City of Melville

Local Planning Scheme No.6

Amendment No. 15

Kardinya District Centre

Prepared by: element advisory

Planning and Development Act 2005

RESOLUTION TO PREPARE AMENDMENT TO LOCAL PLANNING SCHEME

Local Planning Scheme Number 6

Amendment Number: 15

Resolved that the Local Government pursuant to section 75 of the *Planning and Development Act 2005*, amend the above Local Planning Scheme as follows:

1. **Amend the scheme map by:**

   (a) Redesignating the "Centre" zone classification applicable to the Kardinya District Centre from "C3" to "C2" to reflect adoption of the Activity Centre Plan.

   (b) Deleting the "Centre" zone for a width of 12.19m wholly within Lot 17 (1-15) South Street along the length of the eastern boundary of Lot 17 (1-15) South Street and designating it as local road reserve.

   (c) Including within the boundary of the Kardinya District Centre the "AR1" 'Additional Requirement' designation.

   (d) Rezoning various lots on the eastern side of Gilbertson Road between Williamson Road and South Street from "Residential R50" zone to "Mixed-Use R80" zone.

   (e) Amending the R-Coding of Lot 315 (No.42) Gillet Drive from "R20" to "R60".

   (f) Amending the R-Coding of lots zoned "Residential" within the Kardinya District Centre Activity Centre Plan area from "R25" and "R40" to "R40" and "R60" as required to reflect density codes identified within the Kardinya District Centre Activity Centre Plan.

2. **Amend the scheme text by:**

   (a) Amend 'Note 1' of Table 3 – Zoning Table to state: Kardinya Centre – Due regard to be given to the Kardinya Activity Centre Structure Plan. Land use permissibility shall be in accordance with Centre-C3 zone.

   (b) Amend clause 19 additional uses, Table 4 to remove additional use No.9.

   (c) Amend Table 7 – Additional site and development requirements, No.1, Centre Zone – C3 (District Centres) (3) (a) to remove the plot ratio reference 'Kardinya 1.0'.

   (d) Amend clause 33 – Additional site and development requirements for areas covered by structure plan, activity centre plan or local development plan, by adding the following:

      (1) Table 8 sets out requirements relating to development that are included in structure plans, activity centre plans, and local development plans that apply in the scheme area.

(2) The specific development standards set out under this Clause and the associated Schedule B prevail to the extent of any inconsistencies with any other standard or provisions of the Scheme.

Table 8 – Additional Requirements that apply to land in Scheme Area

No.	Description of Land		Requirement
1	Kardinya Activity Centre Plan	(a)	Development shall comply with any site or development requirement set out in Schedule B of this scheme.

(e) Insert Schedule B – Additional site and development requirements for area covered by structure plan, activity centre plan or local development plan.

<u>Kardinya</u>

a. The subdivision and development of all land within the Kardinya Activity Centre shall have due regard to the Kardinya Activity Centre Plan.

b. The owner of any lot affected by the 'Future Main Street' within the C2 zone identified in a WAPC approved Activity Centre Plan shall cede the required area free of cost to the City as a condition of any significant development or subdivision approval and construct and drain the road to the specification and satisfaction of the City.

c. The owner of any lot affected by a 'Future Easement In-Gross' identified in a WAPC approved Activity Centre shall be required to be provide an easement in gross to the benefit of the City, free of cost, as a condition of any significant development or subdivision approval and construct and drain the easement area to the specification and satisfaction of the City.

d. The following are hereby extinguished:

1. The covenant affecting the land comprising Lot 17 on Diagram 47556, 1 South Street, Kardinya (Certificate of Title Volume 1614, Folio 190) which is registered against the title of the land (Registration No. A961664) made pursuant to a deed dated 19 November 1974 between The Swan Brewery Company Limited and Karshop Pty Ltd and Kardinya Projects Pty Ltd.

2. The easement affecting the land comprising Lot 17 on Diagram 47556, 1 South Street, Kardinya (Certificate of Title Volume 1614, Folio 190) which is registered against the title of the land (Registration A961669) made pursuant to a deed dated 19 November 1974 between The Swan Brewery Company Limited and Karshop Pty Ltd and Kardinya Projects Pty Ltd.

3. The easement affecting the land comprising Lot 17 on Diagram 47556, 1 South Street, Kardinya (Certificate of Title Volume 1614, Folio 190) which is registered against the title of the land (Registration C259866) made pursuant to a deed dated 31 October 1979 between The Equity Trustees Executors and Agency Company Limited and Euston Nominees Pty Ltd.

e. Residential lots that are identified within the Kardinya Activity Centre Plan which abut the South Street road reservation are required to meet the following:

1. The determining authority shall not grant approval to any increase in single, grouped or multiple dwelling yield or recommend approval for subdivision in the area identified, unless:

    I. A Local Development Plan has first been prepared and approved over the site;
    II. The subject lot(s) or site is provided with permanent legal access to a public road other than South Street that is capable of providing trafficable vehicle access to the site; and
    III. The subdivision and/or development does not entirely prejudice the ability for any other site within the same street block from obtaining access from a public road, other than South Street.

The amendment is standard under the provisions of the *Planning and Development (Local Planning Schemes) Regulations 2015* for the following reason(s):

(a) The Amendment is consistent with the Kardinya Activity Centre Plan which has been considered by the Western Australian Planning Commission.

(b) The Amendment is consistent with the purpose and intent and of the C2 zone of Local Planning Scheme No.6.

(c) The Amendment does not result in any significant environmental, social, economic or governance impacts on land in the scheme area.

(d) The Amendment satisfies the definition of a standard amendment and does not reflect the characteristics of a complex or basic amendment.

Dated this___ day of _____ 20_____

_____
(Chief Executive Officer)

PLANNING REPORT

1. INTRODUCTION

The purpose of this proposed amendment is to facilitate the implementation of the Kardinya District Activity Centre Plan (KDACP).

The KDACP has been prepared as per the requirements of State Planning Policy 4.2 Activity Centres for Perth and Peel.

The Statutory Planning Committee (SPC) of the Western Australian Planning Commission (WAPC) at its meeting of 21 September 2021. The WAPC resolved the following:

1. *Require the City of Melville to advertise modifications to the Kardinya Activity Centre Plan in accordance with Attachment A, in accordance with the Clause 22 (2) of Schedule 2 – Deemed Provisions for Local Planning Schemes, Planning and Development (Local Planning Schemes) Regulations 2015 (Deemed Provisions);*

2. *Include Attachment A the Key Public Space, Indicative Centre Street and Indicative Centre Pedestrian Links as shown on Attachment 9 – City of Melville Proposed Modified ACP Plan;*

3. *Request the City of Melville advertise these modifications to the Kardinya Activity Centre Plan concurrently with a Scheme Amendment required to implement the ACP, in accordance with Clause 18 of the Deemed Provisions or a longer period as may be required to be consistent with the Scheme Amendment Process; and*

4. *Request that the City of Melville subsequently provides a report on the Kardinya Activity Centre Plan modifications to the Western Australian Planning Commission in accordance with clause 22(2) of the Deemed Provisions.*

A revised KDACP has been prepared in accordance with Resolutions 1 & 2 above. The Scheme Amendment is proposed in response to Resolution 3.

2. AFFECTED AREA

The subject site is located within the suburb of Kardinya and is situated approximately 13km southwest of the Perth Central Business District. The proposed Scheme Amendment relates to the area shown in Figure 1. The Amendment area comprises the Kardinya District Centre and adjoining residential area included within the boundary of the Kardinya District Centre Activity Centre Plan (KDCACP).

The District Centre comprises the Kardinya Park and Kardinya Square Shopping Centre sites with the adjoining residential component characterised by a mix of historic low/medium density built form.

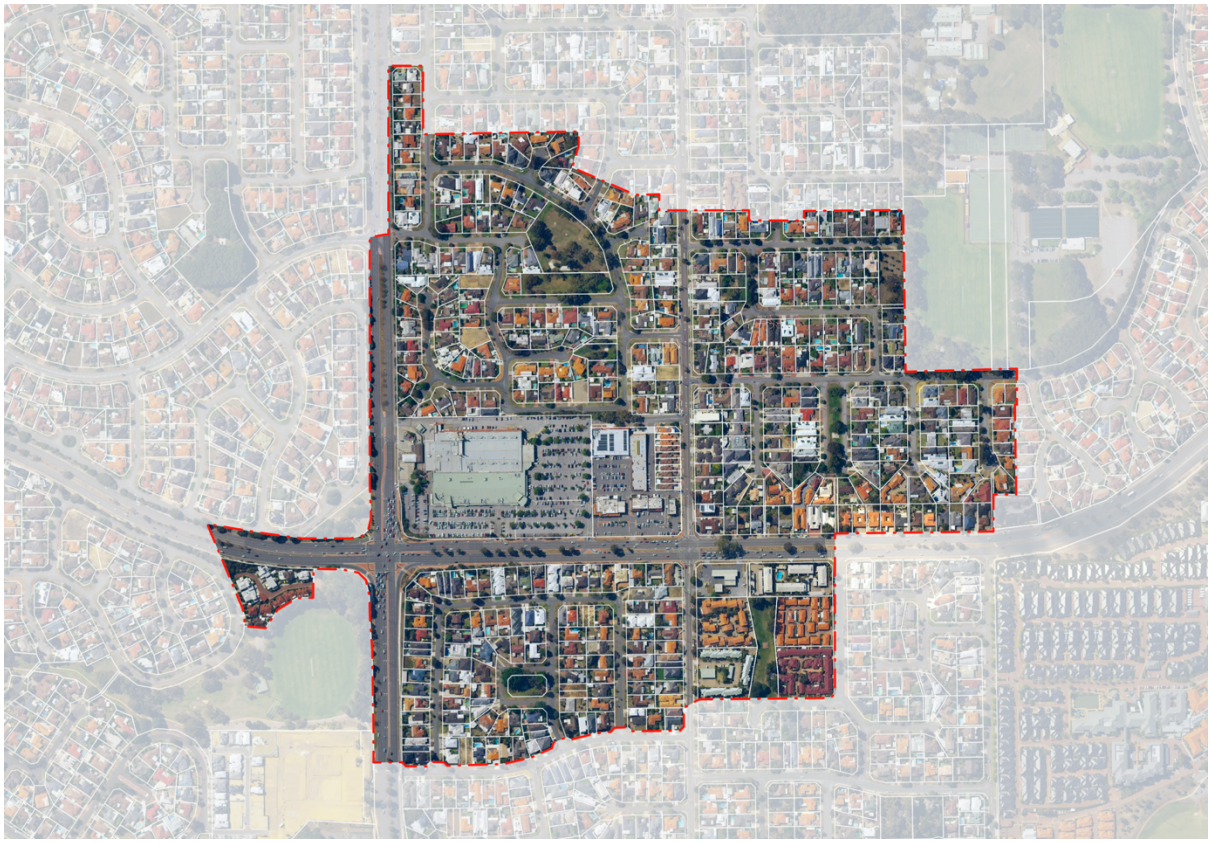


FIGURE 1: KARDINYA SCHEME AMENDMENT & ACTIVITY CENTRE PLAN BOUNDARY

3. BASIS FOR SCHEME AMENDMENT

The Scheme Amendment proposes to amend LPS6 only where necessary to implement the KDCACP. On this basis the following modifications to LPS6 are required:

- Scheme Map: Re-designate the Centre zone classification applicable to the Kardinya Park District Centre from “C3” to “C2” to reflect adoption of an Activity Centre Plan for the Kardinya District Centre.
- Scheme Map: Re-designate the eastern edge of Lot 17 South Street from “Centre” zone to “Local Road Reservation”
- Scheme Map: Rezone various lots on the eastern side of Gilbertson Road between South Street and Williamson Road from “Residential R50” to “Mixed Use R80” as per the KDCACP.
- Scheme Map: Amend density codes within the KDCACP area as required to reflect the density codes as proposed within the KDCACP.
- Scheme Text: Amend the Scheme Text as required to facilitate the implementation of the KDCACP including modification where existing contents of the Scheme contradict KDCACP proposals and inclusion of additional clauses as required to facilitate implementation of the KDCACP.

In addition to proposals specifically identified in the KDCACP the Scheme Amendment proposes to extinguish one covenant and two easements which impact on the ability for the District Centre to be developed to its potential consistent with the local and State planning framework.

Section 69(1) of the *Planning and Development Act 2005* (PD Act) provides the ability for a planning scheme (or amendment) to make "*provision for all or any purpose, provisions, powers or works referred to in Schedule 7."*

Clause 11(1) of Schedule 7 of the PD Act provides that a planning scheme may provide for the *"extinguishment or variation of any restrictive covenant, easement or right of way."*

The PD Act is not discriminative as to the limit of the application of extinguishing encumbrances via a Scheme Amendment process but any proposal to amend or remove an encumbrance must be based on justifiable planning grounds.

Covenant

Covenant A961664 has existed over the site since 1975 when the original landowner had intentions of using a portion of land for the purposes of an industrial scale brewery. The original landowner subsequently subdivided off and sold the majority of the land subject to a covenant to prevent competition with its planned brewery. The brewery ultimately didn't eventuate, and the balance of the site was subsequently sold off.

The Covenant restricts the use of any part of the Kardinya Park Shopping Centre property for any purpose which involves the sale of liquor. It was put in place as part of a commercial arrangement and was not applied to the site in the first instance to achieve any specific land use planning objective. The balance of the site, once sold, underwent numerous subdivisions, amalgamations and strata-titling resulting in substantial entities with registered interests in the land now comprising the District Centre.

It is noted that the land burdened by the covenant has accommodated the sale of liquor, in contradiction of the covenant, for over 20 years. The owner of the Kardinya Park Shopping Centre site has advised that it has completed searches and attempted to provide notice and obtain consent of relevant parties in order to try and remove the covenant via the Supreme Court and Registrar of Titles. Obtaining the simultaneous consents of all those who had an interest in the land (as required) was not achievable as not all of the registered interest holders could be found resulting from a regular turnover of interest holders in the totality of the original landholding.

As noted, Clause 11 (1) of Schedule 7 of the PD Act 2005 provides the authority for a planning scheme to extinguish a restrictive covenant where there is a planning purpose in doing so.

It is a clear intent of both the State and local planning framework for a District Centre to provide a combination of land uses that relate to retail, entertainment and medical. The combination of these land uses accommodates the daily and weekly needs of the immediate catchment and locality. To fulfil this vision, the ability to sell liquor throughout the District Centre is an important component of a modern, well-functioning and vibrant entertainment precinct and District Centre. The delivery of this vision will be constrained if the historical covenant remains.

The City's Local Planning Strategy, endorsed by the WAPC on 18 April 2016 outlined the following in respect to the future vision of Kardinya District Centre:

> *The modelling for Kardinya indicated that the centre is trading close to the maximum floorspace for the catchment size. Increasing the amount of floorspace at the centre is likely to require an increase in the catchment size.*
>
> *This could be achieved through increasing the size of the local population increasing the attractiveness of the centre (i.e. significantly increasing the offer of goods and services, and therefore floorspace, at the centre).*
>
> *The vision for the future of centre should be considered in the context of the role the centre is playing in meeting local demand for goods and services, and the role it plays in the overall activity centre network.*

In order to fulfil this vision and achieve the intended development outcome of the KDACP, after hours entertainment land uses are supported and encouraged to operate throughout the District Centre.

Specifically, there are a number of land uses which are explicitly defined in LPS6 by their ability to be licensed under the *Liquor Control Act 1988*. These land uses can be approved under the Scheme within the "Centre" zone. The historical covenant has the potential to prevent these land uses from operating, despite being approvable uses under LPS6. The planning objective for an activated mixed use district centre is therefore potentially constrained by the historic covenant. As such there is a genuine planning purpose served by providing for extinguishment of the covenant as part of LPS6 via this amendment.

Historical Easements

The Scheme Amendment also proposes to extinguish two historical easements under Clause 11(1) of Schedule 7. These easements directly affect the Kardinya Park Shopping Centre property. A961669 extends across the northern boundary of the property, while C259866 runs in a north-south orientation along the eastern boundary of the property where it abuts the adjoining Kardinya Square Shopping Centre property.

Easement A961669 was originally created to provide continued access to North Lake Road for the eastern part of the now District Centre at a time when the surrounding road network was underdeveloped. This route became superfluous when surrounding road upgrades occurred in the late 1970's.

The easement has also been severed from the lots it was originally intended to service. When the Brophy Street road reservation was created, it was made wider (18 metres) than the existing 10 metre wide easement. This led to the eastern lots no longer having direct access to the easement. The area impacted by the easement was also required to be gated by the City of Melville due to anti-social behaviour and instances of 'rat-running' in the early 1990's. This restricted use of this area to deliveries and staff car parking only.

These management measures continued to be implemented and have been further reinforced by the conditions imposed on subsequent development approvals. As such the continued need for this easement is questioned.

Again, an easement can be extinguished where it is demonstrated there is a planning purpose in doing so. It may be considered that the easement was originally put in place to provide a planning purpose in providing access to the land in question and that this planning purpose has now been assumed by the public road infrastructure now in place.

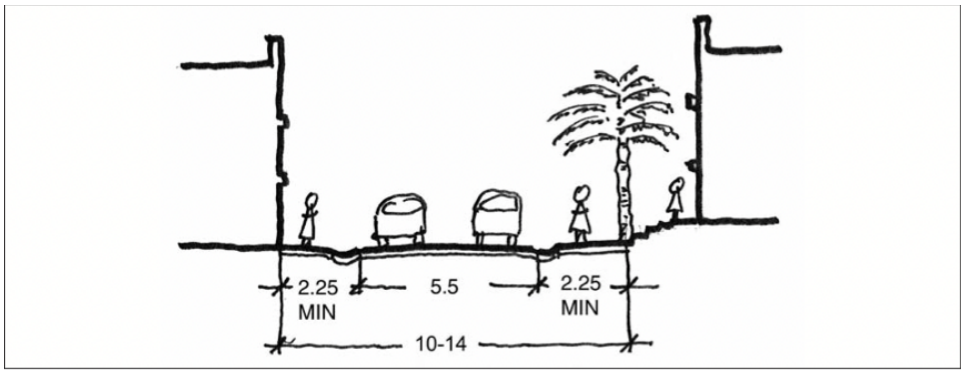
The original intent of Easement C259866 was to provide access to the building currently accommodating a supermarket on former Lot 31 as the land to the east of the centre had been subdivided with no lawful access to South Street at that point in time. This changed when the land was re-amalgamated and then strata-titled.

The KDCACP identifies the development of a District Centre "Main Street" along the alignment of current easement C259866. This has also been identified and accommodated within the development approval issued for the redevelopment of the Kardinya Park Shopping Centre site. The easement purpose could potentially limit street level activation initiatives such as alfresco dining, street and landscaping etc. envisaged under the KDCACP as it restricts use of this area for access purposes only. On this basis there is a planning purpose to extinguish this easement in support of the KDCACP.

To ensure the purpose/intent of the easement remains protected, under the KDCACP a 'local road' reservation is proposed to be provided over the existing easement which has a total width of 12.19 metres. This 'local road' reservation will be entirely within the Kardinya Park Shopping Centre property. It is intended that Lot 17 will cede this land to the Crown for the creation of a road reserve as part of a future subdivision process. This will ensure the purpose of the easement remains but that street activation can be implemented.

While this road reservation may be added to in the future as and redevelopment within the abutting Lot 31 occurs the amendment does not include any part of Lot 31 within the proposed reservation.

The 12.19 metres proposed within Lot 17 can function as a main street environment. In accordance with Liveable Neighbourhoods 2009, the future main street can be considered as a *Small Town Centre Street* which ranges between 10-14 metres in width, see extract below.



Liveable Neighbourhoods 2009: Small Town Centre Street

The reservation will not trigger any compensation claims as there is no injurious affection as the same land is precluded from development by an easement in any event.

Inserting a provision into a planning scheme which requires a road reserve to be ceded has been prescribed previously. The City of Stirling Local Planning Scheme No.3 as part of the Mirrabooka Activity Centre Plan mandated a similar requirement stating:

6.8.12 Public Road Connections
AMD 85 GG 12/06/18

a) The owner of any lot affected by a 'Fixed Future Road Reserve' or 'Indicative Future Road Reserve' delineated in a WAPC approved Activity Centre Plan, shall cede the required road reserve free of cost as a condition of development or subdivision approval and construct and drain the road to the specification of the Council.

This is important to note, as there is existing precedent for scheme provisions to prescribe specific requirements to help successfully achieve the intent of an ACP.

4. CONCLUSION

The proposed amendment provides statutory support to implement the KDACP and is consistent with the Statutory Planning Committee resolution on behalf of the WAPC made on the 21 September 2021.

Planning and Development Act 2005

RESOLUTION TO PREPARE AMENDMENT TO LOCAL PLANNING SCHEME

Local Planning Scheme Number 6

Amendment Number: 13

Resolved that the Local Government pursuant to section 75 of the *Planning and Development Act 2005*, amend the above Local Planning Scheme as follows:

Scheme Map Changes:

(a) Redesignating the "Centre" zone classification applicable to the Kardinya District Centre from "C3" to "C2" to reflect adoption of the Activity Centre Plan.

(b) Deleting the "Centre" zone for a width of 12.19m wholly within Lot 17 (1-15) South Street along the length of the eastern boundary of Lot 17 (1-15) South Street and designating it as local road reserve.

(c) Including within the boundary of the Kardinya District Centre the "AR1" 'Additional Requirement' designation.

(d) Rezoning various lots on the eastern side of Gilbertson Road between Williamson Road and South Street from "Residential R50" zone to "Mixed-Use R80" zone.

(e) Amending the R-Coding of Lot 315 (No.42) Gillet Drive from "R20" to "R60".

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Scheme Text Changes:

(a) Amend 'Note 1' of Table 3 – Zoning Table to state: Kardinya Centre – Due regard to be given to the Kardinya Activity Centre Structure Plan. Land use permissibility shall be in accordance with Centre-C3 zone.

(b) Amend clause 19 additional uses, Table 4 to remove additional use No.9.

(c) Amend Table 7 – Additional site and development requirements, No.1, Centre Zone – C3 (District Centres) (3) (a) to remove the plot ratio reference 'Kardinya 1.0'.

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Table 8 – Additional Requirements that apply to land in Scheme Area

No.	Description of Land		Requirement
1	Kardinya Activity Centre Plan	(b)	Development shall comply with any site or development requirement set out in Schedule B of this scheme.

(e) Insert Schedule B – Additional site and development requirements for area covered by structure plan, activity centre plan or local development plan.

<u>Kardinya</u>

(a) The subdivision and development of all land within the Kardinya Activity Centre shall have due regard to the Kardinya Activity Centre Plan.

(b) The owner of any lot affected by the 'Future Main Street' within the C2 zone identified in a WAPC approved Activity Centre Plan shall cede the required area free of cost to the City as a condition of any significant development or subdivision approval and construct and drain the road to the specification and satisfaction of the City.

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(d) The following are hereby extinguished:

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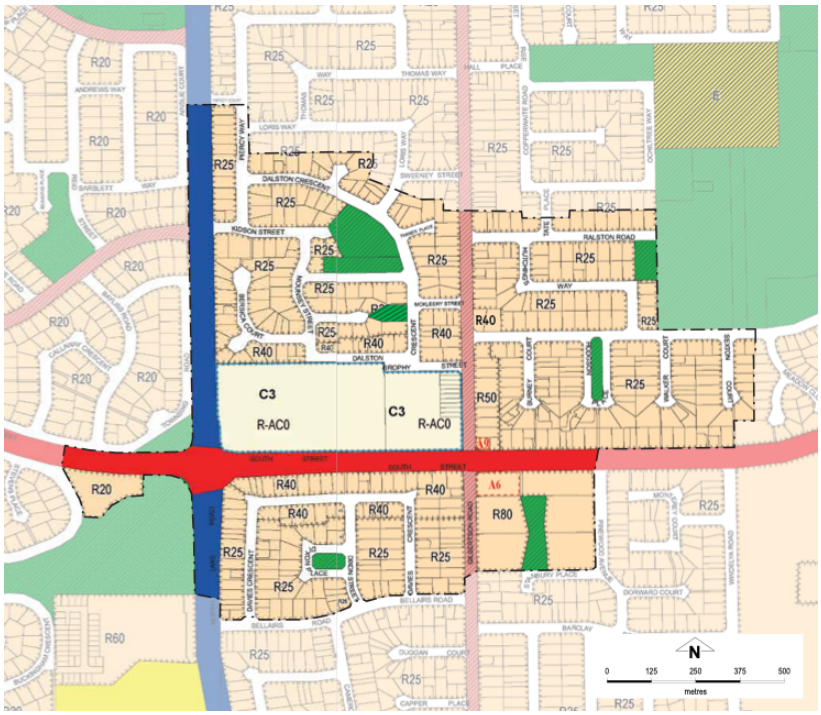
iii. The subdivision and/or development does not entirely prejudice the ability for any other site within the same street block from obtaining access from a public road, other than South Street

City of Melville

Local Planning Scheme No.6

Existing Zoning



AMENDMENT MAP

LEGEND

- ACP Boundary
- R-Code Boundary
- Centre
- Residential
- Mixed Use
- Public Open Space
- Primary Regional Roads
- Other Regional Roads
- Local Distributor Road
- AR1 — Additional Site Requirements
- A1 — Additional Use
- Local Road

Proposed Zoning

LEGEND

- ACP Boundary
- R-Code Boundary
- Centre
- Residential
- Mixed Use
- Public Open Space
- Primary Regional Roads
- Other Regional Roads
- Local Distributor Road
- AR1 — Additional Site Requirements
- A1 — Additional Use
- Local Road

FORM 6A

COUNCIL ADOPTION

This Standard Amendment was adopted by resolution of the Council of the City of Melville at the Ordinary Meeting of the Council held on the _____
_____

……
MAYOR

……
CHIEF EXECUTIVE OFFICER

COUNCIL RESOLUTION TO ADVERTISE

by resolution of the Council of the City of Melville at the Ordinary Meeting of the Council held on the _____ proceed to advertise this Amendment.

……
MAYOR

……
CHIEF EXECUTIVE OFFICER

COUNCIL RECOMMENDATION

This Amendment is recommended for support by resolution of City of Melville at the Ordinary Meeting of the Council held on the _____ and the Common Seal of the City of Melville was hereunto affixed by the authority of a resolution of the Council in the presence of:

……
MAYOR

……
CHIEF EXECUTIVE OFFICER

WAPC ENDORSEMENT (r.63)

……
DELEGATED UNDER S.16 OF THE P&D ACT 2005

DATE……

FORM 6A – CONTINUED

APPROVAL GRANTED

……
MINISTER FOR PLANNING

DATE……

Filename: Kardinya Scheme Amendment CoM Revisions[1][1].docx
Directory:
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/Data/Documents
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Author: Campbell Green
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