Public Agenda Briefing Forum

Notes

8 September 2026

INDEX

1. Official Opening

The Presiding Member opened the meeting at 6:30pm and welcomed Councillors, Staff, Members of the Public Gallery and those watching via live stream. 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

Mayor Margaret Thomas JP

Councillors

South East Ward

John Giardina

David Modolo

South West Ward

Mary Cannon

Brooke O'Donnell *(Presiding Member)*

North West Ward

Sue Bilich

Lisa Cooper

North Ward

Kathy Ritchie

Josh Clark

Members of Staff

Chief Executive Officer

Luke Ellis – A/Chief Executive Officer

Executive Team

Nathan Ritchie – Director Development

Amanda Widjaja– A/Director Infrastructure

Gary Ticehurst – Director Corporate

Darren Jones – A/Director Community

Management Team

Rhonda Bowman – Manager Governance

Regan Travers – Manager Statutory Approvals

Pollyanne Fisher – Manager Asset Planning

Administration Team

Molly Rogers-Thomson - Executive Officer to the CEO

Members of the Public 3

Members of the Press Nil.

Apologies Nil.

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

Public questions will be allowed and received following the presentation of the report.

6. Public Statement Time

Public statements will be allowed and received following the presentation of the report.

7. Public Submissions Received in Writing

7.1 Nil.

8. Petitions Received

8.1 Nil.

9. Confidential Items Announced But Not Discussed

9.1 Item 10.2.1. Kalamunda Environmental and Sustainability Reference Group Nominations – **Confidential Attachment** - Confidential Attachment 1 – Kalamunda Environmental and Sustainability Reference Group nominations.

Reason for Confidentiality: *Information relating to the personal affairs of an individual [Act s. 5.23(4)(b)]*

10. Reports to Council

10.1. Development Reports

10.1.1. Local Planning Policy 1.0 Development Assessment

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

A presentation was provided by Regan Travers, Manager Statutory Approvals.

Officers clarified that the home business exemption would allow an existing approved home business to transfer to a new property, subject to conditions and written confirmation from the City. It would not permit an otherwise unsupported use.

The proposed tavern exemption arose from consultation with other local governments and would apply only in Commercial and Centre zones. It would not apply in Rural Agriculture zones such as Pickering Brook, where development approval would still be required. The 'any other use' exemption would generally apply to temporary, one-off or minor activities, with suitability determined through a planning assessment.

Officers undertook to confirm prior to the next Ordinary Council Meeting (OCM) whether Western Australian Planning Commission (WAPC) approval is required for the proposed modification regarding boundary setbacks.

Regarding discretionary advertising, the proposed approach places greater emphasis on technical planning assessments where potential impacts on neighbouring properties can reasonably be anticipated from the application material. Consultation would continue where local context or information from neighbouring landowners may be relevant.

Questions were asked by Cr Kathy Ritchie, Cr David Modolo and Cr Josh Clark. A public statement was made by Bev Dornan.

Previous Items	OCM2026/97
Directorate	Development
Business Unit	Statutory Approvals
File Reference	3.009297
Applicant	Nil
Owner	Nil
Voting Requirements	**Simple Majority**

Attachments	1.	Submission Table [**10.1.1.1** - 5 pages]
	2.	Development Assessment Policy DRAFT V1 for Adoption [**10.1.1.2** - 14 pages]

TYPE OF REPORT

Legislative

Includes adopting Local Laws and Town Planning Schemes. 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.

EXECUTIVE SUMMARY

1. The purpose of this report is for Council to consider a revised Draft Local Planning Policy 1.0 – Development Assessment (Policy) for adoption, and feedback received during the consultation period.

2. The draft Policy provides a planning instrument which clarifies the City of Kalamunda’s approach to development assessment and alignment with the City’s values. It respects the needs of both the City’s applicants, and the regulatory requirements of the relevant planning framework.

3. The recommendation is for Council to adopt the draft Policy as amended which responds to themes of feedback from the community.

OFFICER RECOMMENDATION

That Council:

1. NOTE the submissions received during the public advertising of draft Local Planning Policy 1.0 – Development Assessment and the responses to those submissions attached to this report.

2. ADOPT Local Planning Policy 1.0 – Development Assessment in accordance with Schedule 2, Part 2, Clause 4(3)(b)(ii) of the Planning and Development (Local Planning Schemes) Regulations 2015.

3. REQUEST the Chief Executive Officer conduct a Health Check of the City’s Local Planning Policies to ensure they are contemporary and effective in achieving the outcomes identified in the City’s planning strategies.

BACKGROUND

4. Local Governments have a critical role implementing state government legislation, including undertaking development assessment delegated from the Planning and Development (Loal Planning Schemes) Regulations 2015, and Planning and Development (Development Assessment Panel) Regulations 2011.

5. While there are key legislated elements of the development assessment process, many procedural elements and principles of planning law often lack transparency as they are conducted behind closed doors.

6. At Council's Ordinary Council Meeting of 24 June 2025, Council resolved (OCM 2025/99) that:

   The Chief Executive Officer:

   1. Develop a performance improvement plan to address the results of the MARKYT Scorecard in relation to the Planning and Approvals feedback.
   2. Present the draft plan to council for consideration and adoption at the August Ordinary Council Meeting.

7. The Approval Services Regulatory Improvement Plan (ASRIP) was presented, and noted by Council at the August 2025 OCM.

8. The City's Local Planning Policy's (LPP) contribute to the customer experience and regulatory processes. The key LPP's linked to the regulatory customer experience include:

   LPP 11 – Public Notification of Planning Proposals

   LPP 17 – Planning Administration

   LPP 16 – Design Review Panels

   LPP 7 – Compliance

9. These policies, and the LPP framework require updating to ensure council expectations can be achieved.

   A new LPP – the Development Assessment Policy is the cornerstone of the ASRIP by delivering improved customer service, with a focus on best practice and continuous improvement by:

   a) Providing a transparent and accountable policy and processes for applicants.
   b) Alignment to best practice guidelines.
   c) Promoting and supporting a continuous improvement culture; and

d) Innovation through process improvement and technology to ensure assessment-ready applications.

10. While this report deals with only one Local Planning Policy, it is important that the Administration undertakes a structured review of the remainder of the existing Local Planning Policies to ensure their effectiveness and consistency with community expectations. Local Planning Policies deal with any ambiguity in the default planning framework and provide local nuance. The Officer Recommendation includes a direction to complete a policy 'health check'.

COMMENT

11. The Policy aims to facilitate improved customer experience by:-

a) Providing a transparent process and expectations to guide applicants through the complex standards of the planning framework;
b) Establishing industry leading best-practice approaches to development assessment;
c) Establishing genuinely streamlined workflows that allow for fast approvals; and,
d) Providing a permission-based approach to development by removing the requirement for development approval for minor, or low-impact development that demonstrates a good planning outcome.

12. The Policy applies to all applications for development and subdivision that the City of Kalamunda is responsible for either providing recommendations or comments on proposed development to determining authorities, or is the determining authority.

Nothing in the Policy removes the local government's discretion to require Development Approval where it is considered that a proposal may result in unacceptable impacts or where required under the Local Planning Scheme and in consideration of Clause 67 of the Deemed Provisions.

13. The Policy clarifies three critical elements of the Development Application process which can impact customer experience and timely decisions on development applications

14. The first is the quality of applications, the second is fit for purpose engagement, and the last is meaningful exemptions.

15. Application Quality

The Administration has trialled strategies over the last nine months to identify reform initiatives that would ultimately deliver faster development decisions.

A key trial was modelling of additional statutory planners. While this was effective in delivering faster assessments, it is resource intensive and was not a meaningful reform. It was also at risk of incoming, and outgoing bottlenecks.

Another key trial was modelling the impact of providing post-approval support in the form of a development liaison resource.

Application quality was modelled to have an impact at all three phases of development application assessment (pre-lodgement, formal assessment, post-determination). The draft Policy provides clarity for applicants and the Administration on expectations regarding the quality of applications, through the abovementioned phases.

16. Regulatory Focused Engagement

The Administration has completed case studies on applications that have been subject to neighbour consultation, to consider the different impacts of asking neighbours for comment.

At a statutory level, the planning timeframes extend from 60 days to 90 days. The Administration’s case studies show that a 14 day advertising period is often a 45 day disruption to the assessment when advertising preparation, advertising period, consideration of submissions, and negotiation tasks are completed.

Key observations include

1. For minor development changes are rare after advertising;
2. Resource demand across the organisation to complete advertising; and
3. The Administration often turns from assessing Officer, to neighbour mediator.

The draft Policy provides guidance to the Administration and community on the limits of effective regulatory consultation and introduces IAP2 aligned engagement principles.

The IAP2 Engagement refers to the practice of community and stakeholder engagement, which is a process that involves working across organisation, stakeholders and communities to shape decisions or actions related to a problem, outcome or opportunity. IAP2 Engagement is guided by culturally adaptive standards of practice and core values, aiming to promote and advance public participation and community engagement. Council's Enterprise Project Management Office (EPMO) have also aligned to these engagement practices.

The planning framework facilitates collaboration and empowering levels of engagement, however these are typically at the higher-level stages of planning (such as planning strategies), rather than development assessments. The draft Policy facilitates a shift towards an informing approach to engagement during development assessments.

For clarity, this does mean that a greater proportion of development applications may not be advertised, to provide timely development determinations.

17. Meaningful Exemptions

The Administration notes that recently several local governments have released exemption policies as a reform measure. Whilst exemptions are likely to have an impact, provided they are genuine, in time planning reform at the state level is likely to add back in complexity for planning assessments. Exemptions are likely to provide short term impact.

The draft Policy provides a permission-based approach to development by removing the requirement for development approval for minor, or low-impact development that demonstrates a good planning outcome.

The exemptions tables are likely to require periodic updates as the planning framework shifts; these changes can be accommodated when the Policy is subject to scheduled review.

18. Engagement

During the consultation period the Administration received six submissions. Two supporting the draft, three objecting, and one submission of comment on unrelated matters.

19. Key themes of the submissions supporting the draft Policy are;

- an acknowledgement of the intent to deliver a more customer focused assessment process by providing increased clarity, and
- assessment principles that are forecast to deliver timely decisions on development applications.

20. There is one change to the draft Policy in response to a submission of support which identified that there are some proposals of particular community interest that – consistent with the draft Policy’s focus on increasing trust of the planning system – is a new provision which makes it clear to assessing Officers and applicants that simpler applications on a site with other more complex

approvals should have regard to that history before considering the advertising discretion of the draft Policy.

21. The three submissions of objection raised concerns regarding:

- the delegation levels;
- significant proposals would not be advertised; and
- consideration of the environment.

The draft Policy does not propose any changes to existing delegations and is focused on the cohort of development applications at the simple, minor level – and does not impact proposals of significant community interest. Significant proposals – in terms of their community engagement process – will continue to be guided by the existing Local Planning Policy 11 – Public Notification of Planning Proposals.

The draft Policy does reference the environment - among other planning matters - being important considerations of development assessment. The consideration of relevant planning matters for each application are set by the default state planning framework and provided nuance through the City's suite of local planning policies.

22. The Administration has not proposed any modifications to respond to the concerns raised in submissions.

23. The Administrations internal testing of the draft Policy has identified that greater flexibility – consistent with the objectives of the draft Policy – can be achieved if the exemption reference to fire fighting tanks is changed to refer just to water tanks. This broader reference provides flexibility for water tank installations across the City for other purposes, such as resource certainty, and sustainability.

OPTIONS

24. Option 1 - Adopt the Draft Policy in accordance with the Officer Recommendation.

Adopting the draft Policy would be consistent with Council's endorsed ASRIP, which is the City's lead program facilitating reform of the local planning framework at the Local Government level.

25. Option 2 - Modify the Draft Policy to dial up or down its impact on the planning framework, to achieve the objectives of the draft Policy.

Modifications should be considered with the whole planning framework in mind, as some parts of the planning framework are not able to be amended – or if changed, may have unintended consequences.

The only option with potential for unplanned resource impact is the option to modify the draft Policy in a different manner to the Officer Recommendation. Clarification of the impact of a modification can be provided on a case-by-case basis.

26. Option 3 - Not adopt the draft Policy, leaving the local planning framework in its current state.

LEGISLATIVE CONSIDERATIONS

27. *Planning and Development Act 2005 (P&D Act 2005)*

The P&D Act 2005 is legislation that establishes Western Australia's land use planning system and promotes the sustainable use and development of land in the State.

28. *Planning and Development (Local Planning Schemes) Regulations 2015*

Schedule 2, Part 2, cl.4 (2)

"The period for making submissions … must not be less than the period of 21 days after the day on which the notice is first published …"

Schedule 2, Part 2, cl.4 (3)

"*After the expiry of the period within which submissions may be made the local government must –*

a) review the proposed policy in light of any submissions made: and
b) resolve to-
   i. proceed with the policy without modification; or
   ii. proceed with the policy with modifications; or
   iii. not to proceed with the policy."

Schedule 2, Part 2, cl.4 (3A)

"The local government must not resolve under subclause (3) to proceed with the policy if –

a) the proposed policy amends or replaces a deemed-to-comply provision of the R-Codes; and
b) under the R-Codes, the Commission's approval is required for the policy; and

c) the Commission has not approved the policy."

Schedule 2, Part 2, cl.5 (4)

"If the local government resolves to proceed with the policy, the local government must publish notice of the policy in accordance with clause 87."

POLICY CONSIDERATIONS

29. Local Planning Policy 11 - Public Notification of Planning Proposals identifies a minimum advertising period of 21 days for a local planning policy.

    The City has met the statutory requirement of establishing a new local planning policy, which is tabled for Council's decision.

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.
Strategy 1.1.2 - Empower, support and engage all of the community.

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.

Priority 3: Kalamunda Develops
Objective 3.4 - To be recognised as a preferred tourism destination.
Strategy 3.4.1 - Facilitate, support and promote, activities and places to visit.

Priority 4: Kalamunda Leads
Objective 4.1 - To provide leadership through transparent governance.
Strategy 4.1.1 - Provide good governance.
Strategy 4.1.2 - Build an effective and efficient service based organisation.

COMMUNITY AND STAKEHOLDER ENGAGEMENT

Internal Engagement	
Process	Outcome
Workshop	As noted earlier in this report, a workshop of the draft Policy highlighted a change to the exemption to water tanks would be consistent with the objectives of the draft Policy.

External Engagement	
Process	Outcome
The draft Policy was advertised on the City's engagement platform for 21 days, and a notice was published in the Echo newspaper inviting comment.	The Schedule of Submissions is attached to this report.

FINANCIAL CONSIDERATIONS

30. The draft Policy is forecast to have a minor financial impact due to less applications being assessed, and exemptions to the requirement to obtain development approval being used.

31. The procedural improvements identified in the draft Policy are expected to occur within existing resource levels, but it does require shifts in resource allocation within the Statutory Approvals teams.

SUSTAINABILITY

32. Social

    The draft Policy is forecast to improve neighbour relationships by getting neighbour engagement right.

33. Economic

    The draft Policy is forecast to have a positive economic impact, by facilitating timely planning decisions which allow applicants to progress through the development approval stage of their project.

34. Environmental

    The draft Policy has no known environmental impact. Matters that require consideration of environmental considerations would be deemed as Significant proposals – in terms of their community engagement process – and will continue to be guided by the existing Local Planning Policy 11 – Public Notification of Planning Proposals.

RISK MANAGEMENT

Consequence	Event	Rating	Action
Financial	Reduction in Application Fee's	Low	Not applicable.
Health & Safety	Injury occurs due to exemption being applied.	Low	Not applicable.
Reputation	Council improving the planning framework to increase certainty impact neighbours' expectations to make comment.	Medium	Monitor policy implementation, and report back to Council if changes are required.
Operation	Improved operating environment fails to improve execrations of community.	Medium	Monitor policy implementation, and report back to Council if changes are required.
Environment	Minor environmental damage or contamination occurs due to policy being applied.	Low	Not applicable.
Compliance	Minor breach of policy, or process requiring approval or variance occurring	Low	Monitor policy implementation, and report back to Council if changes are required.
Project	Small variation to cost , timelines, scope or quality of objectives and required outcomes to achieved by policy	Low	Monitor policy implementation, and report back to Council if changes are required.

REGIONAL SIGNIFICANCE

35. The draft Policy is not of regional significance, although it is an innovative response to long-standing planning issues within the City of Kalamunda.

36. It's likely that elements of this policy approach will be replicated and filter into other Council's respective planning frameworks.

CONCLUSION

37. The revised draft Local Planning Policy 1.0 – Development Assessment provides a sound and proportionate tool within the City's planning framework to guide exemptions, assessments, meaningful engagement, and recommendations.

38. The revised draft Local Planning Policy 1.0 – Development Assessment is an important element of the Approval Services Regulatory Improvement Plan (ASRIP) which was developed in response to the 2024 Markyt Community Survey.

10.2. Infrastructure Reports

10.2.1. Kalamunda Environmental and Sustainability Reference Group Nominations

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

A presentation was provided by Pollyanne Fisher, Manager Asset Planning.

Officers advised that, if nominations were readvertised, targeted promotion could be undertaken in underrepresented suburbs through local shops and other community locations. A question was taken on notice whether previous advertising had been displayed at libraries or promoted through relevant community groups in Forrestfield and High Wycombe.

Questions were asked by Mayor Margaret Thomas, Cr Lisa Cooper, and Cr Kathy Ritchie.

Previous Items	OCM 47/2022; OCM 61/2022; OCM 187/2023; OCM 74/2024
Directorate	Infrastructure
Business Unit	Asset Planning
File Reference	3.009047
Applicant	N/A
Owner	N/A
Voting Requirements	**Simple Majority**
Attachments	1. Attachment 1 - Kalamunda Environmental & Sustainability Reference Group TOR [**10.2.1.1** - 7 pages]
Confidential Attachments	1. Confidential Attachment 1 – Kalamunda Environmental and Sustainability Reference Group nominations <u>Reason for Confidentiality:</u> *Information relating to the personal affairs of an individual [Act s. 5.23(4)(b)]*

TYPE OF REPORT

Executive

When Council is undertaking its substantive role of direction setting and oversight (e.g. accepting tenders, adopting plans, policies and budgets)

EXECUTIVE SUMMARY

1. The purpose of this report is for Council to appoint five community representatives to the Kalamunda Environmental and Sustainability Reference Group (KESRG) for the period September 2026 to September 2028 (Confidential Attachment 1).

2. Council have been provided with the Terms of Reference (Attachment 1) which outlines the purpose, objectives and roles and responsibilities of the reference group.

OFFICER RECOMMENDATION

That Council:

1. APPOINT the five nominated representatives to the Kalamunda Environmental and Sustainability Reference Group, as per Confidential Attachment 1, for a term of 2 (two) years.

2. NOMINATE and APPOINT an Elected Member Representative and a Deputy Representative to the Kalamunda Environmental and Sustainability Reference Group for a term ending 16 October 2027.

3. ADOPT the Kalamunda Environmental and Sustainability Reference Group Terms of Reference as per Attachment 1.

BACKGROUND

4. Advisory committees, advisory groups and reference groups are commonly used by Councils as an advisory mechanism as way to test and inform approaches to specific matters. Members are appointed to these groups by resolution of Council under Terms of Reference, which specify the purpose, functions and roles of the group.

5. The City of Kalamunda (City) has historically had a number of Advisory Committees of Council which generally transitioned to advisory groups in 2023. The most recent version of the KESRG was the Kalamunda Environmental and Sustainability Advisory Group (KESAG), which was established at the 28 October 2023 Special Council Meeting for a two-year period.

6. Due to an organisational restructure at the City and departure of the environmental lead for the group, the group was temporarily paused until February 2026.

7. In early 2026, an internal review of the structure and effectiveness of KESAG was undertaken. The review concluded that transitioning to a reference group would provide a more suitable governance model than the existing advisory group or committee structure. A reference group offers greater flexibility to focus on specific issues, facilitates focussed discussion, and provides a more effective forum for testing, refining, and developing ideas and approaches relating to environmental matters with the advice and support of group members.

COMMENT

8. Advertising for nominations for the KESRG opened Monday 18 May 2026 and closed Friday 26 June 2026. Advertising was undertaken on the City's website homepage and social media channels. Paper nomination forms and Terms of Reference were supplied to the Kalamunda Administration front counter. A total of seven nominations were received.

9. The candidates were assessed by the City against the criteria matrix endorsed as per Governance Policy 13.

Selection Criteria	Weighting
Knowledge, experience, or qualifications of the topics the Committee/Group will be required to address.	20%
Ability to demonstrate previous experience working in teams and groups.	20%
Demonstrate how they will act as an advocate for the city always displaying positive intent and the ability to represent the interests of other people, including those who might be less vocal or harder to reach.	20%
Applicants demonstrating, they are from cultural and linguist diverse backgrounds	20%
The ability to allocate the necessary time to attend meetings and read documentation prior to the meeting.	10%
Applicants that have not participated in any previous advisory committees enabling new talent to be attracted to committees that may not have as much experience as existing members.	10%

10. It is noted that the majority of nominees reside within Kalamunda, with limited representation from other areas of the City. This concentration of membership may result in a stronger focus and local knowledge associated with environmental issues specific to Kalamunda, potentially at the expense of broader environmental considerations or the unique environmental challenges, priorities, and opportunities affecting other parts of the City. A more geographically diverse membership would assist in ensuring environmental matters are considered from a whole-of-City perspective, and bring in a broader range of local knowledge for a wider spread of areas.

11. Candidates with the top (averaged) assessment scores are nominated to Council for appointment. See Confidential Attachment 1. The Terms of Reference also identify that an Elected Member representative will be also be appointed to the group as well as a Deputy Elected Member representative.

12. Minor modifications were made to the previous Terms of Reference to develop the new Terms of Reference, proposed for Council Endorsement as part of this report to ensure the terms align with the changes made to convert the Advisory Group to a Reference Group.

OPTIONS

13. Option 1 – As per Officer Recommendation

    Council appoints the five recommended nominees presented in this report to the KESRG. The nominees will be advised of their appointment and the KESRG will be formally re-established with a new Terms of Reference and operating as a Reference Group rather than an Advisory group.

14. Option 2 – Readvertise for broader representation

    Council may disagree with nominee recommendations due to the concentration of nominees residing in and around Kalamunda (3 Kalamunda, 1 Gooseberry Hill and 1 Forrestfield), and recommended appointments therefore having limited representation across all City wards.

    An option may be to readvertise and focus on advertising more heavily in wards that are currently under-represented. This would likely incur additional advertising costs, particularly if focussing a campaign aimed at generating additional applications and from specific areas.

15. Option 3 – Do not establish group

Council decides to not proceed with the establishment of the KESRG. All nominees will be notified that they have been unsuccessful and that the reference group will not proceed.

LEGISLATIVE CONSIDERATIONS

16. *Local Government Act 1995*

POLICY CONSIDERATIONS

17. Governance 13 – Appointment of Community Members to Advisory Committees and Reference Groups

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 2.1.2 - Development and Implementation of the Urban Forest Strategy.
Strategy 2.1.3 - Development and implementation of the Local Biodiversity Strategy
Strategy 2.1.5 - Community engagement and education in environmental management.

COMMUNITY AND STAKEHOLDER ENGAGEMENT

Internal Engagement	
Process	**Outcome**
An internal review of the structure and effectiveness of the former KESAG was undertaken in early 2026. The review involved the Infrastructure Director, asset planning and development team members, governance team and Community Director. The proposal was presented and workshopped with Council in February 2026.	It was determined that a reference group structure would be more appropriate than an advisory group structure. The Terms of Reference were updated the reflect this change.
Following the advertisement process, the nominations were assessed by three staff members. Staff were from the Asset Planning, Parks & Engineering and Statutory Approvals teams. Recommendations were submitted to the Asset Planning Manager and	Five out of seven nominees were recommendation for appointment to Council.

Infrastructure Director for review. The recommendations were reviewed by the Kalamunda Leadership Team.	

External Engagement	
Process	**Outcome**
A meeting was held with the previous KESAG Chair on 20 January 2026 to facilitate introductions with new leads and discuss the group model and potential new model for the group.	The proposed 'reference group' model was discussed and was supported.
A meeting was held with the previous Elected Member Advisory Group representatives, Cr Ritchie and Cr Cooper, on 27 January 2026 to discuss the Chair feedback.	The feedback was discussed and the proposed 'reference group' model was supported.
Advertising for nominations began Monday 18 May 2026 and closed Friday 26 June 2026, a period of 26 days. Advertising was undertaken was undertaken on the City's website homepage and social media channels. Paper nomination forms and Terms of Reference were supplied to the Kalamunda front counter. On Facebook, the advertisements were viewed by 9,500 people, 469 of which clicked the link to the nominations page.	The advertising period exceeded the minimum period of three weeks as per Governance Policy 13. A total of seven nominations were received.

FINANCIAL CONSIDERATIONS

18. The City will allocate time and resources to support the operation of the KESRG.

19. Based on the following estimated administration time per meeting and the assumption of 4 meetings per year, the cost of the reference group will be in the order of $8,000 - $9,000 per annum.

Hours / Meeting	Activity
4	Meeting agenda preparation
16	Research for briefing papers
2	Meeting attendance (2 staff)
3	Minutes
4	Review and sign-off (senior officer)
4	General liaison
4	Reports to Council (if applicable)

SUSTAINABILITY

20. **Social**

Reference groups are a focussed pathway for the City to engage with the community and seek community feedback.

21. **Economic**

N/A

22. **Environmental**

Reference groups nominate community representatives with expertise on environmental issues who can provide advice and support to the City to achieve better environmental outcomes. This group is intended to specifically focus on achieving the broad environmental objectives of the City by supporting the achievement of actions within endorsed Strategies.

RISK MANAGEMENT

Consequence	Event	Rating	Action
Financial	The reference group do not function or operate to achieve outcomes and become a cost to the City rather than a benefit.	Low	The terms of reference outline the purpose, objectives, expectations, roles and responsibilities of the reference group. The terms of reference provided to nominees during advertisement period. City officers will provide guidance and support on the group's operations.
Health & Safety	The meetings of the reference group are not flexible or inclusive to allow participation.	Low	Structure meetings to provide flexibility in mode of attendance (team meetings).

Consequence	Event	Rating	Action
Reputation	The goals of the reference group do not align with the goals, objectives and strategies of the City and the City receives negative feedback.	Medium	The terms of reference outline the purpose, objectives, expectations, roles and responsibilities of the reference group. The terms of reference were provided to nominees during the advertisement period. City officers will provide guidance and support to manage expectations.
Operation	The reference group do not support the City's operations or projects which creates a conflict between the City and reference group which hinders City operations.	Low	The terms of reference outline the purpose, objectives, expectations, roles and responsibilities of the reference group. The terms of reference provided to nominees during advertisement period. City officers will provide guidance and support to guide the group's expectations and operations.
Environment	The reference group representatives do not have knowledge or experience in the environment or sustainability.	Low	The nominations are reviewed by the City before submission to Council. The nominees are assessed against criteria, one of which is the knowledge, qualification and experience of the nominees, in accordance with the Governance Policy 13.
	Limited geographic representation may result in environmental matters being considered from a predominantly Kalamunda Ward perspective, reducing consideration of environmental issues and priorities across the wider City.	Medium	This risk is partially mitigated by aligning the group's activities with the City's endorsed environmental strategies. Rather than determining topics independently, City officers will establish meeting agendas and discussion items based on endorsed Strategy priorities, with the aim of facilitating knowledge sharing, informed discussion, and the generation of ideas to support

			the delivery of Strategy actions. While this approach will help maintain a broader, whole-of-City focus, there remains a risk that members' contributions will be influenced by their local knowledge and experiences, which – although valuable knowledge - may result in discussions being more heavily informed by issues and perspectives from their local area.
Compliance	The reference group or representatives have conflicts of interest.	Low	The Terms of Reference include a clause requiring group member to disclose conflicts of interest.
Project	The reference group do not support City's managed projects/proposals.	Low	The terms of reference outline the purpose, objectives, expectations, roles and responsibilities of the reference group. The terms of reference provided to nominees during advertisement period. City officers will provide guidance and support to guide the group's expectations and operations.

REGIONAL SIGNIFICANCE

23. N/A

CONCLUSION

24. Upon Council appointment of community representatives, the KESRG will be formally re-established under a new reference group structure for a two-year term.

10.3. Corporate Reports

10.4. Community Reports

10.5. Office of the CEO Reports

10.5.1. Policy Reviews

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

There was no presentation provided for this item.

Cr Lisa Cooper asked about the changes to the Freeman of the City Policy. Officers advised that the limit of one Freeman of the City being awarded within a 12-month period is a policy guideline, and Council may depart from this where appropriate, such as for a joint nomination.

Previous Items	N/A
Directorate	Office of the Chief Executive Officer
Business Unit	Governance
File Reference	N/A
Applicant	N/A
Owner	N/A
Voting Requirements	**Simple Majority**
Attachments	1. DRAFT - Governance 15 - Payments to employees (Final) [**10.5.1.1** - 2 pages] 2. DRAFT - Governance 15 - Payments to employees (marked up) [**10.5.1.2** - 3 pages] 3. DRAFT - Governance 21 - Freeman of the City (Final) [**10.5.1.3** - 4 pages] 4. DRAFT - Governance 21 - Freeman of the City (marked up) [**10.5.1.4** - 4 pages]

TYPE OF REPORT

Executive

When Council is undertaking its substantive role of direction setting and oversight (e.g. accepting tenders, adopting plans, policies and budgets)

EXECUTIVE SUMMARY

1. Council policies are presented for review as follows:

- Governance 15 – Payments to Employees (Recognition of Service)
- Governance 21 – Freeman of the City

2. The policies listed above have not been reviewed by Council since 2021 and require review to account for changes to legislation and administrative practices at the City since that time.

OFFICER RECOMMENDATION

That Council ADOPT the recommended amendments to the following policies, as shown in the attachments:

a) Governance 15 – Payments to Employees (Recognition of Service) (Attachment 1)
b) Governance 21 – Freeman of the City (Attachment 3)

BACKGROUND

4. Periodic policy reviews are a requisite feature of good governance to ensure the guidelines around the use of statutory powers are up-to-date, lawful and suit the needs of the local government, expectations of the community, and are fit for purpose.

5. Changes made to the *Local Government Act 1995* (Act) as part of overarching local government reforms by the State Government require local governments to update policies for a range of matters (where the Act requires policies to deal with specific items).

6. Council previously received a report on 24 February 2026 (OCM 2026/07) to review and update other policies relating to requirements prescribed by the Act (Elected Member Travel being one example).

COMMENT

7. Officers have reviewed these policies in detail and present drafts to update or replace them. All are presented in 'track changes' format.

8. **Governance 15 – Payments to Employees (Recognition of Service)**

   This policy allows for the recognition of employees whose employment with the City is ending by voluntary means, linked to the length of their service. Amendments have been made to the Policy to remove detailed reference to sections of the *Local Government Act 1995*, assisting in keeping the policy current. Amendments have also been made to better explain the purpose and what is allowable as recognition for employees by way of gift card. Further clarification on the eligibility for employees in relation to the specific recognition allowable within this Policy has also been proposed.

The introduction of the *Local Government (Long Service Leave) Regulations 2024* updated the long service leave scheme for local government employees. All local governments in Western Australia are now subject to State workplace law in the making of Industrial Agreements. This has been reflected in the amended policy.

The amended policy is at Attachment 1 with the marked up changes to the policy shown at Attachment 2.

9. **Governance 21 – Freeman of the City**

Minor amendments to this policy are identified, mostly for purposes of improving grammar and defined terms, with an inclusion limiting the conferral of Freeman of the City to one within a 12 month period. The reviewed policy has also been updated to remove irrelevant legislative references.

The amended policy is at Attachment 3 with the marked up changes to the policy shown at Attachment 4.

OPTIONS

10. Option 1 – As per Officer Recommendation

Council may adopt the recommended policy changes as proposed.

11. Option 2 – Additional changes

Council may adopt the reviewed policies with any additional changes identified as an amendment to the Officer Recommendation.

12. Option 3 – Not approve

Council may reject the proposed changes, retain the policies as they are and review again in two years.

LEGISLATIVE CONSIDERATIONS

13. *Local Government Act 1995*

s.2.7 Role of Council
(b) determining the local government's policies

s.5.50 Payments to employees in addition to contract or award

POLICY CONSIDERATIONS

14. The proposal is to amend the existing policies.

STRATEGIC PLANNING ALIGNMENT

Kalamunda Advancing Strategic Community Plan to 2031

Priority 4: Kalamunda Leads
Objective 4.1 - To provide leadership through transparent governance.
Strategy 4.1.1 - Provide good governance.
Strategy 4.1.2 - Build an effective and efficient service based organisation.

COMMUNITY AND STAKEHOLDER ENGAGEMENT

Internal Engagement	
Process	**Outcome**
Business units were consulted on the operation of the policies and any needed changes	Amendments recommended, where necessary

External Engagement	
Process	**Outcome**
N/A	N/A

FINANCIAL CONSIDERATIONS

15. N/A

SUSTAINABILITY

16. Social

Regular policy reviews are a cornerstone of good governance to maintain community confidence in Council; and to ensure appropriate transparency and limitations are included.

17. Economic

N/A

18. Environmental

N/A

RISK MANAGEMENT

Consequence	Event	Rating	Action
Financial	N/A	N/A	N/A
Health & Safety	N/A	N/A	N/A
Reputation	Lack of appropriate policy structure resulting in improper conduct or lack of awareness	Medium	Adopt recommended policy changes
Operation	N/A	N/A	N/A
Environment	N/A	N/A	N/A
Compliance	Lack of required policies results in City being in breach of the Act	Medium	Adopt recommended policy changes
Project	N/A	N/A	N/A

REGIONAL SIGNIFICANCE

19. Nil.

CONCLUSION

20. Regular reviews of the City's policies will ensure that Council's policy structure remains abreast of legislative changes, community expectations, and are fit for purpose.

21. The amendments proposed to the policies listed support these objectives. It is recommended Council adopt the amendments proposed.

10.5.2. Adoption of Proposed Local Government Property Local Law 2026

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

A presentation was provided by Rhonda Bowman, Manager Governance.

Officers confirmed that all local laws are reviewed by the Joint Standing Committee on Delegated Legislation (JSCDL) after being made and gazetted.

Clarification was sought as to whether the amendment to clause 3.1(4), relating to activities undertaken by community clubs under written agreements with the City, constituted a significant change for the purposes of section 3.13 of the Act, and whether advice had been received on this matter. This question was taken on notice.

It was advised that enforcement of the local law would focus on education and communication, rather than immediately issuing infringements for non-compliance.

Questions regarding the process, delegation, criteria and safeguards for excluding a person from City property for up to 12 months were taken on notice. Officers advised that exclusions from City property are uncommon, with one instance identified in the previous two years, primarily on safety grounds and involving Police.

Questions were asked by Cr Kathy Ritchie, Cr Josh Clark, Cr David Modolo, and Mayor Margaret Thomas.

Previous Items	OCM 2026/52
Directorate	Office of the Chief Executive Officer
Business Unit	Governance
File Reference	N/A
Applicant	N/A
Owner	N/A
Voting Requirements	**Absolute Majority**
Attachments	1. Schedule of Submissions (FINAL) [**10.5.2.1** - 26 pages] 2. Draft Local Government Property Local Law 2026 (FINAL) [**10.5.2.2** - 32 pages]

TYPE OF REPORT

Legislative

Includes adopting Local Laws and Town Planning Schemes. 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.

EXECUTIVE SUMMARY

1. At the Ordinary Council Meeting of 26 May 2026 Council resolved to give local public notice of the proposed Local Government Property Local Law 2026 (the proposed local law).

2. The proposed local law is intended to replace the existing Local Government Property Local Law made by Council in 2001, because it is impacted by the repeal provisions contained within the *Local Government Act 1995* (WA) where local laws not reviewed under the previous 8-year review requirement will become repealed if not reviewed or replaced.

3. 15 submissions were received in response to the proposed local law. Where appropriate, amendments have been made to the proposed local law to account for issues raised by some submissions. Other amendments are proposed to correct typographical errors and general structure.

4. It is recommended Council make the proposed local law, as attached to this report.

OFFICER RECOMMENDATION

That Council:

1. NOTES the proposed Local Government Property Local Law 2026, as attached to this report, is not significantly different from what was proposed for community consultation by Council at the Ordinary Council Meeting of 26 May 2026;

2. In accordance with section 3.5(1) and section 3.12(4) of the *Local Government Act 1995,* MAKE the Local Government Property Local Law 2026 as attached to this report;

3. AUTHORISE the Chief Executive Officer to –

a) pursuant to section 3.12(5) of the *Local Government Act 1995*, give a copy of the Local Government Property Local Law 2026 to the Minister for Local Government, and publish the Local Government Property Local Law 2026 in the Government Gazette;

b) pursuant to section 3.12(6) of the *Local Government Act 1995*, give local public notice in the manner prescribed, specifying the date on which the Local Government Property Local Law 2026 comes into operation, and where it may be viewed by the public; and

c) pursuant to section 3.12(7) of the *Local Government Act 1995*, give a signed Explanatory Memoranda and Explanatory Memoranda check list, copies of the Local Government Property Local Law 2026 and any other materials required, to the Clerk of the Joint Standing Committee on Delegated Legislation.

BACKGROUND

4. The *Local Government Amendment Act 2024* (Amendment Act) was proclaimed on 6 December 2024, with some sections coming into effect the following day. This amendment to the *Local Government Act 1995* (Act) changed the statutory local law review period from 8 years to 15 years, however in the same amendment, the repeal provision was introduced that would repeal local laws not reviewed under the previous 8-year period.

5. This automatic repeal provision impacts the existing Local Government Property Local Law made by Council in 2001, because it has not been reviewed since 2011. Whilst it is understood Council initiated a review process at its Ordinary Council Meeting on 20 June 2011, there is no information available to indicate the review was completed.

6. At its OCM of 26 May 2026 Council resolved to give local public notice of the proposed local law, with publication occurring in accordance with the requirements of the Act inviting submissions to be made to the City. The submission period commenced on Friday 29 May 2026 and ended on 17 July 2026, allowing 7 weeks for submissions (the Act requires 6 weeks).

7. There were 15 public submissions received during the consultation period, and a response from the Department of Local Government, Industry Regulation and Safety (Department) in response to the proposed local law being submitted to

the Department pursuant to the Act. No public submissions were received outside the consultation period.

COMMENT

8. The proposed local law is based on contemporary examples already in operation in the sector, which are based on the template local law offered by the Western Australian Local Government Association. Property local laws based on this template are well established in the local government sector, containing the same or similar provisions, powers, and offences. The Joint Standing Committee on Delegated Legislation (JSCDL) has previously recommended local governments use template local laws where possible.

9. As required by the Act (s. 3.12(3)(b)(i)), the local law was submitted to the Department on 2 June 2026. Whilst the Department stated that "no critical issues were identified", the Department requested all cross references be checked for accuracy. This has been done.

Local government property – general legislative scheme

10. Aside from the local government's general ability at law to possess and deal in property, a local government's authority over its property is based in the Act under s. 1.4 in the defined term of *local government property* – excepting non-land/building assets in this case:

> ***local government property*** *means anything, whether land or not, that belongs to, or is vested in, or under the care, control or management of, the local government*

11. Local government property primarily concerns real property - land, buildings, premises, and the fittings/fixtures on the property. Other forms of local government property are irrelevant for the purpose of this exercise (e.g. fleet vehicles). The definition of local government property provided by the Act nevertheless includes other forms of property in recognition of the broad array of functions and duties, and obligations local governments have.

12. When considering local government property within the context of local law making, the management, ownership and responsibilities of the local government is to be viewed against section 3.1(2) of the Act:

> ***3.1. General function***
>
> …
>
> *(2) The scope of the general function of a local government is to be construed in the context of its other functions under this Act or any other written law and any constraints imposed by this Act or any other written law on the performance of its functions.*

13. Section 3.5 of the Act further allows local governments to make local laws prescribing all matters that are required or permitted to be prescribed by a local law, or are necessary or convenient to be so prescribed:

> ***3.5. Legislative power of local governments***
>
> *(1) A local government may make local laws under this Act prescribing all matters that are required or permitted to be prescribed by a local law, or are necessary or convenient to be so prescribed, for it to perform any of its functions under this Act.*

Subsection (3) provides that the power to make a local law under the Act is in addition to any power to make local laws conferred on it by any other Act.

14. In providing these powers, Parliament has expressly given local governments functions concerning reserves under its control and management. This is illustrated by section 3.54 of the Act:

> ***3.54. Reserves under control of local government***
>
> *(1) If land reserved under the Land Administration Act 1997 (WA) is vested in or placed under the control and management of a local government, the local government may do anything for the purpose of controlling and managing that land that it could do under section 5 of the Parks and Reserves Act 1895 if it were a Board appointed under that Act to manage and control the land and for that purpose a reference in that section to a by-law is to be read as a reference to a local law.*
>
> *(2) Subsection (1) is subject to any express provision to the contrary made by an order under the Land Administration Act 1997 (WA) in respect of the land.*

The powers and functions provided by the Act are broad and substantial. Subject to any specific requirements under any management order, the local government may do anything for the purpose of controlling and managing land and reserves as if it were a board constituted under the *Parks and Reserves Act 1895*.

15. The legislative scheme is established that –

- local governments are responsible for local government property;
- local governments may manage local government property as part of their general function under the Act and other written laws;
- local governments may make local laws for matters that are required or permitted, or are necessary or convenient to be regulated by a local law; and
- land and reserves under the control of the local government are not only capable of being managed by the local government as it would with any other local government land, the local government's local laws apply universally to that land.

16. The Supreme Court has tested and affirmed the established legislative scheme for local government property in *Tallott -v- City of Stirling* [2017] WASCA 126 where the court held, in the context of a local government property local law and the local government's powers under those local laws on Crown land –

> *190. Under the Local Government Act, the provision of good government for persons in its district is the general function of a local government, and a liberal approach is to be taken to the construction of the scope of the 'general function': s 3.1(1) and s 3.1(3) of the Local Government Act. The scope of the general function of the City is also to be construed in the context of its other functions under any written law: s 3.1(2) of the Local Government Act. This includes its functions under the Land Administration Act in relation to the care, control and management of the land in question. There is nothing comparable in the Local Government Act which deals specifically and in detail with the administration of the land.*
>
> *191. The provisions of cl 9.1 and cl 9.2 of the Local Law, regarding persons 'on local government property' obeying the lawful directions of, and not obstructing, an authorised person in the execution of their duties, and being required 'to leave local government property' in specified circumstances, fall within the scope of the 'necessary or convenient' power under s 3.5(1) of the Local Government Act.*

The Court's reasoning in *Tallott* recognises that a local government's functions under the Act are to be construed in the context of its other statutory functions, including those arising under the *Land Administration Act 1997* (WA) (LAA) in relation to the management of Crown land.

17. It can be seen therefore the legislative and common law scheme for the regulation of local government property, and the local government's powers applicable to that function, are well established. It recognises that provisions regulating conduct on local government property, including compliance with lawful directions and other measures that are necessary and convenient for the orderly administration of local government property, legitimately fall within the scope of the local law-making power conferred by s. 3.5(1) of the Act, having regard to the other aforementioned statutory obligations.

18. It is not just convenient for local governments to have an effective and lawful regulatory scheme for activities on land the local government is responsible for, but also necessary.

PUBLIC SUBMISSIONS – GENERAL THEMATIC ISSUES RAISED

19. 15 public submissions were received by the City in response to the advertisement of the proposed local law (excluding a response from the Department). Three were from organisations, with the remainder being from individuals. Specific issues or questions arising from individual submissions are

addressed in the schedule of submissions accompanying this report (Attachment 1).

20. The majority of the submissions generally objected to the proposed local law and its provisions. A number of submissions appear to be duplicates of one another, using identical sentences, paragraphs and construction.

Perceived impact on sports clubs and other licence holders

21. Submissions by sports clubs that use Ray Owen Reserve expressed concern that some provisions of the proposed local law will inhibit or curtail lawful activities associated with the normal operation of a sports club. The crux of this argument appears to be that the proposed local law would require permits to be obtained for activities listed, which are activities routinely performed by sports clubs, and due to the licence agreements of the sports clubs not expressly referencing those activities, permits are required thus creating an unworkable administrative burden for licence holders.

22. If a local government has entered into a lease or licence agreement with anyone (regardless of the local government's tenure of the land), the local government has done so in exercise of its executive functions as a lawful property owner. Naturally this is conditional on the operation of other laws that expressly deal with the tenure or assignment of interests of some types of land (i.e. the LAA), however the overall premise is that local governments are generally free to enter into a lease or licence agreement with a person, and that lease or licence agreement has its own legal standing, as recognised by the courts.

23. The proposed local law recognises the need for legitimately established lease, licence, hire and approved activities to continue, as expressly provided by a transitional clause (clause 1.8).

24. Because a lease or licence agreement has its own legal standing, a lessee or licensee generally derives the same proprietor's rights and obligations as the owner, subject to the individual agreement and the operation of the law. Where the lease or licence describes the permitted purpose of the agreement, the lessee or licensee (as the case may be), is able to undertake those activities that are for the permitted purpose under that lease or licence.

25. The existing provisions from the Local Government Property Local Law (2001) have been reproduced in the proposed local law verbatim - meaning the permit and hire requirements that have existed for the past 25 years will remain. It should also be noted that the existing exemption for lease or licence holders ("written agreement") is carried over as well. This is provided by clause 3.1(4) of the proposed local law.

26. Notably, the *effect* of cl. 3.1(4) is framed on whether a written agreement *exists*, not whether the written agreement deals with the things listed by subclause (1). This is because as previously stated, leases and licences have legal standing of their own and are taken to have dealt with any question of permissibility of the things the local law requires permits for, provided that the activity desired is consistent with the permitted purpose under the lease or licence. For example, an end of year AGM function for a sports club is something that would be consistent with the purpose of the lease or licence - because it is a part of the sports clubs' activities.

27. Conversely making an excavation or building a building is not - it would be difficult to argue that either of those are consistent with the permitted purpose of the lease or licence. A permit should be sought for those things to allow the City to scrutinise them. Conditions of individual leases and licences may make express mention of these things or may refer to a requirement to obtain a permit for specific things that are not reasonably related to the lessee's use or the permitted purpose.

28. An opposing concern presented by another submission raised an underlying concern whereby there is potential for the proposed local law to enable a form of "back door" permissive environment for lease and licence holders in terms of some activities, that would not be ordinarily permissible under an existing lease or licence.

29. There are limits inherent in leases and licences in terms of the activities permitted, in which the activities permitted must be associated with the permitted purpose. A lease or licence holder that seeks to undertake an activity that is not associated with the permitted purpose will be required to obtain permission from the local government, if the activity is one regulated by the local law.

30. Viewed objectively however, in order to remove the prospect of inappropriate or unauthorised works occurring on local government property where a lease or licence is in effect, it is acceptable to modify clause 3.1(4) to make it more specific around lease or licence holders and the permitted purpose of those kinds of agreements. This modification is shown in the attachment and later in this report.

31. This change to clause 3.1(4) will deliver four outcomes:

    a) It would import a well-established principle of property law into the local law that is recognised by the courts.

    b) It has the effect of creating a link between the local law and lease/licence agreements rather than the two existing in isolation to one another.

c) It provides better surety to lease and licence holders that activities associated with their permitted purpose are allowed as-of-right.

d) It covers the broader public interest by ensuring permit applications are required for activities that are not authorised or not associated with the permitted purpose (i.e. closing the "back-door").

Crown land tenure

32. Several submissions argue that the proposed local law provides a source of the City's authority to manage Crown land or enter into agreements in respect of Crown land. This is incorrect. The City's powers and obligations in relation to Crown land arise under the applicable statutory framework, particularly sections 3.54 and 3.58 of the Act, the LAA, and any management order and other relevant written laws. The proposed local law regulates conduct on local government property but neither enlarges nor diminishes those statutory powers and obligations.

33. Where some submissions refer to clause 1.10 of the proposed local law as some form of source of authority to deal in land, the clause itself expressly recognises the legislative limitations in this respect by saying *"Subject to the requirements of the Act and any other written law…"*

34. If the City exceeded its powers under the LAA or a management order, it would be unlawful regardless of whether the local law addressed it. Further, section 3.7 of the Act specifies the legislative standing of local laws against other written laws:

> ***3.7. Inconsistency with written laws***
>
> *A local law made under this Act is inoperative to the extent that it is inconsistent with this Act or any other written law.*

35. The purpose of the proposed local law is to regulate conduct and activities on local government property. It does not confer powers to grant tenure, lease Crown land, alter reserve purposes, or exercise powers inconsistently with any written law. As delegated legislation, the local law operates subject to the Act and all other applicable legislation, and is ultimately subject to Parliamentary review by the JSCDL.

36. For this reason requests by submissions to amend or include specific provisions relating to Crown land are unnecessary and would be highly likely to result in disallowance by the JSCDL for reasons of being beyond the local government's law-making power, due to duplicity against Acts of Parliament, and functions of the Minister for Lands.

37. Much for the same reason, requests for permit applications to undergo the community consultation process pursuant to s. 3.58 of the Act before being determined would be likely to be beyond lawful power, as hire and permits do not confer any transferral of property rights like a lease or licence.

38. The City holds Crown land that involves a wide array of public purposes (Ray Owen Reserve, Kostera Oval are two examples). With the existing sport and recreational uses of some of these Crown lands involving leases or licences to community groups and sporting clubs, the regulatory scope demanded by some submissions would unreasonably impact these groups and would require the City to engage in a public consultation process every time the group or club wished to conduct a function, install sponsorship banners or charge an entry fee for an event. This is an example of an unreasonable regulatory over-reach that would be criticised by the JSCDL.

Delegation of powers and functions

39. Another theme arising from some submissions is what appears to be a perception around delegation of powers and functions.

40. This concern appears to arise from a misunderstanding of the distinction between "Council" and "local government" as used in the Act. The existing local law functions and powers have been delegated to the Chief Executive Officer (CEO), as has been done for a number of years. Many of those functions and powers are proposed to be carried forward unchanged. As stated previously, the proposed local law does not provide a source of authority to deal in the tenure of land. In addition, the Act provides the head of power to delegate functions of local laws made under that Act.

41. The Department of Local Government, Industry Regulation and Safety in it's '*Local Government Operational Guideline - Delegations, Authorisations and Acting Through'* (August 2024) explains as follows:

> *"The Act has been framed in a way that determines whether powers and duties can be delegated or not, namely:*
> - *If the term 'council' or 'by resolution' is used, then it is the council itself which must carry out that function.*
> - *If the term 'local government' is used then delegation may be possible, subject to any other express powers against delegation.*
> - *If the term 'the CEO' is used then unless expressly provided otherwise, the CEO may delegate that function."*

42. Contrary to the views expressed in some submissions, the terminology used by the existing 2001 local law in clause 2.1 (the term "the local government") actually allowed for this function to be delegated, were it not for the operation of subclause (8). Where in the proposed local law the ability to make a determination in accordance with clause 2.2 exists, this has been held as a function that can only be exercised by the Council (itself).

43. The difference in terms used between the 2001 local law and the proposed local law can be best put down to peculiar drafting and being based on a model local law that used a drafting style in common use at the time.

44. As noted above, where the Act, regulations or local laws made under the Act use the term *Council*, the function cannot be delegated because the Council is the governing body of the local government. Where the term *the local government* is used, this is a function or power that is able to be delegated in accordance with section 5.42 of the Act (subject to the operation of section 5.43).

45. It would appear as though the principal point of objection around this arises from the existing property local law whereby in its equivalent provisions as the proposed local law, it contains the power to make a determination. If Council wishes to make a determination in respect of local government property, Council would need to follow the process prescribed by the local law – as it is currently required to do.

46. In every other case delegated authority is necessary to allow the local government to deal with day-to-day hire and permit applications, for a range of users, facilities and activities. Requiring every hire permit application to be dealt with by the Council – in some cases, multiples in a single day – would be an administrative absurdity and would result in the introduction of a level of red tape that would likely be classified by the JSCDL as an unreasonable regulatory overreach.

47. It does not automatically follow that something will be delegated as a matter of course, and the delegator always reserves the ability to set aside a delegation of authority for a particular matter or a class of matters generally, even when there is a 'standing' instrument of delegation in place (see: *Interpretation Act 1984,* s. 59).

Enforcement powers

48. Likewise a number of the submissions claim the proposed local law would create a new or unconstrained enforcement regime. That is also not the case. The proposed local law operates within the existing statutory and administrative law framework governing local government decision-making.

49. Any future exercise of powers under the local law would remain subject to the same legal constraints, statutory oversight and judicial review mechanisms that presently apply to all exercises of local government power. Any offence of the local law requires an objective assessment of causation. These are well established principles of administrative law.

50. As stated previously the term *local government property* encompasses an array of places owned or managed by the local government, inclusive of parks, buildings

and facilities. In this respect the mechanism of the City's tenure of the land is irrelevant.

51. The enforcement powers of the proposed local law also speak to the general overarching common law principle in that the City, as a proprietor of land, premises and facilities, has the lawful ability to exercise its property rights if a person's behaviour on the local government property becomes incompatible with the general public interest for these spaces to be safe and freely accessible for all.

52. As explained previously (pp. 16), the Supreme Court found in the *Tallott* decision that these enforcement powers of a local government property local law fall within the legitimate scope of being necessary or convenient powers for local law making in accordance with s. 3.5(1) of the Act.

53. The proposed local law is directed to the regulation of conduct on local government property and the administration of that property. It does not create or alter the City's statutory powers or obligations in relation to Crown land, but operates within that broader legislative framework. As noted previously, any contravention of the LAA by the local government in respect of Crown land would be unlawful in any case, regardless of the local law and its provisions.

54. The local government has a need to exercise such powers on both City-freehold and Crown-vested land on a regular basis for a range of grounds. In day-to-day practice these reasons regrettably are almost always involving anti-social behaviour, wilful damage/vandalism, unlawful access and other issues that arise as a day-to-day aspect of managing spaces for public use.

55. Without a straightforward regulatory mechanism to hold offenders to account, safe public access and use of public spaces would suffer, along with a corresponding cost to ratepayers for increased maintenance, repairs, and public liability insurance indemnity.

56. It is highly likely that the community has an expectation that the local government will possess a means of holding offenders to account for conduct that results in damage or misuse of places the community uses or has paid for - to not have that enforcement mechanism would invariably fail one of the principal tests of the Act: to provide for the good government of the district.

Exclusion from public places

57. Decisions of the courts have long recognised that a person's entitlement to enter and remain on premises open to the public is generally founded upon an implied licence granted by the occupier, which may be withdrawn in appropriate circumstances.

58. Clause 6.2(4) allows the local government to exclude a person from local government property for a period of up to 12 months. Clause 6.2(1) provides for a person duly authorised under section 9.10(2) of the Act to direct a person to leave local government property. The clause does not create an unfettered power to prohibit a person from accessing public places for any purpose or in any circumstances. Its operation is confined by the terms of the local law and the broader statutory and common law framework.

59. As the majority of the High Court reasoned in *Roy v O'Neill* [2020] HCA 45, the implied licence is not absolute and balanced its recognition of that implied permission by acknowledging that an occupier may withdraw that permission.

60. Ultimately the local government has an obligation under the *Work Health and Safety Act 2020* as well as under general public liability principles to provide safe workplaces for its employees, and safe facilities for the public to use.

61. Perhaps the most notable misunderstanding of submissions in respect of clause 6.2(4) is that the City can already exclude a person from local government property without relying on this clause at all – because the City as the lawful proprietor of property under the implied licence doctrine allow it to do so in a more or less unfettered manner – with no recourse. Clause 6.2(4) places limitations on how this can occur. The power to exclude a person from local government property is only exercisable where a person has already been directed to leave or committed an offence of the local law. It is therefore not a power that can be exercised arbitrarily.

62. Some submissions additionally state there is no 'judicial' review associated with clause 6.2(4), however this is also not correct. An exercise of this power is subject to the right of review provided by clause 7.1 of the proposed local law, which would allow an aggrieved person to lodge an objection with the Council, or alternatively apply to the State Administrative Tribunal for a review of the decision in accordance with Part 9 of the Act. This linkage in the local law has been included on purpose, to limit opportunities for abuse of the power.

Constitutional freedoms (political communication)

63. A submission has referred to the High Court and *Lange -v- Australian Broadcasting Corporation* [1997] 189 CLR 520 (*Lange*) wherein implied freedom of political communication was explained by the High Court in terms of regulatory instruments that might unreasonably burden that implied freedom. There are undertones of this theme arising in other submissions, however not directly mentioned. This mostly seems to concern a requirement of the proposed local law to obtain permits for erecting signs/advertisements and using public address systems.

64. The reference to *Lange* is helpful, however the application of *Lange* must be properly understood and should not be used without its intrinsic test.

65. The *Lange* decision established a two-part test to determine circumstances when it is appropriate for legislation to infringe on a person's implied Constitutional right of free political communication. Whilst *Lange* primarily dealt with a defamation proceeding, it was further modified by the High Court in *Coleman -v- Power* [2004] HCA 39 and *McCloy -v- New South Wales* [2015] HCA 34 and *Comcare -v- Banerji* [2019] HCA 23 into a three-part test as follows (the modified *Lange* test):

> *"1. Does the law effectively burden the freedom in its terms, operation or effect? If "no", then the law does not exceed the implied limitation and the enquiry as to validity ends.*
>
> *2. If "yes" to question 1, are the purpose of the law and the means adopted to achieve that purpose legitimate, in the sense that they are compatible with the maintenance of the constitutionally prescribed system of representative government? This question reflects what is referred to in these reasons as "compatibility testing".*
>
> *The answer to that question will be in the affirmative if the purpose of the law and the means adopted are identified and are compatible with the constitutionally prescribed system in the sense that they do not adversely impinge upon the functioning of the system of representative government.*
> *If the answer to question 2 is "no", then the law exceeds the implied limitation and the enquiry as to validity ends.*
>
> *3. If "yes" to question 2, is the law reasonably appropriate and adapted to advance that legitimate object? This question involves what is referred to in these reasons as "proportionality testing" to determine whether the restriction which the provision imposes on the freedom is justified.*
>
> *The proportionality test involves consideration of the extent of the burden effected by the impugned provision on the freedom. There are three stages to the test – these are the enquiries as to whether the law is justified as suitable, necessary and adequate in its balance in the following senses:*
>
> > *suitable — as having a rational connection to the purpose of the provision;*
> > *necessary — in the sense that there is no obvious and compelling alternative, reasonably practicable means of achieving the same purpose which has a less restrictive effect on the freedom;*
> > *adequate in its balance — a criterion requiring a value judgment, consistently with the limits of the judicial function, describing the balance between the importance of the purpose served by the restrictive measure and the extent of the restriction it imposes on the freedom.*
> > *If the measure does not meet these criteria of proportionality testing, then the answer to question 3 will be "no" and the measure will exceed the implied limitation on legislative power."*

Assessment of the proposed local law under the modified Lange test

66. It is considered the proposed local law meets the threshold posed by the modified *Lange* test as follows –

1. The answer to limb 1 of the test is 'yes' because the proposed local law inherently limits permissible activities on local government property, in which case political communication may be *incidentally* burdened by regulating certain activities undertaken on local government property, subject to compliance with the local law and any other written law;

2. The answer to limb 2 of the test is also 'yes', due to the purpose of the proposed local law being to regulate the use and management of local government property in the interests of public safety, protection of public assets, equitable access, and the orderly administration of local government property. Those purposes are plainly compatible with the maintenance of the constitutionally prescribed system of representative and responsible government as provided for by the Act;

3. The answer to limb 3 of the test is also yes, when considering the elements and the proportionality requirement of the modified *Lange* test to be applied where -

   Suitable - the provision has a rational connection to the purpose of the local law which in and of itself is for the purpose of regulating activities on local government property without bias and is user neutral;

   Necessary - there is no obvious and reasonably practicable alternative, nor any other regulatory instrument available that is capable of performing the overarching purpose of the local law, inclusive of enforcement powers, with the associated ability to control the proliferation of signs on local government property and ensure use is lawful and equitable to all;

   Adequate in its balance - the provision in question, with specific regard to the example of signs, placards and megaphones, does not ban these items outright. Rather, the local law contemplates that these things are not to be done/used/installed unless a permit has been obtained from the local government. The burden imposed is therefore limited and proportionate to the legitimate objectives of ensuring public safety, protecting local government assets, avoiding conflicts between competing users, avoiding nuisance to adjoining landowners and facilitating the orderly administration of local government property. This is well within the scope of a local government's law making powers for property it is required to manage and is a continuance of a regulatory scheme that the local government has had since the making of the existing local law in 2001 - regardless of the nature of the local government's tenure over the land.

67. The High Court previously considered the *Lange* test with respect to delegated legislation made by a local government regulating the use of public places (a by-law). In *Attorney-General (SA) -v- Corporation of the City of Adelaide* [2013] HCA 3 the court recognised that some burden upon political communication may arise from such regulation, but held that the regulation directed towards orderly management of public places is capable of being constitutionally valid. The City is regulating the use of its public spaces, not the ideas expressed by those using them.

68. The implied freedom of political communication in *Lange* does not create a positive right to use public land in whatever manner someone chooses. The High Court has consistently explained since the *Lange* decision that the implied freedom is not a personal right or licence to ignore generally applicable laws.

RECOMMENDED CHANGES

69. While it is apparent that a number of submissions received by the City have misunderstood the purpose and lawful effect of the proposed local law, some submissions nevertheless raise legitimate issues for consideration around changes that should be made to it.

70. The recommended changes to the proposed local law are as follows -

Amend clause 3.1(1)(i). The subclause contains a typographical error to be corrected:

> *(i) drive or ride or take any vehicle, or park or stop any vehicle on local government property in an area ~~set not~~ not set aside for that purpose, or unless authorised by the local government;*

Replace clause 3.1(1)(t). This is in response to an issue raised in sports club submissions whereby the structure around permits for shade structures (portable gazebos, umbrellas) would not be encompassed by the general permit exemption for licence holders, due to the fact the proposed local law as drafted contained the shade structure provision elsewhere. This is a reasonable change to make and has no material impact on the operation of the proposed local law. This has essentially been cut and pasted into clause 3.1(1) so that it properly falls under the permit requirement, and thus the relevant exemption clause:

> *(t) erect, on local government property that is not enclosed, an umbrella or temporary shade structure unless –*
>
> *(i) it is erected for protection from the sun or other elements;*
> *(ii) it has an area of no more than 9 square metres;*
> *(iii) it has a height of no more than 2.5 metres; and*

(iv) it is removed by that person immediately on leaving that local government property on the same day on which it was erected;

Insert clause 3.1(1)(u), (v). Subclauses (u) and (v) are moved down the list due to the insertion of subclause (t):

~~(t)~~(u) erect, install, operate or use any broadcasting, public address system, loudspeaker or other device for the amplification of sound; or

~~(u)~~(v) conduct an entertainment event.

Amend clause 3.1(4). As referred to previously in this report (pp. 29, 30), this amendment will address opposing concerns in respect of perceived limitations (or freedoms) provided by clause 3.1(4) for lease and licence holders whereby an exemption is provided by the local law to obtain a permit for activities listed.

(4) Subclause (1) does not apply to a person who uses or occupies local government property under a written agreement with the local government, to the extent that the activity is – ~~do so.~~

(a) expressly authorised by the agreement; or

(b) associated with the permitted purpose of the agreement.

Amend clause 3.2(3). A submission objected to the removal of a provision in the existing Local Government Property Local Law (2001) that gives the local government the discretion to require a permit applicant to give local public notice of a permit application. The submission further asserted that the requirement should be carried forward, and be mandatory. Whilst there is no material consequence to carrying forward the provision in question, it is considered to be an unreasonable regulatory impost for such a provision to require mandatory public notice for permit applications, and there does not appear to be any basis to extend the regulatory scope of the requirement beyond what already exists. Nevertheless the recommended change is as follows:

(3) Before determining an application for a permit, the local government may require the applicant to – ~~provide additional information reasonably related to the application.~~

(a) provide additional information reasonably related to the application;

(b) give local public notice of the proposed activity to be conducted; or

(c) a combination of (a) and (b).

Amend clause 3.7(1)(e). Typographical error where the full title of legislation was missing:

> *(e) prevent the consumption of any liquor on the local government property unless the permit allows it and a licence has been obtained under the Liquor Control Act 1988 for that purpose;*

Amend clause 4.10. As noted previously, the provisions relating to portable shade structures are proposed to be moved to clause 3.1(1), with some changes made for simplification purposes. Clause 4.10 would become limited to camping offences on local government property.

4.10 ~~Erecting structures or camping~~ Camping on local government property

…

(3) A person must not, without a permit –

(a) camp on, lodge at or occupy any structure at night for the purpose of sleeping on local government property; or

(b) erect on local government property, any tent, camp, hut or similar structure.~~; or~~

~~(c) erect, on local government property that is not enclosed, an umbrella or temporary shade structure unless –~~

~~(i) it is erected for protection from the sun or other elements;~~
~~(ii) it has an area of no more than 9 square metres;~~
~~(iii) it has a height of no more than 2.5 metres;~~
~~(iv) it is removed by that person –~~
~~(I) immediately on leaving that local government property; and~~
~~(II) during daylight on the same day on which it was erected; and~~
~~(v) it is for private use.~~

Delete clause 4.13. Advice from the City's external legal service provider recommended the removal of this clause in its entirety as advertising signage is already regulated by clause 3.1(1), and individual user lease and licence agreements. Exemptions that were included in clause 4.13 were worded in a manner that was not immediately clear, which may attract objection from the JSCDL.

~~4.13 Signs placed by other parties~~

~~A person shall not place a sign on local government property, or on a fence that is enclosing or demarcating local government property unless –~~

~~*(a) the sign is authorised by the local government and is temporary in direct connection with a sporting or other event authorised by the local government for a particular period of time; or*~~

~~*(b) the sign authorised by a written agreement between the local government and the party who placed the sign; or*~~

~~*(c) the sign is authorised by a permit issued under Part 3 of this local law.*~~

Clause 4.14 would also need to be reassigned as clause 4.13 as a consequence of this deletion.

Delete clause 5.3(2)(g). A number of submissions raised concerns around the use and installation of sponsorship signs, commercial media/filming activity, and clause 5.3(2)(g) of the proposed local law. Whilst the first two are accommodated by the proposed local law as drafted, because such activity would be associated with the permitted purpose of individual lease or licence agreements of clubs and community groups, the latter is not.

It is likely clause 5.3(2)(g) is unworkable from a practical and regulatory perspective, because on occasions where there is a sports competition (for example 'game day') there are many people in attendance, and filming activity occurs both by the clubs and individuals and is posted to social media to promote the achievements of their clubs and participants. Clause 5.3(2)(g) creates an offence for a person who films patrons on any local government facility without the consent of those patrons. It is possible that on 'game day' everyone would be committing an offence in one way, shape or form. It is conceivable that many individuals and entities could be unreasonably captured by the provision. It is acceptable to delete this clause.

~~*(g) use a camera or other form of recording device to capture still or video imagery of patrons without the consent of those patrons; or*~~

~~(h)~~(g) behave in a manner that is harassing, offensive, threatening, violent, abusive, or unsafe towards a patron or a local government employee who is on duty on the local government facility.

Subclause (h) would need to be reassigned to (g) as a consequence.

Amend Schedule 1. Changes are required to Schedule 1 – prescribed offences due to the movement of the portable shade structure provision into clause 3.1, and the deletion of clause 4.13. This means offences 23 through 41 and 43 through to 48 need to be renumbered. There are no offences added compared to initially proposed, however the offence for clause 4.13 is deleted.

Amend Schedule 2. In Schedule 2 – Determinations in the final line of the last paragraph amended as follows:

> *on any local government property or part thereof unless the local government property or part thereof is expressly set aside for that purpose, is sign-posted to permit that purpose, or the person is authorised ~~pursuant to~~ under a written law to do so.*

OPTIONS

71. Option 1 – As per Officer Recommendation

    Council can make the Local Government Property Local Law 2026 as presented.

72. Option 2 – Council may make the local law as per the draft originally presented to Council.

    This option is not recommended as the proposed Local Government Property Local Law 2026 has been corrected with typographical and formatting changes and amended following careful consideration of submissions received.

73. Option 3 – Withdraw the proposed local law for further consideration.

    It should be noted that due to the fact the existing Local Government Property Local Law (2001) has not been reviewed in accordance with the previous requirements of the Act, it will be repealed on 6 December 2026 if not replaced or reviewed. As has previously been reported to Council, replacement is recommended due to the age of the instrument. There is now limited time remaining to address this issue before the repeal date.

LEGISLATIVE CONSIDERATIONS

Impact of changes

74. As discussed earlier, there are a range of modest changes recommended to be made to the proposed local law. This would make the local law different to what was initially proposed; however it does not automatically follow that the changes would amount to making the local law significantly different.
75. The recommended changes are within the scope of the local government's local law-making power as prescribed by the Act and authorities of the courts, and have been reviewed by the City's external legal service provider.

76. Section 3.13 of the Act requires that, if during the procedure for making a proposed local law the local government decides to make a local law that would be significantly different from what it first proposed, the local government is to recommence the procedure.

77. The Act does not define the term "significantly different". The JSCDL have previously advised local governments that section 3.13 of the Act may become

enlivened when a local law made by a council proposes different terms and provisions to what was initially proposed during public consultation. That is, there is a new regulatory obligation, liability or power created that was not initially proposed, or the individual or property rights of persons are impacted in a way that was not proposed in a consultation draft – particularly if those rights are later proposed to be negatively affected.

78. Equally, if Council decided in response to submissions to introduce an entirely new regime for, say, commercial activities on Crown land, this would be much harder to characterise as merely a refinement, not the least because such a change would extend the local law into a regulatory area already governed by other legislation. Such an approach would almost guarantee disallowance of the local law.

79. Section 3.13 of the Act does not, however, carry the intention to require a local government to restart the local law making process every time consultation results in refinements or low-level changes to a proposed local law. The Act is constructed to anticipate this scenario, and accommodate it.

80. Nor does it provide a mechanism for fundamentally recasting the subject matter of a proposed local law in response to individual interests or subjects.

81. The question for resolution therefore is not whether Council changes something after consultation, but whether Council changes the <u>proposal</u> into something materially different from what people were invited to comment on.

82. In assessing whether the changes are significantly different, regard has been had to the nature and extent of the changes, their effect on the operation of the proposed local law, and whether the changes materially alter the substance or scope of the proposed local law on which public consultation was undertaken.

83. On balance, it is considered the changes to the proposed local law do not meet the threshold to be significantly different, and thus not impacted by section 3.13 of the Act. This is because the changes –

    1) do not propose a change to the purpose and effect of the local law;

    2) do not materially expand or restrict the persons, places, activities or circumstances to which the local law applies;

    3) do not create, remove or materially alter a person's rights, privileges, obligations, liabilities or burdens;

    4) do not introduce a new prohibition, permit requirement, offence or other substantive regulatory requirement, or materially alter an existing one;

5) do not materially expand, restrict or otherwise alter the powers or discretions conferred on the local government or an authorised person, or the circumstances in which enforcement action may be taken;

6) are principally for the purpose of clarification, or are consequential, corrective, refinement or restructuring changes to provisions already contained in the proposed local law;

7) are relevant to the local law as advertised for public comment and therefore remain within the substance of the subject matter on which persons had an opportunity to make submissions; and

8) considered individually and collectively, are not considered to materially alter the character, operation or application of the local law as a whole.

84. The Act recognises that sometimes limited changes need to occur to proposed local laws when being made by Council. For these reasons it is considered appropriate for Council to proceed with making the local law, as the changes are not considered to be significantly different and are within the scope provided by the Act.

Local law making procedure

85. Part 3, subdivision 2 of the Act refers. It specifies the process that is to be followed for the proposing of, and making, a local law.

86. It is important to ensure the prescribed process is followed. Failure to do so may result in the local law being invalid or recommended by the JSCDL to be disallowed by Parliament. Whilst the Act provides that a failure to follow the procedure does not immediately invalidate a local law, there must be substantial compliance
[s. 3.12(2A)].

87. The City has complied with the process prescribed by the Act, by giving more than 6 weeks local public notice in the required way [s. 3.12(3)(a)] and referring the proposed local law to the Department for comment [s. 3.12(3)(b)].

88. After the last day for submissions, Council is to consider any submissions, and may make the local law as proposed, provided it is not significantly different from what was proposed [s. 3.12(4)]. Council could also make significant amendments following consideration of any submissions. In the event there are any significant changes, the process must be commenced again [s. 3.13], or the local law is likely to be subject to objection by the JSCDL, as described previously. As noted in this report, it is not considered the changes recommended will result in a local law being made that is significantly different.

89. Council must then resolve by absolute majority to make the local law [s. 3.12(4)]. Once made, the City will be required to publish the local law in the Government Gazette and give a copy of it to the Department. Local public notice is again required [s. 3.12(5), (6)], and a document package is required to be submitted to the JSCDL [s. 3.12(7)].

90. The local law will take legislative effect 14 days after publication in the Government Gazette [s. 3.14(1)].

POLICY CONSIDERATIONS

91. The proposed local law at its heart is a regulatory enforcement instrument, to deal with the day-to-day use and issues that arise in public open spaces and facilities.

92. Policy development will need to occur to frame discretionary approval functions of the local law. Appropriate updates to relevant policies will be presented to Council following the adoption of the local law.

STRATEGIC PLANNING ALIGNMENT

Kalamunda Advancing Strategic Community Plan to 2031

Priority 1: Kalamunda Cares and Interacts
Objective 1.2 - To provide a safe and healthy environment for community to enjoy.
Strategy - 1.2.1 Facilitate a safe community environment.
Strategy - 1.2.3 Provide high quality and accessible recreational and social spaces and facilities.

Priority 4: Kalamunda Leads
Objective 4.1 - To provide leadership through transparent governance.
Strategy 4.1.1 - Provide good governance.
Strategy 4.1.2 - Build an effective and efficient service based organisation.

COMMUNITY AND STAKEHOLDER ENGAGEMENT

Internal Engagement	
Process	**Outcome**
Initial consultation draft circulated for feedback from key stakeholders	Internal consultation draft further developed with information obtained
Referral of internal consultation draft to external legal service provider	Modifications recommended and applied as appropriate

External Engagement	
Process	**Outcome**
Call for submissions for 7 weeks in accordance with the Act (local newspaper, social media, website, noticeboards)	15 submissions received.

FINANCIAL CONSIDERATIONS

93. Funds have been allocated for the purpose of the review of local laws in the 2026/2027 Adopted Budget.

    Approximately $3,500 has been spent on external legal fees for reviewing the proposed local law and submissions.

    Publication in the Government Gazette is estimated to cost $2,500.

SUSTAINABILITY

94. **Social**

    It is in the community's interests to have up-to-date and effective local laws to regulate activities on local government property. Not having a regulatory scheme for the subject matter concerned would mean the City would be unable to effectively deal with resident complaints about inappropriate behaviour, vandalism and misuse of local government property and facilities.

95. **Economic**

    The proposed local law continues an existing regulatory scheme. Whilst the proposed local law primarily concerns behaviour on local government property, economic activity in the form of activity-based permits continues to support small business.

    In addition, the inability to effectively deal with inappropriate behaviour, vandalism and misuse of local government property and facilities could result in an economic impact to City resources.

96. **Environmental**

    As a base regulatory instrument, the proposed local law supports environmental protection by prescribing offences for behaviour or activities on local government property that are detrimental to the environment (e.g. taking or injuring fauna, flora, cutting down trees for firewood, abandoning animals).

RISK MANAGEMENT

Consequence	Event	Rating	Action
Financial	N/A	N/A	N/A
Health & Safety	Local law is not reviewed/replaced by the due date, leaving the City with an inability to deal with offences	Medium	Review or replace local law before 6 December 2026
Reputation	Substantiated, public embarrassment, moderate impact, moderate news profile	High	Review or replace local law before 6 December 2026
Operation	Inability to address enforcement breaches and complaints	High	Review or replace local law before 6 December 2026
Environment	Inability to address enforcement breaches and complaints	High	Review or replace local law before 6 December 2026
Compliance	Local law not reviewed in accordance with the law	High	Review or replace local law before 6 December 2026
Project	N/A	N/A	N/A

REGIONAL SIGNIFICANCE

97. Nil.

CONCLUSION

98. Local law making by local governments is a serious matter. Like any regulatory instrument, local laws have the potential to modify common law rights and use of public places and can contain financial sanctions in the form of modified penalties. This is provided that the local law is within the scope permitted by Acts of Parliament and the courts.

99. While modest changes are recommended to the proposed local law in response to issues raised in public submissions, overall the submissions did not raise any issues that indicated a fundamental problem with the underlying regulatory scheme proposed. The majority of the submissions appear to have misunderstood the purpose of a local law and its legislative standing in the constitutional hierarchy of laws and the exercise of executive powers under Acts of Parliament. The legislative scheme supporting the making of local laws

for local government property is well established, and has been tested and upheld by the judiciary.

100. Parliament has delegated its authority to local governments to make local laws in specific Acts. To ensure this authority is within the bounds of the law, the *Interpretation Act 1984* and the JSCDL provides the oversight required to ensure the public interest is not unreasonably or unlawfully infringed when local governments use this executive law making power.

101. Moreover, the exercise of local government regulatory powers and functions is subject to judicial review, and the principles of well-established administrative law. The proposed local law is designed to operate within this framework.

102. With any major policymaking decision, competing interests and views often presented through a singular lens must be balanced against the broader public interest and the local government's responsibility to manage, maintain, and safeguard public spaces and assets, for the benefit of all. The proposed Local Government Property Local Law 2026 continues this approach with a contemporary and responsible regulatory scheme that will continue to allow the City to properly perform its regulatory responsibility for day-to-day management and use of public spaces.

11. Closure

There being no further business the Presiding Member declared the meeting to be closed at 7.12pm.