



City of
KINGSTON

Special Council Meeting

Notice is given that a Special Meeting of the Kingston City Council will be held at 7.00pm on Monday 3 December 2012 at 1230 Nepean Highway, Cheltenham.

- 1 Apologies**
- 2 Disclosure by Councillors, Officers or Contractors of any Conflict of Interest**
- 3 Items of Business**

**City of Kingston
Special Meeting of Council**

Agenda

3 December 2012

Notice is given that a Special Meeting of the Kingston City Council has been scheduled for 7.00pm on Monday 3 December 2012 at 1230 Nepean Highway Cheltenham.

Business will be as follows:

- 1. Apologies**
- 2. Disclosure by Councillors, Officers or Contractors of any Conflict of Interest**
- 3. Items of Business**

O206 Request to Review Council Decision on 4 Hazel Avenue, Edithvale

Confidential Attachments

O206 Request to Review Council Decision on 4 Hazel Avenue, Edithvale

Special Council Meeting

3 December 2012

Agenda Item No: O 206

REQUEST TO REVIEW COUNCIL DECISION ON 4 HAZEL AVENUE, EDITHVALE

Contact Officer: Dusan Ivanic

Purpose of Report

In accordance with Section 205 of the Public Health and Wellbeing Act 2008, the applicant for the rooming house at 4 Hazel Avenue, Edithvale on 6 November 2012 submitted an application for Council to review its decision made on 24 of September 2012 to not register the rooming house.

Disclosure of Officer / Contractor Direct or Indirect Interest

No Council officer/s and/or Contractor/s who have provided advice in relation to this report have declared a Conflict of Interest regarding the matter under consideration.

Recommendation

Officers recommend that Council:

1. Review the original decision as required under the Public Health and Wellbeing Act 2008.
2. Revoke the original decision and allow registration upon compliance with the Public Health and Wellbeing Act 2008 as there are no grounds for refusal of registration under the Act.
3. Provide written confirmation of the outcome of the review and Councils decision.

1. Executive Summary

Council refused registration of a rooming house at 4 Hazel Avenue Edithvale at the 24th of September 2012 Council meeting on the grounds that there would be an adverse impact on the amenity of the community and an inappropriate use of the site. The applicant has now lodged a formal request for a review of that decision. In accordance with the Public Health and Wellbeing Act 2008, Council must review the initial decision to refuse registration and provide to the applicant a written statement of the new decision and the reasons for that decision.

2. Background

An application for the registration of a Rooming House under the Public Health and Wellbeing Act 2008 was received by Council and was a subject of concerns within the neighboring community. While council officers hold delegated authority to approve registration under the Act, a request was made for the application to be presented to Council for a decision.

A report was presented at the 24th September Council meeting as Agenda Item No: O 179, BRIEFING ON PROPOSED ROOMING HOUSE - 4 HAZEL AVENUE EDITHVALE and is attached for information. Council's decision was:

1. That the application for registration at 4 Hazel Avenue, Edithvale be refused as there would be an adverse impact on the amenity of the community and an inappropriate use of the site.
2. That Council receives legal advice on how to prevent the ongoing use of the property as a rooming house/ boarding house registered or otherwise.

3. Discussion

3.1. Council Plan Alignment

Planned Outcome 5 – Community Inspired Leadership

Strategy 5.3 Sound Governance and responsible financial leadership.

3.2. Consultation/Internal Review

Council's Building Department has conducted a final inspection of the premises on the 20th of September and found it to comply with the relevant requirements for safety measures. An Occupancy Permit allowing the property to be used was subsequently issued on the 21st of September.

An inspection was carried out by Council's Environmental Health Officer to ascertain compliance with the Public Health and Wellbeing Act and relevant Regulations. In general the premise complies with the requirements of the Act and Regulations, and as such would normally be registered by Council as a rooming house.

3.3. Operation and Strategic Issues

3.3.1. Environmental Health Statutory Process:

The Public Health and Wellbeing Act and the Public Health and Wellbeing Regulations 2009 set out requirements that need to be met prior to Council registering a rooming house. There is no allowance within the Act for objection or appeal from affected residents to a registration decision.

Grounds to Refuse Registration - Refusal of registration may only occur where an application does not comply with the requirements of the Act and the grounds for refusing to issue the registration are specifically listed within the Public Health & Wellbeing Act - Section 76 (2), being;

- a) the applicant, registration holder, prescribed accommodation or the premises do not meet or comply with any requirements of this Act or the regulations that is applicable;
- b) the registration holder has failed to comply with any conditions to which the registration is subject;
- c) the applicant has ceased to provide accommodation or conduct the business in respect of which the registration is required;
- d) there is a risk to the health of persons if the registration is not cancelled or suspended or is issued, transferred or renewed;
- e) any other ground which is prescribed for the purpose of this section (Council is asked to note that no further grounds have been prescribed by either legislation or Regulation).

Section 76 (3) Requires Council to notify the applicant in writing of the decision made under Section 76 (2) and the ground or grounds on which the decision is based.

The Public Health and Wellbeing Act also provides for an aggrieved person, the applicant, to have a decision reviewed by Council under Section 205. This section states

- 1) In this section –
decision means a decision made by Council under section 74 or 76 in respect to the issue, variation, transfer, renewal, cancellation or suspension of registration;
person aggrieved means the person who is the applicant for, or the holder of, the registration in respect of which the decision was made.
- 2) A person aggrieved by a decision may within 28 days of being notified of the decision apply to Council for a review of the decision.
- 3) On receiving the application under subsection (2), the Council must review the decision.
- 4) The Council is taken to have affirmed the decision if the Council has not determined an application under this section within –
 - a) 28 days of receiving the application; or
 - b) the period agreed to by the Council and the applicant under subsection (5)
- 5) The Council and the applicant may agree that the Council may determine the applicant's application within a period that is greater than the 28 days specified in subsection (4)(a).
- 6) The Council may –
 - a) make a decision affirming, varying or revoking the decision; and
 - b) if the Council revokes the decision make any other decision as the Council considers appropriate under the provisions under which the decision was made.
- 7) The Council must within the period applying under subsection (4) give the applicant for review a written statement of the decision and the reasons for the decision.
- 8) The Council must inform an applicant for review in writing of the applicant's right to apply to VCAT for a review under section 207.

3.3.2. Planning Permit
 Not required

3.3.3. Building Act Compliance

The premises has been assessed for compliance with a previous Building Notices and has been found to comply. An Occupancy Permit was issued on the 21st of September 2012.

3.4. Options

3.4.1. Option 1 – Council revoke the original decision and allow registration of the rooming house.

The application complies with the major requirements for registration within the Public Health and Wellbeing Act and Regulations. Minor items relating to operational requirements are to be provided once the premises is registered and operating. The Building Department has issued an occupancy permit for the premises. There are no identified grounds under the Public Health and Wellbeing Act to refuse registration.

While this decision may not be consistent with the wishes of the residents, once an applicant has complied with the requirements of the Public Health and Wellbeing Act, Council has no legal grounds to refuse the registration.

3.4.2. Option 2 – Council affirm the original decision to not register the rooming house.

Grounds for refusing to issue the registration are listed within the Public Health & Wellbeing Act - Section 76 (2). There are no grounds within the Public Health and Wellbeing Act or the Regulations that would support this decision.

The applicant has undertaken the first step in requesting the refusal to register be internally reviewed by Council. If an applicant has had a decision reviewed by Council and they are still not satisfied with the outcome, a further appeal process is available through VCAT.

As there are no legal grounds for refusal of registration under the Public Health and Wellbeing Act, the applicant has sufficient grounds to appeal to VCAT with a likely outcome of Council's decision being overturned and costs may be awarded against Council. There is also a risk of the applicant seeking further damages beyond legal cost through litigation (lost income).

4. Conclusion

The applicant has sought a review of council's decision as required under the Act. Council has no legal grounds to refuse the registration.

4.1. Environmental Implications

Not Applicable

4.2. Social Implications

Public concern that the rooming house will lower housing values, cause antisocial and inappropriate behaviour which may impact on the residents in the area.

Low cost housing is in short supply throughout Melbourne, registering the rooming house would provide housing options for disadvantaged individuals.

4.3. Resource Implications

Not Applicable.

4.4. Legal / Risk Implications

Refusal to grant registration can be challenged in VCAT. As there are no grounds for refusal of registration applicable under the Act, Council does not have grounds to refuse registration. Any appeal to VCAT would likely succeed and Council may be subject to cost. The applicant also has indicated that he is prepared to undertake legal action for recovery of lost revenue which would potentially be around \$1,200 in weekly rent, plus legal costs.

5. Appendices

- 5.1.** Appendix 1 – Agenda Item No: O 179, Briefing on Proposed Rooming House - 4 Hazel Avenue, Edithvale
- 5.2.** Appendix 2 – Extract of Council Minutes – 24 September 2012
- 5.3.** Appendix 3 – Application for review of decision – **Confidential**
- 5.3** Appendix 4 - Legal Advice - **Confidential**

Author/s: Dusan Ivanic – Team Leader Environmental Health
Reviewed and Approved By: Paul Franklin – General Manager Corporate Services

Ordinary Council Meeting

24 September 2012

Agenda Item No: O 179

BRIEFING ON PROPOSED ROOMING HOUSE – 4 HAZEL AVENUE EDITHVALE

Contact Officer: Dusan Ivanic

Purpose of Report

Advise Council of registration requirements Under the Public Health and Wellbeing Act 2008 and present report for registration of a rooming house.

Disclosure of Officer / Contractor Direct or Indirect Interest

No Council officer/s and/or Contractor/s who have provided advice in relation to this report have declared a Conflict of Interest regarding the matter under consideration.

Recommendation:

Officer recommends that Council:

1. Receive the information and progress registration for a Rooming House located at 4 Hazel Avenue, Edithvale, upon compliance with the Public Health and Wellbeing Act 2008 as there are no grounds under the Act to refuse registration for this application.

1. Executive Summary

An application for registration of a 12 person Rooming House under the Public Health and Wellbeing Act 2008 has been received by Council. Prior to application, the proposal for the Rooming House located at 4 Hazel Avenue, Edithvale, had been the subject of concern within the neighbouring community.

Council's Planning, Building and Environmental Health Teams have Legislative responsibilities in relation to the nature and operation of rooming houses. The application has been assessed by all relevant departments and there are no legislative grounds to refuse the registration. Council officers hold delegated authority to approve registration under the Public Health and Wellbeing Act 2008 (PHWA), however a request to present the application to Council for decision has been made.

2. Background

Initial correspondence was received by Council raising concerns that a 12 person rooming house was operating at 4 Hazel Avenue Edithvale. Residents were particularly concerned about the negative impact of likely users of the rooming house. These impacts included anticipated inappropriate behaviour, excessive noise, the use of illegal drugs and competition for limited on road parking.

Upon further investigation, it was found that the rooming house was not operating; however, a building permit for internal works had been sought and was issued for a 1b Boarding House as the proposal complied with the State Government Building Legislation. The permit related to removal/movement of walls to increase the size of rooms as well as installation of fire safety measures.

There were no grounds to refuse the Building Permit. Currently the Building Department is awaiting further advice from the owner on the status of the building works and as a result the final building approval (Certificate of Occupancy) has not yet been issued.

Subsequent to the building permit being issued, additional information was submitted by the applicant, who is also the owner of the property, to Council's Building Department enquiring about a proposal to install partition walls which would turn the house from 3 large bedrooms into 12 partitioned rooms.

Advice was sought from Council's Solicitors to clarify meaning of "room" and requirements under the Planning Legislation. The advice was consistent with Officers opinion that installing partitions would make each partitioned area a room. By installing partitions the proposal would effectively require a Town Planning Permit as there would be more than 10 rooms within the proposed use.

A meeting was held between the applicant and Council Officers to clarify intentions regarding the property, the nature of the proposed rooming house and to ensure all appropriate applications and permits are sought.

During this meeting, the owner of the site confirmed that the proposed rooming house does not include the installation of any partitions (or similar) within any bedroom and that the bungalow in the rear yard will not be used for sleeping purposes.

The owner was made aware that the property was not to be used as a rooming house until appropriate registration has been granted by Council. He was also informed that the installation of partitions would be seen as increasing the number of rooms and as such applications for an amended Building Permit and a Town Planning Permit would need to be submitted if the partitions were installed.

3. Discussion

3.1. Council Plan Alignment

Planned Outcome 5 – Community Inspired Leadership

Strategy: 5.3 Sound governance and responsible financial leadership

The recommendation complies with the requirements of the Public Health and Wellbeing Act as there are no grounds for refusal of registration upon completion of all required works. This recommendation also encompasses the requirements of transparency and accountability in decision making as well as meeting all statutory requirements.

3.2. Consultation/Internal Review

Discussions have occurred with the Mayor, CEO and Ward Councillors in regard to the proposed rooming house as a result of community concern. A written response has been provided to residents that have voiced their concern or opposition to the rooming house. Letters from Environmental Health and Planning have been sent to the owner of the proposed rooming house addressing relevant requirements.

Statutory Planning, Planning Enforcement, Building Services and Environmental Health have held discussions to ensure consistent information is provided to residents and the proposed applicant has been made aware of all Legal requirements.

A further meeting has occurred between residents, the Mayor John Ronke, The Local Member of Parliament Donna Bauer, a representative of the Minister for Consumer Affairs, a representative of Consumer Affairs Victoria and Dusan Ivanic,

Team Leader Environmental Health. Following this meeting a request was made that the registration for the rooming house at 4 Hazel Avenue be presented to Council for a decision, rather than it being made through delegated authority by Officers.

3.3. Operation and Strategic Issues

3.3.1. Statutory Planning:

Council Planning Officers have obtained legal advice from Maddocks Lawyers in relation to this matter particularly the permit triggers and exemptions that apply to rooming houses (called “boarding houses”) in the Kingston Planning Scheme.

In essence, a planning permit is not required to establish or operate a rooming house if:

- the proposal involves 10 or less habitable rooms; and/or
- there are no external building works.

As the proposed Rooming House has 5 habitable rooms and the owner of the facility has indicated that no partitions are to be installed so as to exceed the 10 habitable room threshold, the use of the site for the purposes of a rooming house capable of housing up to 12 people does not require a Planning Permit.

3.3.2. Building:

Building Permits are not subject to objection by affected residents. A permit for internal works was applied for and granted. As at the time of writing this report, a final inspection is scheduled to be completed by the Building Department. As there is one minor item remaining, it is envisaged that the applicant will comply and the Municipal Building Surveyor will have no option under the Building Act but issue an Occupancy Permit.

3.3.3. Environmental Health – Statutory Process:

The PHWA and the Public Health and Wellbeing Regulations 2009 set out requirements that need to be met prior to Council registering a rooming house. There is no allowance within the Act for objection or appeal from affected residents to a registration decision.

In the process of registering a premises, applicants are provided with advice and information to ensure they complete any works so that compliance is gained prior to final inspection. Officers would normally issue a notice requiring certain items to be completed as a result of any site visits or discussions. A Conditional Registration may be issued where items which are minor in nature and do not affect the health or safety of the rooming house residents have not as yet been completed.

A site visit was conducted at the premises and it was found to comply with the size of rooms and provision of other amenities allowing for a maximum of 12 persons to be accommodated.

Several items were not noted during the inspection as the rooming house currently is not in operation. These normally form part of the operational activities of the rooming house and include provision of hot water and a register of occupants. These items would generally be provided prior to the final inspection and registration being granted.

Further information has been received from the owner of the property including a copy of the house rules. These are not required as part of the registration process.

Grounds to Refuse Registration - Refusal of registration may only occur where an application does not comply with the requirements of the Act and

the grounds for refusing to issue the registration are specifically listed within the Public Health & Wellbeing Act - Section 76 (2), being;

- a) the applicant, registration holder, prescribed accommodation or the premises do not meet or comply with any requirements of this Act or the regulations that is applicable;
- b) the registration holder has failed to comply with any conditions to which the registration is subject;
- c) the applicant has ceased to provide accommodation or conduct the business in respect of which the registration is required;
- d) there is a risk to the health of persons if the registration is not cancelled or suspended or is issued, transferred or renewed;
- e) any other ground which is prescribed for the purpose of this section (Council is asked to note that no further grounds have been prescribed by either legislation or Regulation).

Section 76 (3) Requires Council to notify the applicant in writing of the decision made under Section 76 (2) and the ground or grounds on which the decision is based.

Currently there are only minor items that require attention, however once completed, Council would have no grounds to refuse to issue the registration. Should Council refuse to register the rooming house upon their compliance, Section 205 of the PHWA sets out the requirements and timeframes for an applicant to have an internal review by Council of that decision. Section 207 allows for an applicant to have a decision under Section 76 or Section 205 to be review by VCAT.

3.3.4. Consumer Affairs Victoria:

New legislation which covers amenities within a rooming house comes in force in the 1st of April 2013. This new legislation is enforced by Consumer Affairs Victoria. It appears that the owner of the property may find it difficult to comply with these new provisions for 12 residents; however they would be able to comply by having a reduced number of residents. The owner of the property has been advised of these new standards.

3.3.5. Victoria Police:

Concerns raised by residents about use of drugs and other anti social/inappropriate behaviour are controlled by legislation which is enforced by Victoria Police. They are the appropriate authority to deal with any such issues that may arise from this property.

3.4. Options

3.4.1. Option 1 – Council allow registration of the rooming house

The application complies with the major requirements for registration within the PHWA and Regulations. There are minor items requiring attention, as well as the final inspection from the Building Department to be completed prior to registration. There are no identified grounds under the PHWA to refuse registration once these items are completed.

While this decision may not be consistent with the wishes of the residents, once an applicant has complied with the requirements of the PHWA, Council has no legal grounds to refuse the registration.

3.4.2. Option 2 – Council formally refuse to register the rooming house.

Grounds for refusing to issue the registration are listed within the Public Health & Wellbeing Act - Section 76 (2). Once final completion of works occurs there are no grounds within the PHWA or the Regulations that would support this decision.

The PHWA provides an aggrieved applicant the opportunity to have a refusal to register decision internally reviewed by Council or by VCAT. If an applicant

has had a decision reviewed by council and they are still not satisfied with the outcome, a further appeal process is available through VCAT.

As there are no legal grounds for refusal of registration under the PHWA , the applicant has sufficient grounds to appeal to VCAT with a likely outcome of Councils decision being overturned and costs may be awarded against Council.

4. Conclusion

The applicant has sought registration for a rooming house under the Public Health & Wellbeing Act. A final inspection for an Occupancy Permit is due for completion by Councils Building Surveyor. Once completed a final inspection would be conducted by Environmental Health for compliance to the PHWA. When all requirements under the Act have been met, Council has no legal grounds to refuse registration and as such Option 1 should be adopted.

4.1. Environmental Implications

Not applicable.

4.2. Social Implications

Public concern that the rooming house will lower housing values, cause antisocial and inappropriate behaviour which may impact on the resident in the area.

Low cost housing is in short supply throughout Melbourne, registering the rooming house would provide housing options for disadvantage individuals.

4.3. Resource Implications

Not applicable.

4.4. Legal / Risk Implications

Refusal to grant registration can be challenged in VCAT. As there are no grounds for registration applicable under the Act, Council does not have grounds to refuse registration. Any appeal by the applicant would succeed and Council may be subject to costs.

Author: Dusan Ivanic – Team Leader Environmental Health

Reviewed and Approved By: Paul Franklin – General Manager Corporate Service

O 179 Hazel Avenue Rooming House Application**Moved: Cr Brownlees****Seconded: Cr Shewan**

1. That the application for registration at 4 Hazel Avenue, Edithvale be refused as there would be an adverse impact on the amenity of the community and an inappropriate use of the site.
2. That Council receives legal advice on how to prevent the ongoing use of the property as a rooming house/boarding house registered or otherwise.

Cr Staikos left the Council Chamber at 10.12pm.

Cr Staikos returned to the Council Chamber at 10.14pm.

CARRIED