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**JURISDICTION** : TOWN PLANNING APPEAL TRIBUNAL

**CITATION** : ILES and SHIRE OF SERPENTINE-JARRAHDAL  
[2003] WATPAT 37

**CORAM** : MR E A MCKINNON

**HEARD** : 27 JUNE 2003

**DELIVERED** : 17 JULY 2003

**FILE NO/S** : APP 110 of 2003

**BETWEEN** : L ILES AND H ILES  
Appellants

AND

SHIRE OF SERPENTINE-JARRAHDAL  
Respondent

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*Catchwords:*

Stables - Kennels - Noise

*Legislation:*

Nil

*Result:*

Appeal allowed subject to conditions.

*Category:* B

**Representation:**

*Counsel:*

Appellant	:	Mrs H Iles and Ms C Herbert
Respondent	:	Mr B Gleeson

*Solicitors:*

Appellant	:	As Agent
Respondent	:	As Agent

**Case(s) referred to in decision(s):**

Nil

**MR E A MCKINNON:**

- 1 This appeal arises firstly from the conditions set by the Shire of Serpentine Jarrahdale (“**Shire**”) for the establishment of stables and secondly for the refusal by the Shire for the establishment of kennels on Lot 60 Boomerang Road, Oldbury (“**subject land**”).
- 2 The appeal was heard in accordance with the *Town Planning Appeal Tribunal Rules 2003* Part 3 – Conduct of Class 1 Appeals. In the first instance the conduct of the appeal followed the traditional line of a mediation with the intention of proceeding to a decision by the Tribunal. It was acknowledged by Mr Gleeson that he did not have the authority to amend any of the conditions the subject of the appeal but could provide advice and make suggestions as to a satisfactory outcome on behalf of the Shire.
- 3 The subject land is more particularly described as Lot 60 on Diagram 79956 the subject of Certificate of Title Volume 1906 Folio 138 and is located at 265 Boomerang Road Oldbury some 7.5 kilometres north west of Mundijong in the Shire of Serpentine Jarrahdale and contains 5.6478 HA.

**Background to Appeal**

- 4 Mr and Mrs Iles made application to the Shire to construct a kennel and stable establishment on 20 April 2002. Prior to doing so the Appellants approached adjoining neighbours to advise of their intentions and received no objections.
- 5 At the time of application the registered proprietor of the subject land was Ching Kam Yuk from whom the applicants had negotiated an offer and acceptance subject to the Shire’s approval for the establishment of the kennels and stables.
- 6 The offer and acceptance was subsequently settled when the offer expired prior to the Shire’s decision on the application. Andrew Lakeman Ryan, Lindsay Brian Iles, Helen Faye Iles and Carol Elizabeth Herbert have been the registered proprietors, as tenants in common in equal shares, since 16 August 2002.
- 7 The subject land is zoned Rural under the Shire’s Town Planning Scheme No 2. Kennels is an “SA” use in the zoning table and stables is a “P” use in the Rural Zone.

- 8 The proposal was advertised by the Shire, in accordance with the Scheme's requirements. Five submissions were received from neighbouring property owners, four objecting to the proposal and one giving conditional support.
- 9 The following concerns were expressed in the submission.
- (a) Noise will affect the amenity of the area.
  - (b) The subject property does not have enough existing screening vegetation to help reduce noise.
  - (c) Possibility of dogs entering adjacent properties, there being no fences currently on the subject property.
- 10 In considering the application as it related to kennels the Shire's Planning Development and Environment Committee ("**Committee**"), at their meeting held on 15 July 2002, noted:
- "Although a proposal such as this would be more suitable for a larger size rural property where the recommended EPA buffer distance for kennels could be achieved and the adverse effects on the existing and possible future residences would be minimised, it also should be taken into account that the proposal complies with the requirements of Dog Act 1976 and also with the Council's Local Law Relating to Dogs."
- 11 Part IV of the Local Law – Regulation of Dog Kennels states the following:
- "Clause 19 – Council shall not permit the establishment or maintenance of an approved kennel establishment in any area if in the opinion of Council such a kennel would adversely affect the environment, be a nuisance to or in any way be detrimental or prejudicial to other residents."
- 12 It is considered by the Sustainable Development Team that there can be measures taken to reduce any possible negative impact on the properties in the area. Special conditions recommended to be placed on the Form 2 approval address the concerns expressed in the submissions received during the advertising period.
- 13 It is recommended that the application for 12 dogs Kennel establishment be approved. The application is in accordance with the intent of the Rural zone and complies with Council's Local Law Relating to Dogs.

- 14 Council's Local Law relating to Dogs requires the facility to be at least 9 metres from the boundary of another property and at least 18 metres from the nearest dwelling. However it is recommended to require the applicant to amend the plan to show the site for the kennels to be 22 metres from the existing dwelling on the subject property, which will increase the distance to the nearest adjoining property boundary on the western side to 50m.
- 15 All issues raised in the objections to the proposal are addressed by the *Dog Act 1976* as amended and Council's Local Law Relating to Dogs. Additional conditions are recommended to be imposed on the kennel establishment to further address local residents concerns.
- 16 In considering the application as it related to the proposed stables the Committee noted that the proposal was for 10 stables, which would also include a tack room, sawdust bin, manure bin, undercover float parking, feed shed and undercover yards for each stable. The Committee noted:
- “The proposal for ten stables considerably exceeds the recommended Ag. WA stocking rates. However there are no clear stocking rate guidelines set for stables. An increased stocking can be permitted in some cases when the management practices proposed are considered sufficient to achieve the desirable outcomes, such as minimisation of any possible negative effect on the adjoining properties or the environment.
- It is recommended by the Sustainable Development Team that a condition be imposed restricting the number of horses to be stocked on the property to 10 horses, in accordance with the application. Also in order to reduce effective stocking on the property it is recommended as part of the development approval to include a condition limiting the number of horses grazing on the paddocks to 5 horses at any given time.
- Applicant would be required to demonstrate how land degradation will be avoided and how nutrients will be managed by submitting a Stock Management Plan for Council's approval prior to commencement of development.”
- 17 The Committee concluded that the application for stables could be conditionally approved.

18 The conditions identified by the Committee were as follows:

**“a. Kennels**

1. Compliance with Council’s Local Law Relating to Dogs.
2. Compliance with the provisions of the Dog Act 1976 as amended.
3. Applicant to submit an amended plan to show the site for the kennel establishment being 50m from the nearest adjoining property boundary on the western side.
4. Fencing to be installed by the applicant and to comply with the following requirements:
  - a) at least 450mm underground and affixed to the concrete slab
  - b) self closing and locking gates
  - c) fence to be at least 1.8 metres high
5. Screen planting to be carried around the development in accordance with Council’s Landscape and Revegetation Policy No 4.
6. Landscaping to be implemented by 31 August 2003 and form (sic) thereon suitably maintained to Council’s satisfaction.
7. Shade-cloth or screening is to be installed as a temporary measure in order to achieve screening of the development from view until the establishment of the vegetation barrier.
8. All property boundary fences are to be installed, prior to construction of kennels and stables in order to contain stock and dogs within the property boundary.

**Advice Note:**

1. In accordance with Clause 5.10.2 of Town Planning Scheme No 2, Council may cancel or withdraw the Kennel Establishment licence for failure to comply with the above conditions of approval or substantial breach of the Dog Act 1976 as amended.

**b. Stables**

1. No more than 10 horses to be kept on the property at any one time in accordance with the application dated 12 May 2002.
2. No more than 5 horses to be grazed in the paddocks at any one time in order to reduce the effective stocking rate on the property.
3. All horses to be stabled at night in accordance with the application dated 12 May 2002.
4. Compliance with Council's Health Local Law 1999 Division 2 – Keeping of Large Animals.
5. Paddocks indicated in the application dated 12 May 2002 to be irrigated to maintain pasture cover over at least 75% of the site.
6. A building licence to be obtained for construction of stables prior to commencement of development.
7. Construction of stables shall meet the following requirements:
  - a) Stables not to be situated within 15 metres of a house or other premises or a drain or waterway;
  - b) Have each wall and roof constructed of an impervious material;
  - c) Have walls of not less than 3 metres, when measured both horizontally or vertically;

- d) The floor is to be raised at least 75 mm above the surface of the ground.
- 8. All existing native vegetation on the lot shall be fenced from stock. Tree guards are not considered adequate for protection of vegetation.
- 9. This approval is granted to the applicant only and is not transferable.
- 10. Applicant to supply a Stock Management Plan for approval of Council, prior to commencement of development, which should provide detail on how various aspects of the proposal will be managed. Aspects of the Management Plan shall include the following:
  - a) Paddock layout and pasture management (pasture establishment and maintenance, dust control);
  - b) Stock numbers and management;
  - c) Stables, horse shelters and other built aspects (stables, fences, horse yards);
  - d) Protection of existing vegetation;
  - e) Any proposed revegetation;
  - f) Management of drains, waterways and wetlands (water flows onto, on and off the property);
  - g) Management of wastes (manures, stable bedding material, wash down water);
  - h) Dust management.
- 11. All aspects of the Management Plan shall be cross-referenced on Map of the Proposal. The map must be to scale and shall include the following details:
  - a) Property boundaries
  - b) North point



- c) Scale
- d) Date
- e) Applicants name
- f) Location of proposed and existing structures
- g) Location of soil types
- h) Location of drains, waterways, areas subject to seasonal inundation
- i) Revegetation areas
- j) Native vegetation”

19 The proposal was carried by the Committee unanimously (5/0).

20 Normally this would have been the end of the matter as, under the Shire’s standing orders, decisions were only referred to an ordinary Council (“**Council**”) meeting if a Committee decision was not unanimous. However, the application was referred to Council and was heard at their meeting held on 22 July 2002.

(a) The Council resolved to approve the establishment of the stables with conditions 1-11, the first 10 of which were recommended by the Committee but refuse the establishment of Kennels on the subject site.

(b) The resolution was passed 7/3.

(c) A footnote to the resolution stated:

“The Committee recommend (sic) resolution was changed as the property was too small to contain the possible noise of Kennels.”

21 Included in the recommendation to Council was a paragraph from the Environmental Protection Authority Draft Policy No 3:

“The Environmental Protection Authority Draft Policy No 3 – “Policies, Guidelines and Criteria for Environmental Impact Assessment. Industrial – Residential Buffer Areas (Separation

Distances)” states that a recommended buffer for kennels is 500m.

The nearest residences on the eastern side of the subject property are approximately 300m away from the proposed site for kennels. Also, taking into account that the site is poorly vegetated, the proposed kennel use on the site specified in the application has the potential to create an adverse impact on the surrounding residences on rural lots in the area, unless measures are taken.”

### **The Hearing**

- 22 Written statements were received from the Appellants and the Respondent and formed the basis of the mediation process.
- 23 Of importance to the final outcome of this hearing were the qualifications and experience of the two representatives of the Appellants, Ms Helen Iles and Ms Carol Herbert, who are sisters, and who planned to jointly use the subject property as proposed in the application.
- 24 Ms Helen Iles holds an Advanced Certificate in Equine Management from the Department of Technical and Further Education (1992), has taught the Equine course at Bentley TAFE and has been involved in the horse industry since 1977.
- 25 Ms Carol Herbert has been a member of the Canine Association since 1973, is President of the WA Beagle Club, is an Obedience Instructor and is involved with the Canine Association micro chipping programme. Ms Herbert has a breeders exemption from the Wanneroo Shire which has allowed her to operate a similar Kennel at her previous address, 13 Warruga Way, Wanneroo in a residential area.
- 26 In the first instance the hearing addressed the application relating to the stables.
- 27 The Appellants accepted all of the conditions relating to this approval, other than Conditions 1, 2 3 and 8, ie:

“Condition No 1 No more than ten horses to be kept on the property at any one time in accordance with the application dated 12 May 2002.

- |                |  |
|----------------|--|
| Condition No 2 | No more than five horses to be grazed in the paddocks at any one time in order to reduce the effective stocking rate on the property.        |
| Condition No 3 | All horses to be stabled at night in accordance with the application dated 12 May 2002. ...  |
| Condition No 8 | All existing native vegetation on the lot shall be fenced from stock. Tree guards are not considered adequate for protection of vegetation.” |

28      Conditions 1 and 2 were discussed together.

29 The Appellants claimed that whilst the application was for the construction of 10 stables, nowhere in the application was a reference to the number of horses to be kept on the property be limited to 10. This was agreed to by Mr Gleeson.

30 The Appellants also claimed that by placing a limit of 10 horses being kept on the property at any one time, the restriction would severely limit the management of the property, eg horses being kept for short periods as change over occurred.

31 The limit of 10 horses by Council appeared to be linked to a publication  
“Stocking Rate Guidelines for Rural Small Holdings” – Agriculture  
Western Australia 2000 which recommended stocking rates for similar  
soil types found on the subject property to:

- (a) 2DSE / 1 ha – dry pastures
- (b) 10DSE / 1 ha – irrigated pasture

32 A Comment received from the Department of Environment Water and  
Catchment Protection also indicated that stocking rates be:

- |     |                    |              |
|-----|--------------------|--------------|
| (a) | dry pastures       | 5ha / horse  |
| (b) | irrigated pastures | 1 ha / horse |

33 The Council maintained that:

“the proposal to keep ten horses on the subject property is well above the recommended stocking rates”.

34 The Appellants claimed that the publications related to pasturing of stock and not, as in this case, animals which would be stabled, hand fed, the yards used for exercising the horses and the pastures for minor grazing.

35 The Appellants also claimed that the Council when assessing the application and taking into account:

“the size of the property and the land available for stock (this excludes the land occupied by buildings, driveways, other structures, gardens and areas of native vegetation), the soil types on a subject property, any watercourses, drains and wet areas”.

36 The Council misunderstood the proposal and they (the Appellants), were not given the opportunity to present to Council and to correct misunderstandings or provide further information if needed.

37 The Appellants further claimed that, to their knowledge, there were no publications which limited stocking rates for the situation as proposed.

38 The Appellants tabled a booklet entitled “Small Stock Manual – land management on small rural blocks in the Shire of Serpentine-Jarrahdale” – by Warren Mortlock May 1944 and referred to:-

- p57 – Pasture Management – High Management Input System
- p61 – Keeping Horses
- p64 – Stables

39 All of the which supported the management proposals submitted by the Appellants.

40 The Appellants supported all of the recommendations therein and considered them appropriate for keeping valuable animals.

41 All of the above issues were accepted by the parties.

42 However, the parties agreed that a limit to the number of horses to be kept on the property should be imposed and that Condition 1 be amended from 10 to 12 horses but that Condition 2 be deleted.

43 Relevant to Condition 3 the Appellants claimed that for the appropriate management of horses, they must be rotated through the stables and pastures depending upon the summer and winter seasons.

44     Stabling by day in summer was considered particularly relevant by the Appellants as:

- “a)   this reduces the risk of skin cancers and sunburn to horses, particularly the greys which have weaker pigmentation in the skin and therefore are susceptible to melanoma. Hence the shade-clothed, undercover yards.
- b)   the grass is most vulnerable and fragile during the scorching heat of the day when it goes into shock
- c)   feed quality is better at night as starch comes into the grass in the cool of the evening and therefore is less depleted, less damaged and quicker regenerating by night grazing.”

45     The parties agreed that Condition 3 be deleted.

46     Relevant to Condition 8 the Appellants maintained that the existing vegetation was in poor condition, was not palatable to horses and any maintenance should be incorporated into the revegetation programme identified in Condition 10.

47     The parties agreed that Condition 8 could be deleted.

48     The hearing then addressed the application relating to the Kennels.

49     It was agreed by the parties that the proposal, particularly the location of the Kennels, abided by Council’s local law relating to dogs. The laws required a Kennel to be constructed at least 9 metres from the boundary of another property and at least 18 metres from the nearest dwelling.

50     As indicated in the Council’s decision to refuse the application, the control of noise was the overriding issue.

51     Mr Gleeson in reviewing the four objections that the Shire had received, noted that two had been received from residents on properties to the south of the subject site on the other side of the railway line, and two had been received from the owners of the adjoining vacant site to the west. The latter two objections could therefore be considered as one. In effect, the owners of the adjoining property were the ones most likely to be affected by any noise nuisance.

52     Mrs Carol Herbert in speaking to the issues relating to the Kennels in the Appellants’ submission noted:

- (a) that in planning the layout of the buildings care had been taken to locate the kennel to confirm to the Shire's requirements. It was noted that the kennel was in fact 15 metres from the closest boundary and not 9 as was required.
- (b) that there may have been some misunderstanding as to the type of dog to be kept on the subject site. The dogs to be kept are Beagle Hounds. It was thought that one of the objections may have been referring to Bassett Hounds which do have a reputation for baying at night. The Appellants did not expect the Beagle Hounds to cause any nuisance other than minor disturbance during feeding time.
- (c) the letters received from neighbours in Wanneroo attesting that a similar kennel did not create a noise nuisance. It was emphasised that the Wanneroo Kennel was in a residentially zoned area.

- 53 It was agreed by the parties that with the exception of Condition 3 the conditions set by the Committee at their meeting of 15 July 2002 were acceptable. It was agreed that Condition 3 should be deleted.
- 54 It was also agreed by the parties that in planning the landscaping and screen planting, emphasis on the area between the kennel fencing and the side boundary (the 9 metre wide portion) could further reduce any noise nuisance. The construction of a bund (or sound hump) plus an increased density of vegetation could be considered when completing the management plan.
- 55 It was agreed by the parties that any noise emanating from the kennels could be satisfactorily controlled with good management practices and appropriate landscaping and screen planting.
- 56 As mentioned in paragraph 21 above, the qualifications and experience of the applicants gave confidence to the parties to the mediation that outcomes would be as was proposed.
- 57 The appeal is therefore upheld with conditions.
- 58 The approval for the construction of Kennels and Stables is subject to the following conditions:

**(a) Kennels**

1. Compliance with Council's Local Law Relating to Dogs.
2. Compliance with the provisions of the Dog Act 1976 as amended.
3. Fencing to be installed by the applicant and to comply with the following requirements:
  - (a) At least 450mm underground and affixed to the concrete slab
  - (b) Self closing and locking gates
  - (c) Fence to be at least 1.8 metres high.
4. Screen planting to be carried around the development in accordance with Council's Landscape and Revegetation Policy No 4 and to an agreed timetable.
5. Landscaping once implemented to be suitably maintained to Council's satisfaction.
6. Shade-cloth or screening is to be installed as a temporary measure in order to achieve screening of the development from view until the establishment of the vegetation barrier.
7. All property boundary fences are to be installed, prior to construction of kennels and stables in order to contain stock and dogs within the property boundary.

**Advice Note:**

1. In accordance with Clause 5.10.2 of Town Planning Scheme No 2, Council may cancel or withdraw the Kennel Establishment licence for failure to comply with the above conditions of approval or substantial breach of the Dog Act 1976 as amended.

**(b) Kennels**

1. No more than 12 horses to be kept on the property at any one time.
2. Compliance with Council's Health Local Law 1999 Division 2 – Keeping of Large Animals.
3. Paddocks indicated in the application dated 12 May 2002 to be irrigated to maintain pasture cover over at least 75% of the site.
4. A building licence to be obtained for construction of stables prior to commencement of development.
5. Construction of stables shall meet the following requirements:
  - (a) Stables not to be situated within 15 metres of a house or other premises or of a drain or waterway;
  - (b) Have each wall and roof constructed of an impervious material;
  - (c) Have walls of not less than 3 metres, when measured both horizontally or vertically;
  - (d) The floor is to be raised at least 75 mm above the surface of the ground.
6. This approval is granted to the applicant only and is not transferable.
7. Applicant to supply a Stock Management Plan for approval of Council, prior to commencement of development, which should provide detail on how various aspects of the proposal will be managed. Aspects of the Management Plan shall include the following:
  - (a) Paddock layout and pasture management (pasture establishment and maintenance, dust control);



- (b) Stock numbers and management;
  - (c) Stables, horse shelters and other built aspects (fences, horse yards);
  - (d) Protection and maintenance of existing vegetation;
  - (e) Any proposed revegetation;
  - (f) Management of drains, waterways and wetlands (water flows onto, on and off the property);
  - (g) Management of wastes (manures, stable bedding material, wash down water);
  - (h) Dust management.
8. All aspects of the Management Plan shall be cross-referenced on Map of the Proposal. The map must be to scale and shall include the following details:
- (a) Property boundaries
  - (b) North point
  - (c) Scale
  - (d) Date
  - (e) Applicants name
  - (f) Location of proposed and existing structures
  - (g) Location of soil types
  - (h) Location of drains, waterways, areas subject to seasonal inundation
  - (i) Revegetation areas
  - (j) Native vegetation

- (c) Any conditions set by the Shire as to the approval of the Stock Management Plan, particularly the protection and maintenance of existing vegetation and the proposed revegetation plan must be reasonably set and agreed to by the Appellants. If agreement cannot be reached, as to the conditions imposed, the parties will have liberty to apply to the Tribunal for determination of the conditions.