

Case Note: Bilecki and Western Australian Planning Commission

Public open space within structure plan locality

In [Bilecki and Western Australian Planning Commission \[2019\] WASAT 26](#), the Tribunal dismissed an application seeking review of a 10% public open space (POS) condition imposed on a 31 lot residential subdivision in Burrekup. The applicant's argument was that the condition should not be imposed because there already existed 10% POS in the locality (within 800 metres of the site) (23).

The Tribunal determined that in circumstances where the strategic planning contemplated by a structure plan remained the local authority's current strategy, the relevant locality to be considered was the endorsed structure plan (42). The structure plan contemplated the provision of 10% POS within the area to be subdivided and equal contribution to provision of that POS by all of the owners of land within the structure plan. There is currently no POS within the Structure Plan area (44).

The Tribunal determined it is not orderly and proper planning to consider what POS may or may not be located within 400 and 800 metre catchments, as it would undermine the ability to strategically plan and co-ordinate areas through the use of structure plans (45). The Tribunal found the condition was certain, had a planning purpose, fairly and reasonably related to the subdivision and was not unreasonable. Therefore, there was no reason to depart from the planning framework.