

MINUTES

TITLE: Environment & Planning Subcommittee
DATE: Monday, 15 May 2006
TIME: 9.30 am
VENUE: Council Chamber, 189 Queen Street, Richmond

PRESENT: Cr E M O'Regan (Chair), Crs R G Kempthorne and E E Henry

IN ATTENDANCE: Manager, Consents (J S Hodson), J Bergman of Control Services (Nelson) Ltd, Environmental Health Officer (D R Lewis), Administration Officer (B D Moore)

1. R AND K COOPER, 342 PATON ROAD, HOPE, APPLICATION FOR DOG KENNEL LICENCE

1.1 Proposal

The applicant sought consent for a dog kennel licence at a property in the Rural 1 Zone at 342 Paton Road, on Lot 1 DP 16268 of 5,430 square metres. The original application advised that the applicants intended to keep no more than 40 dogs at any one time.

1.2 Presentation of Application

The applicants, Kevin and Roz Cooper, were present at the hearing and represented by solicitor, Mr A K Irwin.

Mr Irwin tabled and read an introductory submission and advised that the licence sought by the applicants is a kennel licence under the Tasman District Council Dog Control Bylaw. The Bylaw requires a licence to keep three or more adult dogs in a rural area. He said that the applicants have now reduced their original application and are applying for a licence to keep a maximum of 36 adult dogs on their property at 342 Paton Road, Hope. The dogs are currently on the property and the breeds include 13 Basenjis and 11 Jack Russell terriers, other terriers and four miniature Schnauzers. Mr Irwin clarified that the applicants do not run a boarding kennel facility but have sought the licence for their own dogs that they breed and show. He explained that the applicants operate a dog grooming business on the subject property that complies with the home occupation rules.

Mr Irwin explained that the Council's Dog Control Bylaw does not specify a procedure or criteria for applications. The application was not one where the hearing is required to follow Resource Management Act provisions, however, Section 16 of that Act requires that the emission of noise from the subject land does not exceed a reasonable level. The submission said that the Basenji dogs do not bark and they are kept in the kennels that are closest to the road. All other dogs are kennelled in a concrete garage at night. The majority of the Jack Russell terriers have been debarked.

Mr Irwin briefly explained the animal husbandry that occurs on this property relating to the dogs. Mr Irwin referred to the staff report which acknowledged that the applicants have taken action to reduce the chance of the disturbance created from barking dogs. Mr Irwin objected to the proposed condition of consent that threatened cancellation of the licence as a result of failure to comply with any of the conditions and suggested that this be left as an advice note to the licence and not a condition. He noted that the licence would apply to dogs over three months and not to puppies.

Planning evidence on behalf of the applicants was read by resource management consultant, Mr S J Headley. He provided a description of the applicants' property and a synopsis of the activity. The evidence included a description of the regulatory authorities and identified and analysed the effects of the activity. Mr Headley provided an analysis of the submissions to the application and the staff reports. He said that subject to the imposition of specified conditions, the effects of the activity would be no more than minor.

Tania Mora, a qualified dog trainer and behaviour consultant, read her evidence that assessed the Cooper's kennels and the extent to which the dogs bark. She described how she had visited the applicants' property three times to assess noise and said that the dogs certainly do not make any excessive noise. She said she had found all the dogs to be in excellent condition, happy and well cared for. The dogs were kept in well above average, free range enclosures and runs, which allow them to display normal dog behaviour. All had clean water and shelter and there was no smell from any enclosure.

Cherie Palmer spoke about her involvement with animals, especially at the Nelson SPCA and as a breeder and exhibitor of fox terriers for over 15 years. She provided comments on the health and well-being of the Cooper's dogs and spoke about her experience with assisting on the subject property and said she did not believe that the dogs on this property were causing noise, let alone excessive noise.

Jack Pike, a retired policeman, said he had 11 years experience with police dogs involved in keeping, training and working police dogs. He said that he had been requested by the Coopers to assess their property in terms of the dogs' well-being and barking and reported on his two visits to the subject property, where he was amazed at how quiet the place was on both visits, given that there are 36 dogs. He said that he was also impressed with how well the dogs are treated. Mr Pike said that as far as he is concerned, there are simply no issues with noise from the dogs or how they are being cared for.

Mrs Roz Cooper, as one of the applicants, read evidence to explain her background in breeding and showing dogs. She spoke about the two main breeds (being Basenjis and Jack Russell terriers) on the property and why the applicants purchased the property. She explained the level of cost involved to erect fences and kennels on the property and described why the applicants had debarked their dogs. She said that the applicants operated from a property on the north side of Aniseed Valley Road near the school for six years, with no problems. This completed the applicants' evidence.

1.3 Presentation of Submissions

Mr Russell Aubrey tabled and read a submission for R I and J P Aubrey. He said there are 18 to 20 dwellings located within 400 metres of subject site, including his property, and also the school is located about 100 metres from the subject site. He said the proposed dog kennel would create too much potential for conflict because of its close proximity to a high number of dwellings and the school. Mr Aubrey acknowledged that dog barking noise from the subject site was not significant for him or his wife but he believed the noise of barking dogs could be significant for closer neighbours.

Mr Tony Verdonk of Aniseed Valley Road said he shares a boundary with the subject site but his house is about 200 metres away, with four hedgerows in between. He said in his written submission of 21 April 2006 that in the last four months he had woken from dogs barking, which he believed to be on the applicants' property, at least four times and that on one of these occasions it lasted for approximately two hours. He expressed concern about the number of dogs on the applicants' property and the potential to have a greater number of dogs. Mr Verdonk said he thought the property is too small and has too many neighbours for the purpose which the applicants intend. He explained that although the applicants' previous operating site was closer to his house than the subject property, because his house was facing the other direction he was not affected by the barking noise and did not contact the Council in the past.

Submissions for Chris and Sue Little of 331 Paton Road, Hope were introduced by Mr N McFadden, solicitor. He said the relevant factors in relation to the application being considered are in the objects of the Dog Control Act: *"to make better provision for the care and control of dogs by imposing on owners of dogs, obligations designed to ensure the dogs do not cause a nuisance to any person and do not injure, endanger, or cause distress to any person"* (Section 4, Dog Control Act 1996). He spoke about the debarking of some of the dogs on this site. Mr McFadden questioned the extent of ongoing control that the Council will have once the kennel activity is established on the site and was concerned about potential nuisance effects. The submission referred to the report from Mr J Bergman of Control Services (Nelson) Ltd, in which Mr Bergman stated he was not satisfied that the keeping of the proposed number of dogs in this area, where there are homes and a school close by, is appropriate.

A letter of 12 May 2006 from Dr Kelly Powell was presented, which referred to the debarking of dogs as a restricted surgical procedure, as defined under the Animal Welfare Act 1999. Dr L R Powell read a statement of evidence and said that the barkless Basenjis produce a howl, which is a mixture of a chortle and a yodel. He presented evidence about the debarking of dogs and that in the circumstances he did not support the practice.

Mrs S J Little read a statement of evidence and said that she lives at 331 Paton Road, Hope, where her bedroom is 90 metres from the subject site. She spoke about the night dog noise and how this had affected her sleep but acknowledged that the noise level is not as great as it was previously. She said that when the applicants' kennels were located on the corner of Paton Road and Aniseed Valley Road the noise problems were less.

A letter from D M Stringer, Manager of the Nelson SPCA, expressed concern about the debarking of dogs at the subject site and advised that a letter had been provided to the applicant setting out the concerns of that Society.

Mrs P Andrews tabled and read a submission. The Hearing Panel noted that her original evidence did not raise the extent of her objection. She advised that she had been disturbed by the noise of dogs from the subject site, which was located about 95 metres from her house. She said that she had spoken to the Little family and also visited Mrs Cooper but that the problem of dog noise had not been resolved. She said that the noise had driven her out of her home and that it was almost a week before she felt able to return. She said that she had spent more time away from home in the past six months than in any other 12 month of her whole life. Mrs Andrews said that by debarking the dogs the Coopers have finally admitted the nuisance barking. She suggested much fewer dogs, with much more human contact and exercise would be a better remedy. She said that the odour from the subject site is very strong at times and that she has had to keep her doors and windows shut on the south side of the house because of it. Mrs Andrews said that she felt that the Cooper's kennel proposal was not situated in the right vicinity for a business of this scale. She said that it is quite unacceptable that a neighbour's dogs should interfere so much with other people's personal lives.

1.4 Staff Reports

Environmental Health Officer, Mr D Lewis, spoke to his report contained within the agenda and said that the animal husbandry on the subject site is of a high standard. He spoke about his observations of the subject site and the instances of dogs barking. Mr Lewis said that the improvement in lowering night-time noise has been the result of the dogs being housed in the shed. He said he had not noticed odour and offensive conditions during his five visits to the property. Mr Lewis recommended some conditions of consent.

Mr J Bergman of Control Services (Nelson) Ltd advised in his report contained within the agenda that he had visited the subject site in January of this year as a result of complaints received from residents of Paton Road relating to large numbers of dogs being kept at 342 Paton Road and that there was a barking problem. He said that 10 or more dogs on a property of this size will result in barking and it would be difficult to control. He said there will be noise problems. In response to questions from the Hearing Panel, Mr Bergman repeated that he was not happy with the subject location and proposed number of dogs to be kept. Mr Bergman said that 36 dogs on the property is too many and will cause grief to the neighbours. He said that he acknowledged that some dogs are debarked and some are quiet but he could not recommend a particular number for consent purposes. He said that the complaints sheets were available for use by the Hearing Panel.

1.5 Right of Reply

Mr Irwin tabled a written submission in reply on behalf of the applicants. He said that the applicants believed that Council can grant consent because of the measures that have been taken to mitigate and control the activities on the subject site. He said that the general objectives of the Dog Control Act are not specific criteria but rather general objectives. He said that the Bylaw does not specify any criteria for applicants to meet. Mr Irwin said that the productivity of the land is irrelevant to this application and there is no evidence that property values may decrease. He said there is no intention to keep more than 36 dogs and that the property is more than adequate to house this number of dogs. Mr Irwin demonstrated that the dog grooming and operation of the activities on the site are in compliance with the Tasman Resource Management Plan and that it is not a commercial activity.

Mr Irwin said that the appropriateness of the debarking was not addressed by the applicants in evidence as it was not previously raised by submitters. He noted that Dr Powell did not give evidence specific to this application that debarking was inappropriate. He said that the clear issue was noise and the dogs' capacity to bark is clearly diminished. He said it is an extreme step that has occurred. He asked the Hearing Panel to avoid consideration of subjective evidence and to put aside hearsay, especially in relation to the subjectivity of noise.

Mr Irwin said that prior to purchasing this property, the applicants spoke to Council officers, particularly about keeping more than three dogs. He said that not one single complaint against the applicants had been substantiated. The applicants have not had a dog control enforcement taken against them and are complying with the Section 16 of the Resource Management Act 1991. He noted that the evidence from the Littles and Andrews stated that the situation regarding dog barking had improved in recent times. He said various improvements have been made, principally that the dogs have been housed inside at night. Mr Irwin suggested that the proposed conditions of consent recommended as Section 5.6 of the Environmental Health Officer's report should have the last line amended so that it reads: "*Council, within two weeks, good reason as to why their kennel licence should not be cancelled*". He asked that proposed Condition 5.2 be amended to acknowledge the existing breeds of dogs on the site. Mr Irwin said that if it is necessary Council could specify that the dogs be housed between 7.00 am and 7.00 pm.

Mr Irwin said that a further statement about the product Zerobac Alphasan that is used on the subject site for sanitation and disinfection of services would be provided as requested by Cr Kempthorne. Cr O'Regan noted that the evidence presented by the applicant and the Environmental Health Officer regarding odour was sufficient for the purposes of consideration by the Hearing Panel.

Cr O'Regan arranged for the Hearing Panel to make an immediate visit to the subject site.

**Moved Crs O'Regan / Henry
EP06/05/19**

THAT the public be excluded from the following part of the proceedings of this meeting namely:

R and K Cooper

The general subject of the matter to be considered while the public is excluded, the reason for passing this resolution in relation to the matter, and the specific grounds under Section 48(1) of the Local Government Official Information and Meetings Act 1987 for the passing of this resolution are as follows:

Subject	Reasons	Grounds
R and K Cooper	Consideration of a planning application.	A right of appeal lies to the Environment Court against the final decision of Council.

CARRIED

**Moved Crs Kempthorne / Henry
EP06/05/20**

THAT for the purposes of discussing the application of R and K Cooper as an "In Committee" item, the Manager Consents be authorised to be in attendance as advisor.

CARRIED

**Moved Crs O'Regan / Henry
EP06/05/21**

THAT the public meeting be resumed and that the business transacted during the time the public was excluded be adopted and that the following resolutions be confirmed in open meeting.

CARRIED

Cr O'Regan thanked everyone present for their attendance and the hearing concluded at 4.20 pm.

2. R AND K COOPER, 342 PATON ROAD, HOPE, APPLICATION FOR DOG KENNEL LICENCE

**Moved Crs Kempthorne / Henry
EP06/05/22**

THAT pursuant to the Dog Control By-Law 2004, Council DECLINES consent to keep more than three dogs at 342 Paton Road, Hope.

HOWEVER, to allow a reasonable time for arrangements to be made for the relocation of the dogs, a TEMPORARY LICENCE is GRANTED for a period not exceeding six months from the date of this decision.

The temporary licence is granted subject to the conditions listed below.

The reasons for the decision are stated at the end of this document.

Temporary Licence Conditions:

1. No more than 36 dogs over the age of three months may be present on the property at any one time.
2. The breeds of dogs resident on the property be restricted to Basenjis, Jack Russell Terriers, West Highland White Terriers, Scottish Terriers and Miniature Schnauzers.
3. The dog owners shall comply with the duty as imposed by Section 16 of the Resource Management Act 1991 to adopt the best practicable options to ensure the emission of noise associated with the dogs does not exceed a reasonable level.
4. All dogs on the property shall be housed inside between the hours of 7.00 pm and 7.00 am.
5. That the dog owners take all necessary steps to ensure that no nuisances or adverse effects on the environment arise from keeping of dogs on the property.
6. No commercial dog boarding shall be carried out on the property unless approved by way of resource consent.

Advice Note:

Failure to comply with any of the conditions may result in a review of this temporary licence or enforcement action being taken under the Dog Control By-Law 2004 and the Dog Control Act 1996.

REASONS FOR THE DECISION:

The applicants, Mr K and Mrs Cooper have applied to keep up to 36 dogs at 342 Paton Road, Hope, under the provisions of the Tasman District Council Consolidated By-Law, Chapter 2- Dog Control (September 2004) . The property is zoned Rural 1 under the Proposed Tasman Resource Management Plan and the dogs are not “working dogs” and therefore a licence is required to keep this number of dogs under Section 7 of the By-Law.

The Committee understands that in the past, applications to keep three or more dogs in the rural area have been dealt with by Control Services (Nelson) Ltd, the contractors who carry out the Council’s animal control functions. However, in this case the matter has been referred to the Committee to make a decision as staff were reluctant to recommend approval. This “hearing” process also allows other parties to express their views to Council and therefore for the decision to be made based on the best information available and made in a fair and transparent manner.

The application was notified to seventeen surrounding land owners by way of letter dated 30 March 2006 and they were provided with a copy of the application. Land owners were given the opportunity to comment on the application by 21 April 2006. Council received one letter in support of the application from Hoddy’s Orchard Ltd and seven from people who had concerns about the application.

The concerns raised can be summarised as follows:

- Cross-boundary effects associated with the dogs related to the density of dwellings in the area
- Proposal is a non-productive use of Rural 1 land and would be more appropriate in an area zoned Rural 2. This kind of activity should require a resource consent.
- The proposal may cause a loss of value of surrounding properties.
- The potential number of dogs able to be kept on the property is 100 and therefore there is concern about the numbers increasing in the future
- Concerns about the noise from dogs e.g barking, howling etc causing stress, sleep disturbance and irritation for some nearby neighbours
- Concerns that a dog boarding kennel may be proposed in the future
- Concerns about odour from dog wastes
- Concerns about “debarking” being used to mitigate the noise from barking

On the positive side, the letter from Hoddy Orchard Ltd states that there has been no problems with notification and obtaining flexibility over spraying times (thus ensuring dogs are not exposed to sprays) and that generally the operation appears to be well run and the location suitable.

There are no criteria specified in the By-law which relate to the assessment of licence applications. Issues which are relevant in terms of this consideration include:

- shelters, kennels and bedding
- fencing ,outdoor runs, exercise areas, and exercise programmes
- cleaning regimes
- waste management and hygiene
- disease prevention
- record keeping
- training and barking management methods
- feeding and watering
- supervision
- proximity to neighbours and potential effects on neighbours from noise and odour

The applicants supplied Council with details relating to the kennels and other structures used to contain the dogs, the animal husbandry methods used, experience of the owners, the dog breeding and dog showing activity which they are engaged in and the barking management strategy employed. This information was elaborated upon at the hearing.

The Committee noted that a dog grooming business is also operating from the property but it is understood that this operation complies with the permitted activity provisions for Home Occupations and it is not controlled under the By-Law and therefore no further consideration is given to this aspect.

The Committee acknowledged that the applicants are very experienced dog owners and it was clear that the dogs were generally very well cared for. The hygiene and animal husbandry practices employed were satisfactory. It was recognised that the owners had not completed construction of all the facilities for housing the dogs as they were waiting for the necessary Council approval of the kennel licence, and therefore some arrangements were “temporary”.

The Committee noted the concerns expressed about the use of debarking dogs and considered that this method should not be used except as a “last resort” to manage a serious barking behaviour problem. They also wished to express concern about the failure to register all dogs as required at the time of the original complaints being received.

The Committee heard that some of the neighbours had been experiencing significant levels of stress as a result of being exposed to the noise from the dogs. Evidence was provided regarding thirteen recorded complaints logged with Council. The complaints were received between 9 January 2006 and 8 May 2006. It is understood that 15 dogs were de-barked on 23 and 27 March 2006, but that a number of dogs and puppies have not been de-barked, for various reasons, either they are too young or too old, have puppies or are Basenjis which are “barkless”.

The Committee was told that although the Basenjis do not bark like other dogs, they make a distinctive sound described as a cross between a chortle and a yodel. The Committee did not observe them making this noise at the time of the site inspection.

Evidence was provided from Council’s Environmental Health Officer regarding noise levels from the dogs on the property. His observations were undertaken during the early morning on two occasions being 29 April and 12 May. During those times, he considered that there was no nuisance dog barking associated with the kennels. It was explained that people can become “sensitised” to noise such as dog barking and it is generally understood that this kind of noise can result in significant irritation and stress.

The Committee was concerned that noise from the dogs barking, howling etc would be an on-going problem for the near neighbours in the future. The Committee was particularly concerned about the proximity of the property to the adjoining neighbours (Andrews and Little). It was considered that the current neighbours have become sensitised to the noise from the dogs. This is not to say that other people might experience the same sensitisation if the kennels were granted consent for the long term. The Committee considered that the dog breeding and kennelling activity would be much better located in a more remote area where the problem of neighbours being disturbed by the noise from barking would not arise and therefore there would be no need to resort to debarking the dogs in order to mitigate the problem.

However, the Committee did not wish to be unreasonable in relation to the timeframe which may be needed to find alternative accommodation for the dogs and this is the reason that a six month temporary kennel licence has been granted (subject to conditions). The granting of this temporary licence should not be taken as a signal that this licence may be able to be extended in the future, it is granted purely to allow a reasonable time for relocation of the dogs.

CARRIED

Date Confirmed:

Chair: