Guide to Planning Appeals

Animal husbandry

Under Clause 73.03 of the VPPs Animal husbandry is defined as:

> *Land used to keep, breed, board, or train animals, including birds.*

It includes: Animal keeping, Animal training and Horse training. It is included in Agriculture.

In *Mitsakis v Mitchell SC & Ors* [2013] VCAT 1404, an application was made for animal husbandry allowing for the keeping of twelve animals, comprising four dogs, five peacocks, two miniature ponies and one brahma steer. The application for permit was made after a letter from Council requesting that an application be made. The two key issues for the Tribunal were:

- Characterisation of use; and
- Suitability of the land.

On the first matter, there was debate as to whether the proposal should be defined as animal keeping or animal husbandry. The Tribunal found (at 17-19]:

> *In the case before me, it may be argued that the dogs and the keeping of five peacocks are ancillary to the residential use of the land, however, the argument becomes tenuous in relation to the number and size of farm animals; in this case, three horses and a brahma steer.*
>
> *As explained by Mr Viney and evident from Ms Mitsakis' written statements, all of the animals are on the property because they have been rescued from circumstances of cruelty or neglect and require on-going care. The circumstances under which these animals are housed (in various enclosures and sheds) cannot therefore be regarded as 'ancillary to the residential use of the land'. These animals are being accommodated on the property as a result of animal rescue, solely due to the compassion and skills of Ms Mitsakis. In my assessment, this creates a clear distinction from the Tyquin decision.*
>
> *I agree with the Council interpretation that the accommodation of these animals on the subject site constitutes animal husbandry, defined in the planning scheme as:*
>
> > Land used to keep, breed, board, or train animals, including birds.

As to the suitability of the land, the Tribunal held:

> *The cumulative effect of keeping dogs, peacocks, horses and a steer on the subject site is in my assessment demonstrably unsustainable. There is a only a restricted area available to house the animals, with the consequence that animal waste, soil disturbance and sometimes odour result in degradation of the animal enclosure areas and an unacceptable loss of amenity for adjoining*

> *residents. I find the current animal keeping activity on the subject site is inappropriate for a low density residential area.*
>
> *The motivation in housing these animals is laudable, however, Ms Mitsakis agrees that the current situation is difficult to manage and her preference is to care for the existing animals on her property for the remainder of their lives. While I consider this is acceptable for the dogs and the birds, the keeping of the farm animals within a low density residential environment is inappropriate.* [39-40]

The Tribunal therefore granted a permit allowing the keeping of dogs and birds only.

There have been a number of cases as to whether the breeding and keeping of racing pigeons should be considered as a separate use or ancillary use.

In *Schreiber v Berwick CC* (P87/1848) and *Gal v Berwick CC* (P87/2179), it was held that the keeping of racing pigeons was a hobby and, as it was ancillary to the residential use of premises, no planning permit was required.

However, in *D'Souza v Moorabool SC* (1995/17768), the Tribunal refused a permit to keep 150 pigeons on a residential property at Bacchus Marsh while, in *Allan v Melton SC* 21 APAD 385, the Tribunal granted a permit for the keeping of 80 pigeons in a residential zone.

In *Simmons v Whittlesea CC* [2000] VCAT 960 (editorial comment 5 VPR 123), the Tribunal dealt with a proposal to keep 40 stock pigeons and 80 racing pigeons on a standard residential allotment at Mill Park. Its findings can be summarised as follows:

- Given the nature of the activity, and the number of birds involved, the use was not ancillary to a dwelling and a permit was required;
- The use would not give rise to noise and, as food was expensive and kept in secure containers, it would not give rise to vermin;
- The evidence did not support a finding that bird droppings would detrimentally affect neighboring properties; and
- Eighty racing pigeons were, on the evidence, the minimum number required to be competitive.

The Tribunal held that, subject to "stringent conditions", the use would not detrimentally affect the locality. It ordered that a permit be granted, and made it personal to the Applicant, an experienced pigeon operator.

In *Watts v Horsham Rural CC* [2012] VCAT 1051 44 VPR 309, application was made for the construction of two pigeon lofts for the purpose of animal husbandry (keeping, breeding and training of racing pigeons). The subject land is a standard residential allotment in a newly developing subdivision. Council refused the application on a number of grounds, including contamination of the environment from pigeon faecal matter, attraction of predatory animals and vermin, noise and health risks to surrounding residents. In setting aside the decision of the Responsible Authority and granting a permit, the Tribunal held:

- It was very much doubtful that paramyxovirus and bird flu could be appropriately dealt with through the planning system. It was a matter for government and its agencies to consider the risks and develop a strategy for measures to protect the health of the community.
- There was no evidence that established a mechanism by which environmental harm could occur, certainly none which would suggest any difference over and above the existing condition.
- Even if it had been established that the presence of racing pigeon lofts within Horsham was a significant contributor to the problem of feral pigeons, the current proposal could not exacerbate the existing situation because it involved the relocation of existing lofts.
- Pigeon feathers, dust and dander could be a cause of asthma in pigeon fanciers. However, there was no evidence that the presence of a pigeon loft was likely to be an asthma risk to residents of neighbouring properties. Moreover, design parameters could be used to further reduce any risk.
- The noise of pigeons leaving and returning to their lofts were short-term events, the associated noise levels were relatively low, and not dissimilar to other sources of noise typical of urban areas. These noise events were not unreasonable in an urban environment.
- It would be humane to experience an empathetic concern if your neighbours or their domestic animals contracted a serious disease. However, the possibility that this situation might arise could not be an adverse amenity effect relevant to a planning permission. It was after all, just part of day-to-day life, it could not be planned out of our existence.
- The proposal could not be considered as intensive animal husbandry.

In *Melbourne Hunt Club Inc v Wellington SC* [2022] VCAT 1470, the aptly named The Melbourne Hunt Club sought a declaration that the keeping of up to 60

foxhounds on land that it had acquired should be characterised as Animal husbandry, which is a section 1 (as-of-right) use under the Farming Zone provisions. The foxhounds would be used in the Hunt Club's hunting activities on other land.

The Applicant submitted that it was critical to consider the purpose for which the dogs were being kept. It was explained that the sole purpose of keeping this pack of foxhounds is "to hunt foxes as a pack".

In essence, the Applicant considered that an animal could only be regarded as a domestic animal if it was in association with a home or household; used for domestic purposes. Similarly, it suggested that the term 'domestic' was used in the planning scheme to distinguish animals kept primarily for comfort, companionship or security, as distinct from those kept for profit or utility.

On the other hand, Council submitted that a dog (including a foxhound) is a type of domestic animal rather than a wild animal, and that keeping such an animal would therefore constitute Domestic animal husbandry.

In considering submissions, the Tribunal held that the keeping of the foxhounds was Animal husbandry under the definition in the planning scheme. It stated:

> *As mentioned, the key task is to determine the real and substantial purpose of the use of the subject land.*
>
> *I find that this is a form of animal husbandry, more specifically, dog keeping.*
>
> *Clearly, dog keeping is a form of land use coming within the term Agriculture and would be encompassed by the sub-category Animal husbandry on a direct application of the definition in Clause 73.*
>
> *The determinative question, as highlighted by both parties, is whether it is appropriate to adopt the more specific land use term Domestic animal husbandry. Given the wording of this definition (noting the singular change in wording compared with the broader definition), this depends on whether the dogs being kept would meet the definition of 'domestic animals' in for the purposes of this term in Clause 73.*
>
> *There appear to be two key ways that dictionary definitions define the term 'domestic'. The first is having to do with the home or living with humans. The second, is relating to a tamed animal, not wild.*

> *I consider that the focus on the concept of a 'domestic animal' in the land use definition in the planning scheme is intended to be on the way in which the specific animal may relate to a household, rather than on the type of animal per se (being tame or wild).* [40-45]

The Tribunal noted that Amendment VC159 changed the term 'domestic pet' to 'domestic animal'. Whilst Council contended that that this may have been intended to broaden the category of animal encompassed by this term, so too is the contrary view – it was borne out, according to the Tribunal, from earlier cases referred to by parties that an inappropriate focus was on determining whether a particular animal was being kept as a 'pet'. The Tribunal considered the "change in the planning scheme has removed this uncertainty."

See also:

- **Amenity**
- **Risk**