

## UPDATE

### **A recent example of *intensive animal keeping***

#### **Laughton & SABIC v District Council of Grant & Anor**

The Normans are the second respondent in this case. They lodged a development application with the Council for a change of land use to include "dog boarding kennels, cattery grooming and office". The subject land was located in the Horticultural Zone and the Council's development plan specified that intensive animal keeping was a non-complying land use in the Horticultural Zone. The Normans proposed to establish 10 dog kennels in an existing shed on the land (9 for boarding dogs and 1 for the Normans' pet dog), and a cattery consisting of 11 cat cages, dog grooming station, food preparation station and storage centre in an existing granny flat/garage on the land. The Council processed the application as a category 3 merit application, concluding that the proposed land use did not constitute intensive animal keeping. The Council approved the application.

The Laughtons, who owned neighbouring land, appealed the Council's decision to approve the application and asked the ERD Court to determine, as a preliminary point, whether the application was in fact an application for intensive animal keeping and, therefore, an application for a non-complying development.

The ERD Court examined the definition of intensive animal keeping set out in Schedule 1 of the Development Regulations 2008, which reads "*intensive animal keeping means the keeping or husbandry of animals in a broiler shed, chicken hatchery, feedlot, kennel, piggery, poultry battery or other like circumstances, but does not include horse keeping*". The ERD Court's view was that "*the question of whether the keeping of animals constitutes intensive animal keeping... is a question of fact and degree, dependant, in part, upon the number of animals kept*". The Court's view was that the keeping of up to 9 dogs in kennels in a shed in the circumstances proposed would constitute intensive animal keeping, even though the Normans argued that the volume of business would vary from time to time. The Court was of the view that the characterisation of a land use depends more on the capacity to keep animals rather than the anticipated volume of business. The ERD Court also concluded that the 11 cage cattery was intensive animal keeping.

The ERD Court concluded that the development plan consent issued by the Council was a nullity. The Court quashed the consent and referred the application back to the Council for processing as an application for a non-complying development.

**For further information please contact Nicole Harris, Senior Associate, Local Government, on 8235 3017 or [nicole.harris@wallmans.com.au](mailto:nicole.harris@wallmans.com.au) (Nicole is in the office Monday, Tuesday and Wednesdays)**