject site or discuss this matter further with Council.
- The domestic animal plan provides no confidence that it will result in the amenity of the area will be protected, particularly in regard to noise, for reasons previously mentioned.

Impact on the future growth of this residential area

The planning scheme encourages more intensive development around the subject site in years to come. If the proposed use is supported, it has the real potential to create further conflict in the neighbourhood in years to come.

Does the use serve the local needs of the community?

The dog breeding business sells puppies all around Victoria, servicing a catchment beyond the local community.

RELEVANT PARTICULAR PROVISIONS:

The following Particular Provisions are applicable to this application:

CLAUSE 52.06 – CAR PARKING

- *To ensure that car parking is provided in accordance with the State Planning Policy Framework and the Local Planning Policy Framework.*
- *To ensure the provision of an appropriate number of car parking spaces having regard to the demand likely to be generated, the activities on the land and the nature of the locality.*
- *To support sustainable transport alternatives to the motor car.*
- *To promotes the efficient use of car parking spaces through the consolidation of car parking facilities.*
- *To ensure that car parking does not adversely affect the amenity off the locality.*
- *To ensure that the design and location of car parking is of a high standard, creates a safe environment for users and enables easy and efficient use.*

Clause 52.06-6 Number of car parking spaces required for other uses

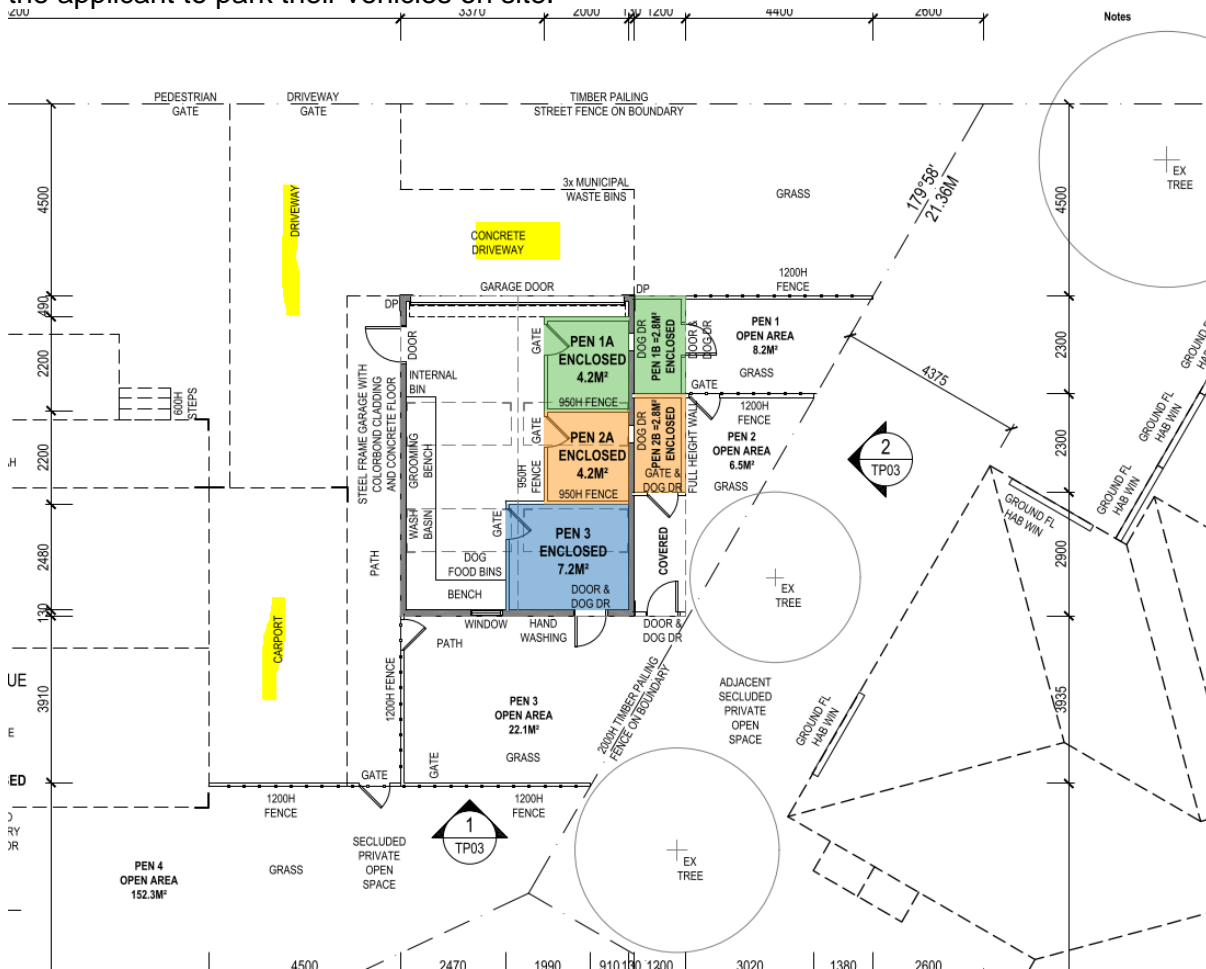
Where a use of land is not specified in Table 1 or where a car parking requirement is not specified for the use in another provision of the planning scheme or in a schedule to the Parking Overlay, before a new use commences or the floor area or site area of an existing use is increased, car parking spaces must be provided to the satisfaction of the responsible authority. This does not apply to the use of land for a temporary portable land sales office located on the land for sale.

Response

Table 1 does not specify parking requirements for the proposed use.

The applicant advised that the business will be managed by the resident of the land. The applicant will also visit the site to manage the land. Visitors will visit the site via appointment only.

Whilst the applicant has converted the existing garage into dog pens, there is room for three cars to be parked on site in the positions marked below. This is sufficient space for the resident and the applicant to park their vehicles on site.



In addition, there is sufficient on street parking availability in the area to allow one family to visit in one car, via appointment, on occasion.

It is therefore considered that sufficient parking can be provided on site.

DECISION GUIDELINES OF CLAUSE 65:

CLAUSE 65.01 – APPROVAL OF AN APPLICATION OR PLAN

Clause 65.01 of the Greater Geelong Planning Scheme outlines the decision guidelines to be considered by the Responsible Authority when making decisions on applications. These decision guidelines include:

- *The matters set out in Section 60 of the Act.*

- *The Municipal Planning Strategy and the Planning Policy Framework.*
- *The purpose of the zone, overlay or other provision.*
- *Any matter required to be considered in the zone, overlay or other provision.*
- *The orderly planning of the area.*
- *The effect on the environment, human health and amenity of the area.*
- *The proximity of the land to any public land.*
- *Factors likely to cause or contribute to land degradation, salinity or reduce water quality.*
- *Whether the proposed development is designed to maintain or improve the quality of stormwater within and exiting the site.*
- *The extent and character of native vegetation and the likelihood of its destruction.*
- *Whether native vegetation is to be or can be protected, planted or allowed to regenerate.*
- *The degree of flood, erosion or fire hazard associated with the location of the land and the use, development or management of the land so as to minimise any such hazard.*
- *The adequacy of loading and unloading facilities and any associated amenity, traffic flow and road safety impacts.*
- *The impact the use or development will have on the current and future development and operation of the transport system.*

Response

The scheme encourages the retention of residential development in this area, and limits non-residential uses to uses that:

- Serve the needs of the local community; and
- Are compatible with residential amenity.

It is considered that this proposal does not result in the orderly planning of the area as:

- The use benefits the greater community, not locals. Puppy sales are not limited to locals;
- It has not been demonstrated that the use can be appropriately managed on site to respect residential amenity for current and future residents.

CLAUSE 71.02 OPERATIONS OF THE PLANNING POLICY FRAMEWORK

Clause 71.02-3 Integrated Decision Making

The Planning Policy Framework operates together with the remainder of the scheme to deliver integrated decision making. Planning and responsible authorities should endeavour to integrate the range of planning policies relevant to the issues to be determined and balance conflicting objectives in favour of net community benefit and sustainable development for the benefit of present and future generations. However, in bushfire affected areas, planning and responsible authorities must prioritise the protection of human life over all other policy considerations.

Response

The applicant notes the letters of support demonstrate that proposal meets the requirements of Clause 71.02-3 as they outline the proposal benefits for the wider community. The letters demonstrate that the puppies are highly valued companion dogs; and the dog breeding business financially supports other businesses in Geelong, such as Newtown Veterinary Clinic. These statements are not disputed.

This issue is however the General Residential Zone generally encourages the retention of residential development in this area, and limits non-residential uses to those that:

- Serve the needs of the local community; and
- Are compatible with residential amenity.

It is considered that this proposal does not result in a net community benefit as:

- Any benefit to the wider community does not outweigh disbenefits to those in the immediate vicinity, particularly in circumstances that the scheme seeks to focus on local community needs through the Purpose of the General Residential Zone;
- It has not been demonstrated that the use can be appropriately managed on site to respect residential amenity for current and future generations.

As previously noted, residential uses (and amenity) should have primacy over non residential uses. The majority of VCAT cases referred to, that permitted dog breeding in residential areas, are located on larger residential allotments where larger buffers would be likely (and normal residential activities would be less likely to arouse dogs).

The use is nested under Agriculture under the Greater Geelong Planning Scheme. This use is more appropriately located in a Farming Zone or other location where appropriate buffers to residential development can be provided. A larger property would enable the applicant to locate their entire business to this site, rather than use numerous residential properties they own to run their business.

CONCLUSION

For the reasons outlined above, it is considered that the proposal is recommended to not be supported based on the assessment undertaken with regard to the requirements of the Greater Geelong Planning Scheme, and therefore should be recommended for refusal.

CLOSE OF MEETING

As there was no further business the meeting closed at 7:41pm on Thursday 27 March 2025

X

Cr Katos
Chair