

P18/3793 - CANNING BRIDGE ACTIVITY CENTRE PLAN – COUNCIL REQUEST FOR PREPARATION OF PLANNING POLICY (REC)

Ward : Applecross - Mt Pleasant
 Category : Strategic
 Application Number : Not Applicable
 Property : Various
 Proposal : Report on Council Request for Preparation of Planning Policy
 Applicant : Not Applicable
 Owner : Various
 Disclosure of any Interest : No Officer involved in the preparation of this report has a declarable interest in this matter.
 Previous Items : P18/3779 – Review of Canning Bridge Activity Centre Plan – Update, Ordinary Meeting of Council 17 April 2018
 M18/5640 – Special Meeting of Electors 20 August 2018, Motions Carried, Ordinary Meeting of Council 18 September 2018.
 Responsible Officer : Steve Cope
 Director Urban Planning

AUTHORITY / DISCRETION

DEFINITION

<input type="checkbox"/>	Advocacy	<i>When the Council advocates on its own behalf or on behalf of its community to another level of government/body/agency.</i>
<input type="checkbox"/>	Executive	<i>The substantial direction setting and oversight role of the Council. e.g. adopting plans and reports, accepting tenders, directing operations, setting and amending budgets.</i>
<input checked="" type="checkbox"/>	Legislative	<i>Includes adopting local laws, town planning schemes & policies.</i>
<input type="checkbox"/>	Review	<i>When the Council operates as a review authority on decisions made by Officers for appeal purposes.</i>
<input type="checkbox"/>	Quasi-Judicial	<i>When the Council determines an application/matter that directly affects a person's right and interests. The judicial character arises from the obligation to abide by the principles of natural justice. Examples of Quasi-Judicial authority include town planning applications, building licences, applications for other permits/licences (eg under Health Act, Dog Act or Local Laws) and other decisions that may be appealable to the State Administrative Tribunal.</i>
<input type="checkbox"/>	Information	<i>For the Council/Committee to note.</i>

**P18/3793 - CANNING BRIDGE ACTIVITY CENTRE PLAN – COUNCIL REQUEST
FOR PREPARATION OF PLANNING POLICY (REC)****KEY ISSUES / SUMMARY**

- At the September 2018 Ordinary Council Meeting Council considered Item M18/5640 – Special Meeting of Electors 20 August 2018, Motions Carried.
- Motion 1 of the Special Meeting of Electors relates to the Canning Bridge Activity Centre Plan (CBACP).
- With respect to Motion 1 Council resolved to request the preparation of a planning policy for the November 2018 Ordinary Council Meeting specifying prescriptive criteria applied and processes undertaken by the Community Benefit Panel in determining the extent of bonus storeys in response to community benefits provided in developers' proposals.
- Officer comment on the proposal to prepare a planning policy is provided in this report.
- The City has obtained legal opinion in relation to that Council resolution.
- The report recommends that the Council note the information provided in this report and considers the scope of potential planning investigations in relation to consideration of approval of bonus building height in the CBACP.

BACKGROUND

At its Ordinary meeting held on 17 April 2018 (Item P18/3779) the Council resolved in part:

4. Directs the Chief Executive Officer to investigate, and report back to an Elected Member Information Session to be held no later than 30 June 2018, the feasibility of:

- a) limiting the maximum number of storeys in all circumstances (including any additional 'bonus' storeys) in the M15 and M10 'core' areas of the Canning Bridge Activity Centre Plan to either 20 or 25 storeys in the M15 area and 15 storeys in the M10 area; and***
- b) setting more prescriptive criteria for determining 'community benefit' in assessing whether additional stories are warranted in the 'core' areas.***

At its Ordinary meeting held on 18 September 2018 (Item M18/5640) the Council resolved:

That the Council:

1. In relation to Motion 1

"That the Council of the City of Melville immediately initiate a full review of the Canning Bridge Activity Centre Plan for the purpose of including:

- a) maximum height limits;***
- b) guaranteed retention of all existing trees; and***
- c) community consultation panels on all multi storey development applications and planning approvals."***

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a) the Council has requested further investigation into the determination of height levels in the Canning Bridge Activity Centre Plan, with the intention of making a recommendation to the State in due course.

b) no street trees are to be removed in the canning bridge activity centre precinct as a consequence of the plan. Street trees are recognised as a unique environmental asset throughout the city and make an important contribution to the character of the Canning Bridge Precinct. Street trees are protected through the development process.

c) the planning system does not provide opportunity for general community input or community panel assessment of proposals. Any change to the CBACP to vary the approval process for development applications would require approval by the WAPC.

B. requests that the Chief Executive Officer:

a) Prepares a project plan to develop Planning Policy for the November 2018 Ordinary Meeting of Council that specifies the prescriptive criteria applied and processes undertaken by the Community Benefit Panel in determining the extent of bonus storeys that will be allowed in response to community benefits provided in property developers' proposals.

b) Incorporates in the planning policy a requirement that restricts Council support for community benefit additional storeys in the M10 and M15 areas to no more than 20% above the 10 and 15 storeys "as of right" maximums in the M10 and M15 zonings of the Canning Bridge Activity Centre Plan Q1 and Q2 areas.

c) As part of the current review into community benefit criteria and buildings heights in the M10 and M15 areas of the CBACP, to investigate the possibility of including maximum site coverage, plot ratio and dwelling density requirements in the M10 and M15 areas of the CBACP.

This report provides officer comment in response to the September 2018 Council resolution. For background purposes it is noted that in response to the April 2018 Council resolution (Item P18/3779) an officer presentation was delivered to an Elected Member Information Session (EMIS) on 12 June 2018. Subsequently a further Elected Member workshop was held on 16 July 2018. Subsequent to the July 2018 EMIS, officers have been examining issues raised by Elected Members in relation to a potential process for, and scope of planning investigations in relation to the CBACP within the City of Melville.

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With respect to Part A (a) of the Council resolution from the September Ordinary Council Meeting (Item M18/5640) a potential project plan for the further investigation requested by Council into the determination of height levels has been drafted incorporating project scope. This project scope includes examination of building heights in the Forbes Road west area between Kintail and Kishorn roads as previously requested by Council at the December 2016 Ordinary Council Meeting (P16/3729). It is noted that the Council resolution relating to the Forbes Road investigation seeks commencement of that review by December 2018. It is recommended below that an update on the potential project scope be presented to an EMIS.

With respect to Part B (a) and Part B (b) of the Council resolution from the September Ordinary Council Meeting, in response to the circulation prior to the Ordinary Council Meeting on 18 September of two proposed Amendments from Elected Members to Motion 1 of Item M18/5640, officer verbal advice was provided to the Council at the Council meeting. That advice noted that:

- (a) It is expected that additional time would be required to prepare a comprehensive local planning policy that included the identification of prescriptive criteria and processes for assessment of bonuses for community benefit and the identification of caps on the amount of bonus height awarded in M10 and M15.
- (b) The Council's earlier April 2018 resolution sought investigation into the feasibility of limiting the maximum number of storeys in the M15 and M10 areas, officer presentations had been provided and the Council is considering a potential review process. It was noted that the proposed September Council resolution differed from the April Council resolution.
- (c) The CBACP currently includes a process for assessing building height in the CBACP area and variation of these requirements via the preparation of a local planning policy may be inconsistent with the CBACP, State Planning Policy 4.2 – Activity Centres for Perth and Peel and the State planning framework. Amendment of the Activity Centre Plan itself was considered to be the most appropriate approach.
- (d) Under the Planning and Development Regulations a local planning policy is required to be based on sound town planning principles. Where a policy is deemed not to be based on sound town planning principles, the level of regard given to a policy by decision making bodies would be likely to be significantly reduced.
- (e) The Planning and Development Regulations require that where a proposed policy is considered to be inconsistent with any State planning policy, notice of the proposed policy is to be given to the WA Planning Commission (WAPC).

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Taking into consideration that the proposed policy would be in conflict with the CBACP and would accordingly appear not to be based on sound planning principles, significant difficulties are anticipated if implementation of a local planning policy of the type proposed in the Council's September resolution were to be attempted.

Following the September Ordinary Council Meeting, in order to gain necessary clarity, the City obtained legal opinion on the matter.

With respect to Part B (c) of the Council resolution the possibility of including maximum site coverage, plot ratio and dwelling density requirements in the M10 and M15 areas of the CBACP can be incorporated in any further investigation requested by the Council into the determination of height levels.

STAKEHOLDER ENGAGEMENT

If the Council resolves to prepare a local planning policy, the local planning policy is required to be advertised, once prepared, in accordance with Clause 4 Schedule 2 of the *Planning and Development (Local Planning Schemes) Regulations 2015*.

I. COMMUNITY

As per Stakeholder Engagement above.

II. OTHER AGENCIES / CONSULTANTS

Clause 4(4) of Schedule 2 of the Regulations requires that the Council advises the Western Australian Planning Commission (WAPC) if it is of the opinion that the proposed policy is inconsistent with any State Planning Policy.

STATUTORY AND LEGAL IMPLICATIONS

The following clauses of the Planning and Development (Local Planning Schemes) Regulations 2015 Schedule 2 – Deemed Provisions for Local Planning Schemes, Part 5 – Activity centre plans have relevance:

30. Terms used

“activity centre plan or activity centre structure plan” means a plan for the coordination of the future subdivision, zoning and development of an activity centre.
”

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On receipt of a report on a proposed activity centre plan, the Commission must consider the plan and the report and may:

- (a) approve the activity centre plan; or
- (b) require the local government or the person who prepared the activity centre plan to:
 - (i) modify the plan in the manner specified by the Commission; and
 - (ii) resubmit the modified plan to the Commission for approval;

or

- (c) refuse to approve the activity centre plan.”

“43. Effect of activity centre plan

- (1) A decision-maker for an application for development approval or subdivision approval in an area that is covered by an activity centre plan that has been approved by the Commission is to have due regard to, but is not bound by, the activity centre plan when deciding the application.”

FINANCIAL IMPLICATIONS

The estimated cost of undertaking the potential planning investigations is yet to be identified.

STRATEGIC, RISK AND ENVIRONMENTAL MANAGEMENT IMPLICATIONS

The City's Strategic Community Plan (SCP), prepared collaboratively with the community, sets out the community vision and aspirations for the future. The six key aspirations within the SCP are:

- Clean and Green
- Sustainable and Connected Transport
- Growth and Prosperity
- Sense of Community
- Healthy Lifestyles
- Safe and Secure

The City's Corporate Plan is the Council's response to the community aspirations in the Strategic Community Plan.

The CBACP aligns with the City's strategic goals and responds in particular to Priority 3 of the Corporate Plan:

“Urban development creates changes in amenity (positive and negative) which are not well understood”.

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Under Priority 3 from the Corporate Business Plan key strategies are:

1. Facilitate higher density development in strategic locations, consistent with the local planning framework and structure plans, design guidelines for interface areas and ensure measured change in established areas and consideration of parking and traffic issues
2. Enhance amenity and vibrancy and enhancing community safety through streetscapes, public art, pedestrian and cycle paths, place making and creating well-designed, attractive public spaces.

The City's Local Planning Strategy seeks to provide for greater intensity of development within activity centres and along key transport corridors and to leave suburban residential areas relatively unchanged.

Risk Statement	Level of Risk*	Risk Mitigation Strategy
WAPC determines proposed policy is inconsistent with CBACP and not able to be implemented resulting in loss of time and resources in policy preparation, advertising, reporting etc.	Minor consequences which are likely, resulting in a Medium level of risk	Not proceed with preparation of a policy as proposed in September 2018 Council resolution. The Council can choose to proceed with a well-defined and clearly scoped review of the CBACP within the City of Melville and/or preparation of a policy that elaborates on the CBACP.

Risk Statement	Level of Risk*	Risk Mitigation Strategy
Perceived lack of clarity experienced by various stakeholders (Elected Members, community, landowners, developers) as to how provisions of CBACP should be interpreted	Moderate consequences which are possible, resulting in a Medium level of risk	The Council can choose to proceed with a well-defined and clearly scoped review of the CBACP within the City of Melville and/or preparation of a local planning policy that elaborates on the CBACP.

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Risk Statement	Level of Risk	Risk Mitigation Strategy
Preparation of Policy and/or amendment to CBACP provisions creates uncertainty and results in a loss of confidence for development industry with consequential reduced interest in development	Moderate consequences which are possible, resulting in a Medium level of risk	The Council can choose to proceed with a well-defined clearly scoped and timely review of CBACP within the City of Melville within a targeted timeframe and/or preparation of a local planning policy that elaborates on the CBACP.

POLICY IMPLICATIONS

This report responds to a Council resolution at the September 2018 Ordinary Council Meeting requesting the preparation of a local planning policy. There are no policy implications in relation to other Council policies.

COMMENT

The CBACP, approved by the WAPC in 2016, contains provisions which identify the circumstances in which bonus height may be considered.

The bonus provisions of the CBACP indicate that for properties within the M15 and M10 zone in the City of Melville, consideration of greater height than permitted in Element 3 may be approved where the relevant Desired Outcomes of all Elements are met or exceeded, and where exemplary design is proposed in the opinion of the Design Advisory Group, and where the development includes the provision of a significant benefit to the community as well as satisfactorily meeting other requirements. Those other requirements include and are not limited to, minimum lot sizes, solar access considerations with respect to adjoining properties, achievement of or exceeding accredited sustainability outcomes, demonstration via a traffic statement that there will not be undue traffic impact on the surrounding centre and inclusion within the proposed development of infrastructure which supports area wide resource efficiency.

The September 2018 Council resolution proposes the inclusion within a local planning policy of limits on the amount of bonus height which may be approved.

Legal opinion has been obtained which supports the City's view.

In relation to building height a local planning policy may be introduced with the intention of providing further clarification of the relationship between community benefits provided in a development application proposal and consideration of approval of additional height.

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The City has commenced consideration of potential improvements to the assessment of the value of community benefits proposed by applicants and how this may be used to assist in the consideration of approval of bonus height.

A proposal to limit building heights in the M10 and M15 zones in the Canning Bridge Precinct or to alter the current approach to the consideration of bonus building height would require an amendment to the CBACP. A proposed amendment to the CBACP would be required to be based on sound planning grounds and demonstrate the merits of amending the current content of the Plan. Ultimately an amendment to the CBACP would require approval from the WAPC. Preparation of any amendment to limit building height in the M10 and M15 zones would likely need to be supported by investigation of desired built form in the precinct and a review of processes used to consider support of bonus height. It is likely that broad stakeholder engagement would form part of the investigation process.

A draft project scope has been prepared to identify the extent of work required to review the height controls and bonus provisions of the CBACP. As indicated above the project scope also includes investigation of building height in the Forbes Road west area between Kintail and Kishorn roads. It is noted that:

- the estimated timeframe for the required investigations is approximately 12 months.
- the results of the project may or may not conclude that more restrictive height controls are appropriate in the M10 and M15 zones.
- any proposed amendment to the CBACP would require approval from the WAPC and it is not known whether or not that approval would be forthcoming.

ALTERNATE OPTIONS AND THEIR IMPLICATIONS

The Council could proceed with the preparation of a local planning policy as proposed in the September Council resolution (Item M18/5640) however this is not recommended as such a policy is likely to be determined to be inconsistent with the CBACP which is the primary guiding document for development within the Canning Bridge precinct. The Council can proceed with review of aspects of the CBACP within the City of Melville. If the Council were to decide to pursue this option it is recommended that the project scope be clearly identified with a target timeframe and consideration of required resources. The Council can request the preparation of a local planning policy which elaborates on the relationship between community benefits and building height in the CBACP.

CONCLUSION

This report provides comment from the City administration on the Council resolution at the September 2018 Ordinary Council Meeting (M18/5640) in relation to the CBACP. The report advises that a local planning policy which seeks to introduce height limits in the CBACP area would likely not be enforceable. The report notes that the Council has previously requested investigation of the feasibility of height limits and more prescriptive criteria for determining

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community benefit in the CBACP area within the City of Melville.

It is recommended that the Council notes the information provided in this report and considers at an Elected Member Information Session, a presentation by officers of the scope of progressing potential planning investigations.

OFFICER RECOMMENDATION (3793)**APPROVAL****That The Council:****1. Notes :**

- a) The Officer comment provided in relation to Part 1 of the Council resolution on Item M18/5640 of the September 2018 Ordinary Council Meeting which indicates that a Local Planning Policy is unlikely to be able to introduce limits on building height which seek to be more restrictive than those contained within the Canning Bridge Activity Centre Plan.
 - b) That there may be opportunity to prepare a Local Planning Policy that provides additional clarity to the operation of the Canning Bridge Activity Centre Plan with respect to establishing the relationship between design and community benefits proposed by applicants and the consideration of approval of additional building height.
 - c) That a proposal to consider introduction of more stringent controls on height and/or changes to the criteria for the consideration of approval of bonus building height in the Canning Bridge Activity Centre Plan would require an amendment to that Plan and that such an amendment would be likely to be required to be supported by a comprehensive investigation.
2. Requests the Acting Chief Executive Officer to arrange for a presentation to an Elected Members Information Session of the scope of progressing potential planning investigations in relation to the consideration of approval of bonus building height within the Canning Bridge Activity Centre Plan within the City of Melville,