

**COUNCIL MEETING: 22 NOVEMBER 2022**

**PCC.3/11/22 PROPOSED LOCAL DEVELOPMENT PLAN – LOT 2002 MARINA QUAY DRIVE**

At the Planning and Community Consultation Committee on Wednesday 9<sup>th</sup> November, Item 2, the proposed Mandurah Quay Local Development Plan (LDP), was the subject of two deputations in opposition to the proposed LDP. These deputations both raised issues with the tree retention outcomes on the site and referred to the conditions of the subdivision approved by the WAPC (157905) specifically condition 7b.

Condition 7b is as follows:

- 7. Local Development Plan(s) being prepared and approved for lots shown on the plan dated 23 March 2020 (attached) that address the following:  
B Tree Preservation 1, 3, 5, 7, 10, 11, 14, 15, 17 and 18*

The proposed LDP includes the retention of tree 7 and 17 but does not make provisions for the retention of the other trees on lots identified in the condition. The individual lot areas being offered by the subdivision being between 220m<sup>2</sup> and 317m<sup>2</sup> provides effectively no prospect of the additional trees being retained.

It is noted that part d of the same condition requires a minimum habitable floor level of 2.7m AHD for all lots and the lot itself ranges in level from 2m to 2.5m AHD. As such it is likely some fill and retaining will be required for the development of dwellings which in turn impacts on the likelihood of a tree surviving. This means even where trees are in a location for potential preservation the additional fill requirements will impact their viability.

The Mayor tabled an alternative motion which was carried by the Committee that requested City Officers present a recommendation to Council which sought to refuse the LDP. The reasons for refusal were to be considered and presented at full Council due to the LDP not sufficiently addressing the tree retention condition in the subdivision approval.

The remaining aspects of the LDP were not discussed by Council or the deputation so it is interpreted the tree retention is the primary concern.

If the Council is seeking to refuse the LDP the following wording is provided:

**That Council:**

- 1. Resolve to refuse proposed Local Development Plan for Lot 2002, No. 21 Marina Quay Drive Erskine as detailed in Attachment 2.1 on the grounds that it does not adequately address the retention of trees 1, 3, 5, 7, 10, 11, 14, 15, 17 and 18 as required in condition 7b of WAPC approval 157905.**
- 2. That Council approves the Chief Executive Officer to write to the Chairman of the Western Australian Planning Commission seeking written explanation as to how a Local Development Plan could practically meet the tree preservation requirements of condition 7b of WAPC approval 157905.**

It is important to note that if Council resolve to refuse the proposal, City officers are unable to represent the City at any appeal to the State Administrative Tribunal and the City would have to engage a consultant and incur legal fees as Council has taken a differing view to the City Officer's original recommendation. Given this relates specifically to a condition of subdivision, it is also accurate that the developer could seek the clearance of the condition directly from

the WAPC. Whilst rare, it is something the developer is entitled to do if they feel that the authority charged with clearing the condition (in this case the local government) has not acted appropriately.

As an alternative, with the outcome focussed on the retention of the trees, the City officer's recommendation that Council resolve to approve the proposed LDP with modifications, which will allow City officers to represent the City at the State Administrative Tribunal, with only staff internal costs incurred. The wording for this suggested resolution is provided:

**That Council:**

- 1. Endorse the proposed Local Development Plan for Lot 2002, No. 21 Marina Quay Drive Erskine as detailed in Attachment 2.1. subject to the following modification;**
  - a. A notation being added to the LDP requiring trees, 1, 3, 5, 7, 10, 11, 14, 15, 17 and 18 being retained during and beyond the construction phase.**
  - b. No pruning, removing or other modification to trees, 1, 3, 5, 7, 10, 11, 14, 15, 17 and 18 shall occur without the written development approval of the City of Mandurah.**
  - c. Any application for development approval to remove, prune or modify trees, 1, 3, 5, 7, 10, 11, 14, 15, 17 and 18 must be accompanied by a report prepared by a suitably qualified arborculturalist.**
- 2. That Council approves the Chief Executive Officer to write to the Chairman of the Western Australian Planning Commission seeking written explanation as to how a Local Development Plan could practically meet the tree preservation requirements of condition 7b of WAPC approval 157905.**
- 3. Acknowledge that the Local Development Plan for Lot 2002, No. 21 Marina Quay Drive Erskine requires approval from the Western Australian Planning Commission.**