

2.7: LOCAL PLANNING SCHEME POLICY-SPECIAL RESIDENTIAL AREA NO. 11 (LOTS 104 AND 105 WILLYUNG ROAD)

ALTERNATE MOTION BY COUNCILLOR BOSTOCK

DATE & TIME REQUEST FOR ALTERNATE MOTION RECEIVED: Wednesday 4 July 2012 at 11.38am.

ITEM 2.7: ALTERNATE MOTION BY COUNCILLOR BOSTOCK VOTING REQUIREMENT: SIMPLE MAJORITY

THAT Council does NOT adopt the Draft Local Scheme Policy for Special Residential Area No. 11 (Lots 104 and 105 Willyung Road) for public advertising.

Councillor's Reason:

There is a detailed description in TPS3 of the required setbacks for this subdivision, which is situated in a very sensitive area subjected to periodic flooding from the King River. The Scheme has the force of law and cannot be overridden by a Council Policy, which has no official status and can be altered at any time.

The requirements of the Scheme include minimum boundary setbacks of 15 metres with 30 metres for lots fronting Willyung Road and 50 metres from the King River footpath. There is a provision in the Scheme for Council to alter these setbacks in exceptional circumstances and it has been suggested that this can be applied to the entire subdivision if individual lots have not yet been sold.

The wording of the Scheme, at paragraph 6.3 is as follows:

Council may approve a lesser boundary setback if Council is of the opinion that:

- (i) The topography or shape of the lot, or natural vegetation on it, makes it desirable to alter this provision; and*
- (ii) That the location of the building or structure will not detract from the environmental quality of the area or from the amenity of existing or future residences on adjoining lots. Council may require hydrological testing for footings and alternative waste water effluent disposal systems.*

It is obvious from this paragraph that changes to setbacks can only be made on an individual building basis after due consideration of the factors affecting that lot and cannot apply across the board, as no two individual lots will be identical.

As there is no mention in paragraph 6.3 of problems caused by increasing the overall lot yield, from 33 to 55 lots, and if that has resulted in difficulties meeting the boundary setbacks which were in force at the time, it must mean that the increase in lot numbers was not sustainable.

It is not the role of Council to maximise developer's profits but to do what is best for the people of the Albany, both present and future. The reasons for these large setbacks are not only environmental but also because the area is part of the King River flood plain and changes to the setback requirements are likely to result in serious future problems, as has been experienced in many parts of the world when inappropriate development on flood plains has been approved.

Officer's Comment (Executive Director Planning and Development Services):

the City already has a town planning scheme policy (60 Modifications to Subdivision Guide Plans) over the subject land, which varies the setback requirements on a number of lots through the application of development envelopes. This policy was adopted by a previous resolution of Council.

I would also refer to paragraphs 24 and 25 of the officer's report, which explain the statutory mechanisms that allow Council to adopt or, as in this case, modify a town planning scheme policy over the subject land:

24. The subject lot is zoned 'Special Residential' and is contained within the Special Residential Area No. 11, under Town Planning Scheme No. 3. Special Provision 1.2 of the zone controls allows Council to consider modifications to the SGP as follows:

"The Council will not recommend lot sizes less than 4000m². Subdivision shall generally be in accord with the lot sizes and layout shown on the Subdivision Guide Plan. Any significant variation to the Subdivision Guide Plan will need to be justified in terms of land capability, visual impact, retention of views, vegetation retention, emergency access/egress and setbacks from King River and creeks. Consultation with and general support of surrounding landowners will be a prerequisite to consideration of any significant variation to the Subdivision Guide Plan."

25. Clause 6.9 of TPS No. 3 set out the processes to adopt and alter Town Planning Scheme Policies and also provide direction on what function the policies have in the decision-making process.

"6.9 POWER TO MAKE POLICIES

6.9.1 *In order to achieve the objectives of the Scheme, the Council may make Town Planning Scheme policies relating to parts or all of the Scheme Area and relating to one or more of the aspects of the control of development.*

6.9.2 *A Town Planning Scheme policy shall become operative only after the following procedures have been completed:*

- (A) *The Council having prepared and having resolved to adopt a Draft Town Planning Scheme Policy, shall advertise a summary of the Draft Policy once a week for two consecutive weeks in a newspaper circulating in the area giving details of where the Draft Policy may be inspected and where, in what form, and during what period (being not less than 21 days) representations may be made to the Council.*
- (B) *The Council shall review its Draft Town Planning Scheme Policy in the light of any representations made and shall then decide to finally adopt the Draft Policy with or without amendment, or not proceed with the Draft Policy.*
- (C) *Following Final Adoption of a Town Planning Scheme Policy, details thereof shall be advertised publicly and a copy kept with the Scheme Documents for inspection during normal office hours.*

6.9.3 *A Town Planning Scheme policy may only be altered or rescinded by:*

- (A) *Preparation and Final Adoption of a new Policy pursuant to this Clause, specifically worded to supersede an existing Policy.*
- (B) *Publication of a Formal Notice of Rescission by the Council twice in a newspaper circulating in the area.*

6.9.4

- (A) *A Town Planning Scheme policy shall not bind the Council in respect of any application for Planning Consent, however, it may require the Council to advertise its intention to relax the provisions of the Policy once in a newspaper circulating in the district stating that submissions may be made to the Council within 21 days of the publication thereof.*
- (B) *Council shall take into account the provisions of the policy and objectives which the policy was designed to achieve any submissions lodged, before making its decision.”*

The intention of the amended policy is to ensure certainty for landowners and a consistency of development across the subject area, as it should negate the need for landowners to seek individual planning approvals. The need to vary the setbacks has arisen from previous decisions of Council and the Western Australian Planning Commission varying the lot sizes and original subdivision guide plan, while remaining consistent with Special Provision 1.2 above. The smaller lot sizes have resulted in a situation where most lots cannot accommodate 15m boundary setbacks (or 30m from Willyung Road) and maintain a development envelope with a minimum dimension of 16m and a minimum area of 800m², as specified in the current subdivision guide plan.

With regard to the issue of flood risk, the subdivision guide plan takes account of the most recent flood mapping available and ensures that development envelopes are located outside areas that are subject to inundation or flooding during a 1 in 100 year event.