BRRAG Belmont Resident and Ratepayer Action Group Inc.

"To provide an effective voice for the people of Belmont"

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11 December 2020

The Honourable Charles Leonard Smith MLC Msc, BSc (Hons) Post Grad Cert
Member for the East Metropolitan Region
The West Australian Party
Suite 13, 9 The Avenue
MIDLAND WA 6056

Via charles.smith@mp.wa.gov.au

To the Member for the Metropolitan Region

Under powers given it by the *Environmental Protection Act 1986* (the Act), Part V, Division 2

- **S38 Request for further information**

  If the Authority considers that it does not have enough information about a proposal referred to it under section 38 to enable it to decide —
  (a) whether or not to assess the proposal;
  (b) whether or not to agree to a request made under section 39B(1); or
  (c) on the level of assessment if the proposal is going to be assessed,

  it may, by written notice, request any person to provide it with additional information about the proposal.

And under Part IV, Division 3

- **S48E Minister may direct further assessment or reassessment of schemes by Authority**

  Having consulted the Authority and obtained the agreement of the responsible Minister, the Minister may —
  (a) if the Authority decides not to assess a scheme referred to it under the relevant scheme Act, after that decision but before the period of public review of that scheme begins; or
  (b) if the Authority decides to assess a scheme referred to it under the relevant scheme Act, after that assessment has begun but before that scheme is finally approved, direct the Authority to assess that scheme under this Division, or to

reassess that scheme under this Division more fully or more publicly or both, as the case requires, in accordance with that direction, and the Authority shall comply with that direction.

(2) Sections 48A, 48B, 48C and 48D apply to the assessment or reassessment under this Division of a scheme under a direction given under subsection (1) as if that direction were a referral of the scheme under the relevant scheme Act.
[Section 48E inserted by No. 23 of 1996 s. 20.]

and under

- The *Swan Canning River Management Act 2006*

And under

- The *Aboriginal Heritage Act 1972*

the Belmont Resident and Ratepayers Action Group Inc (BRRAG) request you to seek review of the Environmental Planning Authority's decision ***"not to assess a proposal in respect of City of Belmont Local Planning Scheme 15 Amendment 14, Reference CMS 17901 dated 7 October 2020"*** **(Attachment 1)**

We request instead that a full environmental assessment of the land being the 7 properties Lot 177 Fauntleroy and Lot 1 Hay Road, Lots 180-184 Hay Rd (Portion of Development Area 9 (DA9)). Area bound by Hay Road, Fauntleroy Avenue, land reserved for 'Parks and Recreation' and properties zoned 'Mixed Use' fronting Great Eastern Highway, as submitted on 22/09/2020.

DETAILS ON THE PROPOSED AMENDMENT

Our request stems from details of the proposed Scheme Amendment documents currently open for public comment on the City of Belmont website, with advertised closing date of 9 December 2020, titled *'Local Planning Scheme 15 Amendment 14*'. **(Attachment 2)**

The public comment area of the City's website made no mention of the EPA decision of 7 October 2020. The documents contained a letter from CEO supporting a 'standard' amendment dated 25 August 2020. This essentially means the information could have been provided to the public but wasn't. The CEO letter was provided to the EPA, and has possibly been relied on by the EPA, included the wording that *'the proposed amendment will not result in any significant negative environmental, social or economic impacts on land in the Scheme area.'* **A statement, which we believe, is untrue.**

Furthermore for consideration of facts:

- The non-current information on which this report relies, ie the report was originally published in 2013 and was put forward as a 'basic' amendment which has now, without further assessment become 'standard'. This is important and we note there have been a number of changes to laws and planning policies since then which are now being overlooked.

- There is omission or lack of detail provided with regards to the *Swan Canning Management Act 2006*. The report merely states it will resolve details with the Swan

River Trust authority.

- There is failure to consider the reduction of canopy associated with the implementation of the proposed zoning change, and its subsequent development, for the whole of the City of Belmont with regard to state-wide adopted 'urban forest canopy strategies' to improve the environment.

  The *Environmental Protection Act 1986 Interpretation Part 1* defines:

  > **"environment",** subject to subsection (2), means living things, their physical, biological and social surroundings, and interactions between all of these;

- There is no proper assessment of the **environmental value** of the land being acquitted to a private developer who has been identified as PHB01 Pty Ltd from a consultants' report attached to the scheme amendment proposal where:

  the *Environmental Protection Act 1986 Interpretation Part 1* defines:

  > the **environmental value** of the strategy is significant and defined by the Act, namely to be
  > (a) a beneficial use; or
  > (b) an ecosystem health condition;

- There is no proper consideration of the loss of public space for **beneficial** use of the land as described under

  the *Environmental Protection Act 1986 Interpretation Part 1* – Preliminary being

  > **"beneficial use"** means a use of the environment, or of any portion thereof, which is —
  > (a) conducive to public benefit, public amenity, public safety, public health or aesthetic enjoyment and which requires protection from the effects of emissions or of activities referred to in paragraph (a) or (b) of the definition of "environmental harm" in section 3A(2); or
  > (b) identified and declared under section 35(2) to be a beneficial use to be protected under an approved policy;

- There is no consideration or mention of the impact on Aboriginal significance in accordance with

  the *Aboriginal Heritage Act 1972, Part IV — Protection of Aboriginal sites*

  > **S17 Offences relating to Aboriginal sites**
  > A person who —
  > (a) excavates, destroys, damages, conceals or in any way alters any Aboriginal site; or
  > (b) in any way alters, damages, removes, destroys, conceals, or who deals with in a manner not sanctioned by relevant custom, or assumes the possession, custody or control of, any object on or under an Aboriginal site,
  >
  > commits an offence unless he is acting with the authorisation of the Registrar under

section 16 or the consent of the Minister under section 18.
[Section 17 inserted: No. 8 of 1980 s. 6; amended: No. 24 of 1995 s. 18.]

While there may not currently be a sacred site heritage listing for the land, residential zoning was applied last century, assuming rights of possession. The City of Belmont and its Councillors acknowledge the custodians of the land at the commencement of each of its Council meetings and on policy and strategy documents. It may be hypocritical to rezone the land for future development when the land could be reconsidered for complete revegetation and restoration as a respectful gesture to the traditional owners, especially because the land is only metres from the Swan River. BRRAG wish for the environmental significance of the area to be retained and improved and able to be used by all cultures.

To this end could you seek the Department of Land Administration (Landgate) to obtain Crown law advice regarding the steps the Crown needs to take to have Parliament legislate to vest the land as Class 'A' reservation?

ENVIRONMENTAL HARM SIGNIFICANCE – BREACH OF THE ACT S50A or S50B

In support of our request for a review of the decision we attach a submission made by Ms Susanne Carter to the City of Belmont dated 8 December 2020 **(Attachment 3)** which outlines specific environmental harm concerns (c) below where the Act describes:

"environmental harm" means direct or indirect —
(a) harm to the environment involving removal or destruction of, or damage to —
(i) native vegetation;
(ii) the habitat of native vegetation or indigenous aquatic or terrestrial animals;
(b) alteration of the environment to its detriment or degradation or potential detriment or degradation;
(c) alteration of the environment to the detriment or potential detriment of an environmental value; or
(d) alteration of the environment of a prescribed kind;

through its town planning scheme and the scheme's Act the use of the land for any purpose other than public open space, for which it was intended would result in several of the following occurring:

(a) the killing or destruction of;
(b) the removal of;
(c) the severing or ringbarking of trunks or stems of; or
(d) the doing of any other substantial damage to,

some or all of the native vegetation in an area, and includes the draining or flooding of land, the burning of vegetation, the grazing of stock, or any other act or activity,

and in acquitting land for public benefit to a private developer a breach of *The Environmental Act 1986*, Part V, Environmental regulation, Division 1, **Section 50A and/or 50B** occurs.

The submission of Ms Carter generally:

- opposes the rezoning based on likely occurrence of the removal of the 17 existing native Flooded Gums from the land. The native flooded gums are in decline.

- proposes for the land to be aligned with the Swan Canning River Trust's land and retained as beneficial public open space for public amenity. As the population increases there is more need for open space not less.

The potential "damage costs" would be in the vicinity of $1 million dollars based on hypothetical calculation for the loss of the identified 17 Flooded Gum trees (one of which was valued in the report of the City of Belmont to be ~$78,000) for the reasonable costs and expenses that are or would be incurred in taking all reasonable and practicable measures to prevent, control or abate the environmental harm and to make good resulting environmental damage.

The impact to the public is not directly quantifiable however land for the public is held in trust for the benefit of all of the public, not for private purposes of a few.

ORDERS SOUGHT

We rely on a direction from the Environmental Protection Authority to discontinue the scheme amendment and to make good the land for public benefit as described under sections:

Order 1: 99X Orders for restoration and prevention

(1) If a court convicts a person of an offence against this Act, the court may order the offender to take such steps as are specified in the order, within such time as is so specified (or such further time as the court on application may allow) —

(a) to prevent, control, abate or mitigate any harm to the environment caused by the commission of the offence;

(b) to make good any resulting environmental damage; or (c) to prevent the continuance or recurrence of the offence.

Order 2: 51B. Declaration of environmentally sensitive areas, Part V Division 2 make such orders necessary to declare the area as environmentally sensitive as described:

(1) The Minister may, by notice, declare —
(a) an area of the State specified in the notice; or
(b) an area of the State of a class specified in the notice,

to be an environmentally sensitive area for the purposes of this Division.

Order 3: Any such additional orders under section 99ZA.

ATTACHMENTS:

Please advise how we may upload the attachments as they are large file sizes. Can you provide a linked folder which we may use?

Attachment 1: CMS17901 City of Belmont LPS 15 Amd 14 Chairmans Determination
Attachment 2: Planning Advertising - Scheme Amendment No- 14 to Local Planning Scheme No-15
Attachment 3: Submission 8 December 2020 opposing the rezoning, by Ms S Carter titled 'Objection 8 Dec S Carter LPS Hay Rd and Ivy St

Kindest regards

Committee
Belmont Resident and Ratepayer Action Group Inc