

# Ordinary Council Meeting

Minutes for 26 September 2017

**UNCONFIRMED**



**city of  
kalamunda**

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## MINUTES

### 1.0 OFFICIAL OPENING

- 1.1 The Presiding Member opened the meeting at 6.36pm and welcomed Councillors, Staff and Members of the Public Gallery.

### 2.0 ATTENDANCE, APOLOGIES AND LEAVE OF ABSENCE PREVIOUSLY APPROVED

#### 2.1 Attendance

##### Councillors

|                   |                            |                 |
|-------------------|----------------------------|-----------------|
| Andrew Waddell JP | (Mayor) (Presiding Member) | North West Ward |
| Sara Lohmeyer     |                            | North West Ward |
| Dylan O'Connor    |                            | North West Ward |
| Sue Bilich        |                            | North Ward      |
| Tracy Destree     |                            | North Ward      |
| Michael Fernie    |                            | South East Ward |
| John Giardina     |                            | South East Ward |
| Geoff Stallard    |                            | South East Ward |
| Allan Morton      |                            | South West Ward |
| Brooke O'Donnell  |                            | South West Ward |
| Noreen Townsend   |                            | South West Ward |

##### Members of Staff

|                      |                                      |   |
|----------------------|--------------------------------------|---|
| Rhonda Hardy         |                                      | Chief Executive Officer                 |
| Natalie Martin Goode |                                      | Director Development Services           |
| Dennis Blair         |                                      | Director Asset Services                 |
| Gary Ticehurst       |                                      | Director Corporate & Community Services |
| Simon Di Rosso       | General Counsel & Executive Advisor, | Governance & Legal                      |
| Andrew Fowler-Tutt   |                                      | Manager Approval Services               |
| Nicole O'Neill       |                                      | Manager Customer & Public Relations     |
| Peter Varelis        |                                      | Manager Strategic Planning              |
| Donna McPherson      | Executive Research Officer to        | Chief Executive Officer                 |

**Members of the Public** 83

**Members of the Press** 2

**2.2 Apologies** Nil.

**2.3 Leave of Absence Previously Approved** Nil.

### 3.0 PUBLIC QUESTION TIME

A period of not less than 15 minutes is provided to allow questions from the gallery on matters relating to the functions of Council. For the purposes of Minuting, these questions and answers are summarised.

3.1 Adele Standeven, 6 Charles Street, Maida Vale

- Q. Why does the City of Kalamunda not have an environmental strategy?
- A. The City has a Biodiversity Conservation Strategy adopted in 2003/2004 which is currently under review. The Strategy will be replaced by an environmental strategy which is being developed by the City in conjunction with the Kalamunda Environmental Advisory Committee.
- Q. Is there a time frame for this review to be completed?
- A. 30 June 2018.

3.2 Harry Mazza, 811 Welshpool Road East, Wattle Grove

- Q. Can consideration be given to making plans available to the community if there is to be environmental impacts from rezoning of land and subsequent development?
- A. The Mayor agreed there is currently a disconnect between the rezoning and the development phase and stated there needed to be changes to the processes.

The Director of Development Services advised there is now more detail required when scheme amendments are requested for consideration. The City is developing a Tree Retention Policy to give more power to place environmental conditions on developments. It should also be noted the Public Consultation Policy has been amended to ensure more opportunities for the community to comment and become involved in the decision making process.

3.3 Adrian Cosgrove, 110 Union Road, Carmel

- Q. Can council please advise if the Noise Impact Study, in relation to the development at Lot 42 (116) Union Road, be made available by residents?
- A. Taken on Notice.
- Q. Why has a third party bushfire consultant been engaged by the City?
- A. There are two diametrically opposed bush fire assessments in relation to the development at Lot 42 (116) Union Road, one from residents' group consultant and the other from DFES, to mediate the positions the City has chosen to seek an independent assessment.
- Q. Will residents be made aware of council's position on this development prior to the Joint Development Application Panel (JDAP) sitting?

- A. The matter will not be presented to this Council. The decision will be made by the JDAP.

3.4 Kim Sinclair, 36 Lewis Road, Wattle Grove

- Q. Why is there a requirement for at 95 metre slip road at the development at 831 Welshpool Road East?
- A. The City and Main Roads are obliged to use Australian Standards. A number of concessions have been made in consultation.

3.5 Steven Gibellini, 330 Mundaring Weir Road, Piesse Brook

- Q. How do we protect the home in the forest from becoming a metropolis?
- A. Once the Minister has made a decision it is binding and cannot be rescinded.

3.6 Ray Thompson, 33 Brady Road, Lesmurdie

- Q. What is the name of the organisation that is responsible for removing the trees and who is the individual responsible?
- A. The Elected Body made the decision subject to various conditions.

3.7 Frank Lindsey, 95 Aldersyde Road, Piesse Brook

- Q1. Mr Mayor at the meeting of the 20th June 2016 you declared a direct financial interest and chaired the meeting.  
Were you not aware that a declaration of a direct financial interest requires Councillor to absent themselves from the Council Chamber whilst an item is debated and voted upon?
- Q2. At the OCM of the 27th June 2016 you changed your declaration to an interest in common when scheme amendment 82 was considered to a direct financial interest and vacated the Council Chamber.  
If your claim, as reported in The Echo of the 16th September 2017 (p. 1), is correct, that "councillors were well within their rights to stay in council to debate and vote on the item" at the meeting of the 27th June 2016 is correct, why did you then change your declaration at the subsequent OCM?
- Q3. In the article published in The Kalamunda Reporter of the 29th August, 2017, (p.1), you are quoted as stating that "The Department of Local Government gives very specific advice and we followed that advice to the letter". Will you:
- (A) place on the public record the very specific advice you claim to have received from the Department of Local Government in order to enable your claims to be verified; and

- (B) how does such very specific advice from the Department explain the very inconsistent declarations between the OCM's of the 27th June 2016 and the 26th June 2017?

Q4. The interest in common provisions of the Local Government Act are contained in Section 5.63(1) of the Act. How do you reconcile using a declaration of an interest in common at the OCM of the 27th June 2016 with subsection (3) of S. 5.63, when it explicitly rules out Councillors using such a declaration in the case of a scheme amendment?

A. All questions Taken on Notice.

3.8 David Harrison, 73 Connor Road, Lesmurdie

Q, When will the council take responsibility for the decision it made in November 2016 in relation to the development at 831 Welshpool Road East?

A. It was a decision of this council to impose conditions necessary to ensure the construction would not endanger public safety.

3.9 Delores Stafford, 4 McCrae Road, Kalamunda

Q. Why was consideration only given to access to the development at 831 Welshpool Road East off Welshpool Road East?

A. The Mayor agreed there is currently a disconnect between the rezoning and the development phase and stated there needed to be changes to the processes.

Q. When land is purchased on a major thorough fare shouldn't access be considered?

A. The City does not have any oversight over who purchases land.

3.10 Phil McCathy, 35 Coolabah Way, Forrestfield

Q. When will the footpath on Wandu Road between Holmes and Lewis Roads be installed?

A. The construction is dependent upon drainage and road upgrades on Wandu Roads. The tender for these works has been awarded and the footpath will be installed following completion of the works.

3.11 Michael O'Donnell, 112 Union Road, Carmel

- Q. One of the senior planners within the Kalamunda Shire (City of Kalamunda) has a development business and can it be confirmed this person has no relationship with the developer of Lot 42 (116) Union Road.
- A. The Director of Development Services advised residents in March 2017 an employee had permission from the CEO to conduct a business. The employee has not operated in this capacity for several years. It was also confirmed at this time there is no conflict of interest and the employee has no current or past links with the developer.

3.12 Harry Smith, 46 Bridgwood Road, Lesmurdie

- Q. Could a roundabout be considered at the Welshpool and Lewis Road intersection providing access to the development at 831 Welshpool Road East?
- A. A roundabout has not been considered at this location. It would be very unlikely that access would be provided on a dual lane roundabout to a private property.
- Q. Is there a mosque being developed on Lewis Road in Forrestfield?
- A. The Director of Development Services advised there has been no application received.
- Q. Has there been an application for a nursing home on Welshpool Road East?
- A. There has been no development application for a nursing home on Welshpool Road East. There has been rezoning approved for a property on Gavour Road.

**4.0 PETITIONS/DEPUTATIONS**

- 4.1 Mr Neil Pember of 6 McNess Road Kalamunda presented a deputation in relation to the Rezoning Approval of Lot 59 Wilkins Road Kalamunda Metropolitan Regional Scheme 1271-41.
- 4.1 Ms Vanessa Mazza of 811 Welshpool Road East, Wattle Grove, Coordinator of "Save the Gum Trees of Wattle Grove", presented a deputation in relation to the development at 831 Welshpool Road East.
- 4.2 Mrs Pamela Kenyon of 14 Bird Road Kalamunda presented a deputation in relation to Item 11.2 Marriage Equality on the agenda.
- 4.3 Mr Dick Lovegrove of 41 Brentwood Road Wattle Grove presented a deputation in relation to state planning procedures.



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**5.0 APPLICATIONS FOR LEAVE OF ABSENCE**

5.1 Nil.

**6.0 CONFIRMATION OF MINUTES OF PREVIOUS MEETING**

6.1 RESOLVED OCM 159/2017

That the Minutes of the Ordinary Council Meeting held on 28 August 2017, as published and circulated, are confirmed as a true and accurate record of the proceedings.

Moved: **Cr Sara Lohmeyer**

Seconded: **Cr John Giardina**

Vote: **CARRIED UNANIMOUSLY (11/0)**

6.2 RESOLVED OCM 160/2017

That the Minutes of the Special Council Meeting held on 11 September 2017 are confirmed as a true and accurate record of the proceedings.

Moved: **Cr Noreen Townsend**

Seconded: **Cr John Giardina**

Vote: **CARRIED UNANIMOUSLY (11/0)**

**7.0 ANNOUNCEMENTS BY THE PRESIDING MEMBER WITHOUT DISCUSSION**

7.1 Advocacy Program Canberra

The Mayor provided a brief overview of the recent advocacy program presented in Canberra.

**8.0 MATTERS FOR WHICH MEETING MAY BE CLOSED**

8.1 **D&A 62 Forrestfield/High Wycombe Industrial Area Stage 1 Structure Plan: Modifications Report – Considerations of Submissions and Modifications CONFIDENTIAL ATTACHMENT 4 (List of Submitters and Map) *Reason for Confidentiality: Local Government Act 1995 S5.23 (2) (b) – "the personal affairs of any person;"***

8.2 **D&A 63 Local Planning Scheme No. 3: Amendment 91 – Lot 50 Sultana Road West, High Wycombe – Special Use Zone – Final Adoption CONFIDENTIAL ATTACHMENT 5 (List and Map of Submitters) *Reason for Confidentiality: Local Government Act 1995 S5.23 (2) (b) – "the personal affairs of any person;"***

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- 8.3      **D&A 64 Local Planning Scheme: Amendment 88 - Forrestfield / High Wycombe Industrial Area Stage 1 – Development Contribution Plan – Final Adoption CONFIDENTIAL ATTACHMENT 5 (List and Map of Submitters)** *Reason for Confidentiality: Local Government Act 1995 S5.23 (2) (b) – "the personal affairs of any person;"*
- 8.4      **D&A 65 Proposed Bed and Breakfast – Lot 3 (12) Carramar Drive, Kalamunda CONFIDENTIAL ATTACHMENT 5 (Confidential Submitters Map)** *Reason for Confidentiality: Local Government Act 1995 S5.23 (2) (b) – "the personal affairs of any person."*
- 8.5      **D&A 66 Proposed Carport – Lot 403 (3) Lookout Road, Kalamunda CONFIDENTIAL ATTACHMENT 6 (Confidential Submitters Map)** *Reason for Confidentiality: Local Government Act 1995 S5.23 (2) (b) – "the personal affairs of any person."*
- 8.6      **D&A 68 Proposed Alterations and Three (3) Storey Additions to Single House – Lot 73 (55) Gooseberry Hill Road, Gooseberry Hill CONFIDENTIAL ATTACHMENT 5 (Confidential Submitters Map)** *Reason for confidentiality: Local Government Act 1995 S5.23 (2) (b) – "the personal affairs of any person;"*
- 8.7      **D&A 69 Proposed Patio - Lot 1 (97) Hale Road, Forrestfield WA 6058 CONFIDENTIAL ATTACHMENT 4 (Confidential Submitters Map)** *Reason for confidentiality: Local Government Act 1995 S5.23(2)(b)- "the personal affairs of any person;"*
- 8.8      **D&A 73 CONFIDENTIAL ITEM – Consideration of Tenders for the Provision of Greenwaste Processing Services (RFT 1705)** *Reason for Confidentiality Local Government Act 1995 S5.23 (2) (c) – "a contract entered into, or which may be entered into, by the local government which relates to a matter to be discussed at the meeting."*
- 8.9      **A&R 08. CONFIDENTIAL ATTACHMENT Review of Tender and Procurement Processes - (Attachment 1)**
- Reason for Confidentiality: Local Government Act 1995 S5.23 (2) (a) – "a matter affecting an employee or employees"*
- Reason for Confidentiality: Local Government Act 1995 S5.23 (2) (c) – "a contract entered into, or which may be entered into, by the local government and which relates to a matter to be discussed at the meeting"*
- 8.10     **A&R 09. CONFIDENTIAL ITEM – Eastern Metropolitan Regional Council Resource Recovery Facility Request for Tender 2016-005**
- Reason for Confidentiality: Local Government Act 1995 S5.23 (2) (c) – "a contract entered into, or which may be entered into, by the local government which relates to a matter to be discussed at the meeting."*
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## **9.0 DISCLOSURE OF INTERESTS**

### **9.1 Disclosure of Financial and Proximity Interests**

- a. Members must disclose the nature of their interest in matters to be discussed at the meeting. (Section 5.65 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*.)

9.1.1 Nil.

### **9.2 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.

9.2.1 Cr Noreen Townsend declared an interest affecting impartiality in relation to Item 11.2 – Council Support of Marriage Equality - as she works in the community.

9.2.2 Cr Brooke O'Donnell declared as direct financial interest and an interest affecting impartiality in relation to Item 11.2 – Council Support of Marriage Equality - as she is a Marriage Celebrant/Gay Marriage Celebrant and is being profiled as a pro Gay Marriage Celebrant.

9.2.3 Cr Geoff Stallard declared an interest affecting impartiality in relation to Item 11.2 – Council Support of Marriage Equality - as he works for a Catholic School and his associations/family.

9.2.4 Cr Allan Morton declared an interest affecting impartiality in relation to Item 11.2 – Council Support of Marriage Equality - as he is of the view this is a personal issue and does not wish to debate and cannot be impartial.

9.2.5 Cr Dylan O'Connor declared an interest affecting impartiality in relation to Item 11.2 – Council Support of Marriage Equality - as he has a personal view and will not be taking part.

## **10.0 REPORTS TO COUNCIL**

Please Note: declaration of financial/conflict of interests to be recorded prior to dealing with each item.

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

**10.1 Development & Asset Services Committee Report**

**10.1.1 Adoption of Development & Asset Services Committee Report**

|   |
|---|
| <b>Voting Requirements: Simple Majority</b> |
|---|

RESOLVED OCM 161/2017

That recommendations D&A 62 to D&A 73 inclusive, contained in the Development & Asset Services Committee Report of 4 September 2017, except withdrawn item D&A 67 and D&A 72 be adopted by Council en bloc.

Moved: **Cr Geoff Stallard**

Seconded: **Cr Michael Fernie**

Vote: **CARRIED UNANIMOUSLY (11/0)**

**10.1.2 D&A 62 Forrestfield/High Wycombe Industrial Area Stage 1  
Structure Plan: Modifications Report – Considerations of  
Submissions and Modifications**

EN BLOC RESOLUTION OCM 161/2017

That Council:

1. Pursuant to Clause 19, Part 4, Schedule 2 of the *Planning and Development (Local Planning Schemes) Regulations 2015*, notes the Summary of Submissions and endorses the City of Kalamunda responses contained within Attachment 2.
2. Pursuant to Clause 20, Part 4, Schedule 2 of the *Planning and Development (Local Planning Schemes) Regulations 2015*, recommends that the Western Australian Planning Commission approves the Local Structure Plan: Modifications Report for the Forrestfield / High Wycombe Industrial Area Stage 1 with modifications as detailed in Attachment 3.

**10.1.3 D&A 63 Local Planning Scheme No. 3: Amendment 91 – Lot 50 Sultana Road West, High Wycombe – Special Use Zone – Final Adoption**

EN BLOC RESOLUTION OCM 161/2017

That Council:

1. Pursuant to Part 5 Regulation 50(3)(b) of the *Planning and Development (Local Planning Schemes) Regulations 2015* supports Amendment 91 to Local Planning Scheme No.3 without modification.
2. Pursuant to Part 5 Regulation 53 of the *Planning and Development (Local Planning Schemes) Regulations 2015* forwards to the Western Australian Planning Commission the Summary of Submission and Responses and all required Amendment documentation.

**10.1.4 D&A 64 Local Planning Scheme: Amendment 88 - Forrestfield / High Wycombe Industrial Area Stage 1 – Development Contribution Plan – Final Adoption**

EN BLOC RESOLUTION OCM 161/2017

That Council:

1. Pursuant to Part 5 Regulation 41(3)(b) of the *Planning and Development Act (Local Planning Schemes) Regulations 2015* supports Amendment 88 to Local Planning Scheme No.3 with modifications as contained in Attachment 2.
2. Pursuant to Part 5 Regulation 44 of the *Planning and Development Act (Local Planning Schemes) Regulations 2015*, forwards the Summary of Submission and Responses and all required Amendment documentation to the Western Australian Planning Commission.

**10.1.5 D&A 65 Proposed Bed and Breakfast – Lot 3 (12) Carramar Drive, Kalamunda**

EN BLOC RESOLUTION OCM 161/2017

That Council:

1. Approves the application for a Change of Use (Bed and Breakfast) at Lot 3 (12) Carramar Drive, Kalamunda subject to the following conditions:

- a) A maximum number of two (2) patrons to attend the site at any one time.
- b) All parking is to be contained on the subject property.

**10.1.6 D&A 66 Proposed Carport – Lot 403 (3) Lookout Road, Kalamunda**

EN BLOC RESOLUTION OCM 161/2017

That Council:

1. Refuse the application for a Carport at Lot 403 (3) Lookout Road, Kalamunda as submitted, for the following reasons:
  - a) The proposed primary street setback of 2.2m is not compliant with the deemed-to-comply requirements or design principles of Clause 5.2.1 C1.2 (Setbacks of Garages and Carports) of State Planning Policy 3.1 - Residential Design Codes.
  - b) The carport would have a detrimental effect on the visual amenity of the existing streetscape.
  - c) The carport design and location as submitted, is not consistent with orderly and proper planning.

**10.1.7 D&A 67 Adoption of Local Planning Scheme No.3 Amendment 94 for Advertising – Lot 112 (280) Holmes Road, Forrestfield – Special Use Zone**

**This matter is withdrawn at the request of the applicant and is not for consideration.**

**10.1.8 D&A 68 Proposed Alterations and Three (3) Storey Additions to Single House – Lot 73 (55) Gooseberry Hill Road, Gooseberry Hill**

EN BLOC RESOLUTION OCM 161/2017

That Council:

1. Approves the application for alterations and three (3) storey additions to the existing single house at Lot 73 (55) Gooseberry Hill Road, Gooseberry Hill, subject to the following planning conditions:
  - a) The development shall be carried out only in accordance with the terms of the application as approved herein, and any approved plan.
  - b) Prior to the lodgement of a building permit application, a detailed landscaping and reticulation plan shall be

submitted to and approved by the City of Kalamunda. For the purposes of this condition, additional landscaping is required at the rear of the subject site to screen the development from dwellings to the south of the site.

- c) Landscaping shall be completed in accordance with the approved detailed landscape plan prior to occupation of the additions and thereafter maintained to the satisfaction of the City of Kalamunda.

**10.1.9 D&A 69 Proposed Patio - Lot 1 (97) Hale Road, Forrestfield WA 6058**

EN BLOC RESOLUTION OCM 161/2017

That Council:

1. Approves the planning application for a patio at Lot 1 (97) Hale Road, Forrestfield subject to the following conditions and advice notes:
  1. The development shall be carried out only in accordance with the terms of the application as approved herein, and any approved plan.
  2. Stormwater shall be disposed of on-site, to the satisfaction of the City of Kalamunda.

**10.1.10 D&A 70 Consent to advertise Draft Local Planning Policy P-DEV 57 – Street Fencing, Walls and Gates Policy**

**COMMITTEE RECOMMENDATION TO COUNCIL (D&A 70/2017)**

That Council:

1. That consideration of Draft Local Planning Policy – P-DEV 57 Street Fencing, Walls and Gates be adjourned to the Ordinary Council Meeting.

**This item is presented at 10.4.1 of this Agenda.**

**10.1.11 D&A 71 Proposed Amendment No. 96 to Local Planning Scheme No. 3 – Use Class Permissibility in the District Centre and Commercial Zones – Public Advertising**

EN BLOC RESOLUTION OCM 161/2017

That Council:

1. Pursuant to Section 75 of the *Planning and Development Act 2005* adopts for the purpose of public advertising Amendment 96 to Local Planning Scheme No. 3 in accordance with Attachment 1.
2. Considers Amendment 96 to Local Planning Scheme No. 3 as a standard amendment under Regulation 35 (2) of the *Planning and Development (Local Planning Schemes) Regulations 2015*, for the following reasons:
  - a) The amendment is consistent with the objectives identified in the Scheme for the District Centre and Commercial zone;
  - b) The amendment is consistent with the City's Local Planning Strategy;
  - c) The amendment is consistent with the Metropolitan Region Scheme;
  - d) The amendment would have minimal impact on land in the scheme area that is not the subject of the amendment;
  - e) The amendment does not result in any significant environmental, social, economic or governance impacts on land in the scheme area; and
  - f) The amendment is not considered a complex or basic amendment.
3. Pursuant to Section 81 of the *Planning and Development Act 2005*, refers the proposed Amendment 96 to Local Planning Scheme No. 3 to the Environmental Protection Authority.
4. Subject to Sections 81 and 82 of the *Planning and Development Act 2005* advertises Amendment 96 to Local Planning Scheme No. 3 in accordance with Regulation 47 of the *Planning and Development (Local Planning Schemes) Regulations 2015* and P-DEV 45 – Public Notification of Planning Proposals.



**10.1.12 D&A 72 Reduction in 2017/2018 Direct Grant Allocation – Budget Amendment**

RESOLVED OCM 162/2017

That Council:

1. Notes the decision of the State Government to reduce the Direct Grants pool of the State Roads Funds to Local Government Program, with the impact on the City of Kalamunda being a reduction of \$110,208 funding.
2. Approves the implementation of the Patterson Road Upgrade project as detailed on the 2017/2018 Road Capital Works Program with revised funding as follows:
  - Roads to Recovery      \$180,000
  - Direct Grant              \$149,661
  - Municipal Funds        \$38,339
  - \$365,000**
3. Approves the amendment to the 2017/2018 Budget to reflect the decrease in 2017/2018 Direct Grants funding from \$259,869 to \$149,661, noting that the full amount of Direct Grant was allocated to Job No. 3413 Patterson Road Upgrade.
4. Approves the following budget amendment to accommodate the reduction in Direct Grant Funding and reallocation of Roads to Recovery Funding to the Patterson Road Upgrade project:

| From  | Funding Source       | Amount    | To  |
|---|----------------------|-----------|---|
| Job No. 3304<br>Canning Road<br>Traffic and<br>Pedestrian<br>Treatments | Roads to<br>Recovery | \$180,000 | Job No. 3413<br>Patterson Road<br>Upgrade |

Moved: **Cr Michael Fernie**

Seconded: **Cr Brooke O'Donnell**

Vote: **CARRIED UNANIMOUS/ABSOLUTE MAJORITY (11/0)**

**10.1.13 D&A 73 CONFIDENTIAL ITEM – Consideration of Tenders for the Provision of Greenwaste Processing Services (RFT 1705)**

EN BLOC RESOLUTION OCM 161/2017

That Council:

1. Approves the appointment of Western Tree Recyclers for the Provision of Greenwaste Processing Services (RFT1705) for a period of two years with an option, at the sole discretion of the City, to extend the Contract by a further two (2) x 12 month period, in accordance with the Price Schedule in Confidential Attachment 2.

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**10.2 Corporate & Community Services Committee Report**

**10.2.1 Adoption of Corporate & Community Services Committee Report**

|   |
|---|
| <b>Voting Requirements: Simple Majority</b> |
|---|

RESOLVED OCM 163/2017

That the recommendations C&C 67 to C&C 74 inclusive, contained in the Corporate & Community Services Committee Report of 18 September 2017, with the exception of C&C 72, be adopted by Council en bloc.

Moved: **Cr Noreen Townsend**

Seconded: **Cr Geoff Stallard**

Vote: **CARRIED UNANIMOUSLY (11/0)**

**10.2.2 C&C 67 Rates Debtors Report for the Period Ended 31 August 2017**

EN BLOC RESOLUTION OCM 163/2017

That Council:

1. Receives the rates debtors report for the period ended 31 August 2017 (Attachment 1).

**10.2.3 C&C 68 Debtors and Creditors Report for the Period Ended 31 August 2017**

EN BLOC RESOLUTION OCM 163/2017

That Council:

1. Receives the list of payments made from the Municipal Accounts in August 2017 (Attachment 1) in accordance with the requirements of the *Local Government (Financial Management) Regulations 1996 (Regulation 13)*.
2. Receives the list of payments made from the Trust Accounts in August 2017 as noted in point 15 above in accordance with the requirements of the *Local Government (Financial Management) Regulations 1996 (Regulation 13)*.
3. Receives the outstanding debtors and creditors reports (Attachments 2 & 3) for the month of August 2017.

#### **10.2.4 C&C 69 Draft Monthly Financial Statements to 31 August 2017**

##### EN BLOC RESOLUTION OCM 163/2017

That Council:

1. Receives the Draft Monthly Statutory Financial Statements for the period to 31 August 2017, which comprises:
  - a) Statement of Financial Activity (Nature or Type).
  - b) Statement of Financial Activity (Statutory Reporting Program).
  - c) Net Current Funding Position, note to financial statement.

#### **10.2.5 C&C 70 Strategic Sport and Recreation Community Committee**

##### EN BLOC RESOLUTION OCM 163/2017

That Council:

1. Support in principle the development of a Strategic Sport and Recreation Community Committee to replace the existing Sport and Recreation Advisory Committees.
2. Request the CEO advertise the draft Terms of Reference for a period of 30 days including consultation with the following Sport and Recreation Advisory Committees:
  - a) Hartfield Park Advisory Committee
  - b) Scott Reserve Advisory Committee
  - c) Kostera Oval Advisory Committee
3. Provide Terms of Reference to all clubs and invite representatives from each club to a forum held at Woodlupine Community Centre and City of Kalamunda Administration Centre with the purpose of providing information and assistance to the clubs of the proposed new structure. In addition explain how the capital grants program will work in conjunction with this group.

**10.2.6 C&C 71 Age Friendly Strategy and Action Plan 2017-2021**

EN BLOC RESOLUTION OCM 163/2017

That Council:

1. Endorses the draft Age Friendly Strategy and Action Plan 2017-2021.
2. Replaces the existing Positive Ageing Plan 2016-2021 with the endorsed Age Friendly Strategy and Action Plan 2017-2021.
3. Notes the Age Friendly Strategy and Action Plan will be reviewed in line with the reviews of the Corporate Business Plan.

**10.2.7 C&C 72 Event Sponsorship and Donations – Council Policy and Management Procedure**

RESOLVED OCM 164/2017

That Council:

1. Adopt the Event Sponsorship and Donations Policy.

Moved: **Cr Michael Fernie**

Seconded: **Cr Tracy Destree**

Vote: **CARRIED UNANIMOUSLY (11/0)**

**10.2.8 C&C 73 Adoption of Public Agenda Briefing Forum Policy, Procedure and Schedule of meetings**

EN BLOC RESOLUTION OCM 163/2017

That Council:

1. Endorse the Public Agenda Briefing Forums Policy as amended to include the words "and consult with the community" after the word 'issues' in dot point 4 under the heading Policy Statement.
2. Endorse the Procedure for Public Agenda Briefing Forums as attached.
3. Endorse the amended Schedule of Meetings for Public Agenda Briefing Forums and Ordinary Council Meetings during the period November 2017 to December 2018 as attached, being to change all of the dates contained in Attachment 1 to a Tuesday.

**10.2.9 C&C 74 Review of Advisory Committees of Council**

EN BLOC RESOLUTION OCM 163/2017

That Council:

1. Defer the item to the Ordinary Council Meeting.

**This item is presented at item 10.4.2 of this Agenda.**

---

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

**10.3            Audit & Risk Committee Report**

**10.3.1        Adoption of Audit & Risk Committee Report**

|   |
|---|
| <b>Voting Requirements: Simple Majority</b> |
|---|

RESOLVED OCM 165/2017

That recommendations A&R 07 to A&R 08, contained in the Audit & Risk Committee Report of 19 June 2017 be adopted by Council en bloc. A&R 09 is withdrawn for consideration at Point 15 on the agenda.

Moved:        **Cr Tracy Destree**

Seconded:    **Cr Dylan O'Connor**

Vote:           **CARRIED UNANIMOUSLY (11/0)**

**10.3.2        A&R 07 Review of Governance and Policy Framework**

EN BLOC RESOLUTION OCM 165/2017

That Council:

1.            Defer the adoption of the City of Kalamunda Governance and Policy Framework to the next Audit & Risk Committee Meeting and request the Chief Executive Officer arrange a Strategic Briefing Session.

**10.3.3        A&R 08 Review of Tender and Procurement Processes**

EN BLOC RESOLUTION OCM 165/2017

That Council:

1.            Notes the observations and recommendations made by Deloitte in their probity report.
2.            Request the Chief Executive Officer to implement all recommendations listed in item 4 of the Deloitte report.
3.            Request the Chief Executive Officer to report back to the Audit & Risk Committee on implementation of all recommendations with progress reports provided at each meeting.

**10.3.4 A&R 09 CONFIDENTIAL ITEM – Eastern Metropolitan Regional Council Resource Recovery Facility Request for Tender 2016-005**

RESOLVED OCM 175/2017

That Council:

1. Commits to support the Eastern Metropolitan Regional Council's Resource Recovery Facility project subject to the Financiers Side Deed and the Participants Agreement for a Waste Supply Agreement being negotiated to the satisfaction of the City of Kalamunda in regard to independent legal advice in consultation and with input from the City's Legal Counsel.
2. Subject to satisfactory amendments as detailed in point 1 above, adopts the:
  - a) Participants Agreement for a Waste Supply Agreement; and
  - b) Financiers Side Deed with the Security Trustee forming an attachment to this report.
3. Subject to satisfactory amendments as detailed in point 1 above, authorises the Mayor and the Chief Executive Officer under Common Seal to sign the:
  - a) Participants Agreement for a Waste Supply Agreement; and
  - b) Financiers Side Deed with the Security Trustee.
4. Authorises the Chief Executive Officer in consultation with the Mayor, and on legal advice, to make any necessary further changes to the agreements.
5. Approves that the report and attachments contained within to remain '*confidential*' and be certified by the Mayor and Chief Executive Officer.

Moved: **Cr Dylan O'Connor**

Seconded: **Cr Geoff Stallard**

|       |  |  |
|-------|--|--|
| Vote: | <u>For</u><br><b>Cr Michael Fernie</b><br><b>Cr John Giardina</b><br><b>Cr Geoff Stallard</b><br><b>Cr Allan Morton</b><br><b>Cr Noreen Townsend</b><br><b>Cr Andrew Waddell</b><br><b>Cr Sara Lohmeyer</b><br><b>Cr Dylan O'Connor</b><br><b>Cr Tracy Destree</b><br><b>Cr Sue Bilich</b> | <u>Against</u><br><b>Cr Brooke O'Donnell</b> |
|-------|--|--|

**CARRIED (10/1)**



## **10.4 CHIEF EXECUTIVE OFFICER REPORTS**

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

### **10.4.1 Consent to advertise Draft Local Planning Policy P-DEV 57 – Street Fencing, Walls and Gates Policy**

|                     |   |
|---------------------|---|
| Previous Items      | N/A   |
| Responsible Officer | Director Development Services   |
| Service Area        | Approval Services   |
| File Reference      | OR-CMA-16   |
| Applicant           | N/A   |
| Owner               | N/A   |
| Attachment 1        | Proposed Draft Local Planning Policy P-DEV 57<br>Street Fencing, Walls and Gates Policy |

### **EXECUTIVE SUMMARY**

1. The purpose of this report is to consider the adoption of Local Planning Policy P-DEV 57 Street Fencing, Walls and Gates (Policy) for the purpose of public advertising.
2. The Policy has been prepared for the purposes of providing guidance for the community in regards to height, materials, location and aesthetic treatments for street fencing, walls and gates.
3. It is recommended the Policy be adopted for the purpose of public advertising.

### **BACKGROUND**

4. Street fencing, walls and gates contribute significantly to the character of an area. This Policy aims to clarify the circumstances when a fence or wall variation can be considered for greater consistency in development applications resulting in higher quality built form throughout the City.
5. The City periodically reviews, revokes, and adds new policies for the purpose of ensuring consistency and transparency in decision-making and to ensure Council has a clear, defensible position. The City is presently reviewing all of its existing policies as well as developing new policies where appropriate.
6. On 27 June 2016, the City adopted *Fencing Local Law 2016*, which was published in the Government Gazette on 2 September 2016. The City's *Fencing Local Law 2016* sets provisions for 'sufficient' dividing fences (as defined in the local law), for fencing throughout the City in residential, rural, commercial and industrial zones.
7. The City also has a Fencing Information Sheet that provides further information to the community about fencing standards, however, the City does not presently have a Local Planning Policy that provides for direction in terms of fencing within the front setback area of properties, or fencing along the boundary between private and public land.

8. The Policy has been prepared in accordance with Part 7.3.2 of State Planning Policy 3.1 – Residential Design Codes (R-Codes) and amends the deemed-to-comply provisions of clauses 5.2.4 and 6.2.2 - 'Street Walls and Fences', to include caps on height limits, design solutions, and criteria in addition to the Design Principles to determine where a variation may be applied. This policy also provides supplementary information regarding performance objectives for fencing above retaining, and performance objectives for clause 5.3.8 'Retaining Walls'.
9. At the August 2017 OCM, Council resolved to defer the Policy to the next Development and Asset Services Committee Meeting.

## DETAILS

10. This policy provides additional guidance and clarification where the R-Codes are silent on matters such as where additional heights may be justified, fencing above retaining, rural, industrial and commercial fencing, treatments for retaining walls above 500mm, provides a table of recommended materials, clarifies assessment criteria for unauthorised fences, walls and gates for development applications, and provides remediation options for non-compliant street fences. Importantly, where proposals are compliant with the provisions of the Policy, development approval is not required.
11. The intent of the policy is to provide development controls and advice to applicants who are applying for a variation for street fencing, walls or gates. The policy includes the following:
  - **Part 5 - Residential zoned land**, includes Table 1 which outlines 'acceptable criteria' detailing heights and minimum visual permeability for street fencing, boundary fencing between two private properties, hedging, fencing between private and public properties, barrier fencing, and fencing to maintain sightlines.
  - **Part 5 - Table 1 Heights of Sufficient Fences and Screening in Residential zoned areas**, outlines the types of fences/walls and gates with the acceptable development criteria for each type with the exception of Residential R2 – R5 zoned areas.
  - **Part 5 - Table 2 Acceptable Materials in Residential zoned areas**, outlines minimum standards for materials for street fencing and retaining within the front setback with the exception of Residential R2 – R5 zoned areas.
  - **Part 6 - Retaining Walls and Fill**, outlines criteria for where retaining walls are proposed to be over 500mm in height. Includes Fig 1 and Fig 2 to visually demonstrate the performance outcomes.
  - **Part 7 - R2 to R10 and Rural zoned land**, includes requirements for street fencing to comply with Schedule 3 of the Fencing Local Law.
  - **Part 8 - Commercial, District Centre, Activity Centre, Service Station, Private Club and Institutions, and Mixed Use zoned land**, and specifies assessment in accordance with Schedule 2 of the Fencing Local Law.
  - **Part 9 - Industrial and Industrial Development zoned land**, outlines heights, gates, materials, preferred colours, and references Schedule 2 of the Fencing Local Law.
  - **Part 10 - Unauthorised fence, wall and gate applications** outlines the assessment process and modification/remediation options.

- **Part 11 - Maintenance and Appearance** outlines the minimum maintenance standards for existing fencing, walls and gates.
- **Part 12 - Matters to be considered** should be referenced when assessing applications which apply for variations to the policy criteria.
- **Part 13 - Variations to the policy** outlines the circumstances where variations to the policy will be considered justified.
- **Appendix 1 – List of Primary or District Distributor Roads within the City** shows list of primary or district distributor roads where a height variation for a front fence may be justified.
- **Appendix 2 - Indicative Diagram of Fencing** is a visual diagram of fencing to show where different types of fences are located in the context of a typical suburban block.
- **Appendix 3 – Examples of Street Fencing** is a photographic visual guide to show how the policy applies in situ and the impact on the streetscape in residential, rural, commercial and industrial zoned land in the City.

12. The Policy will replace the existing Fencing Information Sheet.

## STATUTORY AND LEGAL CONSIDERATIONS

13. Local Planning Policies are created under Clause 3 (1) of the *Planning and Development (Local Planning Scheme) Regulations 2015* (Regulations). ). Unlike City policies, planning policies require formal adoption by Council.
14. Local Planning Policies are to be given due regard in accordance with Schedule 2, Part 2, Clause 3 (5) of the *Planning and Development (Local Planning Scheme) Regulations 2015*. A Local Planning Policy does not bind the City in its application of discretion and should be read in conjunction with the adopted Local Planning Scheme.
15. If the City resolves to adopt the Policy, the City must, unless the WAPC otherwise agrees, advertise the Policy in accordance with Schedule 2, Clause 4 of the *Planning and Development (Local Planning Scheme) Regulations 2015*, which provides that a period for making submissions must not be less than 21 days. As stated in 'Community Engagement Requirements' below, the Policy will be advertised for 28 days.
16. Clause 7.3.1 of the R-Codes provides that local planning policies, local development plans, local structure plans and activity centre plans may contain provisions that:
- a) amend or replace certain deemed-to comply provisions set out in Part 5 and/or Part 6 of the R-Code, including those for street walls and fences;

## POLICY CONSIDERATIONS

17. The proposed Policy will follow the adopted Council templates with some small modifications for structure, legibility and clarity.

---

## **COMMUNITY ENGAGEMENT REQUIREMENTS**

### **Internal Referrals**

18. The proposed Policy was circulated to the City's Assets, Health, Building, and Environmental departments for comments and consideration. No objections to the proposed policies were received from the internal departments, and minor changes requested were integrated into the draft policy.
19. The City's General Counsel has also considered the proposed Policy.

### **External Referrals**

20. The proposed Policy will be advertised for public comment in accordance with Local Planning Policy P-DEV 45- Public Notifications for a period of 28 days.
21. In accordance with P-DEV 45, the City is also required to:
  - a) publish a notice of the proposed Policy in a local newspaper circulating in the Scheme area for two consecutive weeks; and
  - b) advertise the proposed Policy on the City's website and Facebook page.

## **FINANCIAL CONSIDERATIONS**

22. Costs of advertising will be met through the Approval Services budget.

## **STRATEGIC COMMUNITY PLAN**

### **Strategic Planning Alignment**

23. *Kalamunda Advancing: Strategic Community Plan to 2027*

OBJECTIVE 3.1: To plan for sustainable population growth.

Strategy 3.1.1 Plan for diverse and sustainable housing, community facilities and industrial development to meet changing social and economic needs.

OBJECTIVE 3.4: To be recognised as a preferred tourism destination.

Strategy 3.4.1 Facilitate, support and promote, activities and places to visit.

## **SUSTAINABILITY**

### **Social Implications**

24. The proposed Policy will provide:
  - a) consistency to the City's consideration of applications for front fences, walls and gates in residential, rural, commercial and industrial zoned land (and any variations);

- b) clarity and transparency to the community;
- c) improved design outcomes; and
- d) reduced application response timeframes.

### **Economic Implications**

25. Nil.

### **Environmental Implications**

26. Nil.

### **RISK MANAGEMENT CONSIDERATIONS**

- 27.
- |  |                    |               |
|--|--------------------|---------------|
| <b>Risk:</b><br>The proposed Policy is not adopted and planning applications are received for fences inconsistent with the character and streetscape appeal of the area.                             |                    |               |
| <b>Likelihood:</b>   | <b>Consequence</b> | <b>Rating</b> |
| Likely   | Moderate           | High          |
| <b>Action/ Strategy</b>  |                    |               |
| Adopt Policy to guide decision making when assessing an application for street fencing to ensure development contributes to the streetscape, and vehicle, cyclist and resident safety is maintained. |                    |               |
- 
- |   |                    |               |
|---|--------------------|---------------|
| <b>Risk:</b> The Policy may not achieve its stated objectives   |                    |               |
| <b>Likelihood:</b>  | <b>Consequence</b> | <b>Rating</b> |
| Unlikely  | Moderate           | Low           |
| <b>Action/ Strategy</b>   |                    |               |
| Ensure the community and developers are fully conversant with the proposed policy and how the provisions will contribute positively to the streetscape of the locality. |                    |               |

### **OFFICER COMMENT**

28. Applications for variations in Residential zoned lots are subject to the Design Principles of the R-Codes while rural, commercial and industrial applications default to the *Fencing Local Law 2016*.
29. There is however some uncertainty about appropriate materials and design objectives for fences above retaining walls, and circumstances where an increased fence height was deemed justified and to what extent.
30. The proposed Policy aims to clarify materials, design criteria, heights and objectives for street fences, walls and gates on all zoned land throughout the City to supplement the provisions of the R-Codes and *Fencing Local Law 2016*.
31. All proposals for fencing other than street fencing as indicated in Appendix 2, will be subject to the provisions of the Fencing Local Law.

32. The Policy requirements are supported with diagrams and real world examples to replace the information sheet] and clarify technical aspects. This will aid residents in understanding the design objectives of the Policy, definitions and location of different fences, and how the technical provisions work in situ to enhance the streetscape.
33. In response to questions raised by the Elected Members at the Development Asset Services Committee Meeting held on 7 August 2017, some formatting and text changes have been made changes to the Policy in respect to Part 5 Residential zoned land and Part 7 R2 – R10 and Rural zoned land. The changes will provide greater clarity in respect to street fencing requirements for residential zoned areas.
34. If Council would like more time to consider the proposed Policy, the item could be deferred to a later Development and Asset Services Committee meeting to allow for a briefing with Council on the policy.

**Voting Requirements: Simple Majority**

**RECOMMENDATION**

That Council:

1. Pursuant to clause 3(1) of Schedule 2 of the *Planning and Development (Local Planning Schemes) Regulations 2015*, and 2.4.1. of the Local Planning Scheme No. 3, endorses Draft Local Planning Policy – P-DEV 57 Street Fencing, Walls and Gates for the purpose of advertising for a period of 28 days.

Moved:

Seconded:

Vote: **LAPSED**

RESOLVED OCM 166/2017

That Council:

1. Pursuant to clause 3(1) of Schedule 2 of the *Planning and Development (Local Planning Schemes) Regulations 2015*, and 2.4.1. of the Local Planning Scheme No. 3, endorses Draft Local Planning Policy – P-DEV 57 Street Fencing, Walls and Gates for the purpose of advertising for a period of 28 days.
- a) References to "Asbestos" being changes to "Asbestos containing material";
  - b) Explanations as to how repair and maintenance of fences will be dealt with; and
  - c) Include the current Fencing Local Law in the public advertising material.

Moved: **Cr Tracy Destree**

Seconded: **Cr Sara Lohmeyer**

Vote: **CARRIED UNANIMOUSLY**

**Attachment 1**

Consent to advertise Draft Local Planning Policy P-DEV 57 – Street Fencing, Walls and Gates Policy

**Proposed Draft Local Planning Policy P-DEV 57 Street Fencing, Walls and Gates Policy**

[Click HERE to go directly to the document](#)

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

**10.4.2 Review of Advisory Committees of Council**

|                     |   |
|---------------------|---|
| Previous Items      | N/A   |
| Responsible Officer | Chief Executive Officer   |
| Service Area        | Governance, Strategy & Legal Services   |
| File Reference      | N/A   |
| Applicant           | N/A   |
| Owner               | N/A   |
| Attachment 1        | Membership and Terms of Reference for<br>Management Advisory Committees 2017/2019 |

**EXECUTIVE SUMMARY**

1. Council has the ability under the Local Government Act to establish Advisory Committees to assist in the provision of advice on various matters. In order to ensure the Advisory Committees are relevant it is good practice to review the Terms of Reference every two years before Council is required to nominate elected members to the committees.
2. The City has undertaken a full review of all its existing Advisory Committees and updated aspects no longer relevant, aligned all terms of reference under a standard template and included new committees and abolished committees no longer required.
3. This report recommends Council adopt the revised Membership and Terms of Reference for Management and Advisory Committees for term 2017 to 2019.

**BACKGROUND**

4. Every two years in line with Council elections the City undertakes a review of the Terms of Reference of all Advisory Committees.

This review ensures that the Committees:

- a) remain relevant,
- b) are aligned with the direction and requirements of the Council,
- c) enables a refreshing of Membership; and
- d) Reassesses the need for a committee to continue.

**DETAILS**

5. The review of all advisory committees was undertaken by the City of Kalamunda supporting each of the Committees and comment was elicited from the members of the committees where required.
6. All Terms of Reference were aligned to have greater consistency across the operations of all advisory committees.
7. One new Committee – the Kalamunda Arts Advisory Committee - is recommended for establishment.



8. A proposed Strategic Sports and Recreation Advisory Committee is to be considered by Council as a separate item in September, potentially replacing the following sports advisory committees:
- a) Kostera Oval Advisory Committee
  - b) Scott Reserve Advisory Committee
  - c) Hartfield Park Advisory Committee
  - d) Maida Vale Advisory Committee (dormant since 2007)

### **STATUTORY AND LEGAL CONSIDERATIONS**

9. Section 5.8 of the *Local Government Act 1995* – Establishment of Committees.
- Section 5.9 (2) (c) of the *Local Government Act 1995* – Types of Committees.
- Section 5.11 (2) (d) of the *Local Government Act 1995* – Tenure of Committee Membership.

### **POLICY CONSIDERATIONS**

10. The Council does not have a policy position for Advisory Committees.

### **COMMUNITY ENGAGEMENT REQUIREMENTS**

11. Public consultation is not required for the review of the Management and Terms of Reference of Advisory Committees, however existing Committees were invited to provide input in the review.
12. Once Council has approved the establishment of the Committee and Terms of Reference, nominations from appropriate community representatives for appointment to the Committee will be sought.

### **FINANCIAL CONSIDERATIONS**

13. The cost to administrate an advisory committee is in the order of \$5,000 to \$6000 per year based on four meetings per year. This can vary depending on requirement of the committee.

|                                       |                 |                    |
|---------------------------------------|-----------------|--------------------|
| Meeting agenda preparation            | 2 hours/meeting | \$ 400.00          |
| Briefing Papers prepared and research | 8 hours/meeting | \$ 1,600.00        |
| Meeting attendance x 3 staff          | 2 hours/meeting | \$ 1,200.00        |
| Minutes                               | 2 hours/meeting | \$ 400.00          |
| Senior Officers review and signoff    | 3 hours/meeting | \$ 900.00          |
| Ongoing Liaison                       | 2 hours/meeting | \$ 400.00          |
| Reporting to council                  | 4 hours/meeting | \$ 800.00          |
| <b>Total estimate</b>                 |                 | <b>\$ 5,700.00</b> |

## STRATEGIC AND SUSTAINABILITY IMPLICATIONS

### Strategic Planning Alignment

14. *Kalamunda Advancing: Strategic Community Plan to 2027*

Objective 4.1 To provide leadership through transparent governance.

Strategy 4.1.1 Provide good governance

### Sustainability Considerations

#### Social Implications

15. Nil.

#### Economic Implications

16. Nil.

#### Environmental Implications

17. Nil.

## RISK MANAGEMENT CONSIDERATIONS

- 18.
- |   |                    |               |
|---|--------------------|---------------|
| <b>Risk:</b> Advisory Committees become irrelevant and become a cost to the City rather than a benefit.   |                    |               |
| <b>Likelihood</b>   | <b>Consequence</b> | <b>Rating</b> |
| Unlikely  | Moderate           | Low           |
| <b>Action / Strategy</b>  |                    |               |
| By regularly reviewing the terms of reference and the efficacy of advisory committees the City will not incur a cost without benefit.   |                    |               |
| <b>Risk:</b> Committee goals do not align with City's objectives and strategies.  |                    |               |
| <b>Likelihood</b>   | <b>Consequence</b> | <b>Rating</b> |
| Possible  | Moderate           | Medium        |
| <b>Action / Strategy</b>  |                    |               |
| Provide guidance to the Chair and at the first meeting communicate the City's strategic plan and objectives to ensure the Committee understands its role and works within its Terms of Reference. |                    |               |
| <b>Risk:</b> Council may not approve the establishment of a Committee.  |                    |               |
| <b>Likelihood</b>   | <b>Consequence</b> | <b>Rating</b> |
| Unlikely  | Moderate           | Low           |
| <b>Action / Strategy</b>  |                    |               |
| Without Advisory Committees Council will lack a valuable process for community empowerment so ensure the value of community input is understood.  |                    |               |

## OFFICER COMMENT

19. Upon endorsement by Council of all the Terms of Reference and the establishment of all Committees, advertisements seeking nominations from the community for appointment to the various Committees will be placed in the local newspapers. Following this a report will be brought to Council in December 2017 to formalise the appointments.

### Voting Requirements: Absolute Majority

#### RESOLVED OCM 167/2017

That Council:

1. Approves the Kalamunda Arts Advisory Committee Terms of Reference as outlined in Attachment 1.
2. Endorses the reviewed Advisory Committees Manual for Management and Terms of Reference for all Advisory Committees as shown Attachment 1 as amended.
  - Increase the Community Membership of the Kalamunda Environmental Advisory Committee from 4 to 6.
  - The Aged Care Advisory Committee "City of Kalamunda" deputy representative be changed to "Council Delegate"
  - Aged Care Advisory Committee ex officio members be "invited" not "appointed".
3. Abolish the Community Safety and Crime Prevention Advisory Committee.

Moved: **Cr Noreen Townsend**

Seconded: **Cr Sara Lohmeyer**

|       |  |  |
|-------|--|--|
| Vote: | <u>For</u><br><b>Cr Michael Fernie</b><br><b>Cr John Giardina</b><br><b>Cr Geoff Stallard</b><br><b>Cr Allan Morton</b><br><b>Cr Brooke O'Donnell</b><br><b>Cr Noreen Townsend</b><br><b>Cr Andrew Waddell</b><br><b>Cr Sara Lohmeyer</b><br><b>Cr Dylan O'Connor</b><br><b>Cr Tracy Destree</b> | <u>Against</u><br><b>Cr Sue Bilich</b> |
|-------|--|--|

**CARRIED UNANIMOUSLY/ABSOLUTE MAJORITY (11/0)**

**Attachment 1**

Review of Advisory Committees of Council

**Membership Terms of Reference for Management Advisory Committees  
2017/2019**

[Click HERE to go directly to the document](#)

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

**10.4.3 State Administrative Tribunal and Joint Development Assessment Panel Outcomes and Costs over the Period 2015 - 2017**

|                     |   |
|---------------------|---|
| Previous Items      | Nil.  |
| Responsible Officer | Director Development Services   |
| Service Area        | Approval Services   |
| File Reference      | LE-ACT-038 & LE-ACT-014   |
| Attachment 1        | Summary of State Administrative Tribunal Outcomes and Costs since 2015      |
| Attachment 2        | Summary of Joint Development Assessment Panel Outcomes and Costs since 2015 |

**EXECUTIVE SUMMARY**

1. In response to a Notice of Motion raised at the Ordinary Council Meeting held 28 August 2017, a review has been undertaken of all SAT and JDAP matters from 1 January 2015, with a view of analysing officer recommendation, Council decision, SAT/JDAP decision and associated costs incurred by the City of Kalamunda.
2. In summary, the City has been involved in 10 SAT matters and five (5) JDAP applications since 1 January 2015.
3. Total costs associated with SAT matters since January 2015 is \$335,305.37 that includes 476 staff hours. Total costs associated with JDAP matters since January 2015 is \$5,241.80 that includes 89 staff hours.
4. It is recommended that the report be noted and an annual report be presented to Council, commencing at the end of each calendar year, summarising State Administrative Tribunal and JDAP matters, outcomes and costs.

**BACKGROUND**

5. A Notice of Motion was raised at Council's Ordinary Meeting held 28 August 2017, that read as follows:

*"That Council:*

- 1. Request the Chief Executive Officer prepare a report for the September 2017 Ordinary Council Meeting regarding State Administrative Tribunal (SAT) and Joint Development Assessment Panel (JDAP) outcomes and costs over the period 2015 – 2017 that includes the:*

- a) Decision recommended by the Officer;*
- b) Decision of the Council;*
- c) Decision of the SAT or JDAP; and*
- d) Costs incurred by City of Kalamunda."*

6. The following rationale was provided in support of the abovementioned Notice of Motion:

*"A number of Council planning decisions are being appealed through the State Administrative Tribunal (SAT) or Joint Development Assessment Panel (JDAP) and, regardless of the outcome, the City of Kalamunda is exposed to significant costs whenever an appeal is heard.*

*In cases where Council decisions are overturned the costs are usually the same (awarding costs is uncommon), however one could argue that the confidence in the Council's planning decision making maybe undermined should this become a trend.*

*It is incumbent on Council to understand the consequences and costs incurred of any appeal and its decision making 'success rate'.*

*Understanding any correlations between the SAT/ JDAP decision with either the Officer's recommendation and/ or the Council decision could provide context for future planning decisions and further inform decision making. Ensuring this information is available to the community may improve understanding of the constraints of the planning process with the relevant stakeholders.*

*While the information requested is a matter of public record, the trend information is not readily available.*

*There is currently no report or source of information provided to Council that provides a snap shot of the final outcome (including recommendation, decision, appeal, determination and costs) of its planning decisions.*

*Should the initial report provide valid information, it may be prudent to ensure such data is provided to Council on an annual basis."*

## **DETAILS**

7. The review focussed only on applications for development and subdivision approval. It is noted that there may have been other matters subject of a SAT review/appeal such as a building permit application however as the August Notice of Motion focussed on planning decisions, those made by Council Building Permit matters have not been included. Refer to (Attachments 1 and 2).
8. The City has been involved in 10 SAT matters and five (5) JDAP applications since 1 January 2015, and has been subject to total costs estimated to be in the vicinity of \$335,305.37 and \$5,241.80 respectively during this period.

## **STATUTORY AND LEGAL CONSIDERATIONS**

### *Planning and Development Act 2005*

9. The Planning and Development Act 2005 prescribes types of applications which are required to be referred to JDAP and the planning decisions which may be subject to of a Review/Appeal with the SAT.

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*Planning and Development (Development Assessment Panels) Regulations 2011*

10. The Planning and Development (Development Assessment Panels) Regulations 2011 sets out the overarching administration of JDAPs.

*State Administrative Tribunal Act 2004*

11. SAT's objectives are set out in the *State Administrative Tribunal Act 2004*. The main objectives of SAT in dealing with matters within its jurisdiction are:
- To achieve the resolution of questions, complaints or disputes, and make or review decisions, fairly and according to the substantial merits of the case;
  - To act as speedily and with as little formality and technicality as is practicable, and minimise the costs to parties; and
  - To make appropriate use of the knowledge and experience of SAT members.

**POLICY CONSIDERATIONS**

12. Nil.

**COMMUNITY ENGAGEMENT REQUIREMENTS**

**Internal Referrals**

13. Nil.

**External Referrals**

14. Nil.

**FINANCIAL CONSIDERATIONS**

15. The purpose of this report is to identify costs associated with SAT and JDAP applications with a view of potentially informing future decision making of Council.

**STRATEGIC COMMUNITY PLAN**

**Strategic Planning Alignment**

16. *Kalamunda Advancing: Strategic Community Plan to 2027*

OBJECTIVE 3.1: To plan for sustainable population growth.

Strategy 3.1.1 Plan for diverse and sustainable housing, community facilities and industrial development to meet changing social and economic needs.

OBJECTIVE 6.1: To ensure a highly effective and strategic thinking Council sets direction and works for the greater good of the community at all times.

Strategy 6.1.2 Develop and implement a governance framework to ensure the elected body has a very clear understanding of its role and responsibilities.

OBJECTIVE 6.8: To ensure financial sustainability through the implementation of effective financial management, systems and plans

Strategy 6.8.4 Provide effective financial services to support the Shire's operations and to meet sustainability planning, reporting and accountability requirements.

## SUSTAINABILITY

### Social Implications

17. Nil.

### Economic Implications

18. Nil.

### Environmental Implications

19. Nil.

## RISK MANAGEMENT CONSIDERATIONS

|     |   |                    |               |
|-----|---|--------------------|---------------|
| 20. | <b>Risk:</b> that Council are not provided with sufficient information regarding costs associated with SAT and JDAP matters in the course of exercising discretion on planning proposals. |                    |               |
|     | <b>Likelihood:</b>  | <b>Consequence</b> | <b>Rating</b> |
|     | Possible  | Moderate           | Medium        |
|     | <b>Action/ Strategy</b>   |                    |               |
|     | Provide Council with annual information regarding the SAT and JDAP costs associated with decisions of Council.  |                    |               |

## OFFICER COMMENT

21. It is considered that the City will be subject to an increasing number of SAT matters and JDAP applications as urban development patterns mature and change in the City, resulting in increasingly complex and/or significant planning proposals and land use planning conflicts.
22. Where a matter is subject of a SAT review/appeal, it is noted that in the first instance, it is preferable and economical to use the City's officers to defend the City's decision. In addition, often SAT matters involve detailed consideration of technical matters, often requiring expert witnesses to support the decision of the City's Officers or Council.



23. However, where a SAT matter results from decision of Council that is contrary to the officers recommendation (e.g. refuse an application that was recommended by the officer for approval), Council has previously needed to engage legal and/or planning representation to act on its behalf. More recently however, with the appointment of the General Counsel, Council are able to use internal legal representation which will be more cost effective
24. Four (4) out of the 10 SAT matters are still active (matters 6-10), which means that there will likely be further costs incurred during future SAT proceedings. Three (3) of the SAT matters (matters 5, 6 and 10) are applications for appeal/review relating to conditions of approval where applicants disagreed or sought clarification regarding the purpose and intent of conditions. Five (5) of the SAT matters (matters 1-3, 5 and 6) were either reaffirmed by SAT or withdrawn by the applicant after successful mediation or a Section 31 (1) reconsideration.
25. This review has identified three (3) SAT matters (matters 4, 7 and 9) whereby the officer recommendation was to approve subject to conditions, however Council resolved to refuse the application:
- DA15/0660 - Lot 200 (584) Kalamunda Road, High Wycombe – Hardstand and Temporary Storage  
The City was billed \$38,204.61 in legal fees and used an estimated \$1,603.80 in officer time. SAT ultimately resolved to approve the application subject to conditions.
  - DA16/0374 - Lot 77 (310) Canning Road, Lesmurdie – Retrospective Application for Outbuilding and Retaining.  
To date, the City was billed \$3,520 for a professional mediator and has used an estimated \$1,241.76 in officer time. This matter is still subject to SAT proceedings so it is expected that the cost will increase further.
  - DA16/0432 - Lot 39 (12) Lewis Road, Wattle Grove – Telecommunications Facility.  
To date, the City has used an estimated \$2,035 for General Counsel and \$252.90 in officer time. This matter is still subject to a SAT review so it is expected that the cost will increase further.
26. It is important to note that JDAPs were established as a decision making process, rather than an arbitrator. All of the determinations made by JDAP identified (Attachment 2) were consistent with the officer recommendation.
27. It is considered that there is merit in reporting to Council on JDAP matters to identify the larger applications being determined. The review identified five (5) JDAP applications that were processed by the City since 1 January 2015. The approximate costs associated with these applications (calculated primarily by estimated officer hours) ranges from \$500 to \$2000+ depending on the complexity of the matter. These costs are often recovered through application fees.

28. It is considered that the information provided as part of this review will be useful to Council in monitoring and understanding costs associated with decisions. Accordingly it is recommended that a report be prepared annually at the end of the calendar for Council's consideration.

|   |
|---|
| <b>Voting Requirements: Simple Majority</b> |
|---|

RESOLVED OCM 168/2017

That Council:

1. Notes the report on State Administrative Tribunal and Joint Development Assessment Panel outcomes and costs over the period 2015 – 2017.
2. Request the Chief Executive Officer prepare an annual report to Council, commencing at the end of the 2017 calendar year, summarising State Administrative Tribunal Matters and Joint Development Assessment Panel, outcomes and costs.

Moved: **Cr Tracy Destree**

Seconded: **Cr Dylan O'Connor**

Vote: **CARRIED UNANIMOUSLY (11/0)**

## Attachment 1

State Administrative Tribunal and Joint Development Assessment Panel Outcomes and Costs over the Period 2015 - 2017

### State Administrative Tribunal Matters – 1 January 2015 - 19 September 2017

|   | Nature of Matter/Application  | Officer Recommendation  | Council Decision                   | SAT Decision   | Total Costs*  |
|---|---|---|------------------------------------|--|---|
| 1 | DA15/0121<br>Proposed Concrete Recycling Facility –<br>Lots 1, 20 and 21 (251, 257 and 259)<br>Berkshire Road, Forrestfield | Refused under<br>delegation 16 March<br>2015  | N/A                                | Reaffirmed the<br>City's decision to<br>refuse the<br>application  | Total cost:<br><b>\$182,684.8</b><br><br>Estimated officer<br>time: 42 hours  |
| 2 | DA15/0394 –<br>Lot 79 (16) Hibbertia Court, Maida Vale –<br>Proposed Tennis Court Cover (open shed)                         | Refused under<br>delegation 23 October<br>2015.<br><br>S.31(1) reconsideration<br>– Approved subject to<br>conditions under<br>delegation on 24<br>February 2016. | N/A                                | Withdrawn by<br>applicant 26<br>February 2016.   | Total cost:<br><b>\$1,389.6</b><br><br>Estimated officer<br>time: 20 hours    |
| 3 | DA15/0600<br>Lot 103 (65) McCorkill Rd, Pickering Brook<br>– Telecommunications Facility                                    | Refusal   | Refused at OCM on<br>26 April 2016 | Withdrawn by<br>applicant on 2<br>June 2016 -<br>Mediated outcome<br>resulted in NBN<br>relocating to<br>Pickering Brook<br>Sports Club at Lot<br>809 (35) Weston<br>Road, Pickering<br>Brook. | Total cost:<br><b>\$51,115.12</b><br><br>Estimated officer<br>time: 220 hours |

|   |   |   |   |   |   |
|---|---|---|---|---|---|
| 4 | DA15/0660<br>Lot 200 (584) Kalamunda Road, High Wycombe – Hardstand and Temporary Storage | 23.5.2016 - Refusal<br><br>S.31(1) reconsideration 29 August 2016 – Approval subject to conditions  | Initially Refused at OCM on 23 May 2016<br><br>S.31(1) reconsideration – Refused at SCM 29 August 2016                                      | Approved subject to conditions 30 May 2017                            | Total cost:<br><b>\$39,808.41</b><br><br>Estimated officer time: 22 hours |
| 5 | WAPC 152886<br>Lot 51 (118) Lawnbrook Road, Walliston – 38 Lot Freehold Subdivision       | Recommendation of approval subject to conditions.<br><br>Western Australian Planning Commission approved subject to conditions on 21 October 2016 | N/A   | Advised by applicant 30.8.2017 that the SAT matter would be withdrawn | Total cost:<br><b>\$1,456.5</b><br><br>Estimated officer time: 25 hours   |
| 6 | DA16/0103<br>Proposed Nursery and Temporary Food Van – Lot 17 (105) Tanner Road, Carmel   | 24.4.2017 - Approval subject to conditions<br><br>S.31(1) reconsideration 28 August 2017 – Approval of modified conditions.                       | Approved subject to conditions at OCM on 24 April 2017.<br><br>S.31(1) reconsideration – Approved modified conditions at OCM 28 August 2017 | Withdrawn by applicant 30 August 2017.                                | Total cost:<br><b>\$1,429.9</b><br><br>Estimated officer time: 18 hours   |

|   |   |  |  |   |   |
|---|---|--|--|---|---|
| 7   | DA16/0374<br>Lot 77 (310) Canning Road, Lesmurdie –<br>Retrospective Application for Outbuilding<br>and Retaining | Approval subject to<br>conditions 22.5.2017<br><br>S.31(1) reconsideration<br>28 August 2017 –<br>Approval subject to<br>conditions. | Deemed refused at<br>OCM on 22 May<br>2017.<br><br>S.31(1)<br>reconsideration –<br>Refused at OCM 28<br>August 2017. | Pending Directions<br>Hearing scheduled<br>for 13 October<br>2017                                     | Total cost so far:<br><b>\$4,761.8</b><br><br>Estimated officer<br>time: 22 hours |
| 8   | DA16/0568<br>Lot 54 (59) Coolinga Road, Lesmurdie –<br>Child Care Premises  | Refusal  | Refused at OCM on<br>22 May 2017   | Review heard on<br>28 and 29 August<br>2017. SAT<br>Decision pending                                  | Total cost<br><b>\$48,362.84</b><br><br>Estimated officer<br>time: 98 hours       |
| 9   | DA16/0432<br>Lot 39 (12) Lewis Road, Wattle Grove –<br>Telecommunications Facility                                | 19 December 2016 -<br>Approval subject to<br>conditions.<br><br>24 July 2017 - Approval<br>subject to conditions                     | Deferred at OCM on<br>19 December 2016.<br><br>Refused at OCM on<br>24 July 2017.                                    | Directions Hearing<br>held 8 September<br>2017.   | Total cost so far:<br><b>\$1,880</b><br><br>Estimated officer<br>time: 3 hours    |
| 10  | DA17/0118<br>Lot 23 (23) Kalamunda Road, Kalamunda<br>– Six (6) Single Storey Grouped Dwellings                   | Approved under<br>delegation 25 July 2017<br><br>Condition of approval<br>amended through<br>mediation on 19<br>September 2017       | N/A  | Directions Hearing<br>held 8 September<br>2017.<br><br>Withdrawn by<br>applicant 19<br>September 2017 | Total cost so far:<br><b>\$2,416.4</b><br><br>Estimated officer<br>time: 6 hours  |
| <b>TOTAL COSTS FROM JANUARY 2016 TO CURRENT</b> |   |  |  |   | <b>\$335,305.37</b><br><b>476 hours</b>   |

\*total cost includes estimated officer hours and overheads, legal fees, mediator fees, and General Counsel expenses

## Attachment 2

State Administrative Tribunal and Joint Development Assessment Panel Outcomes and Costs over the Period 2015 - 2017

### Joint Development Assessment Panel Matters - 1 January 2015 - 13 September 2017

| Nature of Matter  | Officer Recommendation         | JDAP Decision  | Costs*   |
|---|--------------------------------|--|--|
| DAP/16/01042<br>Lot 100 (121) Canning Road,<br>Kalamunda – Proposed<br>Alterations and Additions to<br>Existing Shop  | Approval subject to conditions | Approval subject to conditions on<br>15 July 2016    | Total cost: <b>\$715.2</b><br><br>Estimated officer time: 12 hours   |
| DAP/16/01085<br>Lot 33 (332) Hale Road, Wattle<br>Grove – Single Storey Shopping<br>Centre and Signage  | Approval subject to conditions | Approval subject to conditions on<br>25 October 2016 | Total cost: <b>\$1,348.8</b><br><br>Estimated officer time: 21 hours |
| DAP/16/01042<br>Lot 100 (121) Canning Road,<br>Kalamunda – Amendment to<br>Previous Approval (Extension of<br>an Existing Supermarket)  | Approval subject to conditions | Approval subject to conditions on<br>6 June 2017     | Total cost: <b>\$446</b><br><br>Estimated officer time: 10 hours     |
| DA16/0322A<br>Lot 33 (332) Hale Road, Wattle<br>Grove – Amendment to Previous<br>Approval (Single Storey Shopping<br>Centre and Signage) Request to<br>delete conditions relating the<br>ceding of land for road widening<br>and public open space. | N/A                            | Withdrawn by applicant 11<br>September 2017          | Total cost: <b>\$273.6</b><br><br>Estimates officer time: 5 hours    |

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|  |   |                       |  |
|--|---|-----------------------|--|
| DA17/0341<br>Lot 42 (116) Union Road, Carmel<br>– Proposed Distillery, Restaurant<br>and Tourism Development | Under assessment. Responsible<br>Authority Report due 19.10.2017. | Yet to be determined. | Total cost to date: <b>\$2,458.2</b><br><br>Estimated officer time: 41 hours |
| <b>TOTAL COSTS FROM JANUARY 2016 TO CURRENT</b>  |   |                       | <b>\$5,241.80</b><br><b>89 hours</b>   |

\* Costs include officer hours and overheads

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

**10.4.4 Review of Local Government Act – Submission to WALGA**

|                     |  |
|---------------------|--|
| Previous Items      |  |
| Responsible Officer | Chief Executive Officer  |
| Service Area        | Governance Legal Services  |
| File Reference      |  |
| Attachment 1        | WALGA review of <i>Local Government Act 1995</i> (WA) – Discussion Paper |

**EXECUTIVE SUMMARY**

1. The City has received a Discussion Paper from the Western Australian Local Government Association (**WALGA**), attached and marked 'Attachment 1' (**Discussion Paper**) and has considered the key issues it raises.
2. To assist Council to consider important matters in the Discussion Paper, officers have prepared detailed comments in respect of the key issues and have highlighted issues that, whilst not raised (in the Discussion Paper) should be considered.
3. This report seeks Council's endorsement of the City's submissions to WALGA in respect of the Discussion Paper, for lodgement with WALGA prior to its 20 October 2017 deadline.

**BACKGROUND**

4. The Minister for Local Government, Hon. David Templeman MLA wrote to WALGA on 14 June 2017 to announce the commencement of a review of the *Local Government Act 1995* (WA) (**LGA**)
5. The review will be undertaken in two phases. The first will focus on modernising Local Government, with the policy work and consultation to be completed in 2017 as part of this phase (**Phase 1**), with a Bill (on Phase 1) expected in 2018.
6. Key topics in Phase 1 with respect to proposed amendment to the LGA, will be to seek increasing elector participation, electronic disclosure (making information more readily available), the simplification of the disclosure of gifts and provisions aimed at reducing 'red tape'.
7. The theme of the second phase is delivering for the community (**Phase 2**), with the policy work and consultation for Phase 2 to be completed in 2018 with a Phase 2 Bill in 2019. Key themes for this phase will be improving behaviour and relationships, increasing community participation, enabling local government enterprises, improving financial management and again, reducing 'red tape'.



- 
8. In July 2017, WALGA's State Council considered and adopted the following Consultation Process:
- a) an Infopage will be distributed to Local Governments, including a Discussion Paper, on issues that have been identified over the last 8 years including advocacy positions resolved by the sector. This will include a request for Local Governments to submit additional items for consideration in the [LGA] review process. Councils can submit individually or collectively through their Zone;
  - b) WALGA to hold Zone/regional group forums on the Act/Regulatory amendment suggestions. Can be held in-conjunction with a Zone meeting or separately; and
  - c) Finalise feedback and provide recommendations on legislative and regulatory change through a State Council agenda item that would go through the Zones.

It is expected that this process will be carried out between July and November 2017 with the State Council item being considered at the 6 December meeting.

9. WALGA listed approximately 40 issues that have been raised or resolved through State Council or Zone meetings. The majority of the issues raised by WALGA are sensible and relevant positions in relation to the legislation.
10. The final collated feedback will be prepared as a State Council Agenda Item for Zone consideration during the November/December 2017 round of Zone meetings. State Council will ultimately determine its position at its meeting of 6 December 2017.
11. Council's endorsed submissions on the issues raised in the Discussion Paper, as well as any other additional relevant matters raised, must be forward to WALGA by Friday 20 October 2017.

## **DETAILS**

12. Contained within this section of the report are WALGA's proposed amendments to the LGA and associated Regulations, which it will present to the Minister together with officer comments on those proposed amendments:

| Part/Regulation                            | Section under Review                                | WALGA Position   | Officer Comment   |
|--|---|--|---|
| PART 2<br>Constitution of Local Government | Method of Election of Mayor/President: Section 2.11 | Local Governments should determine whether their Mayor or President will be elected by the Council or elected by the community.  | The City support the proposal.  |
|  | Elected Member Training: New Proposal               | <p>WALGA opposes legislative change that would:</p> <ol style="list-style-type: none"> <li>1. require candidates to undertake training prior to nominating for election;</li> <li>2. incentivise Elected Member training through the fees and allowances framework; or</li> <li>3. mandate Elected Member training.</li> </ol> <p>Further, if mandatory training becomes inevitable, WALGA will seek to ensure that it:</p> <ol style="list-style-type: none"> <li>a) only applies to first time Elected Members;</li> <li>b) Utilises the Elected Member Skill Set as the appropriate content for mandatory training;</li> <li>c) Applies appropriate Recognition of Prior Learning (RPL);</li> <li>d) Requires training to be completed within the first 12 months of office; and</li> <li>e) Applies a penalty for non-completion of a reduction in fees and allowances payable.</li> </ol> | <p>The City is generally supportive of mandatory and on-going training for all Elected Members.</p> <p>The City agrees that <i>candidates</i> should not be required to undertake training prior to nominating for election.</p> <p>The City of Kalamunda ran a mock Council meeting instead of a Candidate Information Session, which was attended by the WAEC. This event was well attended by candidates, and had them roleplaying the consideration of two complex planning matters. The City believes that local governments should take a greater role in promoting these kinds of creative information sessions, rather than mandate training for candidates.</p> <p>Most professions require employees to undertake Continued Professional Development to update their knowledge and skills. The City considers this should be the same case for Elected Members, as long as the training seeks to enhance, update or continue their current knowledge, and takes recognition of prior learning of long-term Elected Members into account.</p> <p>The City considers that the most important areas of training are:</p> <ol style="list-style-type: none"> <li>a) Planning;</li> <li>b) Finance;</li> <li>c) Interest and Gift Disclosures;</li> <li>d) Obligations under the <i>Local Government Act</i>; and</li> <li>e) Standing Orders.</li> </ol> <p>Mandated training is designed to assist Elected Members both new and returning, to gain the required set of skills to function well as a cohesive team. The training will provide an understanding of the legal responsibilities of Elected Members including their duties under the LGA and related legislation.</p> |

| Part/Regulation                         | Section under Review   | WALGA Position  | Officer Comment   |
|---|--|---|---|
|   | Stand Down when Contesting State or Federal Election: New Proposal | <p>Amend the Act to require an Elected Member to stand down when contesting a State or Federal election, applying from the issue of Writs. The options to consider include:</p> <p>a) that an Elected Member stand down from any decision making role and not attend Council and Committee meetings; or</p> <p>b) that an Elected Member stand down from all aspects of their role as a Councillor and not be able to perform the role as specified in Section 2.10 of the <i>Local Government Act</i>.</p>   | The City supports the requirement for Elected Members to stand down whilst contesting a seat in a State or Federal election, providing that Elected Members do not have to resign from office entirely and that any Leave of Absence does not conflict with an Elected Members obligation under section 2.25(2) of the current Act (or, any similar requirement under any new Act). |
| PART 3<br>Functions of Local Government | Notification of Affected Owners: Section 3.51                      | <p>Section 3.51 of the <i>Local Government Act 1995</i> concerning "Affected owners to be notified of certain proposals" should be amended to achieve the following effects:</p> <p>1. to limit definition of "person having an interest" to those persons immediately adjoining the proposed road works (i.e. similar principle to town planning consultation); and</p> <p>2. to specify that only significant, defined categories of proposed road works require local public notice under Section 3.51(3)(a).</p>  | The City supports the proposal.   |
|   | Control of Certain Unvested Facilities: Section 3.53               | <p>The Local Government Act 1995 includes a provisions, under Section 3.53, that is carried forward from Section 300 of the former Local Government Act 1960.</p> <p>Former Section 300 stated:<br/><i>300. A council has the care, control, and management of public places, streets, ways, bridges, culverts, fords, ferries, jetties, and drains, which are within the district, or, which although not within the district, are by this Act placed under the care, control, and management, of the council, or are to be regarded as being within the district, except where and to the extent that under an Act, another authority has that care, control, and management.</i></p> <p>Section 3.53 refers to infrastructure as an 'otherwise unvested facility', and is defined to mean:</p> | The City supports the proposal.   |

| Part/Regulation   | Section under Review                                    | WALGA Position  | Officer Comment  |
|---|---|---|--|
|   |   | <p><i>"a thoroughfare, bridge, jetty, drain, or watercourse belonging to the Crown, the responsibility or controlling or managing which is not vested in any person other than under this section."</i></p> <p>Section 3.53 places responsibility for an otherwise unvested facility on the Local Government in whose district the facility is located. Lack of ongoing maintenance and accreting age has resulted in much infrastructure falling into a dilapidated state. This, together with the uncertain provenance of many of these facilities, particularly bridges, is reported as placing an unwarranted and unfunded burden on a number of Local Governments.</p> <p>It is recommended Section 3.53 of the Act be deleted and that responsibility for facilities located on Crown Land return to the State as the appropriate land manager.</p> |  |
|   | Regional Local Governments:<br>Part 3, Division 4       | The compliance obligations of Regional Local Governments should be reviewed.  | The City supports the proposal.  |
|   | Council Controlled Organisations:<br>Part 3, Division 4 | The <i>Local Government Act 1995</i> should be amended to enable Local Governments to establish Council Controlled Organisations (CCO) - also referred to as 'Local Government Enterprises' i.e. WALGA's Systemic Sustainability Study 2008.  | The City supports the proposal.  |
| Local Government (Functions and General) Regulations 1996 | Tender Threshold: Regulation 11(1)                      | WALGA supports an increase in the tender threshold to align with the State Government tender threshold (\$250,000).   | The City generally supports the proposal, however that value of the tender threshold limit for each local government should be established having regard to the respective size of local government in accordance with the SAT banding subject to a upper limit threshold. |
|   | Dispositions of Property: Regulation 30(3)              | That Regulation 30(3) be amended to delete any financial threshold limitation (currently \$75,000) on a disposition where it is used exclusively to purchase other property in the course of acquiring goods and services, commonly applied to a trade-in activity.   | The City supports the proposal.  |
| Local Government (Regional)                               | Regional Subsidiaries                                   | That WALGA advocate for legislative and regulatory amendments to enable Regional Subsidiaries to:   | The City supports the proposal.  |

| Part/Regulation                        | Section under Review                                      | WALGA Position   | Officer Comment   |
|--|---|--|---|
| Subsidiaries)<br>Regulations 2017      |   | <ol style="list-style-type: none"> <li>1. Borrow in their own right;</li> <li>2. Enter into land transactions; and</li> <li>3. Undertake commercial activities.</li> </ol>   |   |
| PART 4<br>Elections and Other<br>Polls | Conduct of Postal<br>Elections: Sections<br>4.20 and 4.61 | The <i>Local Government Act 1995</i> should be amended to allow the Australian Electoral Commission (AEC) and Local Governments to conduct postal elections.   | The City supports the proposal.   |
|  | Voluntary Voting:<br>Section 4.65                         | Voting in Local Government elections should remain voluntary.  | The City supports the proposal, however commentary in paragraph 13 of this report should be considered.   |
|  | On-Line Voting  | <p>WALGA has received requests from three (3) Zones to explore the possibility of introducing on-line voting in Local Government elections.</p> <p>A State Council Item for Noting was prepared in May 2017 advising that WALGA staff will liaise with the WAEC regarding the use of the iVote system and also seek feedback from the Local Government sector on online voting and other opportunities to increase voter turnout.</p> <p>The Minister for Local Government has indicated that online voting is likely to be considered in the context of increasing elector participation.</p> | The City supports the proposal, however commentary in paragraph 13 of this report should be considered.   |
| PART 5<br>Administration               | Electors' General<br>Meeting: Section<br>5.27             | Section 5.27 of the <i>Local Government Act 1995</i> should be amended so that Electors' General Meetings are not compulsory.  | The City supports the proposal.   |
|  | Special Electors'<br>Meeting: Section<br>5.28             | <p>That Section 5.28(1)(a) be amended:</p> <p>(a) so that the prescribed number of electors required to request a meeting increase from 100 (or 5% of electors) to 500 (or 5% of electors), whichever is fewer; and</p> <p>(b) to preclude the calling of Electors' Special Meeting on the same issue within a 12 month period, unless Council determines otherwise.</p>   | The City supports the proposal. There are sufficient provisions within the LGA for the public (including rate payers) to participate in local government matters and access information. This is achieved by attending meetings, participating public question time, lodging petitions and requesting special electors' meetings. |

| Part/Regulation | Section under Review  | WALGA Position  | Officer Comment   |
|-----------------|---|---|---|
|                 | Senior Employees: Section 5.37(2)                             | That Section 5.37(2) be deleted to remove any inference or ambiguity as to the role of Council in the performance of the Chief Executive Officer's function under Section 5.41(g) regarding the appointment of other employees (with consequential amendment to Section 5.41(g) accordingly).   | The City supports the proposal..  |
|                 | Annual Review of Certain Employees Performances: Section 5.38 | Section 5.41(g) of the Act prescribes the function of responsibility for all employees, including management supervision, to the Chief Executive Officer. Section 5.38 therefore creates unnecessary ambiguity; unnecessary in terms of the certainty that Section 5.41(g) already provides. It is recommended that Section 5.38 either be deleted, or amended so that there is only a specific statutory requirement for Council to conduct the Chief Executive Officer's annual performance review.   | The City supports the proposal.   |
|                 | Gifts and Contributions to Travel: Sections 5.82 and 5.83     | <p>The current Gift Provisions in the Local Government Act are very confusing and overly prescriptive. The Department of Local Government and Communities have established a Gift Working Group to look at completely reviewing the gift provisions for changes following the March 2017 State Election. WALGA is a participant in this working group. WALGA representatives have been advocating for the following:</p> <ul style="list-style-type: none"> <li>• There be one section for declaring gifts. Delete declarations for Travel.</li> <li>• No requirement to declare gifts received in a genuinely personal capacity.</li> <li>• Gift provisions only for Elected Members and CEO's. Other staff fall under Codes of Conduct from the CEO to the staff.</li> <li>• Gifts only to be declared if above \$500.00.</li> <li>• There will not be any category of notifiable gifts or prohibited gifts.</li> <li>• Gifts only to be declared in respect to an Elected Member or CEO carrying out their role.</li> <li>• Exemptions for ALGA, WALGA and LG Professionals (already achieved).</li> <li>• Exemption for electoral gifts received that relate to the State and Commonwealth Electoral Acts. So Elected Members who are standing for State or Federal Parliament will only need to</li> </ul> | <p>The City agrees in principle with a revamp of the gift provisions to streamline and simplify the area.</p> <p>The City is supportive of WALGA's position however would like to ensure that contributions to travel are included in the definition of 'gift' should the requirement to disclose separately be deleted.</p> <p>The City also believes that strict clarity should be given to what is a "gift received in a genuinely personal capacity."</p> |

| Part/Regulation | Section under Review                                | WALGA Position  | Officer Comment                 |
|-----------------|---|---|---------------------------------|
|                 |   | comply with the State or Federal electoral act and not declare it as a Local Government gift.   |                                 |
|                 | Vexatious and Frivolous Complainants: New Provision | <p>It is recommended that a statutory provision be considered, permitting a Local Government to declare a person a vexatious or frivolous complainant. Section 5.110(3a) of the Act was recently introduced in relation to the Local Government Standards Panel ruling on vexatious and frivolous Rules of Conduct Regulations breach allegations</p> <p><i>"...a standards panel can at any stage of its proceedings refuse to deal with a complaint if the standards panel is satisfied that the complaint is frivolous, trivial, vexatious, misconceived or without substance."</i></p> <p>Given the extensive cost and diversion of administrative resources currently associated with vexatious and frivolous complainants across the Local Government sector, it is recommended that a more general mechanism, based on the principles associated with the introduction of Section 5.110(3A), be investigated.</p> <p>Amendments to the legislation would need to cover the following points to implement the proposed arrangements:</p> <ul style="list-style-type: none"> <li>• Create a head of power to determine whether a community member is vexatious (potentially establish a new body through legislation and give it this power of determination);</li> <li>• Define vexatious behaviour broadly to include the extent and nature of communication between the alleged vexatious person and the Local Government (using words such as 'unreasonable', 'persistent', 'extensive', 'malicious' and 'abusive');</li> <li>• Outline the restrictions to statutory rights which can be imposed on a person if he or she is declared by the independent body to be vexatious;</li> <li>• Establish a process, if necessary, to enable a Local Government to present its case for the alleged vexatious person to defend himself/herself;</li> <li>• Determine what appeal rights are necessary.</li> </ul> | The City supports the proposal. |
|                 | Revoking or Changing                                | Regulation 10 provides a mechanism for the revocation or change to a previous decision of   | The City supports the proposal. |

| Part/Regulation                                    | Section under Review                                | WALGA Position   | Officer Comment                 |
|--|---|--|---------------------------------|
| Local Government (Administration) Regulations 1996 | Decisions: Regulation 10                            | Council. It does not however, contain any provision clarifying that the provisions [does] not apply to Council decisions that have already been implemented. This regulatory deficiency is currently managed administratively, but warrants an appropriate amendment to assist [clarifying] the rights of a Councillor to seek a revocation or change.   |                                 |
|  | Minutes, contents of: Regulation 11                 | Regulation 11 contains a potential anomaly in that the content requirements relating to Minutes of a Council or Committee meeting do not make reference to the reports and information that formed the basis of the Agenda to that meeting. Despite it being a common practice that Agenda reports and information are included in most Minutes, this is not universally the case, and it is recommended that an amendment be considered as an aid to community understanding of the decision-making process of the Council.   | The City supports the proposal. |
|  | Repayment of Advance Annual Payment: New Regulation | <p>The Local Government Legislation Amendment Act 2016 introduced Section 5.102AB, which provides that Regulations may be made relating to the recovery of advance payments of annual allowances or annual fees made to a person who subsequently ceases to hold office during the period to which the payment relates:</p> <p><b><i>5.102AB. Repayment of advance annual payments if recipient ceases to hold office</i></b></p> <p><i>(2) Regulations may be made —</i></p> <p><i>(a) requiring the repayment to a local government, to the extent determined in accordance with the regulations, of an advance payment of an annual allowance or annual fee in the circumstances to which this section applies; and</i></p> <p><i>(b) providing for a local government to recover any amount repayable if it is not repaid.</i></p> <p>Regulations enabling the recovery of advance annual payments have yet to be made and it is recommended this matter be prioritised.</p> | The City supports the proposal. |



| Part/Regulation                                      | Section under Review  | WALGA Position   | Officer Comment  |
|--|---|--|--|
| Local Government (Rules of Conduct) Regulations 2007 |   | <p>WALGA supports:</p> <ol style="list-style-type: none"> <li>1. Official Conduct legislation to govern the behaviour of Elected Members;</li> <li>2. An efficient and effective independent Standards Panel process;</li> <li>3. An ability for the Standards Panel to dismiss vexatious and frivolous complaints; and,</li> <li>4. Confidentiality for all parties being a key component of the entire process.</li> </ol> <p><i>NOTE: Point 3 achieved under the Local Government Legislation Amendment Act 2016</i></p>                              | The City supports the proposal.  |
| PART 6<br>Financial Management                       | Imposition of Fees and Charges                              | That a review be undertaken to remove fees and charges from legislation and Councils be empowered to set fees and charges for Local Government services.   | The City supports the proposal.  |
|  | Power to Borrow: Section 6.20                               | Section 6.20(2) requires, where a power to borrow is proposed to be exercised and details of the proposal are not included in the annual budget, that the Local Government must give one month's public notice of the proposal (unless an exemption applies). There is no associated requirement to request or consider written submission prior to exercising the power to borrow, as is usually associated with giving public notice. Section 6.20(2) simply stops the exercise of power to borrow for one month, and it is recommended it be deleted. | The City supports the proposal.  |
|  | Restrictions on Borrowings: Section 6.21                    | Section 6.21 of the <i>Local Government Act 1995</i> should be amended to allow Local Governments to use freehold land, in addition to its general fund, as security when borrowing.   | The City supports the proposal.  |
|  | Rating Exemptions – Charitable Purposes: Section 6.26(2)(g) | <p>WALGA's policy position regarding charitable purposes is as follows:</p> <ol style="list-style-type: none"> <li>1. Amend the Local Government Act to clarify that Independent Living Units should only be exempt from rates where they qualify under the Commonwealth Aged Care Act 1997;</li> </ol>  | The City supports the proposal. Additionally, EMRC recommended that amendments should be made to the Act to allow a local government authority to make the decision on providing concessions to charitable organisations where appropriate. The Act should be amended to clarify those circumstances where rating exemptions for charitable purposes |

| Part/Regulation | Section under Review   | WALGA Position   | Officer Comment   |
|-----------------|--|--|---|
|                 |  | <p>2. Either</p> <p>a) amend the charitable organisations section of the Local Government Act 1995 to eliminate exemptions for commercial (non-charitable) business activities of charitable organisations; or</p> <p>b) establish a compensatory fund for Local Governments, similar to the pensioner discount provisions, if the State Government believes charitable organisations remain exempt from payment of Local Government rates.</p>  | are waived under contractual arrangements with local governments. |
|                 | <p>Rating Exemptions – Charitable Purposes: Section 6.26(2)(i) and 6.26(3) – Cooperative Bulk Handling</p> | <p>Whilst not stated in the Discussion Paper, the City submits that consideration should be given to the amendment of section 6.26(2)(i) and 6.26(3) of the LGA in order to provide for a more accurate rate equivalent setting for the 'contribution' provided by Cooperative Bulk Handling to local government districts in which Cooperative Bulk Handling owns land.</p> <p>At present, Cooperative Bulk Handling is exempt from the requirement to pay local government rates pursuant to section 6.26(2)(i) of the LGA, however, is required to pay an agreed 'contribution' in lieu thereof. This contribution is determined by reference to the tonnes of grain stored on the relevant site and the contribution agreement is subject to Ministerial oversight in the event Cooperative Bulk Handling and the relevant local government cannot agree on terms.</p> <p>At present, the audit of storage of grain is undertaken by Cooperative Bulk Handling, rather than an independent third party auditor, which, in the City's submission would be appropriate, and additionally, a scalable mechanism should be applied to any calculation to ensure that the effective 'contribution' be representative of the comparative rateable value of the land.</p> <p>The agreement in force is currently heavily in favour of CBH with review provisions untenable as it requires the assent from other local authorities with similar CBH facilities. Attempts to compare agreements have not been possible due to the confidentiality involved in the arrangements of each agreement.</p> |   |

| Part/Regulation | Section under Review         | WALGA Position   | Officer Comment                 |
|-----------------|------------------------------|--|---------------------------------|
|                 |                              | Comparable new organisations who are in competition with CBH do not enjoy similar rate exemptions.   |                                 |
|                 | Basis of Rates: Section 6.28 | <p>1. That Section 6.28 be reviewed to examine the limitations of the current methods of valuation of land, Gross Rental Value or Unimproved Value, and explore other alternatives.</p> <p>The method of valuation of land to be used as the basis of rating in Western Australia is either: Gross Rental Value for predominantly non-rural purpose; or unimproved value of land for rural purposes. These are the only two methods available under the Section 6.28 of the Local Government Act in Western Australia.</p> <p>Eastern State Local Governments can elect to rate on one of the following options:</p> <ul style="list-style-type: none"> <li>• Site Value - levy on the unimproved value of land only and disregards the value of buildings, personal property and other improvements;</li> <li>• Capital Value - value of the land including improvements;</li> <li>• Annual Value - rental value of a property (same as GRV).</li> </ul> <p>Alternative land valuation methods came under the scope of the WALGA Systemic Sustainability Study, particularly Capital Improved Valuations which is in operation in Victoria and South Australia.</p> <p>2. Advocate for amendment to Section 6.28 to enable Differential Rating based on the time land remains undeveloped.</p> <p>Concern at the amount of vacant land remaining in an undeveloped state for an extensive period of time and holding up development opportunities.</p> <p>North Metropolitan Zone advocates an amendment to the current legislative provisions in relation to differential rating to enable a differential rate to be applied on the basis of the length of time a property has remained in an undeveloped state.</p> | The City supports the proposal. |

| Part/Regulation  | Section under Review  | WALGA Position   | Officer Comment  |
|--|---|--|--|
|  | Differential General Rates: Section 6.33                    | This section outlines the characteristics that Local Governments may take into account when imposing differential general rates. It is recommended the issue of time-based differential rating should be examined, to address some Local Governments view that vacant land should be developed in a timely manner.   | The City supports the proposal.  |
|  | Service of Rates Notice: Section 6.41                       | That Section 6.41 be amended to:<br><br>(a) permit the rates notice to be issued to electronically; and<br><br>(b) introduce flexibility to offer regular rate payments (i.e. fortnightly, monthly etc) without requirement to issue individual instalment notice.   | The City supports the proposal.  |
|  | Rates or Service Charges Recoverable in Court: Section 6.56 | That Section 6.56 be amended to clarify that all debt recovery action costs incurred by a Local Government in pursuing recovery of unpaid rates and services charges be recoverable and not be limited by reference to the 'cost of proceedings'.  | The City supports the proposal.  |
|  | Rating Exemptions – Rate Equivalency Payments               | Legislation should be amended so rate equivalency payments made by LandCorp and other Government Trading Entities are made to the relevant Local Governments instead of the State Government.  | The City supports the proposal.  |
|  | Rating Restrictions – State Agreement Acts                  | Resource projects covered by State Agreement Acts should be liable for Local Government rates.   | The City supports the proposal.  |
| Local Government (Financial Management) Regulations 1996 | Exemption from AASB 124: Regulation 4                       | Regulation 4 of the Financial Management Regulations provides a mechanism for an exemption from the Australian Accounting Standards (AAS). Regulation 16 is an example of the use of this mechanism, relieving Local Governments from the requirement to value land under roads.<br><br>A Zone has requested that an exemption be allowed from the implementation of AASB 124 'Related Party Transactions' due to the current provisions in the Act on declarations of interest at meetings and in Primary and Annual returns. This is regarded as providing appropriate | The City supports the proposal. The definition of what would be a related party, and thus in need of disclosure, is broader than the Act. For example, a "closely associated person" required with respect to a financial declaration under the Act would not capture all people who would need to be declared as a result of Related Party Transaction declarations (eg. parents and siblings).<br><br>Additionally, the City believes that the <i>Local Government Act 1995</i> should be amended to mandate and enforce the lodgement of Related Party Disclosures returns. |

| Part/Regulation                                       | Section under Review               | WALGA Position   | Officer Comment   |
|---|------------------------------------|--|---|
|   |                                    | material declaration and disclosure of interests associated with function of Local Government.   | Additionally, commentary in paragraph 16 of this report should be considered. |
| PART 7<br>Audit                                       |                                    | The Local Government Amendment (Auditing) Bill 2017, before Parliament at the time of writing, will substantially replace much of Part 7 to provide for the auditing of Local Governments by the Auditor General. New legislation will allow the Auditor General to contract out some or all of the financial audits but all audits will be done under the supervision of the Auditor General and Office of the Auditor General. State Government will pay the cost for the conduct of performance audits.   | The City supports the proposal.   |
| PART 8<br>Scrutiny of the Affairs of Local Government | Stand Down Provision: New Proposal | <p>WALGA supports, in principle, a proposal for an individual elected member to be 'stood down' from their role when they are under investigation; have been charged; or when their continued presence prevents Council from properly discharging its functions or affects the Council's reputation, subject to further policy development work being undertaken.</p> <p>Further policy development of the Stand Down Provisions must involve specific consideration of the following issues of concern to the Sector:</p> <ol style="list-style-type: none"> <li>1. That ... the established principles of natural justice and procedural fairness are embodied in all aspects of the proposed Stand Down Provisions; and</li> <li>2. That activities associated with the term 'disruptive behaviour', presented as reason to stand down a defined Elected Member on the basis their continued presence may make a Council unworkable, are thoroughly examined and clearly identified to ensure there is awareness, consistency and opportunity for avoidance.</li> </ol> <p>In 2008 a Discussion Paper was circulated seeking feedback regarding legislative amendments to suspend an individual Elected Member, as follows:</p> <ul style="list-style-type: none"> <li>• An elected member to have the ability to stand down where they are being investigated or have been charged;</li> </ul> | The City supports the proposal.   |

| Part/Regulation  | Section under Review   | WALGA Position  | Officer Comment  |
|--|--|---|--|
|  |  | <ul style="list-style-type: none"> <li>An elected member to be forcibly stood down where they are being investigated or have been charged and whose continued presence prevents Council from properly discharging its functions and affects its reputation and integrity or where it is in the public interest;</li> <li>The Standards Panel to make the stand down decision;</li> <li>Such matters to be referred to the Standards Panel only by a Council (absolute majority), a statutory agency or the Department;</li> <li>Three to six months stand down periods with six month extensions;</li> <li>The elected member to remain entitled to meeting fees and allowances; and</li> <li>Inclusion of an offence for providing false information leading to a stand down.</li> </ul> |  |
| PART 9<br>Miscellaneous<br>Provisions  | Onus of Proof in<br>Vehicle Offences<br>may be Shifted:<br>Section 9.13(6) | Amend Section 9.13 by introducing the definition of 'responsible person' and enable Local Governments to administer and apply effective provisions associated with vehicle related offences.  | The City supports the proposal.  |
| Schedule 2.1 –<br>Creating, Changing<br>Boundaries and<br>Abolishing Districts | Poll Provision:<br>New Proposal  | Schedule 2.1 of the <i>Local Government Act 1995</i> should be amended so that the electors of a Local Government affected by any boundary change or amalgamation proposal are entitled to petition the Minister for a binding poll.  | The City supports the proposal.  |
|  | Number of<br>Electors: Clause<br>2.1(1)(d)                                 | That Schedule 2.1 Clause 2(1)(d) be amended so that the prescribed number of electors required to put forward a proposal for change increase from 250 (or 5% of electors) to 500 (or 5% of electors) whichever is fewer.  | The City supports the proposal.  |
| Schedule 2.2 –<br>Provisions about<br>Names, Wards and<br>Representation       | Who may make<br>Submission:<br>Clause 3(1)                                 | That Schedule 2.2 Clause 3(1) be amended so that the prescribed number of electors required to put forward a submission increase from 250 (or 5% of electors) to 500 (or 5% of electors) whichever is fewer.  | The City supports the proposal.  |
| Schedule 4.1 – How<br>to Count Votes and                                       | Method of Voting   | Elections should be conducted utilising the first-past-the-post (FPTP) method of voting.  | The City would like consideration to be given to using a proportional preferential method of voting. |

| <b>Part/Regulation</b>       | <b>Section under Review</b> | <b>WALGA Position</b> | <b>Officer Comment</b>   |
|------------------------------|-----------------------------|-----------------------|--|
| Ascertain Result of Election |                             |                       | Consideration should also be given to paragraph 13 of this report. |

13. Down-Ballot Voting

The City does not believe the Discussion Paper gives adequate consideration to improving voter participation during local government elections.

At the October 2015 local government ordinary elections, the Western Australian Electoral Commission (**WAEC**) was contracted to manage the largest number of postal elections it had ever conducted. In addition to six in person elections, the WAEC was asked to run 82 postal elections (Western Australian Electoral Commission. 2015 Local Government Ordinary Elections - Election Report April 2016).

With voting in local government elections being non-compulsory in Western Australia, postal elections typically result in a higher participation rate by eligible electors than in person ballots, as they offer most electors greater convenience and accessibility. However, the highest participation rate for postal elections amongst metropolitan local governments in 2015 was the City of Perth with 37.8%, conversely, the City of Joondalup recorded the lowest metropolitan participation rate with 20.2%. The overall Statewide participation rate was 27.5%.

Since they were first trialled in 1995, the number of local governments adopting postal elections has progressively increased. The local governments deciding to conduct a postal election in 2015 comprised some 1,433,575 electors, which is about 98% of the State's total number of eligible electors. At the close of nominations, 964 candidates had nominated for 419 vacancies resulting in 75 separate postal elections

On 3 November 2011, the Government of Western Australia introduced fixed four-year terms for the Legislative Assembly, with the elections to be held on the second Saturday in March. The first election under the new law was the 2013 election.

The City submits that consideration should be given to all local governments holding whole-of-Council elections on the same date as the WA State Election. When a voter is handed their compulsory ballots for the Legislative Assembly and Legislative Council, that voter could also be handed a non-compulsory ballot for their local government election.

In the United States of America, this is known as 'down-ballot voting' where voters can vote for a President, House Representative, U.S. Senator, State Representative and Senator, and Municipal Representative all on the single ballot paper.

If this process was adopted, not only would this method of voting reduce the costs paid by local government authorities for the delivery of a postal ballot by the WAEC (the City has budgeted \$146,000 for election expenses in 2017/18), but it may also drive greater participation in future local government elections. Particularly, it may help address the non-representation of certain age groups within communities.



### Summary of Electors and Voter Participation by Age Group

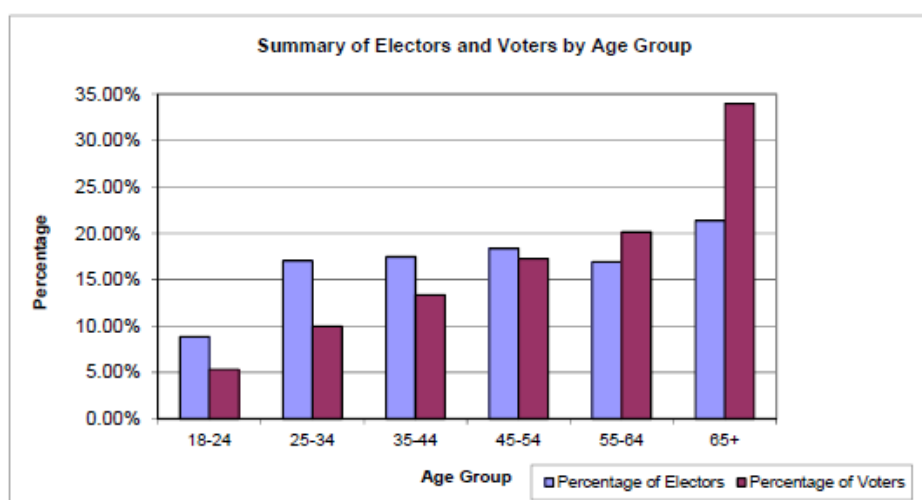
| Age                         | Electors <sup>1</sup> | Percentage of Electors | Voters <sup>2</sup> | Percentage of Voters |
|-----------------------------|-----------------------|------------------------|---------------------|----------------------|
| 18-24                       | 121,232               | 8.9%                   | 19,831              | 5.3%                 |
| 25-34                       | 233,129               | 17.0%                  | 37,118              | 10.0%                |
| 35-44                       | 239,014               | 17.5%                  | 49,782              | 13.4%                |
| 45-54                       | 251,342               | 18.4%                  | 64,375              | 17.3%                |
| 55-64                       | 231,605               | 16.9%                  | 75,062              | 20.1%                |
| 65+                         | 292,334               | 21.4%                  | 126,565             | 34.0%                |
| No DOB <sup>3</sup>         | 15                    | 0.0%                   | 7                   | 0.0%                 |
| Not identified <sup>4</sup> |                       |                        | 3,250               | 0.9%                 |
| <b>Total</b>                | <b>1,368,671</b>      | <b>100.0%</b>          | <b>375,990</b>      | <b>100.0%</b>        |

<sup>1</sup> Elector figures for contested elections only.

<sup>2</sup> Voters – returned voting packages (accepted and rejected).

<sup>3</sup> No DOB – electors for whom a date of birth was not supplied.

<sup>4</sup> Electors were unidentifiable because they returned a package with no elector certificate attached.



Source: 2015 Local Government Ordinary Elections, Election Report – Appendix 6

Whilst the City is supportive of online voting methods being used in future local government elections, officers are of the opinion that this may invert the above participation numbers – with younger voters finding it easier to participate in local government elections. Instead, The City would prefer to explore a method of voting that leads to representation from all age groups.

Voter participation through WAEC-run local government elections has tended to decrease:

### Voter Participation (% of State Population)

| October 2011 | October 2013 | October 2015 |
|--------------|--------------|--------------|
| 30.94%       | 27.76%       | 27.50%       |

Source: 2015 Local Government Ordinary Elections, Election Report

At the 2017 WA State Election, voter turnout was 89.7% (1,386,155 votes cast and 37,480 informal votes cast out of 1,593,222 enrolled voters). With a captive audience, even if half of all people filling out a Legislative Assembly/Council ballot then filled out a local government ballot, the participation numbers in local government would vastly increase.

The City suggests that several local government authorities volunteer to be trialled for a 'down-ballot' vote during the 2021 WA State Election.

If consideration is given to holding local government elections on the same day as the WA State Election, then re-consideration may be given to compulsory voting being introduced for local government elections. A recent EMRC recommendation stated that amendments should be made to the LGA so that voting in local government elections be compulsory.

Compulsory voting increases the political education of the people. They will tend to pay more attention to politics if they know they have to vote. Compulsory voting does not force a choice. People can always lodge a blank or spoiled ballot paper. Compulsory voting means that candidates have to address the needs of all the voters. If voting were voluntary, the experience of countries like the United States is that poorer and less educated people would tend not to vote. This would skew the political system (further) toward the well off and well educated. Additionally, compulsory voting keeps the Australian political system responsive to the community.

14. Role of Councillors

The City does not believe that enough consideration has been given to updating the role of Councillors under section 2.10 of the LGA. This matter was also raised at the Eastern Metropolitan Regional Council meeting of 18 August 2017.

A recent State Planning Commission deliberation indicated that the role of Councillors is not only to uphold the views of the ratepayers, but also to uphold other legislation, such as the Town Planning Act and the Health Act.

The City is of the opinion that section 2.10 of the LGA should be amended to reflect the contemporary expectations of the role of Elected Members.

15. Penalties under the Act

As per an EMRC recommendation, the City believes that the penalties allowed under the LGA should be increased to a sufficient amount to discourage breaches.

Penalties are imposed to discourage breaches and reflect the severity of those breaches. The maximum penalty allowed under the LGA is \$5,000. It is submitted that to achieve its intended purpose, the *value* of the \$5,000 penalty established in 1995 must be reconciled, as since that time, the comparative value of this monetary imposition has significantly eroded due to inflation and general living standards.

In 2013, the Supreme Court of Western Australia considered the powers of local governments to issue notices under section 3.25 of the LGA, in the case of *Saliba v Town of Bassendean* [2013] WASC 93.

16. Conflicts of Interest

As per an EMRC recommendation, the City believes that section 5.60 of the LGA should be updated to include impartiality interests and allow section 5.67 to disqualify the members, having disclosed the impartiality interest, from participating in the meeting.

Sections 5.65 and 5.67 of the LGA stipulates that a Councillor or Committee member who has a section 5.60 financial interest in a matter before the Council, must disclose the nature of the interest, depart the meeting room and not participate in the decision-making process.

On the other hand, members that do have an impartiality interest within the scope of r 11 of the *Local Government (Rules of Conduct) Regulations 2007* (WA) having disclosed the interest affecting impartiality may continue to remain at the meeting and vote on the matter. This appears to conflict with the well-established common law rule against bias.

The Department of Local Government and Communities Operational Guideline No. 01 - January 2011, which is provided to local government Elected Members in WA makes the DGLC's understanding of the obligation to vote clear in the following terms (OG s.3) -

*'There are very different outcomes resulting from disclosing an interest affecting impartiality compared to that of a financial interest.*

*For example, with the declaration of a financial interest an elected member leaves the room and does not vote (unless permitted to do so by the meeting or the Minister).*

*With the declaration of an impartiality interest, the elected member stays in the room, participates in the debate and votes. In effect then, following disclosure of an interest affecting impartiality, the member's involvement in the meeting continues as if no interest existed.'*

Under common law, a decision by a body such as a local government Council is liable to be set aside as invalid if one of the Council members was disqualified for bias, actual or apprehended (see *Dickason v Edwards* (1910) 10 CLR 243 at 259; *1W v City of Perth* (1997) 71 ALJR 943 at 969; and *Irwin v Meander Valley Council* [2007] TASSC 79 at [37]).

A Council member who considers that he/she has an interest in a matter before the Council which is sufficiently significant to justify a disclosure of the interest as affecting impartiality, runs a clear risk of being considered to have an actual or apprehended bias, and on the principle mentioned above, that bias in the absence of statutory provisions to the contrary, could result in the Council decision on judicial review being set aside as invalid, and other related consequences.

17. Privacy Policy

As per an EMRC recommendation, the City believes that the LGA be amended to provide support for the open and transparent management of personal information in compliance with the Australian Privacy Principles (**AAP**) or such a code.

The APP do not apply to local governments or state or territory governments. Section 6C of the *Privacy Act 1988* (Cth) states that entities which are state or territory authorities or prescribed instrumentalities of a state or territory (including local governments) are not classified as organisations. As these entities are not organisations they are exempt from the coverage of the APPs. Some states have privacy laws that cover state and local government bodies.

The state public sector in Western Australia does not currently have a legislative privacy regime. Various confidentiality provisions cover government agencies and some of the privacy principles are provided for in the *Freedom of Information Act 1992* (WA) overseen by the Office of the Information Commissioner (WA).

Local governments have access to a significant amount of information including a ratepayer's database. To ensure legislative support, it is considered imperative that the LGA supports the efforts of local governments to manage personal information in an open and transparent way.

18. Local and Statewide Public Notice

As per an EMRC recommendation, the City believes that sections 1.7 and 1.8 of the LGA be amended to remove the requirement for publication in a newspaper and instead provide for publication to any medium that would provide circulation sufficient to inform the people of the district and the State.

The LGA requires newspaper notices to inform the public. Newspapers have long been deemed the best outlets for these notices because they are widely accessible, relatively inexpensive, have a documented list of subscribers and are easily preserved for records.

With the proliferation of online websites and a declining readership to printed newspapers, posting public notices on websites can save ratepayers money. Because of those changing patterns of readership, the proposal to move public notices to online will save local government significant expenditure.

19. Business Planning

Current consideration between EMRC local governments is being given to the issue of a land transaction being caught up in the requirement to prepare a business plan if it is "preparatory to" a major land transaction.

It is possible for a local government to acquire a property (enter into a contract to purchase the property) at which point a business plan becomes preparatory to a major land transaction. Having done so, it is then impossible to complete the acquisition, as a local government authority must do the business plan before entering into the transaction, however the requirement to do the business plan does not kick in until it has entered into the contract to purchase.

Many local governments are now entering into larger and increasingly more complex land transactions to achieve positive development outcomes in their districts. These transactions can involve long, complex arrangements including buying land, amalgamating it, subdividing it, developing it, building facilities etc. There may be multiple agreements to achieve these purposes. These transactions will become increasingly common as Perth seeks to complete infill development. The business planning provisions do not realistically allow for this to occur as they are drafted for smaller, one-off transaction. The legislation currently provides a very narrow path of compliance. Some thought needs to be given to a set of provisions that will enable local governments to proceed with these larger more complex developments and still provide the necessary accountability, public input and reporting.

20. Councillors to Stand Down in Certain Circumstances  
The new proposal being flagged for Councillors to Stand Down when Contesting State or Federal Election should be extended to Councillors who wish to apply for employment opportunities within their Local Government.

## **STATUTORY AND LEGAL CONSIDERATIONS**

21. *Local Government Act 1995 (WA).*

## **POLICY CONSIDERATIONS**

22. Review and large-scale reform of the *Local Government Act 1995 (WA)* will require a complete audit and review of all City of Kalamunda policies, procedures and processes to ensure compliance and currency.

## **COMMUNITY ENGAGEMENT REQUIREMENTS**

### **Internal Referrals**

23. Nil.

### **External Referrals**

24. Eastern Metropolitan Regional Council.

## **STRATEGIC COMMUNITY PLAN**

### **Strategic Planning Alignment**

25. *Kalamunda Advancing: Strategic Community Plan to 2027*

OBJECTIVE 4.1: To provide leadership through transparent governance.

Strategy 4.1.1 Provide good governance.

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## **SUSTAINABILITY**

### **Social Implications**

Nil.

### **Economic Implications**

26. Nil.

### **Environmental Implications**

27. Nil.

## **RISK MANAGEMENT CONSIDERATIONS**

28. Nil.

### **OFFICER COMMENT**

29. Officer comments have been incorporated into the 'Detail' section of this report.

|   |
|---|
| <b>Voting Requirements: Simple Majority</b> |
|---|

### RESOLVED OCM 169/2017

That Council:

1. Endorses this report and lodges the City of Kalamunda's submissions and the contents of this report with the Western Australian Local Government Association (WALGA) before 20 October 2017 for its consideration.

Moved: **Cr Geoff Stallard**

Seconded: **Cr Michael Fernie**

Vote: **CARRIED UNANIMOUSLY (11/0)**

**Attachment 1**

Review of Local Government Act – Submission to WALGA

**WALGA review of *Local Government Act 1995 (WA)* – Discussion Paper**

[Click HERE to go directly to the document](#)

## **11.0 MOTIONS OF WHICH PREVIOUS NOTICE HAS BEEN GIVEN**

### **11.1 Comprehensive Independent Audit – Tender and Procurement Process**

|   |
|---|
| <b>Voting Requirements: Simple Majority</b> |
|---|

That Council:

1. Requests that the Chief Executive Officer to complete the external, independent audit of the City of Kalamunda's tender and procurement process and its effectiveness in delivering objectives of the tender and value for money to the City for every tender over the past three years (2014-2017) with the exception to those reported to the Audit and Risk Committee meeting or 18 September 2017.
2. The audit sample shall include all tenders commissioned by the City between the 2014 – 2017 period, without exception.
3. The Audit scope of work shall be to:
  - (a) The auditor to City review all records to determine the number of audits undertaken between 2014 and 2017 are verify the complete sample size;
  - (b) Assess the City's tender evaluation criteria, tender assessment process and degree of information that is made publicly available against relevant standards and current local government sector practices;
  - (c) Review and verify decisions to exclude tender respondents;
  - (d) Assess the number and range of variations approved and the extent to which any variations go beyond the scope of work, the level of officers providing approval and the impact to the approved budget;
  - (e) Identify where the level of accountability within the City is assigned for the delivery of the contract, approval of any variations and numbers and details of contracts that have not met the initial scope of works and budget.
4. That the Audit Report be presented to the Audit and Risk Committee no later than 28 February 2017.

Moved: **Cr Tracy Destree**

Seconded:

Vote:



### **Rationale:**

There has been a sustained level of complaints regarding the City's tender processes and decisions from the community. Further, the level of detail being presented to Council has not met its expectation for informed decision making.

It is important the City can demonstrate it is working within local government benchmark standards and the Council is approving expenditure that is appropriate and fiscally responsible. There is limited information being provided to Council on the level expenditure related to variations or the quality of work completed.

A detailed review of past decisions and assessment of current evaluation criteria and processes is appropriate to ensure Council has confidence that its decisions are meeting community expectations.

On 18 September 2017, the City reported the results of the audit requested by Council but exercised its discretion in restricting the sample size of the audit to 30%. This did not meet the requirement of the Council directive, and it is not evident to Council where the decision to select the sample was taken.

It is imperative that the audit be completed in its entirety to restore confidence in the process and decision making, and ensure all deficiencies, if any, are identified and rectified.

### **Officer Comments:**

The City is aware of one complaint, currently unsubstantiated, in respect of the City's tender processes over the last 12 month period, however is unaware of any '*sustained level of complaints*' as set out in the above rationale. The City invites further discussion and the provision of written detail of such from Council or any complainant in this regard.

The City agrees that it is '*important the City can demonstrate it is working within local government benchmark standards*' and is of the view, given the outcome of the current 2014 – 2017 probity audit, that this is indeed the case, notwithstanding the audit report provides there is room for improvement, which the City will attend to as a matter of priority.

It is noted for Council's attention that the City is aware that Council expressed concern as to whether a 'sample' methodology utilised in the preparation of the 2014 – 2017 audit report was satisfactory to discharge the City's obligation created pursuant to Council's resolution to have all tenders in the said period audited.

Accordingly, the City sought response on this point from the auditor, who advised in writing on 20 September 2017, that '*it would be both unusual and unnecessary to review 100% of the tenders, given the stated objectives of the review. Even a 30% sample is quite high by internal audit standards. The only circumstances which in our experience warrant a 100% examination are*

*where specific concerns give rise to the need to conduct a forensic investigation.*

The City will need to reallocate and estimated \$100,000 to undertake this work. This funding can be reallocated from the savings made to the History Village Location projects.

**Cr Destree withdrew the Motion of which Previous Notice Had Been Given and provided an Alternative Motion.**

**NOTICE OF MOTION – COMPREHENSIVE INDEPENDENT AUDIT – TENDER AND PROCUREMENT PROCESS**

RESOLVED OCM 170/2017

That Council:

1. Requests that the Chief Executive Officer to complete the external, independent review of the City of Kalamunda's tender and procurement process and its effectiveness in delivering objectives of the tender and value for money to the City for every tender over the past three years (2014-2017) with the exception to those reported to the Audit and Risk Committee meeting or 18 September 2017.
2. The review shall, as a minimum, include all tenders related to work completed in relation to the Forrestfield North in development including industrial area Stage I.
3. Forms a sub-committee of the Audit and Risk Committee to approve the list of tenders to be included in the review, and its membership shall include:
  - a) Audit and Risk Committee Presiding Member;
  - b) Audit and Risk Committee Deputy Presiding Member; and
  - c) One other Councillor
4. The Review scope of work shall be to:
  - a) The auditor to City review all records to determine the number of audits undertaken between 2014 and 2017 are verify the complete sample size;
  - b) Assess the City's tender evaluation criteria, tender assessment process and degree of information that is made publicly available against relevant standards and current local government sector practices;
  - c) Review and verify decisions to exclude tender respondents;
  - d) Assess the number and range of variations approved and the extent to which any variations go beyond the scope of work, the level of officers providing approval and the impact to the approved budget;
  - e) Identify where the level of accountability within the City is assigned for the delivery of the contract, approval of any variations

- and numbers and details of contracts that have not met the initial scope of works and budget.
- f) Ensure the report and its findings shall be released to the public.

5. Request the CEO to prepare a report and quote for Council's review for the completion of the review no later than November 2017
6. That the Review Report be presented to the Audit and Risk Committee no later than 28 February 2018

Moved: **Cr Tracy Destree**

Seconded: **Cr Michael Fernie**

|       |                            |                      |
|-------|----------------------------|----------------------|
| Vote: | <u>For</u>                 | <u>Against</u>       |
|       | <b>Cr Michael Fernie</b>   | <b>Cr Sue Bilich</b> |
|       | <b>Cr John Giardina</b>    |                      |
|       | <b>Cr Geoff Stallard</b>   |                      |
|       | <b>Cr Allan Morton</b>     |                      |
|       | <b>Cr Brooke O'Donnell</b> |                      |
|       | <b>Cr Noreen Townsend</b>  |                      |
|       | <b>Cr Andrew Waddell</b>   |                      |
|       | <b>Cr Sara Lohmeyer</b>    |                      |
|       | <b>Cr Dylan O'Connor</b>   |                      |
|       | <b>Cr Tracy Destree</b>    |                      |

**CARRIED (10/1)**

**Rationale:**

There is has been a sustained level of complaints regarding the City's tender processes and decisions from the community. Further, the level of detail being presented to Council has not met its expectation for informed decision making. It is important the City can demonstrate it is working within local government benchmark standards and the Council is approving expenditure that is appropriate and fiscally responsible. There is limited information being provided to Council on the level expenditure related to variations or the quality of work completed.

A detailed review of past decisions and assessment of current evaluation criteria and processes is appropriate to ensure Council has confidence that its decisions are meeting community expectations.

On 18 September 2017, the City reported the results of the audit requested by Council but exercised its discretion in restricting the sample size of the audit to 30%. This did not meet the requirement of the Council directive, and it is not evident to Council where the decision to select the sample was taken.

It is imperative that the audit be completed in its entirety to restore confidence in the process and decision making, and ensure all deficiencies, if any, are identified and rectified.

## 11.2 Council Support of Marriage Equality

This motion was withdrawn by Cr Destree prior to consideration.

### Council Support of Marriage Equality

#### Voting Requirements: Simple Majority

That Council:

1. Publicly support marriage equality for all people, irrespective of sexual orientation, gender identity or sexual characteristics.
2. Request that the Mayor write to all Federal Members of Parliament advising them of Council's support for an amendment to the Marriage Act 1961 (Cth) in accordance with Council's support for marriage equality.
3. Request that the Mayor write to the Commonwealth Human Rights and Equal Opportunity Commission advising the Commission of Council's support for marriage equality.
4. Request that the CEO cause an advertisement to be placed in the local community newspaper announcing this resolution and the Council's support for the "Yes" campaign during the Australian Bureau of Statistics' Postal Ballot.

Moved: **Cr Tracy Destree**

Seconded:

Vote:

#### Rationale:

Fairness and equality are at the heart of Australian society. We believe our laws should reflect these values of which we are most proud. It's time for all Australians to be treated equally under the law, with the full rights of equal citizenship.

Marriage is about the commitment shared between two people who love each other and want a secure future together. LGBTI Australians should have the same opportunities for love, commitment and happiness as everyone else.

This is the step we're ready for: two-thirds of Australians as well as a majority of MPs agree. Marriage equality will not change anything for the vast majority of Australians, but will make a profound difference to the status and dignity of some.

Some will argue that this is not a Local Government issue, but it is an issue for all community leaders.

Many agree that the Local Government is the touch point with the community – we engage more directly, more frequently and we have a greater influence on the community in which we live. As a Local Government Council, we have the opportunity to stand together and state clearly that we value diversity, we support marriage equality and where the federal parliament not been able to collective make a decision for its community, we shall.

**Officer Comments:**

This is a Federal matter and accordingly, the City cannot offer comment beyond stating that this is a matter for Council to consider.

**12.0 QUESTIONS BY MEMBERS WITHOUT NOTICE**

**12.1 Development at 831 Welshpool Road East (Cr Townsend)**

Q. Is it possible to arrange a special committee to investigate alternative options for access to the development as soon as possible?

A. The City will request a meeting with the Developer to discuss other access options.

**12.2 Development at 831 Welshpool Road East (Cr Bilich)**

Q. Can I confirm with the CEO that there is already a focus group who has requested a meeting with the City?

A. The CEO confirmed a request for a meeting had been received.

**12.3 High Wycombe South (Cr O'Connor)**

Q. Could the CEO facilitate a mail out update to the residents in the High Wycombe South area?

A. This would be possible and it would also encourage residents to subscribe to the regular E-update.

**12.4 Development at 831 Welshpool Road East (Cr Stallard)**

Q. Who is involved in the focus group?

A. The CEO advised this information was not provided.

12.5 Crime Prevention Forum Planning Meetings (Cr Stallard)

Q. With the abolition of the Community Safety and Crime Prevention Advisory Committee would it be possible to invite more people to the forum organisation meetings.

A. The CEO advised Councillors would be advised when the next planning meeting occurs.

**13.0 QUESTIONS BY MEMBERS OF WHICH DUE NOTICE HAS BEEN GIVEN**

13.1 Nil.

**14.0 URGENT BUSINESS APPROVED BY THE PRESIDING MEMBER OR BY DECISION**

**14.1 Development at 831 Welshpool Road East**

*Cr Giardina left the meeting at 9.45pm and returned to the meeting at 10:02pm and did not vote on this matter.*

RESOLVED OCM 171/2017

That Council:

1. Request the CEO to continue negotiation with the Main Roads and the Applicant, of the proposed development at Lot 36 Welshpool Road, to seek an alternative option to those outlined in Condition n) of City of Kalamunda Planning Approval (OCM 184/2016) of November 2016 as attached.
2. Encourage the applicant to resubmit a development application for Council consideration.
3. Require the CEO to forbid any employee or staff member of the City of Kalamunda from removing, or assisting in the removal, or entering into a contract for the removal of any lemon scented gum trees in front of or adjacent to Lot 36 Welshpool Road other than for an emergency, or as subsequently approved in writing by the City.

Moved: **Cr Michael Fernie**

Seconded: **Cr Andrew Waddell**

Vote: **CARRIED UNANIMOUSLY (11/0)**

**15.0 MEETING CLOSED TO THE PUBLIC**

15.1 Motion

RESOLVED OCM 172/2017

That the meeting close to the public to consider a confidential item.

Moved: **Cr Tracy Destree**

Seconded: **Cr Sara Lohmeyer**

Vote: **CARRIED UNANIMOUSLY (11/0)**

The meeting closed to the public at 10.00pm.

15.2 Motion

RESOLVED OCM 173/2017

That Standing Orders be suspended to all discussion on the confidential item.

Moved: **Cr Dylan O'Connor**

Seconded: **Cr Sara Lohmeyer**

Vote: **CARRIED UNANIMOUSLY (11/0)**

Standing Orders were suspended at 10.03pm.

15.3 Motion

RESOLVED OCM 174/2017

That Standing Orders be recommenced following discussion on the confidential item.

Moved: **Cr Tracy Destree**

Seconded: **Cr Sara Lohmeyer**

Vote: **CARRIED UNANIMOUSLY (11/0)**

Standing Orders recommenced at 10.27pm.

15.4      **10.3.4      A&R 09 CONFIDENTIAL ITEM – Eastern Metropolitan  
Regional Council Resource Recovery Facility Request for Tender  
2016-005**

RESOLVED OCM 175/2017

That Council:

1.            Commits to support the Eastern Metropolitan Regional Council's Resource Recovery Facility project subject to the Financiers Side Deed and the Participants Agreement for a Waste Supply Agreement being negotiated to the satisfaction of the City of Kalamunda in regard to independent legal advice in consultation and with input from the City's Legal Counsel.
2.            Subject to satisfactory amendments as detailed in point 1 above, adopts the:
  - c) Participants Agreement for a Waste Supply Agreement; and
  - d) Financiers Side Deed with the Security Trustee forming an attachment to this report.
3.            Subject to satisfactory amendments as detailed in point 1 above, authorises the Mayor and the Chief Executive Officer under Common Seal to sign the:
  - c) Participants Agreement for a Waste Supply Agreement; and
  - d) Financiers Side Deed with the Security Trustee.
4.            Authorises the Chief Executive Officer in consultation with the Mayor, and on legal advice, to make any necessary further changes to the agreements.
5.            Approves that the report and attachments contained within to remain '*confidential*' and be certified by the Mayor and Chief Executive Officer.

Moved:      **Cr Dylan O'Connor**

Seconded: **Cr Geoff Stallard**

|       |   |  |
|-------|---|--|
| Vote: | <u>For</u><br><b>Cr Michael Fernie</b><br><b>Cr John Giardina</b><br><b>Cr Geoff Stallard</b><br><b>Cr Allan Morton</b><br><b>Cr Noreen Townsend</b><br><b>Cr Andrew Waddell</b><br><b>Cr Sara Lohmeyer</b><br><b>Cr Dylan O'Connor</b><br><b>Cr Tracy Destree</b><br><b>Cr Sue Bilich</b><br><b>CARRIED (10/1)</b> | <u>Against</u><br><b>Cr Brooke O'Donnell</b> |
|-------|---|--|



Motion

RESOLVED OCM 176/2017

That the meeting open to the public after consideration of a confidential item.

Moved: **Cr Brooke O'Donnell**

Seconded: **Cr Tracy Destree**

Vote: **CARRIED UNANIMOUSLY (11/0)**

The meeting opened to the public at 10.44pm.

**16.0 CLOSURE**

16.1 There being no further business, the Presiding Member declared the meeting closed at 10:45pm.

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

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

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 2017