

**PROPOSED AMENDMENTS / RESOLUTIONS AT
COMMITTEE OR COUNCIL MEETINGS**
(Elected Members)

Please forward this form to – Governance@melville.wa.gov.au

Name:	Councillor Margaret Sandford
Date of Meeting:	17 November 2020
Meeting of the:	Ordinary Meeting of Council
Item No.	P20/3883
Title of Item	Initiation of Amendment to Southern Boundary of CBACP

Disclaimer: Where administration has provided any assistance with the framing and/or wording of any motion/amendment to the Elected Member who has advised their intention to move it, the assistance has been provided on an impartial basis. The principle and intention expressed in any motion/amendment is solely that of the intended mover and not that of the officer/officers providing the assistance. Under no circumstance is it to be expressed to any party that administration or any officer holds a view on this motion other than that expressed in an official written or verbal report by administration to the Committee or Council meeting considering the motion.

PROPOSED AMENDMENT OR REJECT AND REPLACE MOTION:

(If an amendment is proposed, please identify the words being amended and reasons for the amendment) –

That the Council:

1. In accordance with Schedule 2, Part 5 of the *Planning and Development (Local Planning Schemes) Regulations 2015* resolves to prepare and initiate the following amendment to the Canning Bridge Activity Centre Plan:
Modify the southern boundary of the Canning Bridge Activity Centre Plan so that the boundary follows the carriageways of Helm Street, Sleat Road and Wren Street to Ullapool Road, Mount Pleasant, in accordance with Attachment 1.
2. Pursuant to Section 75 of the *Planning and Development Act 2005*, resolves to prepare and initiate Scheme Amendment No. 9 to Local Planning Scheme No. 6 as follows:
 - a) Modify the southern boundary of the Canning Bridge Activity Centre Plan so that the boundary follows the carriageways of Helm Street, Sleat Road and Wren Street to Ullapool Road, Mount Pleasant, in accordance with Attachment 1.
 - b) Modify the zoning of those properties excluded from the Canning Bridge Activity Centre Plan from Centre Zone RAC-O to Residential R20.
3. Resolves that the proposal is considered to be a basic amendment to Local Planning Scheme No. 6 within the provisions of Regulations 34(e) and (g) of the *Planning and Development (Local Planning Schemes) Regulations 2015*, as:

- a) Reg. 34(e) - The amendment is to make the scheme consistent with State Planning Policy 4.2 clause 6.3.1(2); and Appendix 2 Clauses 2, 5, 5.1, 6.4, and 7.2; and
 - b) Reg. 34(g) - The amendment is necessary to make the scheme map consistent with the proposed amended southern boundary of the CBACP and the goals of the CBACP.
4. Directs the CEO pursuant to regulation 58 of the *Planning and Development (Local Planning Schemes) Regulations 2015* to provide the amendment to the Western Australian Planning Commission within 21 days.

A. Reasons for Amendment/Resolution 1

1. Proposed resolution 1 removes the requirement to advertise the modification to the southern boundary of the CBACP. Regulation 45(3) of the Planning and Development (Local Planning Schemes) Regulations 2015 (**Regulations**) empowers the local government to decide not to advertise an amendment to an activity centre plan if, in the opinion of the local government and the Commission, the amendment is of a **minor** nature. Therefore Council must form its own view on whether it is a minor amendment.

2. The Proposed CBACP boundary modification substantially meets the following criteria for a “**minor**” amendment to an approved structure plan, as stated in the Regulations Structure Planning Framework August 2015 clause 17.1, because it is a change or departure which does not materially:

- (a) alter the purpose and intent of the structure plan;
- (b) change the intended lot/dwelling yield by more than 10 per cent (only by an estimated 6%);
- (c) adversely impact upon the amenity of adjoining landowners and occupiers. (Rather it increases their amenity by restoring their R20 rights to protection from overshadowing by no more than 25% (instead of in excess of 50% in the case of Ms Waldron-Hartfield) and protections of visual privacy);
- (d) unduly restrict the use and development of adjoining land (no landowner has exercised the right to give a deputation or make submissions to Council objecting to the proposed boundary modification since the petition was presented to Council in May 2020 or otherwise to my knowledge. The density targets will be met in any event.); or
- (e) significantly impact on infrastructure provision or impact upon the environment.

B. Reasons for Amendment/Resolution 3

3. Council can conclude that the proposal is a **basic** amendment to Local Planning Scheme No. 6 if the amendments fall under any one or more of the following Regulations 34(e) and (g):

- (i) Reg 34(e) - The amendment is to make the scheme consistent with the following provisions of State Planning Policy 4.2:
 - (A) Clause 6.3.1(2), which does not include side boundaries as one of the factors by which an activity centre boundary should be defined. The alleged criteria of a 800 metre walkable distance from the train station is not a reasonable or relevant consideration for overriding the fundamental obligation of Council to have considered whether there might be any adverse impacts of the mid-block

side boundaries on adjoining R20 residents. The only mid-block boundary contemplated by SPP 4.2 is the use of rear boundaries as an interface or transition for land use change, presumably because most people's houses are traditionally further from the rear boundary than from side boundaries.

By contrast, the amendments being proposed tonight to the proposed Kardinya Activity Centre Plan boundaries are directed to minimise mid-block boundaries and use road boundaries, where possible. This demonstrates that due regard has been given to the relevant consideration of the planning principle that mid-block boundaries should be avoided where possible if the interface is capable of degrading residents' amenity;

- (B) Appendix 2 Clause 2 re: Centre context, which requires that: "*Activity centres should be developed and redeveloped in a manner that is sensitive to the needs, assets, and deficiencies of the surrounding community while respecting local historical patterns, precedents, and context. Activity centres are an integral part of the broader urban and suburban environment and cannot be considered in isolation. Understanding the physical, social and economic context is vital to forming a mutually supportive relationship with the surrounding hinterland, which in turn, contributes to a centre's success*";
- (C) Appendix 2 Clause 5.0: "*Activity centre built form should incorporate height at key points while respecting human scale and solar access, within a layout of strong, legible public streets and spaces that preserve natural assets and enhance the structure of the activity centre*". (Cf: Appendix 2 Clause 6.4 which requires the establishment of guidelines for new development to ensure that energy-saving design and technology is incorporated through passive solar building orientation and solar panels. Mid-block boundaries with R20 houses are inconsistent with Clauses 5 and 6.4 as solar energy benefits to R20 neighbours are reduced);
- (D) Appendix 2 Clause 5.1 Occupant amenity: "*Centre development should minimise adverse amenity effects on neighbouring uses caused by over-shadowing, noise, odours, and over-looking*"; and
- (E) Appendix 2 Clause 7.2 Staging and monitoring: "*Centre structure plans should be reviewed regularly to ensure their objectives are being met and remain viable. Local governments should periodically assess the impact of policies and development applications on centre development, vitality and viability*".
 - (ii) Reg 34(g) – the purpose of the amendment is to make the scheme map consistent with the proposed amended southern boundary of the CBACP, otherwise this amendment would not be necessary.
 - (iii) Reg 34(g) – the amendment to the scheme map is to make it consistent with an activity centre plan, in particular, the following goals of the CBACP, which goals are not currently being met by the existing southern boundary of the scheme map:
 - (A) the G11 CBACP goal that staging of development should be considerate of the community impacts of development over time, including transition from lower to higher density development; and

- (B) the G12 CBACP goal that the CBACP area should develop sensitively and carefully over time to ensure that the benefits of development are realised by all members of the community, not achievable with the current boundary.

It would appear that at the time the CBACP was adopted by Council, there was a lack of regard to all relevant information, including the risks to, and impacts, on adjoining residents of side mid-block boundaries between the R20 zone and the H4 zone. This oversight has left R20 property owners adjoining the H4 zone with the surely unintended adverse consequence that they live in a zoning vacuum: i.e. they no longer have the protections afforded by the Residential Design Codes (**R-Codes**) to R20 property owners against overshadowing and overlooking (e.g. R-Code 5.4.2), because these are removed by the CBACP (the very protections they still must properly accord to their R20 neighbours under the application of the R-Codes to them), yet they have not been afforded the rights of H4 landowners. They are left in a void without the protections or rights of either zone – this is poor planning and surely was not intended. Such voids have led to enormous strain on residents, to stranded assets, and much anxiety and despair. It is incumbent on Council to now take into account the human cost that flows from this planning error by taking the swiftest possible action available.

4. The proposal is not a complex amendment because it is not inconsistent with the City's Local Planning Strategy which, according to the Officer's Report at the last paragraph of page 59 of the Agenda, seeks to **leave suburban residential areas relatively unchanged**. View Road is one of the prettiest, traditional, residential streets in Mt Pleasant. The mid-block boundary will severely degrade the character and amenity of this beautiful suburban neighbourhood, as well as eroding the rights of R20 neighbours to the H4 Zone.

5. The Officer's Report does not provide any evidence to support the conclusion that the amendment is complex due to being of a scale or, which will have an impact, that is significant to development in the locality. On the contrary, using the density and area calculations contained in the recently adopted SWG Planning Policy, (which are consistent with the maximum density requirements for an Activity Centre in State Planning Policy 4.2), the reduction in dwellings potential has already been calculated. The change in boundary will result in a reduction of 341 dwellings from the total calculated in the SWG Planning Policy under the existing boundary. However, the existing boundary calculation includes a buffer of 1084 dwellings more than the WAPC and SPP 4.2 dwellings target for 2051 and it is only the buffer that will be impacted by being reduced to 743 dwellings. The core dwellings target is not impacted at all. That is, the reduction in area does not reduce the WAPC or SPP 4.2 2051 dwellings target.

6. The officers now estimate that the overall review of the CBACP may not be completed until some 8 months after the estimated time for submission of the review proposal in May 2021, being about February 2022. Therefore a boundary change is unlikely to be implemented until about 2023 taking into account the various steps.

7. At the ABF of 5 November 2019 (over a year ago) even the architect for the proposed development at 4A View Road, Mt Pleasant in the H4 Zone (Mr Giles Hardon-Jones), concluded that the mid-block boundary was an error and should be amended quickly. This shows that residents and developers alike have identified the



mid-block boundary as an error. His deputation starts at 1:50 mins and ends at about 2:01 mins (i.e. it is about 10 mins long). Regarding the boundary he said:

"It is unusual in this instance to have a boundary square down in between two property boundaries where you've got an R high density zone to an R20. It's probably slipped through the cracks that one. And if the Council is serious about this they need to address that and it needs to be addressed sooner rather than later. I know that some of these things take a fair while to trawl their way through local government but this probably should be a fast track if you can. You can't have an R20 and an R60 or whatever it happens to be zoning next to each other because the neighbours are just going to be badly impacted. And being absolutely fair, it's actually not fair on neighbours, they shouldn't have to put up with that. These things need to be in roadways. They need to be in pathways. They need to be done like that. In summary, I urge the Council to address this. You need to. This won't be the only property, there will be more of this happening. The City of Nedlands recently had their scheme changed. All their boundaries happen and start and stop at streets and street boundaries.

8. Residents are appealing to Council to do whatever they can to expedite this approved modification. Treating the amendments as complex requiring advertising will result in further unnecessary delays which will continue to give rise to the unfair outcome that residents will potentially have to live with the irreversible effects of this boundary problem. They may never be able to recover their rights if developments proceed next to them and they are overshadowed and overlooked, etc.. At the very best, they will have to live under a cloud of uncertainty and with assets they are unlikely to be able to sell for another 2 or 3 years.

SIGNATURE: *Margaret Sandford*

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