



**DISTRICT
PLANNING
SCHEME No. 2**

Amendment No. 152

PLANNING AND DEVELOPMENT ACT 2005

RESOLUTION DECIDING TO AMEND A LOCAL PLANNING SCHEME

CITY OF WANNEROO

DISTRICT PLANNING SCHEME NO. 2 - AMENDMENT NO. 152

RESOLVED that the Council, in pursuance of Section 75 of the Planning and Development Act 2005, amend the above local planning scheme by:

1. Amending Schedule 2 – Section 1 (Clause 3.20) Additional Uses to permit the land use ‘Cattery’ at Lot 151 (41) Casuarina Way, Wanneroo.

Dated this day of 20

.....
CHIEF EXECUTIVE OFFICER

TEXT MODIFICATION PAGE

PLANNING AND DEVELOPMENT ACT 2005

CITY OF WANNEROO

DISTRICT PLANNING SCHEME NO. 2 - AMENDMENT NO. 152

The City of Wanneroo under and by virtue of the powers conferred upon it in that behalf by the Planning and Development Act 2005 hereby amends the above local planning scheme by:

1. Amending Schedule 2 – Section 1 (Clause 3.20) Additional Uses to permit the land use ‘Cattery’ at Lot 151 (41) Casuarina Way, Wanneroo.

PLANNING AND DEVELOPMENT ACT 2005

CITY OF WANNEROO

DISTRICT PLANNING SCHEME NO 2 - AMENDMENT NO. 152

SCHEME AMENDMENT REPORT

1.0 Purpose

The purpose of Amendment No. 152 to District Planning Scheme No. 2 is to allow for the use-class 'Cattery' at Lot 151 (41) Casuarina Way, Wanneroo (subject lot).

2.0 Background

The subject lot is 1.5009ha in area and is zoned Rural under the Metropolitan Region Scheme (MRS) and Special Rural under the District Planning Scheme No. 2 (DPS 2). There is an existing single house, pool and shed on the subject site. **Attachment 1** provides a location plan of the subject site.

On 21 July 2015, a report (PS08-07/15) was presented to Council to consider a development application (DA2015/338) for a Cattery at the subject lot. As Schedule 13 (Clause 3.18) – Special Rural Provisions of DPS 2 currently only allows for residential and/or horticultural uses within Special Rural Zone No. 3 (in which the subject lot is located), Council was unable to approve the development application.

As a result, Council resolved the following:

1. *REFUSES the development application for the Cattery at Lot 151 (41) Casuarina Way, Wanneroo as the Cattery does not comply with Clause 2) of Special Rural Provision No. 3 in Schedule 13 of District Planning Scheme No. 2 as a Cattery is not a Residential or Horticultural purpose;*
2. *ADVISES the submitters of this decision; and*
3. *Pursuant to Section 75 of the Planning and Development Act 2005, INITIATES Amendment No. 152 to District Planning Scheme No. 2 by amending Schedule 2 – Section 1 (Clause 3.20) Additional Uses to permit the land use 'Cattery' at Lot 151 (41) Casuarina Way, Wanneroo;*
4. *Pursuant to Section 81 of the Planning and Development Act 2005, FORWARDS Amendment No. 152 to District Planning Scheme No. 2 to the Environmental Protection Authority (EPA) for comment; and*
5. *Subject to no objection being received from the Environmental Protection Authority (EPA), ADVERTISES Amendment No. 152 to District Planning Scheme No. 2 for public comment for a period of 42 days, pursuant to Regulation 25(2) of the Town Planning Regulations 1967.*

In light of Councils resolution (above), Amendment No. 152 to DPS 2 has been prepared for Councils consideration.

MARGINUP

LOT 151 (41) CASUARINA WAY
WANNEROO

Attachment 1

CAPORN STREET

Lot 142

Lot 143

Lot 144

Lot 150

Lot 151
Subject
Lot

Lot 701

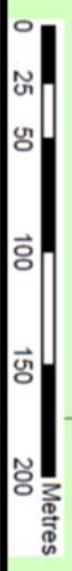
CASUARINA WAY

Lot 153

Lot 154

Lot 155

WANNEROO



EDGAR GRIFFITHS PARK



3.0 Detail

The proposed amendment to DPS 2 includes the following:

1. Amend Schedule 2 – Section 1 (Clause 3.20) Additional Uses to permit the land use ‘Cattery’ at Lot 151 (41) Casuarina Way, Wanneroo.

4.0 Assessment against DPS 2

In considering Amendment No. 152 to DPS 2, the following justification has been provided:

4.1 Permissibility of Land use

A ‘Cattery’ is defined under DPS 2 as the following:

“cattery : means the use of an approved outbuilding constructed in accordance with the Health Act Model By-Laws Series ‘A’ Part One – General Sanitary Provisions (1927) for the purpose of keeping more than three (3) cats over the age of three (3) months”.

A Cattery is a ‘D’ use in a Special Rural Zone under Table 1 (the Zoning Table) of DPS 2. Clause 3.2.2 of DPS 2 states that a D use class is as follows:

“D = A use class that is not permitted, unless the Council grants its approval after following the procedures laid down by subclause 6.6.2.”

Under Clause 6.6.2 of DPS 2, Council in exercising its discretion as to the approval or refusal of an application for Planning Approval, shall have regard to the provisions of Clause 6.8 which sets out various matters to be considered by Council.

The lot is also subject to Special Provisions set out in Schedule 13 of DPS 2 as it is within Special Rural Zone No. 3. One of the requirements of the Special Provisions for Special Rural Zone No. 3 is as follows:

“The land the subject of this Zone may be used for residential and/or horticultural purposes only.”

Within DPS 2, there is no specific definition of either ‘residential’ or ‘horticultural’. In the absence of a definition in the DPS 2, a definition for both residential and horticulture has been derived from other sources.

The Residential Design Codes (R-Codes) defines ‘residential development’ as follows:

“Development of permanent accommodation for people, and may include all dwellings, the residential component of mixed-use development, and residential buildings proposing permanent accommodation.”

The Australian Oxford Dictionary defines horticulture as follows:

“The arts or practice of garden cultivation and management.”

In respect to these definitions, the Cattery is not considered to be residential development as it will not be used for the permanent accommodation of people. The Cattery is also not considered to have any relation to garden cultivation and management. On the basis of the

above, a Cattery is not considered to be a residential or horticultural purpose and therefore does not satisfy the Special Provisions applicable within Special Rural Zone No. 3.

Further Clause 3.18.5 of DPS 2 states the following:

“Notwithstanding any other provision of the Scheme, in the case of any conflict between the special provisions relating to individual Special Rural Zones and Table 1, the special provisions shall prevail.”

Whilst the use class is ‘D’, this Clause states that the Special Provisions applicable to Special Rural Zone No. 3 prevail and therefore a Cattery is not permissible.

4.2 Impact on Amenity

In accordance with Clause 6.8 of DPS 2, Council when considering a ‘D’ use are to take into consideration the matters listed below in relation to amenity:

“(i) the compatibility of a use or development within its setting; and,

(n) the preservation of the amenity of the locality”

The compatibility of the use could be considered appropriate based on a Cattery being identified as a ‘D’ use under Table 1 – the Zoning Table of DPS 2. Irrespective of the current legal implications of the provisions included in DPS 2 (as outlined previously within this report), more importantly the main concern in regards to the potential impact on the locality would relate closely to the development proposed.

It is considered inappropriate to make assumptions on the impact of a Cattery land use within the context of its setting without knowing the details regarding the building/s proposed. For example, the type of materials used to construct the cattery building could either exacerbate or prevent noise impacts on adjoining landowners. This is also relevant when considering the structures location and dimensions in respect to its impact on the amenity of the locality.

As a result, the impact of the land-use is dependent on the mitigation measures and type of buildings/structures proposed at development application stage. Therefore, the impact on amenity will be considered once a development application is lodged with the City for determination. The development application for the cattery could be subject to conditions to ensure adequate measures are taken to limit any potential impact of surrounding landowners.

4.3 The Special Rural Zone

The Special Rural zone was incorporated under DPS 2 (and Town Planning Scheme No. 1) as a result of detailed environmental assessment which identified areas considered to be of environmental value within the City of Wanneroo (particularly within the east Wanneroo area).

Under Clause 3.18.2 of DPS 2, the objectives of the Special Rural Zone are as follows:

“(a) designate areas where rural-residential retreats can be accommodated without detriment to the environment or the rural character;

- (b) *meet the demand for a rural lifestyle on small rural lots generally ranging from one to four hectares in size;*
- (c) *maintain and enhance the rural character and amenity of the locality.”*

The majority of the Special Rural areas have either environmental assets, a designated priority water catchment area and/or are considered an ecological linkage. This is why many of the provisions under Clause 3.18 of DPS 2 (Special Rural Zone) relate to the protection, and limit the impact of development on the natural environment.

Without the City completing a detailed study into the condition and value of these environmental assets today, it is considered unacceptable to permit potentially environmentally damaging land uses within these Special Rural areas. Therefore, the permissibility of uses for those properties located within a Special Rural Zone (Those areas identified as No. 1 – 18 under Schedule 13) will not be considered under Table 1 – The Zoning Table under DPS 2.

It is also acknowledged that a Cattery may not meet the objectives of the Special Rural Zone as there is the potential for impact on the rural character and amenity of the locality. However, the Cattery land use could be conditioned under Schedule 2 – Section 1 of DPS 2 to ensure the land use meets the objectives of the Special Rural Zone if considered appropriate by Council.

As a result of the above, the amendment proposal will only permit the land use ‘Cattery’ on the subject lot, and will not permit any other uses/sites to conduct these activities taking into regard the important environmental nature and rural character of the locality.

5.0 Conclusion

In accordance with Councils resolution dated 21 July 2015, Amendment No. 152 to DPS 2 is proposed to include the land-use ‘Cattery’ as an additional use on Lot 151 (41) Casuarina Way, Wanneroo.

Adopted by resolution of the Council of the City of Wanneroo at the Ordinary meeting of the Council held on the 21st day of July 2015

.....

.....

CHIEF EXECUTIVE OFFICER

Adopted for final approval by resolution of the City of Wanneroo at the meeting of the Council held on the day of and the Common Seal of the City of Wanneroo was hereunto affixed by the authority of a resolution of the Council in the presence of:

.....

MAYOR

.....

DIRECTOR, PLANNING & SUSTAINABILITY

Recommended/Submitted for final approval

.....
DELEGATED UNDER S.16 OF
PD ACT 2005

DATE

Final Approval Granted

.....
MINISTER FOR PLANNING

DATE