

<b>DATE OF DETERMINATION</b>	20 April 2023
<b>DATE OF PANEL DECISION</b>	19 April 2023
<b>PANEL MEMBERS</b>	Alison McCabe (Chair), Stephen Leathley, Roberta Ryan, Kellie Scholes and Granville Taylor
<b>APOLOGIES</b>	Tony McNamara
<b>DECLARATIONS OF INTEREST</b>	None

Public meeting held by videoconference on 5 April 2023, opened at 12:05pm and closed at 3:30pm.

#### **MATTER DETERMINED**

PPSHCC-99 – Muswellbrook – DA 2021/129 - 1949 Martindale Road, Martindale - Animal Boarding and Training Establishment (as described in Schedule 1)

#### **PANEL CONSIDERATION AND DECISION**

The Panel considered: the matters listed at item 6, the material listed at item 7 and the material presented at meetings and briefings and the matters observed at site inspections listed at item 8 in Schedule 1.

This matter has been before the Panel since October 2021 and has been the subject of a number of Council and applicant briefings, as well as a specific briefing with the Council's acoustic expert. The Panel also inspected the site and immediately adjoining sites and the general locality. The proposed development has attracted significant interest from surrounding landowners and residents as well as a broader cohort concerned with animal welfare.

As a result of the number of submissions received the Panel held a Public Briefing and listening meeting in July 2022. Also, in response to the issues raised and the nature of the existing acoustic environment, Council commissioned an independent peer review of the acoustic report submitted with the application. The Panel understands that 2022 was a particularly wet year and on both of the dates of site inspection, access to the site was cut by Martindale Creek.

At the public meeting on the 5<sup>th</sup> April 2023 the Panel was made aware that a number of documents referred to in the conditions had not been uploaded onto the Planning Portal. The Panel indicated that they would consider further written submissions in respect to these attachments if received within 7 days from the date of the meeting. A further six (6) submissions were received and considered.

The site is located within a rural environment adjacent to national park and other rural holdings. Martindale Road is the only road access to the site and terminates to the south of the site at the Wollemi National Park, which also adjoins the site to the east. The site was previously used for agricultural use as a horse stud.

Access to the site is via Martindale Road which is a two (2) way rural road that does not consistently have a sealed pavement width or road shoulder/verge to allow for passing traffic. It is also a school bus route for students attending local schools including Martindale Public School. An unsealed gravel Crown Road provides access to the site from Martindale Road which is proposed to be transferred to Council. This access involves crossing a causeway across Martindale Creek to access the site. The proposed use is an intensification of the use of the site. The animal boarding and training establishment would house up to 400 greyhounds and have typically 24 staff onsite. A site manager/caretaker would reside on the site.

The proposed use is a 24/7 operation with the majority of functions associated with the use occurring between 7:30am and 6:15pm on a daily basis. It is known and acknowledged that Martindale Creek at numerous times throughout the year prohibits access to the site due to flooding. This has been identified for different periods of up to 10 days and anecdotally up to 14 days.

The application was amended, over the course of the assessment period, to address a range of matters including acoustic mitigation and how the site would function when access was restricted during periods of floods when site access was cut off. Ultimately an Operational Management Plan was prepared that involved in part:

- Evacuation triggers
- Boom gates
- Stockpile of supplies and reduced personnel on site during periods of restricted access
- Helicopter evacuation as a last resort – the frequency of which was questioned.

Martindale road is a narrow, substandard rural road. Due to the limited bitumen seal width vehicles cannot pass in opposing directions whilst using the sealed road pavement. Upgrades to widen the road pavement and provide a road shoulder are required to Martindale Road – though the Applicant did question whether the upgrades were a function of the development. During the construction phases of the development, it is considered that the road would be subjected to construction vehicles, some of these heavy vehicles. The use of Martindale Road by construction vehicles could not occur during the school bus hours, because of the unsafe and substandard condition of Martindale Road.

The site is subject to flooding. The proposed structures associated with the facility on the site were not proposed to be located in any area of the site subject to a flood event up to and including 1:100 year ARI. However, the site would be isolated in the event of Martindale Creek flooding for various periods.

The Panel accepts that the proposed use is permitted in the zone and is a use appropriate for a rural environment. However, the Panel questions the suitability of a site so remote from services, subject to periods of isolation and accessed from a narrow, poorly maintained road. The site is constrained by access across Martindale Creek during flooding and is bushfire prone.

The function of the site during periods of isolation, in compliance with the Operational Management Plan, would require personnel to leave the site and a reduced number of staff to remain on site for an unknown period to ensure the safety and wellbeing of the animals.

The triggers for evacuation would be established through a stream monitoring system at the site and a new gauge up stream of the site, and technology associated with boom gates to moderate human behaviours (against the wish to leave the site and risk driving through flood waters). The

Panel is not clear how the facility would be operated if the triggers were activated at night when there was only an onsite manager, and the site access was flooded for an extended period of time. The safety of users of the site and wellbeing of animals in the event of flood would require strict compliance with the Operational Management Plan.

The extensive periods of flooding which would restrict access to the facility, the nature of the required operational management systems proposed, and the unknown factor of how the facility would be managed if flooding occurred during the night when onsite staff is limited to a site manager, make the site unsuitable for the proposal.

Ultimately, while the Panel acknowledges the extensive amount of work undertaken to support the application, it is of the view that the site is not suitable for the proposed development given the:

- Isolated nature of the site
- Means of access
- Restricted access and isolation of the site for extended periods during flooding of Martindale Creek
- Potential risk to users and occupiers of the site in the event of flood of Martindale Creek or bushfire

For these reasons the Panel considers that the proposed development should be refused.

#### **Development application**

The Panel determined to refuse the development application pursuant to section 4.16 of the *Environmental Planning and Assessment Act 1979*.

The decision was unanimous.

#### **REASONS FOR THE DECISION**

The Panel determined to refuse the application for the following reasons:

1. The site is not suitable for the proposed use given the nature and extent of flood impacts and the potential for the site to be isolated for extended periods.
2. The means of access to the site is unsatisfactory.
3. The impacts associated with the site isolation and measures proposed to evacuate the site cannot be satisfactorily mitigated by the Operational Management Plan.
4. The proposed use would result in an unacceptable risk to users of the site in the event of flood.
5. The physical and environmental constraints of the site including flood, bushfire and access are unacceptable for the proposed use.
6. The management measures required to be implemented would result in unacceptable impacts in the event of non-compliance.
7. It is unclear how the facility would be staffed if the flooding occurred at a night and access was cut for an extended period of time.
8. The provisions of clause 5.21 of Muswellbrook LEP 2009 have not been satisfied.
9. The proposed development and associated construction would result in unacceptable impacts to the amenity of the surrounding residents and environment.

#### **CONDITIONS**






Not applicable.

## CONSIDERATION OF COMMUNITY VIEWS

In coming to its decision, the Panel considered written submissions made during public exhibition and heard from all those wishing to address the Panel. The Panel notes that issues of concern included:

- Animal welfare (no support for greyhound racing)
- Reliability of baseline weather data in technical studies as data was sourced from outside the Martindale Valley.
- Traffic and road safety
- Noise
- Wastewater management and potential impact on Martindale Creek
- Odour
- Visual impact
- Flora and fauna
- Flooding and access safety
- Flooding and its impact on site operation
- Challenges related to staffing and retention due to remote location and on-site facilities including phone service
- Water security and water use.
- Proximity to Wollombi National Park
- Bushfire risk

The Panel considers that concerns raised by the community have been adequately addressed in the assessment report and that no new issues requiring assessment were raised during the public meeting.

PANEL MEMBERS	
 Alison McCabe (Chair)	 Roberta Ryan
 Stephen Leathley	 Granville Taylor
 Kellie Scholes	

SCHEDULE 1		
1	PANEL REF – LGA – DA NO.	PPSHCC-99 – Muswellbrook – DA 2021/129
2	PROPOSED DEVELOPMENT	Animal boarding and training facility
3	STREET ADDRESS	1949 Martindale Road, Martindale NSW 2333 (Lot 2 DP 1088704)
4	APPLICANT/OWNER	Greyhound Racing NSW
5	TYPE OF REGIONAL DEVELOPMENT	General development over \$30 million
6	RELEVANT MANDATORY CONSIDERATIONS	<ul style="list-style-type: none"> <li>Environmental planning instruments: <ul style="list-style-type: none"> <li>State Environmental Planning Policy (Resilience and Hazards) 2021</li> <li>State Environmental Planning Policy (Planning Systems) 2021</li> <li>State Environmental Planning Policy (Biodiversity and Conservation) 2021</li> <li>Muswellbrook Local Environmental Plan 2009</li> </ul> </li> <li>Draft environmental planning instruments: Nil</li> <li>Development control plans: <ul style="list-style-type: none"> <li>Muswellbrook Development Control Plan 2009</li> </ul> </li> <li>Planning agreements: Nil</li> <li>Provisions of the <i>Environmental Planning and Assessment Regulation 2000</i></li> <li>Coastal zone management plan: Nil</li> <li>The likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality</li> <li>The suitability of the site for the development</li> <li>Any submissions made in accordance with the <i>Environmental Planning and Assessment Act 1979</i> or regulations</li> <li>The public interest, including the principles of ecologically sustainable development</li> </ul>
7	MATERIAL CONSIDERED BY THE PANEL	<ul style="list-style-type: none"> <li>Council assessment report: 27 March 2023</li> <li>Written submissions during public exhibition: 1293</li> <li>Written submissions accepted after the public meeting: six (6)</li> <li>Verbal submissions at the public briefing meeting on 28 July 2022: <ul style="list-style-type: none"> <li>Vanessa Richards, Steven Richards, Trevor Wooley, Michael Neville, Rob McKenzie, Tully DeVries, Erana Duddy, Ishbell Collins, Coleen Sykes and Marien Wooley</li> <li>On behalf of the applicant – Stephen Kerr</li> </ul> </li> <li>Verbal submissions at the public meeting on 5 April 2023: <ul style="list-style-type: none"> <li>Ishbell Collins, Lisa Ryan on behalf of Animal Liberation, Ellie Robertson, Steven C Richards, Vanessa Richards, Trevor Woolley on behalf of Not In Martindale, Mayor Steve Reynolds on behalf of the Muswellbrook Shire Councillors, Fiona Chisholm on behalf of Coalition for the Protection of Greyhounds, Wendy Wales on behalf of Denman Aberdeen Muswellbrook Scone Healthy Environment Group INC, Susie Header and Michael Neville</li> <li>On behalf of the applicant – Stephen Kerr, Sharon Andronicos, James Georgiades, Brendan Mason, Jason O’Brien, Olivier Gaussen, Sean Morgan and James Marrinan</li> </ul> </li> <li>Total number of unique submissions received by way of objection: 90</li> <li>Further submissions received in response to Appendix B, C and K on 13 April 2023</li> </ul>

8	MEETINGS, BRIEFINGS AND SITE INSPECTIONS BY THE PANEL	<ul style="list-style-type: none"> <li>• Briefing: 8 December 2021 <ul style="list-style-type: none"> <li>○ <u>Panel members</u>: Alison McCabe (Chair), Sandra Hutton, Stephen Leathley and Kellie Scholes</li> <li>○ <u>Applicant representatives</u>: Wayne Billet, Alicia Fuller, Sharon Andronicos, Stephen Kerr, Belinda Barrie, James Marrinan, Olivier Gaussen and Julia Knight</li> <li>○ <u>Council assessment staff</u>: Hamish McTaggart and Sharon Pope</li> <li>○ <u>Department staff</u>: Leanne Harris, Carolyn Hunt and Lisa Foley</li> </ul> </li> <li>• Site inspection: 20 January 2022 <ul style="list-style-type: none"> <li>○ <u>Panel members</u>: Alison McCabe, Sandra Hutton, Stephen Leathley and Kellie Scholes</li> <li>○ <u>Council assessment staff</u>: Hamish McTaggart, Sharon Pope, Peter Chambers and Claire Rozema</li> <li>○ <u>Department staff</u>: Leanne Harris</li> <li>○ <u>Site Inspection 22 July 2022 Panel Member</u>: Granville Taylor</li> </ul> </li> <li>• Briefing: 9 June 2022 <ul style="list-style-type: none"> <li>○ <u>Panel members</u>: Alison McCabe (Chair), Sandra Hutton, Kellie Scholes and Granville Taylor</li> <li>○ <u>Council assessment staff</u>: Hamish McTaggart and Sharon Pope</li> <li>○ <u>Department staff</u>: Leanne Harris and Lisa Foley</li> </ul> </li> <li>• Public Briefing: 28 July 2023 <ul style="list-style-type: none"> <li>○ <u>Panel members</u>: Alison McCabe (Chair), Sandra Hutton, Stephen Leathley, Granville Taylor and Kellie Scholes</li> <li>○ <u>Council assessment staff</u>: Sharon Pope, Tanya Jolly and Hamish McTaggart</li> </ul> </li> <li>• Briefing: 2 November 2022 <ul style="list-style-type: none"> <li>○ <u>Panel members</u>: Alison McCabe (Chair), Sandra Hutton, Stephen Leathley, Granville Taylor and Kellie Scholes</li> <li>○ <u>Council assessment staff</u>: Hamish McTaggart, Peter Chambers and Alex Rees (Acoustic Consultant)</li> <li>○ <u>Department staff</u>: Carolyn Hunt and Lisa Foley</li> </ul> </li> <li>• Briefing on acoustic issues: 4 April 2023 <ul style="list-style-type: none"> <li>○ <u>Panel members</u>: Alison McCabe (Chair), Stephen Leathley, Roberta Ryan, Granville Taylor and Kellie Scholes</li> <li>○ <u>Council assessment staff</u>: Hamish McTaggart, Sharon Pope, Claire Rozema, Peter Chambers and Tanya Jolly</li> <li>○ <u>Independent acoustic consultant</u>: Alex Rees</li> <li>○ <u>Department staff</u>: Carolyn Hunt and Lisa Foley</li> </ul> </li> <li>• Final briefing to discuss Council's recommendation: 4 April 2023 <ul style="list-style-type: none"> <li>○ <u>Panel members</u>: Alison McCabe (Chair), Stephen Leathley, Roberta Ryan, Granville Taylor and Kellie Scholes</li> <li>○ <u>Council assessment staff</u>: Hamish McTaggart, Sharon Pope, Claire Rozema, Peter Chambers and Tanya Jolly</li> <li>○ <u>Department staff</u>: Carolyn Hunt and Lisa Foley</li> </ul> </li> </ul>
9	COUNCIL RECOMMENDATION	Approval
10	DRAFT CONDITIONS	Attached to the Council assessment report