



# Public Agenda Briefing Forum

Notes

7 December 2021



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**1. Official Opening**

The Presiding Member opened the meeting at 6:30pm and welcomed Councillors, Staff and Members of the Public Gallery. The Presiding Member also acknowledged the Traditional Owners of the land on which we meet the Whadjuk Noongar people.

**2. Attendance, Apologies and Leave of Absence**

**Councillors**

**South East Ward**

John Giardina  
Geoff Stallard

**South West Ward**

Mary Cannon  
Kellie Miskiewicz  
Brooke O'Donnell

**North West Ward**

Sue Bilich  
Lisa Cooper  
Dylan O'Connor

**North Ward**

Kathy Ritchie  
Margaret Thomas JP (Mayor) Presiding Member

**Members of Staff**

**Chief Executive Officer**

Rhonda Hardy

**Executive Team**

Gary Ticehurst - Director Corporate Services  
Brett Jackson - Director Asset Services  
Peter Varelis - Director Development Services

**Management Team**

Andrew Fowler-Tutt - Manager Approval Services  
Chris Lodge - Manager Strategic Planning  
James Wickens - Manager Environmental Health & Community Safety

**Administration Support**

Darrell Forrest - Governance Advisor  
Donna McPherson - Executive Assistant to the CEO

**Members of the Public 2**

**Members of the Press 1**

**Apologies**

Cr Janelle Sewell

Cr Andrew Osenton

**Leave of Absence Previously Approved Nil**

**3. Declarations of Interest**

**3.1. Disclosure of Financial and Proximity Interests**

- a. Members must disclose the nature of their interest in matter to be discussed at the meeting. (Section 5.56 of the *Local Government Act 1995*.)
- b. Employees must disclose the nature of their interest in reports or advice when giving the report or advice to the meeting. (Section 5.70 of the *Local Government Act 1995*.)

3.1.1 Nil

**3.2. Disclosure of Interest Affecting Impartiality**

- a. Members and staff must disclose their interest in matters to be discussed at the meeting in respect of which the member or employee had given or will give advice.

3.2.1 Nil

**4. Announcements by the Member Presiding Without Discussion**

4.1 Nil.

**5. Public Question Time**

5.1 Nil

**6. Public Statement Time**

6.1 Nil

**7. Public Submissions Received in Writing**

7.1 Nil

**8. Petitions Received**

8.1 Nil

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**9. Confidential Items Announced But Not Discussed**

- 9.1 Item 10.1.4 Cambridge Reserve - Consideration of Department of Planning, Lands and Heritage Offer to Purchase and Business Plan – Confidential Attachments - Business Case – Forrestfield Advancing: Community Enhancement Project and Submitters Details

*Reason for Confidentiality: Local Government Act 1995 (WA) Section 5.23 (2) (c) - "a contract entered into, or which may be entered into, by the local government and which relates to a matter to be discussed at the meeting."*

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**10. Reports to Council**

**10.1. Development Services Reports**

**10.1.1. Draft Local Planning Policy 34 - Wetlands and Waterways - Adoption for the Purposes of Public Advertising**

*Declaration of financial / conflict of interests to be recorded prior to dealing with each item.*

The Manager Strategic Planning provided a presentation on this report.


Council sought clarification on various matters contained within the policy and the effectiveness of the policy.

Council also sought clarification as to the classification of the policy.

Previous Items	Nil
Directorate	Development Services
Business Unit	Strategic Planning
File Reference	3.009297
Applicant	N/A
Owner	N/A

Attachments	1. Draft - Local Planning Policy 34 - Waterways and Waterways [10.1.1.1 - 16 pages]
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**TYPE OF REPORT**

Advocacy	When Council is advocating on behalf of the community to another level of government/body/agency
Executive	When Council is undertaking its substantive role of direction setting and oversight (e.g. accepting tenders, adopting plans and budgets)
Information	For Council to note
 Legislative	Includes adopting Local Laws, Town Planning Schemes and Policies. When Council determines a matter that directly impacts a person's rights and interests where the principles of natural justice apply. Examples include town planning applications, building licences, other permits or licences issued under other Legislation or matters that could be subject to appeal to the State Administrative Tribunal

**STRATEGIC PLANNING ALIGNMENT***Kalamunda Advancing Strategic Community Plan to 2031***Priority 2: Kalamunda Clean and Green****Objective 2.1** - To protect and enhance the environmental values of the City.**Strategy 2.1.1** - Implementation of the Local Environment Strategy**Strategy 2.1.4** - Increasing and protecting local biodiversity and conservation, wherever possible, through integrating ecosystem and biodiversity protection into planning processes including schemes policies and strategies.**Priority 3: Kalamunda Develops****Objective 3.1** - To plan for sustainable population growth.**Strategy 3.1.1** - Plan for diverse and sustainable activity centres, housing, community facilities and industrial development to meet future growth, changing social, economic and environmental needs.**EXECUTIVE SUMMARY**

1. The purpose of this report is for Council to consider the adoption of draft Local Planning Policy 34 – Wetlands and Waterways (LPP34) for the purpose of public advertising (Attachment 1).
2. The preparation of LPP34 is a key strategic action identified in the City's Environmental Land Use Planning Strategy (ELUPS). LPP34 will provide guidance to applicants, the Council, and officers where an application proposes development adjacent to a wetland or waterway.
3. It is recommended that the Council adopt LPP34 for the purposes of public advertising.

**BACKGROUND**

4. The ELUPS was adopted by the Council on 23 July 2019. Among other measures, Strategy 6.1 of the ELUPS seeks to protect and enhance waterways, wetlands, and groundwater, and ensure sustainable use and management of water resources.
5. Action 6.1.1 identifies the development of a local planning policy for waterways, flood prone areas (the floodway and flood fringe), and wetlands to protect the environmental value of the waterbody, and provide parameters for development in susceptible areas. It is in response to this strategic direction that LPP34 has been prepared.

6. Wetlands and waterways are important features of our natural environment. They provide a variety of hydrological, ecological, and social functions, including but not limited to:
- a) Flood protection by directing and storing stormwater
  - b) Improvement of water quality through nutrient uptake and trapping of contaminants and sediment
  - c) Water supplies for drinking, public purposes and agriculture
  - d) Maintaining healthy aquatic and riparian ecosystems, biodiversity and ecological connectivity
  - e) Opportunities for passive and active public recreation
  - f) Amenity and sense of place
  - g) Mental and physical wellbeing
  - h) Aboriginal and cultural heritage
  - i) Contributing to increased property values.
7. It is important to protect and enhance the hydrological, ecological and social values of the City's wetlands and waterways through the establishment and management of wetland buffers and waterway foreshore areas, during the planning and development process.
8. In doing so, compatible land uses and related development activities can occur whilst maintaining the many benefits associated with wetlands and waterways, so that they can be enjoyed by current and future generations, as well as by native wildlife.

#### **DETAILS AND ANALYSIS**

9. The key objectives of LPP34 are:
- a) To ensure sustainable long-term management of wetlands and waterways
  - b) To provide clear guidance where development is proposed near a wetland or waterway including determination of buffer/ foreshore distances and guidance on permitted and prohibited activities within the buffer/ foreshore.
  - c) To protect wetlands and waterways from impacts of development and enhance their hydrological, ecological, and social values
  - d) To avoid increasing the risk of property damage in flood prone or flood risk areas
  - e) Improvement of water quality from the built environment for the benefit of the natural environment.



10. LPP34 provides guidance for strategic planning proposals, subdivision or development applications located adjacent to wetlands or waterways, including the establishment and management of wetland buffers and waterway foreshore areas. Key sections of LPP34 include:
- a) Wetlands - establishes wetland buffer distance requirements and outlines permissible and prohibited activities or actions as part of, or as a result of, development proposals within and adjacent to the wetland buffer.
  - b) Waterways - establishes a methodology for determining waterway foreshore widths and outlines permissible and prohibited development within and adjacent to the waterway foreshore.
  - c) Management of Wetland Buffers and Waterway Foreshores – provides for the requirements for their establishment and management, including management plan information requirements, ceding of land and ongoing roles and responsibilities.
11. Wetlands include areas of seasonally, intermittently, or permanently waterlogged or inundated land, whether natural or otherwise, and includes lakes, swamps, marshes, springs, damplands and sumplands. For the purpose of LPP34, wetlands do not include constructed dams.
12. Wetlands are mapped and classified into different management categories by the Department of Biodiversity, Conservation and Attractions. Based on the assigned management category of a wetland, a 30m to 50m-wide buffer is to be established, surrounding the wetland boundary, as specified in the table below.

Category	Wetland Management Category Objective (Hill <i>et al</i> 1996)	Buffer Distance (unless varied in accordance with Clause 9)
Geomorphic Wetland-Conservation Category Wetland	To preserve wetland (natural) attributes and functions.	50m
Geomorphic Wetland-Resource Enhancement Wetland	To restore wetlands through maintenance and enhancement of wetland functions and attributes.	30 m
Geomorphic Wetland-Multiple Use Wetland	To use, develop and manage wetlands in the context of water, town, and environmental planning.	No buffer requirement.

13. Where a wetland has not been designated a management category as a geomorphic wetland, a 50 m buffer shall be applied, or alternatively, a site-specific wetland assessment undertaken to determine an appropriate management category. Additionally, where a mapped wetland boundary does not appropriately reflect the wetland values, the City reserves the right to request a wetland site assessment to accurately define the wetland boundary or management category.
14. Where an applicant can demonstrate that wetland hydrological, ecological, and social functions will be maintained and enhanced, the local government may grant a variation/reduction to the wetland buffer distances.
15. Waterways include any river, creek, stream, or brook, including its foreshore area or reserve, floodplain, estuary, and inlet. This includes systems that flow permanently, for part of the year or occasionally; and parts of the waterway that have been artificially modified.
16. Waterway foreshore areas are determined by several biophysical characteristics that contribute to the health and function of the waterway ecosystem. Planning applications for proposals adjacent to waterways shall be accompanied by a biophysical assessment to determine an appropriate foreshore width, undertaken in accordance with the Department of Water's (now Department of Water and Environment Regulation) *Operational Policy: Identifying and Establishing Waterway Foreshore Areas* and the Water and Rivers Commission's (now Department of Water and Environment Regulation) *Determining Foreshore Reserves*.
17. LPP34 specifies permissible and prohibited activities or actions within the wetland buffer and waterway foreshore area. The City may approve prohibited land uses and/or activities within the waterway foreshore where it can be demonstrated by the proponent that the proposed use of the land will not have a detrimental impact to the hydrological, ecological and social values of the waterway.
18. Where a waterway or wetland has been identified on a site, the City may as a condition of development or subdivision approval, require a management plan/s to manage any risk of impacts associated with development, to the wetland or waterway.
19. LPP34 includes provisions that will guide the identification, establishment and management of wetland buffers and waterway foreshore areas. With regard to waterways, foreshore areas should be informed by an assessment considering a range of biophysical factors including vegetation, flooding, landform, aquatic flora and fauna, land use and

heritage. A foreshore width should generally not be less than 15m from each side of a waterway (measured from the high-water line).

20. LPP34 will incorporate guidance for the City to apply conditions of approval, to maintain the wetland buffer / waterway foreshore for a minimum of two years and until all completion criteria in approved management plans are achieved, to the satisfaction of the City.
21. For subdivision proposals, the wetland, wetland buffer, waterway and foreshore maybe required, as a condition of approval, to be ceded to the Crown free of cost and without payment of compensation by the Crown. The City will usually assume responsibility for ongoing management of ceded land.
22. Drainage easements and reserves may be required under LPP 34 having regard to the scale of the subdivision or development, the degree to which the subdivision or development will generate the need for an easement or reserve, whether the wetland or waterway forms part of a planned or expanding area of public open space network, and the requirements for access for maintenance.

#### **APPLICABLE LAW**

23. LPP34 has been prepared under and in accordance with Schedule 2 Part 2 of the Planning and Development (Local Planning Scheme) Regulations 2015 (Regulations).
24. The *Planning and Development Act 2005* promotes the sustainable use and development of land in the State and the protection of natural resources including the establishment of reserves for foreshore and waterway management.
25. *Rights in Water and Irrigation Act 1914* (RIWI Act) provides for the regulation, management, use and protection of water resources. This Act provides for a licensing system for taking water; and a permitting system for activities that may damage, obstruct or interfere with water flow or the beds and banks of watercourses and wetlands in proclaimed rivers, surface water management areas and irrigation districts.
26. The objects in Section 4 of the RIWI Act include providing for the sustainable use and development of water resources, protection of their ecosystems and the environment in which water resources are situated and assisting the integration of water resources management with other natural resources management.

27. The *Environmental Protection Act 1986* provides for environmental protection and includes a requirement to refer significant impacts to "Inland Waters" the Environmental Protection Authority for assessment and approval under Part IV of the Act. This includes (but is not limited to) significant impacts to wetlands listed in the Directory of Important Wetlands in Australia, Conservation Category Wetlands and Resource Enhancement Wetlands.
28. Under Part IV of the Act, the following principle for clearing of native vegetation applies: *native vegetation should not be cleared if it is growing in, or in association with, an environment associated with a watercourse or wetland.*

**APPLICABLE POLICY**

29. The State Planning Strategy 2050 sets a high-level expectation for the demonstration of exemplary built form and environmental excellence.
30. State Planning Policy 2 – Environment and Natural Resources Policy includes provisions for water resources and states:

*"planning strategies, schemes and decision making should:*

- a) *Consider mechanisms to protect, manage, conserve and enhance*
  - i. *wetlands of importance, Ramsar wetlands and wetlands identified in any relevant Environmental Protection Policy;*
  - ii. *waterways;.....*
- b) *Take account of the availability of water resources to ensure maintenance of water quality and quantity for existing and future environmental and human uses*
- c) *Encourage urban water management through water sensitive design approaches that better manage stormwater quality and quantity; that reduce the impact of stormwater flows to streams, wetlands and coastal waters; and that control or remove pollutants and nutrients so as to improve water quality, retain habitats, conserve water and provide for recreational opportunities and conservation functions through multiple use drainage systems.*
- d) *Ensure the provision of adequate setbacks between development and the foreshores of wetlands, waterways, estuaries and the coast, in order to maintain or improve the ecological and physical function of water bodies. Such setbacks will aim to maintain the natural drainage function, protect wildlife habitats and landscape values, lessen erosion of banks and verges, and facilitate filtration of sediment and waste associated with surface run-off from adjacent land uses, which may include retention or replacement of riparian vegetation.*

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- e) *Consider flood risk by identifying floodways and land affected by 1 in 100 year flood events and avoid intensifying the potential for flooding as a result of inappropriately located land uses and development...."*
31. State Planning Policy 2.9 – Water Resources contains policy measures for the protection, management, conservation and enhancement of the environmental functions and values of wetlands and waterways, including ensuring adequate and appropriate buffering of wetlands, waterways.
32. Draft State Planning Policy 2.9 – Planning for Water includes the following proposed policy outcome: *Waterways and wetlands have adequate foreshore areas and wetland buffers to protect, manage and conserve water quality and quantity, native vegetation, aquatic and riparian habitats, ecological linkages and associated biodiversity values.*
33. It is noted that a separate State Planning Policy is proposed to specifically address wetlands and waterways. This State Planning Policy is currently in preparation. Any relevant policy criteria and guidance arising from the preparation of the new State Planning Policy will inform the finalisation of LPP34.
34. State Planning Policy 7.0 – Design of the Built Environment includes design principles relating to landscape quality and sustainability design principles that aim to protect existing environmental features and ecosystems, promote biodiversity, offer a variety of habitats for flora and fauna, enhance the local environmental context and restore lost or damaged ecosystems, where possible. This includes management of water through water-sensitive urban design.
35. State Planning Policy 7.2- Precinct Design provides guidance on the design, planning, assessment and implementation of precinct structure plans, local development plans, subdivision and development. SPP 7.2 includes policy outcomes relating to the protection of water and soil resources and water sensitive urban design.
36. State Planning Policy 7.3 - Residential Design Codes - Volume 1 currently includes, within its design principles, an objective to reduce the export of nutrients and sediments from the site into waterways.
37. Department of Water *Operational policy 4.3: Identifying and establishing waterways foreshore areas*, describes the process for identifying and managing foreshore areas.
38. **Western Australian Planning Commission Operational policy 1.1 - Subdivision – General Requirements (OP 1.1)**

OP 1.1 sets out the general principles that will guide the WAPC in determining applications for subdivision. The objectives of OP 1.1 include (but are not limited to);

- a) To ensure the subdivision pattern is responsive to the characteristics of the site, including environmental features, sustainability principles and the local planning context.
- b) To promote a sense of place and conservation of places of historic cultural heritage significance.

39. **Kalamunda Clean and Green 2019 – 2029: Local Environmental Strategy (LES)**

Includes an action which states “Develop a Local Planning Policy including guidelines to protect the environmental value of our waterways”.

40. **City of Kalamunda Environmental Land Use Planning Strategy (ELUPS)**

Included action 6.1.1 which states: *Develop a local planning policy for waterways, flood prone areas (the floodway and flood fringe) and wetlands to protect the environmental value of the waterbody and provide parameters for development in susceptible areas.*

41. **Draft Local Biodiversity Strategy (LBS)**

The Draft LBS states that: *in some parts of the City, waterways or drains provide the only opportunity to improve (ecological) connectivity between natural areas.*

42. Action 2.7 of the draft LBS is to Develop and implement a revegetation plan for all degraded lands within ecological linkages.

43. While LPP34 is not directly addressing Action 2.7 of the draft LBS, the provisions within the policy will assist with the enhancement of ecological linkages through achieving revegetation of wetlands, their buffers, waterways and their foreshore areas.

**STAKEHOLDER ENGAGEMENT**

44. LPP33 has been reviewed by the City through the perspective of a number of disciplines including but not limited to:

- a) Planning
- b) Building
- c) Environmental Health
- d) Engineering
- e) Environment

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- 45. If adopted by Council, LPP34 will be referred to the Department of Water and Environmental Regulation, the Department of Biodiversity, Conservation and Attractions and the Department of Planning, Lands and Heritage for formal comment / feedback.
- 46. Subject to LPP34 being adopted for advertising, community engagement will be undertaken in accordance with Local Planning Policy 11 – Public Notification of Planning Proposals.

**FINANCIAL CONSIDERATIONS**

- 47. Costs of advertising are to be met through relevant service department municipal budget allocation.

**SUSTAINABILITY**

- 48. LPP 34 proposes to achieve sustainability outcomes through:
  - a) Development design that responds to and enhances the distinctive natural characteristics of a local area, contributing to a sense of place
  - b) Passive environmental design measures
  - c) Protection of water resources through water sensitive urban design
  - d) Retention and enhancement of ecological linkages associated with wetlands and waterways
  - e) Protection and restoration of fauna habitat.

**RISK MANAGEMENT**

- 49.
 

<b>Risk:</b>	The policy is not progressed to adoption and the City does not have a consistent approach to managing wetland and waterways, and consequently there are the following risks: <ul style="list-style-type: none"> <li>a) A loss of flood protection</li> <li>b) Decrease in water quality and health of aquatic and riparian ecosystems, biodiversity and ecological connectivity</li> <li>c) A loss of opportunities for passive and active public recreation, amenity, wellbeing and sense of place</li> <li>d) A loss, or lack of recognition of places of aboriginal and cultural heritage significance.</li> </ul>	
<b>Consequence</b>	<b>Likelihood</b>	<b>Rating</b>
Significant	Possible	High
<b>Action/Strategy</b>		
Ensure the Council and community are aware of the benefits and long-term positive outcomes of establishing a policy to manage wetlands and waterways. Council to adopt the draft LPP34 Wetlands and Waterways for public advertising.		

50.

<b>Risk:</b> The policy receives strong opposition from sections of the Community.		
<b>Consequence</b>	<b>Likelihood</b>	<b>Rating</b>
Significant	Possible	High
<b>Action/Strategy</b>		
Ensure that the advertising process highlights: a) The justification for introducing measures to protect and enhance wetlands and waterways; b) The balanced approach to negotiating a reduced buffer/ foreshore distance, where it can be demonstrated by the applicant that the values of wetlands and waterways will not be detrimentally impacted.		

51.

<b>Risk:</b> Adoption of the policy may increase resourcing pressures in dealing with policy queries, planning and development applications and compliance.		
<b>Consequence</b>	<b>Likelihood</b>	<b>Rating</b>
Moderate	Likely	Medium
<b>Action/Strategy</b>		
The City have existing procedures in place for processing planning and development applications as well as compliance matters. Existing staff resources will be provided training in implementation of the policy to ensure efficiency in resourcing. Resourcing requirements will be considered on an ongoing basis in line with reviews to LPP34.		

**CONCLUSION**

52.

The purpose of LPP34 is to provide guidance for strategic planning proposals, subdivision or development applications located adjacent to wetlands or waterways, including the establishment and management of wetland buffer and waterway foreshore areas.



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- 53. The objectives of LPP34 are consistent with the City’s overarching strategic intent identified through the ELUPS and LES, together with the draft LBS. Furthermore, LPP34 is consistent with the policy measures established under State Planning Policy 2 Environment and Natural Resources, State Planning Policy 2.9 - Water Resources and Draft State Planning Policy 2.9 – Planning for Water, which generally seek to protect, manage, conserve and enhance the environmental functions and values of wetlands and waterways.
- 54. It is recommended Council adopt LPP34 – Wetlands and Waterways for the purposes of public advertising

**Voting Requirements: Simple Majority**

**RECOMMENDATION**

That Council ADOPT draft Local Planning Policy 34 – Wetlands and Waterways, as provided in Attachment 1, for the purposes of public advertising in accordance with the Planning and Development Act (Local Planning Scheme) Regulations 2015.

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### **10.1.2. Review of Local Planning Policy 26 - Public Art Contributions - Consideration of Submissions and Modifications for Final Approval**

*Declaration of financial / conflict of interests to be recorded prior to dealing with each item.*

The Manager Approval Services provided a presentation on this report.

Previous Items	OCM 31/2019, OCM 168/2020 OCM 258/2019, OCM 68/2021
Directorate	Development Services
Business Unit	Approval Services
File Reference	3.009297
Applicant	N/A
Owner	N/A
Attachments	<ol style="list-style-type: none"> <li>1. Local Planning Policy 26 (LPP26) - Public Art Contributions [<b>10.1.2.1</b> - 6 pages]</li> <li>2. Appendix 1 – Public Art Application Form and Checklist [<b>10.1.2.2</b> - 7 pages]</li> <li>3. Submitters Table [<b>10.1.2.3</b> - 17 pages]</li> </ol>

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Advocacy	When Council is advocating on behalf of the community to another level of government/body/agency
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## STRATEGIC PLANNING ALIGNMENT

*Kalamunda Advancing Strategic Community Plan to 2027*

### Priority 3: Kalamunda Develops

**Objective 3.1** - To plan for sustainable population growth.

**Strategy 3.1.1** - Plan for diverse and sustainable activity centres, housing, community facilities and industrial development to meet future growth, changing social, economic and environmental needs.

### Priority 3: Kalamunda Develops

**Objective 3.3** - To develop and enhance the City's economy.

**Strategy 3.3.1** - Facilitate and support the success and growth of businesses.

## EXECUTIVE SUMMARY

1. The purpose of this report is for Council to consider the final adoption of a revised Local Planning Policy No.26 - Public Art Contributions Local Planning Policy (the Policy) following public advertising.
2. The Policy was adopted through OCM 258/2019 on the 26 November 2019, on the basis it would be reviewed within 12 months. A further minor review to the Policy was adopted by Council in August 2020 (OCM168/2020).
3. The proposed revisions to the Policy are principally aimed at establishing and reinforcing a planning need and nexus to ensure that the City of Kalamunda (the City) is in a better position to facilitate the provision of public art where appropriate and provide a robust framework for landowners to deliver public art in order to improve the amenity and character of the locality.
4. The Policy has been reviewed by the City's lawyers to ensure the provisions have sufficient weight and provide a reliable basis to impose public art conditions for contributing development. The review has resulted in a number of changes to the advertised Policy, principally relating to the format of the Policy. Importantly, the purpose and intent of the Policy remains unchanged from the advertised Policy.
5. It is recommended Council adopt the Policy with modifications as highlighted in Attachment 1 – Draft Local Planning Policy 26 – Public Art Contributions.

**BACKGROUND**

6. The City periodically reviews, revokes and adds new policies for the purpose of ensuring consistency and transparency in decision making and to ensure the Council has a clear and defensible position in making planning decisions.
7. The State Government encourages the inclusion of art in the built environment through the Percent for Art Scheme. Local governments have adopted this Scheme as a model of best practice for the inclusion of public art.
8. The Policy provides a planning basis for the City to facilitate the provision of public art, as well as the collection of contributions towards public art. The development of a Local Planning Policy in accordance with the *Planning and Development Act 2005 and Planning and Development (Local Planning Scheme) Regulations 2015* provides a statutory basis for the collection of public art contributions from development, levied through conditions of planning approval.
9. On 27 August 2019, the then draft Policy was presented at the Ordinary Council Meeting with a recommendation to retain 1% contribution for development costs estimated above one million dollars. The Policy was adopted by Council for the purposes of public advertising subject to the following modifications (summarised):
  - a) Changing the threshold to \$500,000 excl GST from \$1,000,000.
  - b) Exclude building upgrades, and heritage development works from the public art contribution requirements.
  - c) Adding a notation on the cover page which states that Council at the time of consideration of the Policy foreshadowed that the thresholds for contributions towards public art are to be reviewed as part of the next scheduled policy review date.
10. On 26 November 2019, the Policy was adopted in its current form. It is important to note the policy was adopted with a development threshold of \$500,000 excl GST.
11. On 25 August 2020, minor administrative revisions were adopted to the Policy with the aim to ensure the planning purpose of the Policy is consistent with the interpretation of how conditions regarding public art should be applied to development applications.
12. On 25 May 2021, Council resolved to adopt the review of the Policy for the purpose of public advertising.

**DETAILS AND ANALYSIS**

13. The Policy has been applied to development applications valued over \$500,000 excl GST since its adoption. The application of the Policy more generally has in some scenarios been subject to resistance from the development industry, often resulting in State Administrative Tribunal (SAT) appeals challenging the validity of its application.
14. Testing through the SAT process provides the basis for Council to consider changes to the Policy to ensure that it can operate as a robust, effective and valid planning policy thereby achieving its planning objectives.
15. For the Policy to be given weight and acceptance, and provide a reliable basis to impose a development condition for public art, the condition must be able to demonstrate the following:
  - a) Based on sound town planning principles;
  - b) A public, rather than secret policy;
  - c) Conceived after considerable public discussion
  - d) In operation for some time; and
  - e) Been continuously applied.
16. Further to the prerequisites listed above, for the Policy to be given weight, the public art condition applied must meet the 'Newbury Test', namely:
  - a) Be for a proper planning purpose
  - b) Reasonably relate to the development; and
  - c) Not be unreasonable.
17. Noting the above, when applying the Policy through a condition of development approval it is important to emphasise that the intent of the Policy is to facilitate the provision of public art where a development generates a planning need. In this regard, the policy must include the following elements:
  - a) Public art conditions for the purpose of improving the amenity of the private and public realm must be reasonable and be proportionate to the impact of the proposed development.
  - b) Public art conditions for the purpose of improving the amenity must be based on the proposed developments contribution to that need.
  - c) A proposed development must clearly
    - i. Have an impact that is inconsistent with or negative for, the amenity of the locality, and or
    - ii. Give rise to a sufficient basis for public art, including high volumes of staff, occupants and/or visitors.

- d) The amount or value of a contribution required by a public art condition must be fairly and reasonably relate to the proposed development's impact, beyond just an arbitrary formula for a proportion of the construction value.
  - e) Required public art should be publicly visible by the people brought to the development site.
  - f) Acknowledging that there are some circumstances where requiring public art or a contribution may not meet the necessary planning test.
18. Building on the minor modifications adopted by Council in August 2020, noting the submissions received to the Policy, the review of the Policy by the City's lawyers and recognising the need for the Policy to have a planning purpose, the administrative modifications to the Policy are summarised as follows:
- a) A change to the general format of the Policy, however the purpose and intent of the Policy remains unchanged.
  - b) Table 1 – removed and replaced with Part 3 – Application, which identifies the types of development applications which are excluded from the application of the Policy.
  - c) Part 5.1 c) – Contribution Methods – additional method of contribution will enable the applicant to have public art considered through the building design as determined by either the City or the City's Design Review Panel.
  - d) Part 5.4 – Public Art Requirements has been amended. The clause stating '*Artworks that may be integrated within landscaping projects or may be the landscaping or earthworks themselves*', has been removed as this has caused confusion with applicants. Landscaping should not be considered public art.
  - e) Section 6 – Definitions has been removed on the basis there was no necessity to have them included.
  - f) The addition of Appendix – Public Art Application Form and Checklist.
19. As noted above, it is important for planning conditions to be legally valid. There are a number of established legal tests (Newbury Test) to determine the validity of a condition. These tests include that the condition must have a planning purpose and therefore there must be a need and nexus between the development proposed and the requirement of the condition. Section 4 – Objectives has been amended in the Policy to include criteria has been included to assist with meeting this test.

- 20. Public art can help to ameliorate any potential adverse amenity impacts of industrial development where the development faces the public realm by providing an improved level of amenity for its workers and visitors, improving its visual setting, softening the often bulky, large scale warehouse typology seen in these types of developments.
- 21. **Example Development Application**  
A current State Administrative Tribunal (SAT) case that the City is a respondent to has highlighted the importance of conditions requiring public art only being applied in circumstances where the development demonstrates a planning need for public art, and the provision of public art has a nexus with the development.
- 22. Lots 210 and 211 (43,49) Nardine Close, Forrestfield is zoned 'Industrial Development' under the City's Local Planning Scheme No.3. A Warehouse and Office development on the site was approved on 12 February 2019. The City's standard public art contribution condition was applied to the industrial development, as the cost of development exceeded the value threshold of \$500,000 or more.
- 23. For the City to effectively defend a review at the SAT to a condition applied for public art, the Policy provisions need to have sufficient weight and a reliable basis to impose the public art condition.

**APPLICABLE LAW**

- 24. *Planning and Development (Local Planning Schemes) Regulations 2015*  
  
Schedule 2, Part 2, Clause 3(1) – The local government may prepare a Local Planning Policy  
  
Schedule 2, Part 2, Clause 4(3)(a)(b) - Procedure for review of submissions made to the Local Planning Policy  
  
Schedule 2, Part 2, Clause 4(4)(5) – Publishing notice of the Local Planning Policy

**APPLICABLE POLICY**

- 25. N/A

**STAKEHOLDER ENGAGEMENT****Internal Referrals**

26. The amendments to the Policy have been prepared with input from relevant internal planning and economic development disciplines.
27. Prior to Council adopting the Policy for the purpose of public advertising, the City sought and received the following comments from the Kalamunda Arts Advisory Committee (KAAC):
- a) The presiding member on behalf of the Committee advised they would be hesitant to change the current development threshold implemented by the policy (\$500,000).
  - b) Although there are a number of applicable developments applications currently undergoing assessment with the City, KAAC felt the three topics for review could not be commented on at this time. This is due to the City having collected only one developer contribution for public art. They advised it would be difficult for the Committee to provide any assessment on the effectiveness of the LPP to date.
28. The City also sought and received comments from the Economic Development Committee which are summarised as follows:
- a) The Policy would be more in line with the City's Reconciliation Action Plan (RAP) if it specifically stated Indigenous artists were encouraged.
  - b) The relevance of a public art contribution to a development should be assessed on its visibility to the public realm.
  - c) Public art should be considered as part of the building's architecture and not 'tacked on'.
  - d) The \$500,000 threshold appears lower than other local government thresholds.
29. The Policy was advertised for a period of 21 days with a total of three submissions received to the Policy, two being an objection and one being a general comment to the Policy, refer Attachment 3, for the City's response to the issues raised.
30. It is noted that there are a number of modifications to the Policy arising from the legal review. Importantly the purpose and intent of the Policy remains unchanged from the advertised Policy.

Clause 4(3) of the Regulations contemplates such modifications following a review of submissions received without the need for further advertising.



Legal advice received supports the City's position that no further advertising of the Policy is required.

31. The table below identifies the principal themes raised in the objections received to the advertising of the Policy. These are summarised below:

Planning issue	City response
<p>1. The Policy does not meet the Newbury test, and therefore a condition imposed on an industrial development within an industrial zone may very well be invalid.</p>	<p>1. The public art condition will only be applied where it meets the 'Newbury Test'. The Policy has been strengthened to ensure it has sufficient weight and reliable basis to impose the public art condition.</p>
<p>2. The application of the Policy to industrial developments as per Table 1 is too broad as it would relate to all industrial development. This is unreasonable as the Policy has failed to establish any need or nexus between the public art and proposed industrial development.</p>	<p>The condition therefore must have a planning purpose and therefore demonstrably need and nexus between the development proposed and the requirement of the condition. Section 4 – Objectives has been amended in the Policy to include criteria to assist with meeting this test. The City will not apply the condition unless this legal test has been met.</p>
<p>3. The monetary threshold of \$500,000 is too low, rendering many developments economically unfeasible.</p>	<p>2. Table 1 of the draft Policy has been removed and replaced under Part 3 with exclusions to the Policy. Irrespective of the type of land use, the public art condition will be applied if there is a demonstrated need and nexus between the development proposed and the requirement of the condition. In this regard Industrial development is considered no different to other forms of commercial development which the Policy applies to.</p>
<p>4. The Policy and how it should be applied has not been carefully considered. Further research and justification is required to determine how public art can be best implemented rather than applying the Policy in a broad brush approach.</p>	<p>3. It is acknowledged that the \$500,000 threshold is not</p>
<p>5. The Policy does not link the requirement to provide public art with how the proposed development creates the need for such art. Therefore, any</p>	<p></p>

<p>requirement for public art would not serve a proper planning purpose as the trigger for the requirement is based on monetary value in lieu of a planning purpose.</p> <p>6. We refer to the case of BGC (Australia) Pty Ltd and the JDAP (DR 87 of 218) where the SAT resolved that the City of Swan’s public art condition was invalid as the planning conditions on the development must relate to the specific development, have a proper planning purpose and result in a planning outcome.</p> <p>7. Public Art provisions should not be used to counter poor design outcomes. These should be achieved through development and design control, which is already the case within the City. The Forrestfield/High Wycombe Industrial Area Design Guidelines (2019) and the MKSEA Design Guidelines already seek to guide appropriate design and development outcomes within select industrial areas.</p>	<p>uniformly applied by other local governments. That said, the Policy has been continuously applied by the City November 2019, with no demonstrable objection from developers.</p> <p>4. The State Government encourages the inclusion of public art in the built environment through the Percent for Art Scheme as set out in the Guidelines published in 2019. The City’s Policy has undergone an extensive review through its various iterations. The Current Policy represents the culmination of the review process.</p> <p>5. The draft Policy establishes the planning purpose, how the Policy will be applied; those development applications that are excluded; and through the objectives the criteria which gives rise to the need for public art.</p> <p>6. Noted, in response to SAT decision in <i>BGC</i>, the Policy has been strengthened to ensure it has sufficient weight and reliable basis for imposing public art conditions.</p> <p>7. Part 5 c) of the Policy, will enable the applicant to provide a public art contribution by way of design excellence through the building design, either approved by the City or through review by the City’s Design Review Panel.</p>
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**FINANCIAL CONSIDERATIONS**

- 32. All costs incurred during the review of the Policy were met through the Development Services annual budget.

**SUSTAINABILITY**

**Social Implications**

- 33. If the amended Policy is adopted, the City and Council will be provided with a best-practice guide to ensure public art is provided within the limits of the planning system, thus ensuring the delivery of public art for the community meets the planning need and nexus.

**Economic Implications**

- 34. The implementation of the amended Policy may have financial impacts to developments over \$500,000.

**Environmental Implications**

- 35. Nil

**RISK MANAGEMENT**

- 36.
 

<b>Risk:</b> If the revised Policy is not adopted by Council, the City anticipates further appeals to the State Administrative Tribunal. The resources required to defend conditions requiring public art in situations where the amended Policy indicates there is unlikely to be a planning purpose for it, are, in some cases, expected to exceed the value of the public art for which contribution is sought.		
<b>Consequence</b>	<b>Likelihood</b>	<b>Rating</b>
Moderate	Likely	Medium
<b>Action/Strategy</b>		
Adopt the revised Policy, which addresses the concept of planning purpose, and therefore the planning need and nexus requirement, relevant to public art and acknowledges that some development which meets the value threshold for public art may not meet the planning law test for a contribution.		

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### **CONCLUSION**

37. The proposed administrative modifications to the Policy and subsequent changes to the Policy resulting from the legal advice received, builds on the minor changes adopted by Council in August 2020 with the principal aim that the Policy has a valid planning purpose which achieve its planning objectives and does not contain arbitrary provisions which have no planning need and nexus.
38. It is therefore recommended that Local Planning Policy 26 – Public Art Contributions be adopted for final approval.

<b>Voting Requirements: Simple Majority</b>
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### **RECOMMENDATION**

That Council ADOPT the proposed Local Planning Policy 26 (Attachment 1) for final approval pursuant to Schedule 2, Part 2, Clause 4(3) of the *Planning and Development (Local Planning Schemes) Regulations 2015*.

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### 10.1.3. Proposed Keeping and Control of Cats Local Law 2022 - Consideration for the Purposes of Public Advertising

*Declaration of financial / conflict of interests to be recorded prior to dealing with each item.*

The Manager Environmental Health & Community Safety provided a presentation on this report.


Council sought clarification as to the retrospectivity of the local law. The Manager Environmental Health & Community Safety advised the law would not be applied retrospectively.

Council sought clarification on conditions of the local law regarding the number of cats which can be kept. The Manager Environmental Health & Community Safety provided information in relation to the numbers of cats which could be kept under the new local law.

Council sought clarification as to identification of cats. The Manager Environmental Health & Community Safety provided information in relation to this.

Previous Items	OCM149/2020
Directorate	Development Services
Business Unit	Community Safety
File Reference	3.009297
Applicant	N/A
Owner	City of Kalamunda
Attachments	1. Draft Control of Cats Local Law 2022 [10.1.3.1 - 30 pages]

#### TYPE OF REPORT

Advocacy	When Council is advocating on behalf of the community to another level of government/body/agency
Executive	When Council is undertaking its substantive role of direction setting and oversight (e.g., accepting tenders, adopting plans and budgets)
Information	For Council to note
 Legislative	Includes adopting Local Laws, Town Planning Schemes and Policies. When Council determines a matter that directly impacts a person's rights and interests where the principles of natural justice apply. Examples include town planning applications, building licences, other permits or licences issued under other Legislation or matters that could be subject to appeal to the State Administrative Tribunal

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## STRATEGIC PLANNING ALIGNMENT

*Kalamunda Advancing Strategic Community Plan to 2027*

### Priority 4: Kalamunda Leads

**Objective 4.1** - To provide leadership through transparent governance.

**Strategy 4.1.1** - Provide good governance.

## EXECUTIVE SUMMARY

1. The purpose of this report is for Council to review and endorse the draft Cat Local Law in (Attachment 1) for the purpose of public advertising.
2. The provisions of the Local Government Act 1995 and *Cat Act 2011* (the Act) permit Council to create Local Laws for a range of matters which include the keeping and control of cats.
3. This report recommends proceeding with the establishment of the local law by initiating public advertising.

## BACKGROUND

4. At the Ordinary Council Meeting (OCM) on 28 July 2020, a Notice of Motion (OCM 149/2020) was passed as follows:

*"That Council REQUEST the Chief Executive Officer to prepare a report, by December 2020, with details and recommendations regarding the potential to introduce local laws in relation to cat ownership and regulation within the City of Kalamunda."*

5. The rationale for the Notice of Motion included the following:
- a) Each community has different needs and preferences when it comes to the regulation and control of cats.
  - b) There has been increasing discussion within the community regarding responsible cat ownership.
  - c) The City has significant areas of bushland with native fauna.
  - d) The matters to which may be considered as part of the report to Council could include but are not limited to:
    - i. Protection of native wildlife.
    - ii. Registration and micro-chipping.
    - iii. Number of cats per household
    - iv. Sterilisation
    - v. Wearing of collars and registration tags.
  - e) In the context of the City of Kalamunda (City) natural environment, it would be appropriate for Council to be provided information about the possible benefits of introducing Cat Local Laws and what those local laws could involve.
  - f) It is recommended that this report is received, and further investigations commenced on the need for Cat Local laws and further control.
6. Council received a report at the Ordinary Council Meeting on 24 November 2020 explaining the process of establishing such local laws. Having considered the report, Council requested that the Chief Executive Officer progress with the preparation of the City of Kalamunda – Cat Local Law.

#### **DETAILS AND ANALYSIS**

7. Review of surrounding Local Governments with similar natural environments highlighted the key elements that would enable the sustainable long-term protection and enhancement of wildlife through the appropriate regulation of cats through a local law.
8. One of the main deficiencies within the *Cat Act 2011* (Cat Act) and Regulations is that they do not prohibit cats from wandering onto other premises, conservation areas or other land.
9. Residents that have had issues with nuisance cats wandering onto their property, can humanely trap any cat that enters their property. However, they are required to either hand the cat over to their local government or return the cat to the owner, if the owner is known.
10. With the implementation of a Cat Local Law, the City will have further control methods, including, but not limited to:

- a) Requiring applications for the ownership of multiple cats (excluding breeders and catteries).
  - b) Designate cat prohibited areas.
  - c) Ability to identify Nuisance Cats on private/public land.
  - d) Ability to send abatement notices for nuisance cats, therefore being able to enforce.
  - e) Prescribe the control of cats in places that are not public.
11. These control methods are explained further below.
12. **Multiple Cat Ownership**  
The City's existing *Shire of Kalamunda Keeping and Control of Animals and Nuisance Local Law 2011* stipulates 3 cats are allowed without obtaining further approvals, however, with the implementation of the proposed Cat Local Law 2022, the limit to the number of cats will reduce to two (2) per household. Three (3) or more cats up to a maximum of (6) would require a permit.
13. Multiple cat permits will be required to demonstrate they have an area that is deemed suitable for confining multiple cats. Cat breeders and catteries will still require a permit with associated fees and inspections.
14. **Cat Prohibited Areas**  
The City has numerous local natural areas and waterways which could be considered as exclusion zones. The City has provided its recommendation for prohibited areas (Schedule 3) where cats are prohibited entirely, 127 cat prohibited areas have been listed.
15. Penalties for offences in cat prohibited areas are recommended to discourage cat owners living in the vicinity of these local natural areas to allow their cats to wander onto land that is classified under these prohibited areas.
16. The 127 areas identified by the City are local natural areas that are considered important refugia for native animals as they contain vegetation and habitat required for their survival.
17. As the number of significant areas of bushland around the City decreases due to various pressures, the value and importance of our Local Natural Areas increases. As such, it is considered important that all these areas become cat prohibited areas thus reflecting their importance as refuge for our native animals.



18.           **Nuisance Cats**  
The proposed local law contains provisions about the nuisance behaviour of cats, including a definition of nuisance. This local law proposes to prevent a cat or cats creating a nuisance on other premises, to another person or exposing another person to health and safety risks by, defining nuisance by:
- a) An activity or condition which is harmful or annoying and which gives rise to legal liability in the tort of public or private nuisance at law.
  - b) An unreasonable interference with the use and enjoyment of a person of his or her ownership or occupation of land; or
  - c) Interference which causes material damage to land or other property on the land affected by the interference.
19.           The City will provide formal notice to abate the nuisance within a 28-day timeframe to avoid potential penalties.
20.           **Control of cats in places that are not public.**  
The proposed local law also has provisions for the control of cats in places that are not public. Specifically, cats shall not be in any place unless consent has been given by the owner or occupier. If a cat is in a place without consent, the owner of the cat commits an offence.
21.           With the introduction of the local law, the City's intention is to repeal *Division 3: Keeping of Cat* of the *Shire of Kalamunda Keeping and Control of Animals and Nuisance Local Law 2011*, and to include the relevant sections within the new Cat Local Law.

**APPLICABLE LAW**

- 22.           *Cat Act 2011*
- 23.           *Cat Regulations 2012*
- 24.           *Local Government Act 1995*
- 25.           *Shire of Kalamunda Keeping and Control of Animals and Nuisance Local Law 2011.*

**APPLICABLE POLICY**

- 26.           N/A

**STAKEHOLDER ENGAGEMENT**

- 27.           The City has engaged with other Local Governments and State Government Departments in preparing the draft for this local law.

28. The draft Cat Local Law has been subject to a comprehensive review by the City's solicitors, all amendments from the review have been applied as proposed.

**FINANCIAL CONSIDERATIONS**

29. Costs associated with the implementation of additional cat management measures can be accommodated within existing business unit budgets.
30. Consideration regarding implementing signage at relevant prohibited areas mentioned in Schedule 3 will be required for the 2022/2023 budget year.

**SUSTAINABILITY**

31. It has been well documented that cats have had a detrimental effect on wildlife and ecosystems. By implementing certain sustainable control methods ensuring cats are contained effectively will help reduce the amount of wildlife being destroyed and strengthen the responsibility requirements imposed on cat owners.

**RISK MANAGEMENT**

32. **Risk:** Not implementing the Local Law will limit the control of cats causing destruction to native wildlife, as well as impacts upon amenity within neighbourhoods
- | <b>Consequence</b>   | <b>Likelihood</b> | <b>Rating</b> |
|--|-------------------|---------------|
| Moderate   | Likely            | Medium        |
| <b>Action/Strategy-</b>  |                   |               |
| Implementation of the new local law which will limit and allow enforcement for cats not being contained effectively. |                   |               |
33. **Risk:** Introduction of stronger cat control laws could adversely impact domestic cat owners through a compliance response.
- | <b>Consequence</b>   | <b>Likelihood</b> | <b>Rating</b> |
|--|-------------------|---------------|
| Moderate   | Possible          | Medium        |
| <b>Action/Strategy-</b>  |                   |               |
| Education around the new local laws will allow cat owners to adjust and adapt to the new laws and make necessary changes required to ensure their cats are contained adequately. |                   |               |

34.	<p><b>Risk:</b> Legal advice received indicates that the Joint Standing Committee may have issue with the number of areas the City is trying to identify as cat prohibited, as this is significantly more than other local governments local laws.</p>						
	<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: left; padding: 2px;">Consequence</th> <th style="text-align: left; padding: 2px;">Likelihood</th> <th style="text-align: left; padding: 2px;">Rating</th> </tr> </thead> <tbody> <tr> <td style="padding: 2px;">Significant</td> <td style="padding: 2px;">Possible</td> <td style="padding: 2px;">High</td> </tr> </tbody> </table>	Consequence	Likelihood	Rating	Significant	Possible	High
Consequence	Likelihood	Rating					
Significant	Possible	High					
	<p><b>Action/Strategy-</b></p>						
	<p>As per the legal advice, the City has undertaken a similar process to the City of Canning Cats Local law and been more specific in identifying the physical lot boundaries and parts of the reserve which the prohibition applies.</p>						

**CONCLUSION**

- 35. Research undertaken by the City and presented to Council at the November 2020 OCM highlighted that cats are having a detrimental impact to the native wildlife. It also showed increased concerns within the broader community about the impact of uncontrolled cats within the City.
- 36. The City has considered the need for appropriate control methods and listed reserves that should be considered as prohibited areas. These are outlined in Schedule 3 of the proposed draft local law.
- 37. The broader community will have an opportunity to have their say on the proposed local law through the consultation process and Council as part of the finalisation process will consider submissions and possible modifications.

**Voting Requirements: Simple Majority**

**RECOMMENDATION**

That Council:

- 1. ADOPT the proposed City of Kalamunda - Keeping and Control of Cats Local Law 2022 as provided in Attachment 1, for the purpose of public advertising.
- 2. NOTE a copy of the proposed local law will be available at all Kalamunda Libraries, Administration Office, on the City’s website and through social networks.

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3. NOTE Submissions about the proposed local law may be made to the City of Kalamunda throughout the 6 weeks publication period and will be taken into consideration on completion of the notice period.

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### 10.1.4. Cambridge Reserve - Consideration of Department of Planning, Lands and Heritage Offer to Purchase and Business Plan

*Declaration of financial / conflict of interests to be recorded prior to dealing with each item.*

The Manager Strategic Planning provided a presentation on this report.

Council sought clarification on the themes within the submissions received. The Manager Strategic Planning advised further analysis of the submissions would need to be undertaken.

Mr Peter Forrest provided a statement in relation to the business plan in relation to the provision of aged care accommodation. The Director Development Services provided clarification in relation to various issues raised within the presentation.


Previous Items	OCM240/2017, OCM21/2019, OCM153/2020, OCM305/2021
Directorate	Development Services
Business Unit	Strategic Planning
File Reference	CM-01/012
Applicant	City of Kalamunda
Owner	State Government - Crown Land

Attachments	1. Business Plan Report [ <b>10.1.4.1</b> - 17 pages] 2. Submission Table [ <b>10.1.4.2</b> - 22 pages]
Confidential Attachments	Business Case – Forrestfield Advancing: Community Enhancement Project

#### Submitters Details

*Reason for Confidentiality: Local Government Act 1995 (WA) Section 5.23 (2) (c) - "a contract entered into, or which may be entered into, by the local government and which relates to a matter to be discussed at the meeting."*

#### TYPE OF REPORT

Advocacy	When Council is advocating on behalf of the community to another level of government/body/agency
Executive	When Council is undertaking its substantive role of direction setting and oversight (eg accepting tenders, adopting plans and budgets)
Information	For Council to note
 Legislative	Includes adopting Local Laws, Town Planning Schemes and Policies. When Council determines a matter that directly

impacts a person’s rights and interests where the principles of natural justice apply. Examples include town planning applications, building licences, other permits or licences issued under other Legislation or matters that could be subject to appeal to the State Administrative Tribunal

**STRATEGIC PLANNING ALIGNMENT**

Kalamunda Advancing Strategic Community Plan to 2031

**Priority 1: Kalamunda Cares and Interacts**

**Objective 1.1** - To be a community that advocates, facilities and provides quality lifestyles choices.

**Strategy 1.1.1** -- Ensure the entire community has access to information, facilities and services.

**Priority 1: Kalamunda Cares and Interacts**

**Objective 1.2** - To provide a safe and healthy environment for community to enjoy.

**Strategy** - 1.2.3 Provide high quality and accessible recreational and social spaces and facilities.

**Priority 2: Kalamunda Clean and Green**

**Objective 2.1** - To protect and enhance the environmental values of the City.

**Strategy 2.1.4** - Increasing and protecting local biodiversity and conservation, wherever possible, through integrating ecosystem and biodiversity protection into planning processes including schemes policies and strategies.

**Priority 3: Kalamunda Develops**

**Objective 3.2** - To connect community to key centres of activity, employment and quality amenities.

**Strategy 3.2.2** - Develop improvement plans for City assets such as parks, community facilities, playgrounds to meet the changing needs of the community.

**Priority 3: Kalamunda Develops**

**Objective 3.3** - To develop and enhance the City's economy.

**Strategy 3.3.2** - Attract and enable new investment opportunities.

**EXECUTIVE SUMMARY**

1. The purpose of this report is for Council to:

- a) Consider submissions received on the Business Plan (Attachment 1).
  - b) Consider proceeding with the undertaking and transaction.
  - c) Accept the offer, subject to Minister approval, to purchase a 32,786m<sup>2</sup> (3.28ha) portion of Cambridge Reserve from the State Government.
2. For several years, the City of Kalamunda (City) has been investigating the development of Cambridge Reserve for the purposes of aged care, residential development and improved public open space. The Department of Planning, Lands and Heritage (DPLH) have now offered, subject to Minister approval, the City to purchase a portion of the site in freehold for a discounted land value of \$536,500 (excluding GST).
3. At the October 2021 Ordinary Council Meeting (October 2021 OCM), the City's Council noted the offer from DPLH and adopted the Business Plan for the purpose of public advertising in accordance with Section 3.59 of the Local Government Act 1995 (LG Act). The Business Plan was advertised and a total of 32 submissions were received.
4. It is recommended that Council:
- a) Note the submissions received on the Business Plan.
  - b) Proceed with the undertaking and transaction as proposed.
  - c) Accept the offer, subject to Minister approval, to purchase a 32,786m<sup>2</sup> (3.28ha) portion of Cambridge Reserve from the State Government for \$536,500 (excluding GST).

**BACKGROUND**

5. **Land Details:**

Land Area:	89,815m <sup>2</sup> (8.98ha)
Local Planning Scheme Zone:	Local Open Space Reservation
Metropolitan Regional Scheme Zone:	Urban

6. **Locality Plan:**



7. Cambridge Reserve is approximately 8.98ha (89,815m<sup>2</sup>) in size located approximately 500m south-east of the Forrestfield District Centre. The site comprises seven lots owned by the Crown and managed by the City. The site is zoned Urban under the Metropolitan Region Scheme (MRS) and Local Scheme Reserve – Local Open Space under Local Planning Scheme No.3 (LPS3).
8. After the identification of Cambridge Reserve in 2011, through a lands study undertaken by the City, as being suitable for a portion to be transferred to facilitate improvements, the City undertook preliminary technical studies in 2012 and 2013 which found that some portions of the site are suitable for development. On this basis, the City progressed with preliminary community consultation and developed concepts. The preliminary consultation process indicated the community were not receptive to the proposal and the process was discontinued at the time.
9. Since the initial investigations and consultation in 2012 and 2013, the City has undertaken several strategic investigations including the development of an Aged Accommodation Strategy 2016.
10. The City's Aged Accommodation Strategy 2016 included the following key recommendations:
  - a) The City should not directly undertake Aged Care developments;
  - b) The City should utilise government assets to encourage retirement living and aged care developments;



- c) Encourage the expansion of existing providers and shared facilities;  
and
  - d) Prioritise sites close to existing services and amenities.
11. In 2017 and 2018, the City revisited the project and engaged planning and design consultants Urbis to revise the concept with the intent of including an aged care component to the project and revise the concepts for landscape improvements which are less maintenance intensive and more sympathetic to the natural environment.
12. In February and March 2018, the City undertook preliminary community consultation to determine the key values that Cambridge Reserve holds for the community and the key themes of enhancement that the community desires. Preliminary consultation included an onsite workshop, a survey, an information stall at Forrestfield Shopping Centre, and a call for written submissions.
13. The outcomes from the preliminary consultation informed the preparation of a draft concept plan; which included an aged care site, retained bushland, landscaping upgrades, playground, over 55's accommodation and residential lots.
14. Public advertising was undertaken for the draft concept plan between July and August 2018 and included a community workshop, survey, information stalls at the Forrestfield Shopping Centre and Forrestfield Library and a request for submissions. A draft concept plan was also workshopped with the City's technical staff.
15. The concept plan was endorsed by Council at the Ordinary Council Meeting held on 26 February 2019 and it was resolved to progress further technical studies and initiate the land transfer process with DPLH. A core consideration of this project is that the land in question reverts to City freehold ownership to facilitate development given the constraints that exist under the existing Management Orders.
16. In February 2019, the City requested comment from the DPLH on the adopted concept plan. The DPLH and the DBCA responded in March 2019 with some concerns relating to the methodology and results of the flora surveys prepared during previous investigations 2012 and 2017.
17. In response, the City engaged an independent consultant to undertake a third flora and fauna survey in the spring of 2019. At the same time, consultants were engaged to undertake the following technical studies:
- a) Environmental Management Plan including the flora/fauna survey and Floristic Community Type (FCT) Analysis;

- b) Water Modelling Report and Local Water Management Strategy;
  - c) Geotechnical Report;
  - d) Bushfire Management Plan;
  - e) Infrastructure and Servicing Report;
  - f) Landscaping Cost Estimates; and
  - g) A revised concept plan to address the findings of the additional technical studies.
18. In summary, the results of the technical studies found two main constraints:
- a) The capacity of the existing seasonal drainage sump is insufficient and needs to be increased to account for a 1 in 100 year flood level to service the development envisaged through the revised concept plan; and
  - b) The three areas of threatened ecological communities (TEC) were present onsite; two were identified as 3c – Forrestfield Complex and one was identified as 20a – Banksia Woodland.
19. The concept plan that was first adopted by the Council in February 2019 was subsequently re-designed, to account for the new information and to respond to the additional technical studies. Key aspects of the revised concept plan include:
- a) Aged Care Site with an option of 1ha or 1.5ha.
  - b) Retention, protection, and enhancement of the TEC.
  - c) Implementation of buffers which extend the TEC protection zone and act as low fuel load managed parkland for bushfire setbacks.
  - d) Drainage sump reconfigured into a constructed wetland utilising Water Sensitive Design Principles.
  - e) Playground relocated and increased in size. Half basketball court added to cater for a wider variety of age groups.
  - f) Comprehensive path network featuring nature-play, exercise equipment, sensory experiences, signage, and seating areas.
  - g) Development area reconfigured to avoid the TEC resulting in less impact on existing residents to Mallow Way and York Street/Cambridge Reserve.
  - h) Development area includes reclaimed land because of drainage reconfiguration to utilise land already cleared.
  - i) A proposed northern drainage basin and road extension located under the power easement located north-east of the site.
  - j) Residential lots ranging between (225m<sup>2</sup> - 642m<sup>2</sup>) overlooking the local open space.

20. The revised concept plan and associated Scheme Amendment 104 to rezone the developable portion of the site from Local Open Space to Urban Development was adopted by Council for the purposes of public advertising in August 2020. Scheme Amendment 104 was subsequently adopted by the Council at the December 2020 Ordinary Council Meeting and forwarded to the Western Australian Planning Commission.
21. At the October 2021 OCM, Council noted the offer from the DPLH and adopted the Business Plan for the purpose of public advertising in accordance with Section 3.59 of the LG Act.

### **DETAILS AND ANALYSIS**

22. Since mid-2020, the City has been in negotiations with the DPLH on the purchase of the developable portion of Cambridge Reserve. Negotiations with DPLH have been occurring at an officer level with DPLH being advised through Landgate's Valuation Services and the City by independent land valuers. A copy of DPLH and the City's land valuations are contained within Appendix 8 of Confidential Attachment 1.
23. Through conferral of the City and DPLH valuers, a final discounted value for the developable portions of Cambridge Reserve has been offered at \$536,500 (excluding GST). This offer is based on the land and prospective development areas assumed by the land valuers and will form the total purchase price for the subject land.
24. In addition to negotiations on land value, the City has been in detailed discussion and exchanges of information with DPLH on the future development of Cambridge Reserve. A Strategic Business Case was developed and presented to DPLH as part of this process. A copy of the Strategic Business Case is provided in Confidential Attachment 1.
25. In order to progress with the purchase and future development of Cambridge Reserve, as envisaged by Council's adopted concept plan, the City is required to fulfill the requirements of its obligations under the *Local Government Act 1995*. These obligations include the relevant provisions of Section 3.59 – Commercial enterprises by local governments.
26. Section 3.59 requires the City to prepare and advertise a Business Plan, prior to entering into a land transaction that is preparatory to entry into a major land transaction.
27. In this instance, the purchase of the developable portion of Cambridge Reserve from the State would be the preparatory land transaction whereas the development of the site would be a major land transaction.

28. The Business Plan required by Section 3.59 is to include an overall assessment of the major land transaction and is to include details of:
- a) Its expected effect on the provision of facilities and services by the local government.
  - b) Its expected effect on other persons providing facilities and services in the district.
  - c) Its expected financial effect on the local government.
  - d) Its expected effect on matters referred to in the local government's Strategic Community Plan.
  - e) The ability of the local government to manage the undertaking or the performance of the transaction.
29. The City prepared a Business Plan fulfilling those requirements and Council adopted the Business Plan for the purposes of public advertising at the October 2021 OCM.
30. The Business Plan was advertised between 15 October 2021 and 26 November 2021. A total of 32 submissions were received, comprising 28 objections, and 4 in support of the proposed undertaking and transaction as proposed. Submissions and officer responses are provided in Attachment 2.
31. Of the submissions received that were objecting to the proposal, the reasons for objection include but are not limited to:
- a) The clearing of native vegetation;
  - b) The displacement of native fauna;
  - c) Inconsistency with the City's other strategic priorities; and
  - d) The use of municipal funds and financial risk to progress the project.

Each of the above reasons have been addressed below.

32. **a) The clearing of native vegetation**  
With regard to the clearing of native vegetation, the concept for the Cambridge Reserve Project has been informed by a flora and vegetation survey (PGV 2019). The proposed development has been predominantly concentrated in areas where vegetation was recorded as being in a "Completed Degraded" condition.
33. The flora and vegetation survey identified three large areas of vegetation which were determined to be in a "Very Good" to "Excellent" condition, which are referred to as TECs. These areas will be retained, protected and managed. Interface treatments with these areas of vegetation / TECs will

be carefully designed to provide an appropriate buffer to ensure their ongoing viability, in consultation with the Department of Biodiversity, Conservation and Attractions (DBCA).

34. The Concept Plan identifies buffers to the TEC which will accommodate managed revegetation and open space for recreation and provide separation distance to minimise bushfire risk.
35. The proposed drainage system will be located within predominantly "Degraded" and Completed Degraded" vegetation and existing cleared land. The proposed drainage system will be vegetated with local native species to create a living stream which enhances the natural environment and maintain or improve water quality.
36. **b) The displacement of native fauna**  
Several submissions raised concern that the proposed development will displace native fauna that currently use the reserve.
37. While large areas of habitat will remain intact and protected, the proposed development will necessitate some clearing of degraded vegetation which may provide habitat for native fauna. Prior to any clearing works, management of fauna will be determined in consultation with DBCA and may include measures such as:
- a) slow, directional clearing towards retained vegetation to allow fauna to relocate into adjacent vegetation, supervised by a qualified fauna handler/ zoologist;
  - b) implementation of a fauna relocation management plan, in the event that relocation is determined appropriate (subject to a fauna relocation licence issued by DBCA);
  - c) pre-clearing inspections for fauna, including but not limited to inspections of any tree hollows during avian breeding season.
38. **Inconsistency with the City's other strategic priorities**  
Residential Aged Care has been identified as a significant strategic issue for the City. Aged care development in the City has been a decade long priority and a significant amount of analysis has been undertaken by both the City and through the City's Aged Care Advisory Committee. The City of Kalamunda contains a gap between the needs of the community and aged care beds available - an estimated shortfall of approximately 750 aged care beds by 2036. In addition, the aging population in Forreestfield is slightly higher than the Perth Metropolitan Region average.
39. The strategic level assessment of natural areas, through the City's Draft Local Biodiversity Strategy, will assist the City to identify natural areas that should be formally protected and managed in the long term, including the TECs at Cambridge Reserve. As noted above, decisions regarding the

proposed land use changes and protection of environmental values at Cambridge Reserve are based on field assessments to confirm biodiversity values. The Concept Plan has identified development within areas of the site that are predominantly completely degraded, and has identified formalised buffer areas to TECs. Furthermore, the project will enable landscaping measures to improve the protection and ongoing viability of the existing TECs.

40. **c) The use of municipal funds to progress the project**  
Some of the submissions objecting to the proposal have raised concern that the Cambridge Reserve Project will expose the City to undue financial risk. In this regard, appropriate financial due diligence will be undertaken prior to proceeding with any expenditure associated with the development and landscaping improvements.
41. Three (3) of the 32 submissions received were written submissions from State Government agencies including the Public Transport Authority, Main Roads and the Department of Local Government, Sport and Cultural Industries. None of the comments received from these agencies raised significant concerns with the proposal and were all in support of the proposed business plan.

#### **APPLICABLE LAW**

42. *Local Government Act 1995* – Section 3.59 – Commercial enterprises by local governments.
43. The LG Act requires that the decision of Council to proceed with the transaction and undertaking be an Absolute Majority.
44. *Land Administration Act 1997*.

#### **APPLICABLE POLICY**

45. N/A

#### **STAKEHOLDER ENGAGEMENT**

46. At the October 2021 OCM, Council noted the offer from the DPLH and adopted the Business Plan for the purpose of public advertising in accordance with Section 3.59 of the LG Act.
47. The Business Plan was advertised between 15 October 2021 and 26 November 2021. A total of 32 submissions were received. Out of the 32 submissions, 28 submissions were objections whilst 4 were supportive of the proposal. Note that the submissions and City's response to the

submissions are provided in Attachment 2. Submitters details are included in a Confidential Attachment.

48. Key matters raised in the submissions are summarised as follows:
- a. The clearing of native vegetation;
  - b. The displacement of native fauna;
  - c. Inconsistency with the City's other strategic priorities; and
  - d. The use of municipal funds to progress the project.

This is further discussed in the Details and Analysis section of this report. (refer also to Attachment 2– Submission Table).

### **FINANCIAL CONSIDERATIONS**

49. Funding for the purchase of Cambridge Reserve has been set aside through previous budgets as part of the City's allocation of funds to the Land and Property Enhancement and Maintenance Reserve.
50. Accounting for contingencies and changing market factors, the future development of Cambridge Reserve is estimated at a cost of approx. \$10 million (excluding GST). Funding for the development is proposed to be sourced from a combination of reserves, budgeted funds, and borrowings.
51. The future revenue estimated through the sale of land at Cambridge Reserve is estimated at approx. \$14.5 million (excluding GST).

### **SUSTAINABILITY**

52. **Social Implications**  
The proposed development will enable an increase in the range of land uses which could be located within the site including aged care and residential development. Such a development could support ageing in place, so residents remain close to existing social and family networks, and intergenerational mingling through shared use of the local open space.
53. The proposed development will enable the City to sell a portion of the land which will be used to directly fund local open space improvements onsite (or on nearby community infrastructure within Forrestfield), plus encouraging local residents to enjoy the upgraded playground, trails, bushland and parkland.
54. **Economic Implications**  
Facilitating the development will enable the sale of a portion of the land to the market thereby generating the resources required for upgrades to the public open space. Benefits of this process are anticipated to include

delivery of improved public open space facilities, revegetation and ongoing maintenance of remnant bushland, jobs generated through construction and preparation of the site, as well as ongoing healthcare jobs within the aged care sector.

- 55. **Environmental Implications**  
The proposed design results in the retention of all TEC identified onsite and areas of vegetation of good quality or better. It is acknowledged that should development of the site proceed then it would likely result in the removal of vegetation within the developable area to facilitate construction of the aged care site, residential accommodation and supporting services and infrastructure.
- 56. Development of the site will provide opportunities for areas of high-quality vegetation to be managed and enhanced as well as enabling the establishment of street trees as part of the proposed new road network.
- 57. Proposed Scheme Amendment 104 was assessed by the Environmental Protection Authority (EPA) in September 2020. The amendment was examined, with preliminary investigations and inquiries conducted. The EPA advised that the amendment does not require further environmental assessment under the relevant provisions of the *Environmental Protection Act 1986*.

**RISK MANAGEMENT**

58.

<b>Risk:</b> The City embarks on the development and an aged care provider is unable to be sourced.		
<b>Consequence</b>	<b>Likelihood</b>	<b>Rating</b>
Major	Possible	High
<b>Action/Strategy</b>		
The City is aware of significant aged care shortages and, should the development proceed, ensure a robust Expressions of Interest process is pursued.		

59.

<b>Risk:</b> Complications arise throughout the development increasing development costs.		
<b>Consequence</b>	<b>Likelihood</b>	<b>Rating</b>
Major	Possible	High
<b>Action/Strategy</b>		
Ensure thorough detailed designs and robust tendering processes are undertaken for the development of the site.		



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## CONCLUSION

60. The consideration of land value for the site has been through a robust consideration process by both the City and DPLH with each organisation being informed by independent land valuers.
61. The proposed development of Cambridge Reserve is a long-standing strategic initiative of the City. It proposes to fulfill much needed aged care shortages and provides for improved public open space for the broader community. Funding realised from Cambridge Reserve will also provide funding for improved community facilities throughout the Forrestfield locality.
62. On balance, and having regard for the detailed information contained and attached to this report, it is recommended that Council:
- a) Note the submissions received on the Business Plan.
  - b) Proceed with the undertaking and transaction as proposed.
  - c) Accept the offer, subject to Minister approval, to purchase a 32,786m<sup>2</sup> (3.28ha) portion of Cambridge Reserve from the State Government for \$536,500 (excluding GST).

<b>Voting Requirements: Absolute Majority</b>
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## RECOMMENDATION

That Council:

1. NOTE the submissions received on the Business Plan.
2. PROCEED with the undertaking and transaction as proposed in the Business Plan.
3. ACCEPT the offer, subject to Minister approval, to purchase a 32,786m<sup>2</sup> (3.28ha) portion of Cambridge Reserve from the State Government for \$536,500 (excluding GST).

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**10.2. Asset Services Reports**

**No reports presented.**

**10.3. Corporate Services Reports**

**No reports presented.**

**10.4. Office of the CEO Reports**

**No reports presented.**

**11. Closure**

There being no further business, the Presiding Member declared the Meeting closed at 7:15pm.

I confirm these Minutes to be a true and accurate record of the proceedings of this Council.

Signed: \_\_\_\_\_  
Presiding Member

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 2021.