

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

ALTERNATE MOTION BY COUNCILLOR BOSTOCK

DATE & TIME REQUEST FOR ALTERNATE MOTION RECEIVED: Wednesday 3 October 2012 at 11.50am.

**ITEM 2.5: ALTERNATE MOTION BY COUNCILLOR BOSTOCK
VOTING REQUIREMENT: SIMPLE MAJORITY**

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

Councillor's Reason:

Detailed provisions relating to Special Residential Zone 11 are included in Schedule 4 of TPS3 and therefore carry the force of law. Provision 6.2 includes the following:

- Exclusion from the 1/100 year floodway;
- Minimum 50 metre set back from the King River and creek line;
- 50 metre setback from the foreshore footpath;
- 20 metre setback from revegetation areas;
- 15 metre boundary setbacks with 30 metre setbacks from Willyung Road; and
- Exclusion from areas subject to inundation.

These provisions were made because not only is this a valuable site ecologically and visually, but because it is liable to flooding. It is the duty of Council, when considering planning applications to prevent development in unsuitable areas. The provisions were made specifically for this site and that they differ from those for other Special Residential sites is irrelevant.

Provision 6.3 allows Council to vary the provisions of 6.2, but only on the basis of special factors which affect individual lots and not, as in this application, for the entire subdivision. Provision 6.3 reads as follows:

Council may approve a lesser boundary setback if Council is of the opinion that 1) the topography or shape of the lot or natural vegetation on it, makes it desirable to alter this provision and 2) 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.

It is not possible for Council to determine whether this provision can be adhered to except on an individual lot basis and no evidence has been provided by the proponent for any lot.

The underlying reason for the problems faced by the proponent on this site is that the number of lots was increased from 33 to 55, which the applicant should have realised would not be easy to achieve under the legal provisions of TPS3. No attempt was made, however, to alter the setback requirements at the time and the original provisions included in 6.2 are as valid now as they were originally.

It is not the role of Council to change the rules to benefit individual proponents by reversing carefully considered provisions designed to protect both the environment and residents and I ask my fellow Councillors to support this motion in the interests of sound planning to prevent problems in the future.

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

As noted by Councillor Bostock, Council may approve a lesser boundary setback if Council is of the opinion that

1. ...*"the shape of the lot...makes it desirable to alter this provision"* and
2. *"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."*

There is nothing in the wording of these provisions that prohibit Council from considering more than one lot at one time.

The City's planning staff are of the opinion that the proponent has provided sufficient evidence that the proposal will not result in significant impacts on environment or amenity. If Council accepts the professional opinion of the City's planning staff as being valid, Council may lawfully consider variation to the setbacks as in the opinion of Council the location of the building will not detract from the environmental quality of the area or from the amenity of adjoining residences.

Further, if this principle is applied to several lots as is the case with the current proposal, the cumulative impacts on environment and amenity in the area may also be considered.