

20 June 2017

Planning Manager
Urban Design and Development
Department of Planning
Locked Bag 2506
Perth WA 6001

By email: corporate@planning.wa.gov.au

To whom it may concern

RE: DRAFT DEVELOPMENT CONTROL POLICY 2.2 – RESIDENTIAL SUBDIVISION (DC 2.2)

Thank you for the opportunity to provide this submission to the Western Australian Planning Commission (WAPC) in relation to the proposed changes to Development Control Policy 2.2 – Residential Subdivision (DC 2.2).

The Urban Development Institute of Australia (UDIA) WA is the peak body representing the urban development industry in Western Australia. UDIA is a membership organisation with members drawn from the development, planning, valuation, engineering, environmental, market research and urban design professions. Our membership also includes a number of key State Government agencies and Local Government Authorities from across the state. Nationally, UDIA represents the interests of thousands of members, including all of the major land and built form development companies, and consultancy firms.

The UDIA has consulted with its members in relation to the proposed changes to DC 2.2 and it is widely agreed that provision of greater clarity on the circumstances in which a >5% variation to the average lot size will be considered is strongly supported. However, members have also questioned the need for this review given other WAPC priorities and that perhaps it would be more appropriate to incorporate this Policy together with any proposed changes into the new LN and R Codes to rationalise subdivision control policies.

Nevertheless, a number of issues and proposed changes have been identified in relation to the amended Policy that we consider should be addressed to provide greater certainty and clarity as well as make it more reflective of current Industry practice. A summary of these issues and our recommendations is provided below.

Key Comments

1. Section 4.2.3 – Variations to Average Lot Size, Beneficial Outcome

The drafting of this section requires clarification. Currently, there are three bullet points listed under the heading “Variations to average lot size”. The third point suggests that any variation to the average lot size, irrespective whether it is greater or less than 5%, requires an applicant to demonstrate the subdivision will provide a “beneficial outcome to the community”. It is unclear whether this is a deliberate policy position or whether the third bullet point was intended to represent a sixth criterion in the case of variations to the average lot size in excess of 5%.

It is understood that the WAPC has for some time approved subdivisions that contain a variation to the average lot size of less than 5% without question. Presumably there have been few if any demonstrable adverse consequences that have resulted. This being the case, it is unclear why the amended policy would continue to require applicants demonstrate such minor variations will provide a “beneficial outcome”?

Like the existing Policy, the amended Policy offers some examples of what constitutes a “beneficial outcome”, however it is difficult to see how having to submit information in relation to any of these factors contributes to the key Policy objectives, of “a consistent and coordinated approach” and to “supply residential lots in a range of shapes and sizes”. Minor variations to the average lot size are becoming increasingly common, particularly within small-scale infill subdivisions. Requiring applicants to demonstrate a “beneficial outcome” in such circumstances (particularly where this was not recently mandated) is not only considered an unreasonable impost, but will inevitably create some level of uncertainty whether such variations will continue to be approved.

However, if it was intended that this criterion only apply where variations to the average lot sizes are in excess of 5% (i.e.; as a sixth criterion) then this would represent a more logical change to the policy. Nevertheless, the 5 criteria listed under “Variations to average lot size” seem to provide sufficient controls for subdivision where the average lot size is greater than 5% with the requirement for a “beneficial outcome to the community” adding little value to the assessment.

It is therefore recommended that this requirement (mentioned twice in Section 4.2.3) be deleted from this section of the Policy.

2. Section 4.2.3 – Variations to Average Lot Size, Upper Density Limit

There does not appear to be a clear reason for limiting the upper density for variations greater than 5% to R30. It is therefore considered that the upper density limit for the variation should be R35 as this would be consistent with the R40 threshold for Part 6 (Design elements for multiple dwellings) of the R-Codes.

3. Section 4.2.3 – Variations to Average Lot Size, Clarification of Regional Road

The term ‘regional road’ specified in criterion 2 needs to be better defined. Is this intended to refer to roads reserved under region schemes (in which case guidance will be needed for non-region scheme areas), or Main Roads’ classifications, or Liveable Neighbourhoods classifications? It should be noted that some roads are designed to be access-limited even if not reserved as a regional road. There are also cases where some regional roads can accommodate access, particularly where there is an existing access point.

4. Section 4.2.3 – Variations to Average Lot Size, Limit to Corner Lots and Dual Street Frontage

There does not appear to be a clear reason for limiting subdivisions proposing variations to the average lots size greater than 5% to corner lots or lots with two ‘road’ frontages. This criterion should be deleted with such variation also being extended to strata lots (including survey-stratas with access via common property).

There is no material difference between a residential lot that results from the subdivision of a corner lot or a lot with right of way access as compared to a street fronting lot resulting from a survey-strata save perhaps one distinction, the existence of a common property lot (access leg). However, it is very difficult to see how an internal driveway that runs parallel the side boundary of a strata subdivision has any direct impact on the ability of internal lots being developed. In fact, it is arguably preferable allowing this variation to apply to survey-stratas with access via common property as the ‘front setback’ to internal lots is often as little as 1m whereas street fronting lots require a conventional front setback. Therefore, when comparing two lots of similar size, the lot with access to a common property driveway will have greater usable land than a street fronting lot as there is less loss of land within the front setback.

5. Section 4.2.3 – Variations to Minimum and Average Lot Size, Beneficial Outcome

Demonstration of a “beneficial outcome” where a variation to the minimum lot size is proposed is ultimately more acceptable than in the case where only the average lot size is being varied. Nevertheless, as with point 1 above, it appears a relatively arbitrary basis for assessing the validity of a subdivision proposal and seems to add little real value and should be deleted from the Policy.

For example, the second listed criterion refers to “a significant element that contributes toward the amenity”! This is a very subjective criterion and demonstration of this outcome being beneficial cannot necessarily be quantified or measured. The third criterion refers to “lots with separate and sufficient frontage” however, the R Codes do not even specify lot frontages for lots above the R25 Code, therefore, demonstration of a beneficial outcome in this instance could equally be subjective.

Should the WAPC wish to retain the need for variations to the minimum lot size requiring some manner of justification, then any criterion specified must be consistently applied and clearly measurable and not capable of individual bias and interpretation. It is therefore recommended that the criteria listed as examples of providing a “beneficial outcome” be reviewed and where necessary replaced.

6. Section 4.2.3 – Where Local Government Objects

In the case of a local government objecting to a proposed variation, the Policy currently states that it “should be supported by reasons with reference to the criteria set out” in the Policy. This requirement should be amended to make it mandatory for objections to be properly supported by reasons that are specific to the proposal in question. Otherwise, a generic objection should be dismissed.

Further to the above, where the WAPC is of the view to approve a variation where a local government has objected, the Policy suggests that further consultation with the local government will be undertaken. This should be deleted from the Policy as it would result in unnecessary delays to an already lengthy process. Ultimately, if an objection is received to a proposed variation and such objection is properly justified by the local government, further consultation would not be warranted as it would be unlikely to yield further information concerning the local government’s position.

7. Section 4.4.2 and 4.5.2 – Small Residential Lots

This section is generally consistent with the existing Policy and states where a lot is proposed less than 260m² the WAPC may require a building be constructed to plate height prior to deposited plans of survey or vacant/survey-strata plans being endorsed.

UDIA understands the WAPC’s concern that small lot subdivisions (especially within in-fill areas) should create lots that are capable of being developed with ‘acceptable’ forms of housing. However, lot sizes have progressively reduced over the last 5 years to a point where lots of around 260m² are relatively commonplace and no longer regarded as small.

The requirement to construct a dwelling to plate height is considered an antiquated and overly onerous requirement that was first introduced at a time when ‘small’ lots were unusual in the Perth market and development on such lots was considered difficult. This of course is no longer the case with Perth’s homebuilders now considerably more sophisticated and housing typologies for small lots available in abundance.

The UDIA believes that this requirement should not be carried forward from the existing Policy as it is unnecessary and a potential deterrent to some small lot subdivisions.

Should the WAPC not agree and wish to retain some level of development control on small lots, then S.4.5.2 should be amended to provide a more consistent approach between greenfield and infill areas. Clause 4.5.2 already seems to suggest that construction to plate height is not warranted in the case of a DAP/LDP being adopted (mostly applicable to greenfield areas). UDIA would suggest that the requirement for buildings to be constructed in areas not covered by a DAP/LDP be substituted with the requirement for development approval to be obtained as this not only demonstrates the capacity for a lot to be developed, but also provides for a more comprehensive form of development control than a DAP/LDP. Future owners then also have the choice to either proceed with the approved plan or alternatively, proceed with a different style of housing if they choose to do so!

In the event that the WAPC is still not in agreement, then a reasonable compromise is to reduce the lot size where this type of requirement can be applied to in-fill subdivisions creating lots less than 220m² as this would be consistent with an R35 code and directly relates to the comment in Point 2 above. This requirement should not be applicable to greenfield subdivisions which should remain exempt from any dwelling construction conditions at subdivision stage.

8. Miscellaneous Comments

- i. It is recommended that reference to previous Policy changes should be included into the Background Notes for this and other Policy/SPP Amendments in future, to ensure modifications can be more easily understood and tracked.
- ii. It is noted that there are minor refinements to terminology and expression throughout. These improve the flow of the document and are supported.
- iii. The phrase “meaning below the minimum and below the average lot sizes” in Section 4.2.3 should state “and/or”, not “and”.
- iv. The shortening of the sections titled “Connection to sewerage” and “Underground power” is supported, as it ensures minimal duplication of separate policies. It is suggested that these sections be grouped, given that both relate to utility services.
- v. Clause 4.2.1 states that lot sizes greater than the specified minimum will be considered. This statement seems somewhat unnecessary as lot sizes both larger and smaller than the minimum is required in order to achieve the average.
- vi. Clause 4.2.2 states that, in greenfield subdivisions, the WAPC may consider subdivisions below the minimum providing the subdivision complies with the average. This would suggest that an average lot size greater than the average prescribed by the relevant code is not compliant? It is recommended that the phrase “complies with the average” is replaced with “achieves the average”.

- vii. It is suggested that that the final three bullet points in Section 4.2.3 not be bullet-pointed, in the manner of the existing version of DC 2.2. The current formatting implies that they are under the heading “Variations to minimum and average lot size” which is presumed not to be the case.
- viii. Clause 4.4.1 states a preferred frontage to depth ratio of 1:1.5 and 1:2. While these may have been appropriate when DC2.2 was last updated, they no longer reflect contemporary subdivision and housing design. For example, cottage lots are generally 7.5m x 30m (1:4) and squat lots are 15m x 20m (1:1.3). The frontage/depth ratio should either be updated to reflect contemporary lot design or removed entirely.
- ix. Section 4.6.1 should clarify that the term “battleaxe lot” does not include lots taking access from a common property access leg, even if this looks like a battleaxe in terms of layout. This would enable deletion of the words “including survey-stratas with no common property” from Section 4.7.2.
- x. The statement in Section 4.6.5 that the WAPC will not accept variations to battleaxe lot sizes should be alluded to in Section 4.2.3.
- xi. The phrase “to overcome the sense of confinement from lack of street frontage” in Section 4.6.6 is unnecessary, as well as subjective, dependent on built form, and suggestive that the other battleaxe lot size regulations in the R-Codes are inadequate. It is recommended that this phrase be deleted.
- xii. Section 4.8.3 duplicates Liveable Neighbourhoods and should be deleted.

In closing, UDIA also recommends that in the future, prior to any policy review or update being undertaken, the Department for Planning should prepare a Discussion Paper on the scope and timeline for the review for circulation and input by the peak industry bodies and key stakeholders. This would assist in the avoidance of unnecessary work (such as the recent unnecessary ‘rewrite’ of LN) and ensure stakeholders are engaged at the commencement of any review process.

Thank you for the opportunity to provide feedback on the proposed policy. The UDIA looks forward to working with the Department on further refinement of the policy.

Yours sincerely



Allison Hailes
Chief Executive Officer