

11.2 Amendment No. 328 to Local Planning Scheme No. 4 - Special Control Area for Frontage Lots

File Ref: D25/7908
 Previous Items: Nil.
 Applicant: Nil.
 Author and Title: Gregory Delahunty, Manager Planning and Environmental Services
 Declaration of Interest: Nil.
 Voting Requirements: Simple Majority
 Appendices: Item 11.2 - Appendix 1 - Requirements for properties abutting an artificial canal waterway Local Planning Policy

Cr Stewart Carter declared an Proximity Interest in Item Item 11.2 Amendment No. 328 to Local Planning Scheme No. 4 - Special Control Area for Frontage Lots in that he owns a property that is impacted by this change.

Cr Stewart Carter withdrew from the meeting the time being 5.37pm.

Recommendation/Council Decision OCM25/019

Moved: Cr N Willis

Seconded: Cr A Rogers

That Council:

1. In accordance with Regulation 35(1) of the *Planning and Development (Local Planning Schemes) Regulations 2015*, resolves to prepare the Amendment No 328 to Local Planning Scheme No 4 to:
 - (a) Insert reference to a new Special Control Area for Canal Frontage Lots under Clause 6.14.1.1(c);
 - (b) Insert a new Clause 6.14.4 Canal Frontage Lots
 - (c) Insert new sub clause 6.14.4.1 Canal Frontage Lots to set out the purpose, objectives and additional provisions that apply within the Canal Frontage Lots Special Control Area, generally as follows:

Name of Area	Purpose	Objectives	Additional Provisions
SCA1 Canal Frontage Lots	To provide development controls to canal frontage lots that protects the character and amenity of the canals and canal frontage lots.	(1) To ensure the visual amenity and open natured character of the canal frontage area is not compromised. (2) To ensure boating facilities do not adversely impact navigation within an artificial canal waterway and pose a navigation hazard. (3) To ensure canal walls are	(1) Notwithstanding any other provision of the Scheme, all proposed development within SCA 1 requires the development approval of the local government, unless the development is specified as a type that does not require development approval in a canal related local planning policy.

		consistent in appearance.	(2) In determining an application for development approval, the local government may have regard to advice from the Department of Transport and/or any other relevant agency.
--	--	---------------------------	---

(d) Amend the scheme maps by including a Canal Frontage Lots Special Control Area designation to all those lots with a canal frontage, including the following:

- Lots 828 – 850 Batavia Quays, South Yunderup
- Lots 57- 59 and 859 – 873 Warma Way, South Yunderup
- Lots 1 – 56 Allambie Way, South Yunderup
- Lots 60 – 148 Moyup Way, South Yunderup
- Lots 149, 200 – 203, 237 - 240, 256 - 270 Wellya Crescent Way, South Yunderup
- Lots 150 – 199 Tanderra Place, South Yunderup
- Lots 1-3, 204 – 219 and 221 -236 Woolah Place, South Yunderup
- Lots 1 – 2, 241 – 247, 250 -255 and 2481 - 2483 Oomoo Place, South Yunderup
- Lots 10 – 11, 20 – 21, 271 – 273, 510, 279 – 297, 300 – 311 and 314 - 37 Kiap Place, South Yunderup
- Lots 380 – 441 Murray Waters Boulevard, South Yunderup
- Lots 18 – 25, 27-42 and 100 - 101 Willow Gardens, South Yunderup
- Lots 1 - 6, 43 – 59, 131 and 631 South Yunderup Road, South Yunderup
- Lots 63 – 64 and 1974 Shean Place, South Yunderup
- Lots 66 – 71, 75 – 78, 100 and 201 -201 Pelican Road, South Yunderup
- Lots 77 – 92 and 361 - 368 Banksia Terrace, South Yunderup
- Lots 60 – 75 Sun Land Avenue, South Yunderup
- Lots 100 – 102 Egret Place, South Yunderup
- Lots 2, 3, 10, 345, 501 – 502 and 632 Wharf Cove, South Yunderup
- Lots 4 – 9 Dilley Court, South Yunderup
- Lots 137 – 151 and 500 – 501 Wills Way, South Yunderup
- Lots 152 – 167 Robertson Grove, South Yunderup
- Lots 168 – 176 Park Way, South Yunderup
- Lots 177 – 202 and 205 - 207 Delta Drive, South Yunderup
- Lots 50 – 51, 255 – 290, 292 - 334 and 337 Heron Place, South Yunderup
- Lots 209 – 229 and 231 Pateman Place, South Yunderup

2. In accordance with Regulation 35(2) of the *Planning and Development (Local Planning Schemes) Regulations 2015*, determines that the Amendment is a standard amendment for the following reasons:
 - It will have minimal impact on land in the scheme area that is not the subject of the amendment; and
 - It does not result in any significant environmental, social, economic or governance impacts on land in the scheme area
3. Authorises the Shire President and Chief Executive Officer to sign and seal the Scheme Amendment documents prepared to the satisfaction of the Director Planning and Sustainability.
4. Authorises the proposed amendment to be forwarded to the Environmental Protection Authority for consideration of the need for environmental assessment in accordance with section 81 of the *Planning and Development Act 2005* and then submit the proposed amendment to the Minister for Planning in accordance with section 83A of the *Planning and Development Act 2005* to consider granting approval to advertise the proposed amendment.
5. Following compliance with sections 81, 82 and 83A of the *Planning and Development Act 2005*, authorises the amendment to be advertised for a period of at least 42 days.
6. Pursuant to Clauses 4 and 5 of the Deemed Provisions set out in Schedule 2 of the *Planning and Development (Local Planning Schemes) Regulations 2015*, resolves to proceed with the amendments to the General Development Requirements for Properties Abutting an Artificial Canal Waterway Local Planning Policy as follows in **RED**:

“Application/Definition

‘Balcony’ - a balustraded platform on the outside of a dwelling with access from an upper internal room.

‘Beach Properties’ means those lots that are separated from the canal frontage by a beach or foreshore without the presence of a canal wall.

Planning Approval Requirements

Any proposal to develop a dwelling, patio, verandah, shade sail structure, deck, retaining wall, **fence or outbuilding on a property that abuts an artificial canal waterway that does not meet the requirements of this policy require the planning approval of the Shire.**

Dwellings

1. **Within Yunderup Canals Stage 1, Murray Lakes and Murray Waters, any component of a residential development **including a balcony**, other than a patio, verandah, shade sail structure or deck is to be set back a minimum of 9 metres from the canal frontage.**

Fencing and Balustrading within Yunderup Canals Stage 1, Murray Lakes and Murray Waters

20. **No side boundary fencing is permitted within 1 metre of the canal frontage.**
21. **No side boundary fencing set back between 1 metre and 7.5 metres from the canal frontage is permitted to exceed 1.2 metres above the stabilised ground level or a modified ground level approved by the Shire.**
22. **Side boundary fencing set back between 1 metre and 7.5 metres from the canal frontage is to be visually permeable from top to bottom.**
23. **Balustrading and fencing required by the Building Code of Australia for a swimming pool or retaining wall is to be permeable in nature from top to bottom within the canal frontage area.**

Note: For beach properties, no fencing is to extend beyond the lot boundary, irrespective of how far it is set back from the canal frontage."

Fencing and Balustrading within Yunderup Canals Stage 2 and Yunderup Canals Stage 3

24. No side boundary fencing set back between the canal frontage and 4.5 6 metres from the canal frontage is permitted to exceed 1.2 metres above the stabilised ground level or a modified ground level approved by the Shire.

25. Side boundary fencing set back between the canal frontage and 4.5 6 metres from the canal frontage is to be visually permeable in nature from top to bottom.

7. Resolves to give notice in accordance the Deemed Provisions set out in Schedule 2 of the Planning and Development (Local Planning Schemes) Regulations 2015, of the amendments to the Policy referred to in part 5 above.

In Favour: President Douglas McLarty, Crs Geoff Black, Stuart Kirkham, Ange Rogers, David Pike and Nicole Willis

Against: Nil.

CARRIED UNANIMOUSLY 6:0

In Brief

- A recent decision handed down by the Supreme Court of Western Australia has highlighted that, where a development approval exemption exists under the *Planning and Development (Local Planning Schemes) Regulations 2015* (Regulations), a local planning scheme or local planning policy does not have the power to trigger the need for a development approval, unless the land is located within a Special Control Area (SCA).
- This has implications for the Shire's canal frontage lots in South Yunderup, where development control, and the resultant character of the area, is reliant upon development standards contained in local planning policies.
- It is proposed to introduce a SCA to cover these lots to clarify that development approval for all development is required. However, development approval can still be exempted in a particular case where the proposal complies with requirements of the relevant local planning policies. Essentially there will be no material change to current practice but the proposed Amendment will ensure the Shire's planning framework is able to withstand legal challenge.
- Minor modifications are also required to the one of the canal related local planning policies to ensure a consistent approach can be provided.

Background

In June 2016, Council initiated an amendment to the Shire's Local Planning Scheme No.4 (LPS4) that, amongst other things, removed the development standards applicable to residential development on canal frontage lots in South Yunderup. This amendment was gazetted in March 2017.

The relevant development standards were updated and transferred into two new local planning policies:

- Boating Facilities and Moorings
- General Development Requirements for Properties Abutting an Artificial Canal Waterway.

An amended Canal Walls – Yunderup Canals Stage 1 Local Planning Policy was also adopted as part of the suite.

The intention behind placing the relevant development standards in a local planning policy was to make the process of periodic review simpler to undertake, by providing greater flexibility for amendments as required over time to ensure that the development standards remained up to date and relevant.

The development standards in the local planning policies seek to provide a distinct character that is open natured, with large setbacks to the canal frontages.

A recent decision handed down by the Supreme Court of Western Australia (McComish -v- Shire of Peppermint Grove [2024] WASC 502), has highlighted that, where a development approval exemption exists under the *Planning and Development (Local Planning Schemes) Regulations 2015*, a local planning scheme or policy cannot trigger the need for development approval, unless the land is located within a SCA.

Essentially this means that development of single houses and ancillary development in the canal areas no longer need to consider the requirements of the local planning policies, provided that they comply with the Residential Design Codes. Some implications of this include:

- Single houses can be developed closer to the canal frontage;
- 1.8m high solid fencing and higher retaining walls can be provided up to the canal frontage; and
- Outbuildings can be located between the house and the canal frontage.

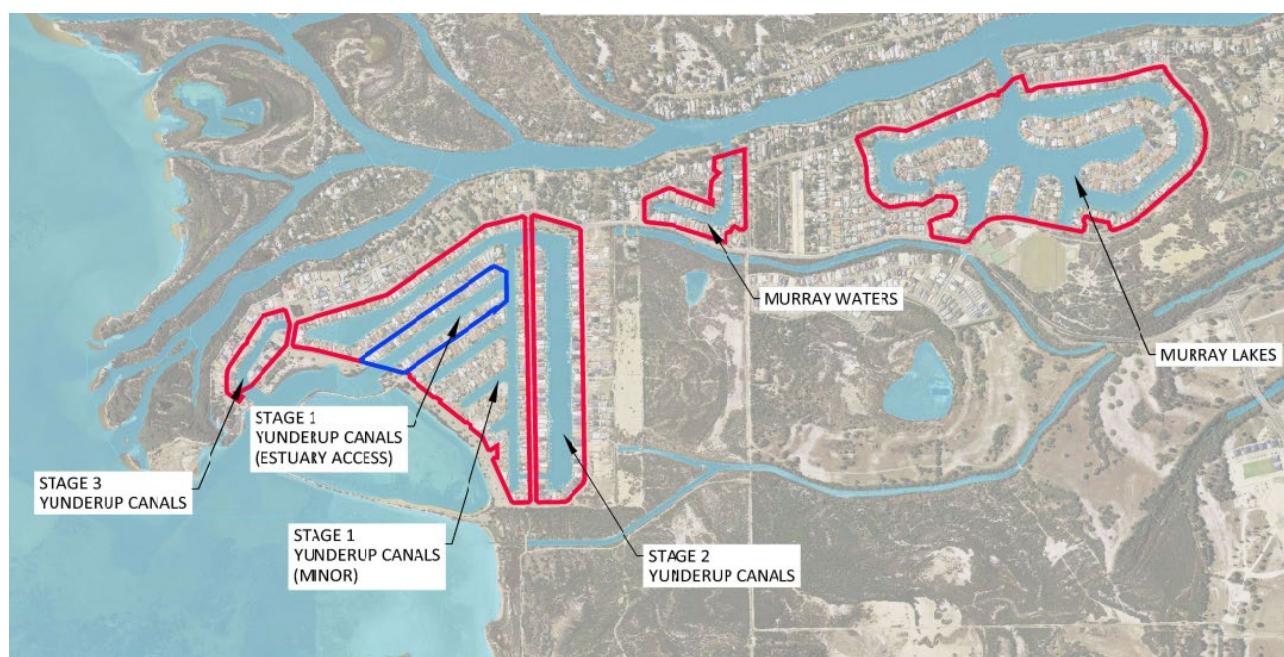
Consequently, there is a risk that the established open character of the canals will be compromised.

Report Detail

It is proposed to introduce a SCA to the canal frontage lots that will require development approval for all development on canal frontage lots, unless it is specifically exempted by a local planning policy. It is intended that the provisions of the existing local planning policies will continue to apply, exempting the need for approval that meets the current development standards.

This will ensure a continuation of current practice which will maintain the existing character and amenity of the canals and ensure no further regulatory burden on residents in the area.

It will essentially have no impact on the way things have operated to date, however, it will ensure that a sound statutory basis to protect the amenity of the area.



1. Canal Frontage Lots

Council Plan

Focus Area	Place
Outcome 7	Population growth is being managed responsibly and sustainably.
Objectives 7.1	Manage urban growth effectively.

Other Strategic LinksGeneral Development Requirements for Properties Abutting an Artificial Canal Waterway Local Planning Policy

Some slight changes are required to this local planning policy to ensure:

- there is clarity around the definition on what is considered to be a 'beach' lot;
- upper floor balconies are consistent with the building setback line;
- that fencing is exempted where it meets the policy standards; and
- that fencing in Yunderup Canals Stage 2 and Yunderup Canals Stage 3 is not required to be open behind the building line.

Statutory EnvironmentPlanning and Development (Local Planning Schemes) Regulations 2015 (Regulations)

Regulation 35(2) of the Regulations requires that a resolution to prepare an amendment must:

1. specify whether, in the opinion of the local government, the amendment is a complex amendment, a standard amendment or a basic amendment; and
2. include an explanation of the reason for the local government forming that opinion.

Regulation 34 sets out the criteria for each amendment category and in particular specifies that a Standard Amendment is:

- an amendment which is consistent with the applicable region planning scheme;
- an amendment that would have minimal impact on land in the scheme area that is not the subject of the amendment;
- an amendment that does not result in any significant environmental, social, economic or governance impacts on land in the scheme area; or
- any other amendment that is not a complex or basic amendment.

The Scheme Amendment is considered to meet the requirements of the Standard category in this case.

The Deemed Provisions set out in Schedule 2 of the Regulations provide for the modification of local planning policies.

Shire of Murray Local Planning Scheme No.4 (LPS4)

Clause 6.2.3 of LPS4 states that residential development is to occur in accordance with the R-Codes unless otherwise stipulated in this Scheme or an approved local development plan or local planning policy.

The recent Supreme Court decision has made clear that this clause no longer has an effect.

Sustainability & Risk Considerations

Economic - (Impact on the Economy of the Shire and Region)

Nil.

Social – (Quality of life to community and/or affected landowners)

This amendment is important to maintain the character and amenity of the South Yunderup canal areas.

Environment – (Impact on environment's sustainability)

Nil.

Policy Implications

Minor changes to existing local planning policies are recommended.

Risk Management Implications

<i>Risk Level</i>	<i>Comment</i>
Low	The amendment will not change current practice.

Consultation

Upon a local government resolving to prepare an amendment to a local planning scheme, section 81 of the *Planning and Development Act* requires it to refer the amendment to the Environmental Protection Authority for consideration as to whether an environmental assessment is necessary under the *Environmental Protection Act 1986*.

Section 83A of the Act also requires the local government to then submit the proposed amendment to the Minister for Planning to consider granting approval to advertise the proposed amendment.

Following advice from the EPA and Minister for Planning that a standard Scheme Amendment does not require formal environmental assessment and may be advertised, Regulation 47 of the Regulations requires the local government to arrange advertising for a period of at least 42 days.

It is anticipated that the policy modifications will be advertised concurrently.

Resource Implications**Financial**

The cost of advertising can be accommodated within the current adopted operational budget.

Workforce

The proposal has been accommodated within existing staff resource levels.

Options

1. Resolving to prepare and advertise the proposed amendment in the form recommended or some other form.
2. Not resolving to prepare and advertise the proposed amendment.

Conclusion

The recent Supreme Court decision has highlighted the fact that a single house and ancillary development are exempt from the need to obtain development approval if a development meets the relevant acceptable development criteria under the Residential Design Codes. Consequently, the

introduction of a SCA is necessary to preserve the character of canal frontage lots. For the public there will be no change to current practice, however the introduction of a SCA is necessary to ensure a continuing sound statutory basis to apply the canal related development standards. As such, it is recommended that Council adopts the proposed amendment and policy for the purposes of advertising.

Cr Stewart Carter rejoined the meeting the time being 5.39pm.