

**Submission Table – Local Planning Scheme No. 3 Amendment 105 – Development Contribution Area 1**

1. Department of Water and Environmental Regulation	The Department of Water and Environmental Regulation has assessed the above referral and has no comments to provide.	Noted.
2.	<p>1. This submission is prepared for and on behalf of [detail withheld] (Developer).</p> <p>2. The Developer has recently completed a warehouse and office on the land located at [details withheld] [the Forrestfield / High Wycombe – Stage 1 Development Contribution Area 1] (Property)</p> <p>3. The property is located within the City of Kalamunda’s “Forrestfield / High Wycombe Industrial Area – Stage 1” (DCA 1), which is subject to a Development Contribution Plan (DCP).</p> <p>4. Since May 2013, the City has required owners of land within DCA 1 to pay a cost contribution pursuant to the DCP when they develop their land.</p> <p>5. The current “method for calculating contributions” was inserted into schedule 12 of LPS 3 by Amendment 88 of LPS 3.</p> <p>6. Amendment 88 of LPS 3 was gazetted in May 2018 to facilitate a number of amendments to schedule 12 of LPS 3, including the addition of express definitions for the words “Net Lot Area” and “Cost of Infrastructure Items: as used in the contribution rate formula.</p> <p>7. The cost contribution rate formula <u>before</u> Amendment 88 was as follows:</p> $\frac{\text{“Contribution rate = Cost of infrastructure items + cost of administrative items ($)”}}{\text{Total area of DCA (m}^2\text{)}}$ <p><i>Cost Contribution Schedule adopted by the local government for DCA 1 which will be reviewed annually.”</i></p> <p>8. The cost contribution rate formula <u>after</u> Amendment 88, and being the <u>current formula</u>, is:</p> $\frac{\text{“Contribution rate = Cost of infrastructure items + cost of administrative items ($)”}}{\text{Net lot area of DCA (m}^2\text{)}}$ <p>Net lot area = Contribution area – (Area of Road Reserve + Developed Area)</p> <p>Cost Contribution Schedule adopted by the local government for DCA 1 which will be reviewed annually.</p> <p>Cost of infrastructure items = remaining infrastructure costs – funds held as money.</p>	<p>Noted.</p> <p>Noted.</p> <p>Noted.</p> <p>Noted.</p> <p>Noted.</p> <p>Noted.</p> <p>Noted.</p> <p>Noted.</p>

	9. The need for Amendment 88 was considered at the City's Ordinary Council Meeting on 28 November 2016 (see item 10.4.12 of the Agenda).	Noted.
	10. The officer report stated that the purpose of the agenda item was "to consider preparation of Amendment 88 (the Amendment) to Local Planning Scheme No. 3 (LPS 3) to update the Development Contribution Plan for the Forrestfield / High Wycombe Industrial Area".	Noted.
	<p>11. The officer report stated:</p> <p><i>"7. In February 2016, the Shire engaged Taylor Burrell Barnett (TBB) to investigate the different influences on the DCP that have emerged as the area has developed. TBB conducted a workshop with landowners, engaged a traffic engineer and a real estate agent to consolidate a position on the factors that may trigger modifications to the DCP. Additionally, the Shire undertook a comprehensive review of the operational components of the DCP.</i></p> <p><i>8. In June 2016, the Shire engaged Woodsome Management to review the costs and financial structure of the DCP with a focus on the administration an day-to-day workings of the arrangement.</i></p> <p>...</p> <p><i>17. Calculation Methodology</i></p> <p><i>Schedule 12 of LPS 3 sets out the method for calculating contributions. When the DCP Scheme was inserted into LPS 3 an error was made in the calculation methodology which was proposed to be inserted by the Department of Planning...</i></p> <p><i>The calculation methodology should state Net lot area of DCA not Total area of DCA...</i></p> <p><i>18. An additional definition has been included as part of the contribution methodology to clearly outline the components that make up the cost of infrastructure items. The cost of infrastructure items is defined as the future infrastructure costs minus the money held in reserve funds (collected cash contributions including interest).</i></p> <p>...</p> <p><i>Officer Comment</i></p> <p><i>29. Through implementation of the DCP there have been a number of interpretations that are inconsistent with Schedule 12 and Clause 6.5 of LPS 3. Upon review, it has become apparent that the Shire needs to undertake the Amendment to ensure the DCP operates in an orderly manner and in conformity with LPS 3.</i></p> <p><i>30. The Amendment will formalise aspects of the DCP which have been operating outside of the parameters provided by LPS 3 for an extended period of time.</i></p>	Noted.

	<p>31. Furthermore, the Amendment will ensure the ongoing financial sustainability of the DCP by ensuring the calculation and collection methodologies align and do not operate the arrangement into deficit.</p>	
	<p>12. The current position of the City, being only 2 years after Amendment 88 was gazetted, is that based on recent (confidential) advice received by the City, a <i>new</i> interpretation of the wording of LPS 3 should be applied by the City to give effect to the true intent of the DCP and LPS 3 (see paragraph [6] of the officer report to agenda item 10.5.6 – minutes of OCM 22 September 2020).</p>	<p>Noted.</p>
	<p>13. The officer report for the 22 September 2020 OCM goes on to state:</p> <p><i>“9. As outlined in the reports to OCM on 25 February 2020 (OCM 27/2020) and 28 July 2020 (OCM 136/2020 and OCM 137/2020):</i></p> <p><i>a) Prior to the DCP Review considered by the Council on 25 February 2020, the Cost Contribution rate was calculating using the whole of Method contained within Schedule 12 of LPS 3.</i></p> <p><i>...</i></p> <p><i>d) To comply with SPP 3.6 and LPS 3 provisions and to administer the DCP in a practical and equitable manner, the equation included in the above method will still be used, but the City, based on advice received, has been advised that it should not have regard to the supplementary notes included below the equation.</i></p> <p><i>10. With a view to ensuring LPS 3 clearly outlines the correct method being applied for the purposes of calculating the Cost Contribution Rate, Amendment 105 will seek to remove the supplementary notes listed below the equation used for calculating the Cost Contribution Rate...</i></p> <p><i>11. Amendment 105 has been proposed to clarify the intent of the Council's OCM resolution on 25 February 2020, to bring LPS 3 into alignment with the City's interpretation of the DCP, which will introduce transparency and prevent any ambiguity regarding the calculation of the Cost Contribution.”</i></p>	<p>Noted.</p>
	<p>14. The Developer submits that it is difficult to comprehend and reconcile the City's change of position in regard to the calculation of the Cost Contribution Rate.</p>	<p>Amendment 88 reflected and sought to define the way in which the DCP had operated up until and shortly after the Amendment was adopted. Among other modifications to LPS 3, this introduced the terms ‘developed area’ and ‘cost of infrastructure items’ to the Method for Calculating Contributions in Schedule 12 of LPS 3.</p> <p>The application of the equation together with the introduced terms, meant that after each landowner makes their Cost Contribution over time, the development area is deducted from the ‘net lot area’. The constructed infrastructure and money collected is also removed from the equation, leaving only the remaining (estimated) infrastructure and administrative costs to be divided by the net lot area of undeveloped land (remaining developable area).</p>

	<p>As a result of the preparation of more precise designs and a comprehensive review of utility relocation cost estimates in 2016/2017 a significant reduction of estimated costs was identified and resulted in the reduction of the Cost Contribution rate in December 2018 from \$29.79/m<sup>2</sup> to \$17.01/m<sup>2</sup>.</p> <p>The approach undertaken resulted in some landowners who had developed early, with a rate based on preliminary cost estimates, contributing at a higher rate than landowners who had developed later and with a rate based on the actual cost of infrastructure or more refined estimates.</p> <p>On the present understanding of the appropriate methodology, to achieve an equitable outcome where Contribution Rates remain uniform throughout the life of the DCP, the formula more appropriately should be as proposed under Amendment 105.</p>
<p>15. The City's position with respect to Amendment 88 was that:</p> <p>a) "An additional definition has been included as part of the contribution methodology to <u>clearly outline the components that make up the cost of infrastructure items</u>. The cost of infrastructure items is defined as the future infrastructure costs minus the money held in reserve funds (collected cash contributions including interest)."</p> <p>b) "Through <u>implementation of the DCP there have been a number of interpretations that are inconsistent with Schedule 12 and Clause 6.5 of LPS 3</u>. Upon review, it has become apparent that <u>the Shire needs to undertake the Amendment to ensure the DCP operates in an orderly manner and in conformity with LPS 3</u>."</p> <p>c) "The <u>Amendment will formalise aspects of the DCP which have been operating outside of the parameters provided by LPS 3 for an extended period of time</u>"</p>	<p>Noted. Refer to response 14 above.</p>
<p>16. The City's position with respect to proposed Amendment 105 is that:</p> <p>a) <u>Amendment 105 has been proposed to clarify the intent of the Council's OCM resolution on 25 February 2020, to bring LPS 3 into alignment with the City's interpretation of the DCP, which will introduce transparency and prevent any ambiguity regarding the calculation of the Cost Contribution</u></p>	<p>Noted. Refer to response 14 above.</p>
<p>17. The Developer submits that the position now being asserted by the City to support proposed Amendment 105 totally contradicts the earlier position asserted by the City to support Amendment 88.</p>	<p>Noted. Refer to response 14 above.</p>
<p>18. Which of the City's interpretations of the DCP is correct?</p>	<p>Refer to response 14 above.</p>
<p>19. Is it the interpretation that supported Amendment 88?</p>	<p>Refer to response 14 above.</p>
<p>20. Or is it the interpretation that the City now relies on to support proposed Amendment 105?</p>	<p>The purpose of proposing Amendment 105 is to ensure that a formula for calculating the Contribution Rate will be included in the DCP which will remove any doubt on the methodology, and will ensure that the DCP methodology will</p>

		produce Contribution Rates which achieve the SPP 3.6 and the City's LPS 3 objectives of fairness, equity and consistency in Cost Contributions by owners across the whole of the DCA.
21. The Developer submits that it is impossible for any landowner to make proper and informed decisions in regard to developing their land when the City has a practice of applying a different interpretation to the provisions of the DCP every few years.		The approach undertaken, including the preparation of Amendment 105, seeks to ensure consistency of Cost Contributions for landowners, which will assist landowners with making proper and informed decisions in regard to developing their land.
22. State Planning Policy 3.6 and LPS 3 outline the Principles underlying development contributions. These principles include "certainty" and "consistency".		Noted.
23. The City's attempt to bring about proposed Amendment 105 two years after Amendment 88 flies in the face of the principles of "certainty" and "consistency".		Refer to responses 14 and 20 above.
24. Given the City's propensity to radically change its position every few years, the concern for all landowners still to develop their land within DCA 1 has to be – is the City going to change its position yet again in the coming years?		Refer to responses 14 and 20 above.
25. The Developer submits that there is currently a very real and significant risk that the City will have to change its position in regard to its <i>new</i> interpretation of the DCP in the new future.		The purpose of Amendment 105 is to make the City's intentions in regard to fairness, equity and consistency in cost contributions clear and unequivocal. A change to this position, to the extent that it results in an inequitable and inconsistent outcome, is considered unlikely and inconsistent with the principles of SPP 3.6 and LPS 3.
26. The City has described the underlying basis for proposed Amendment 105 as follows (emphasis added):  "Amendment 105 has been proposed to clarify the intent of the Council's OCM resolution on 25 February 2020, to bring LPS 3 into alignment with the City's interpretation of the DCP, which will introduce transparency and prevent any ambiguity regarding the calculation of the Cost Contribution."		Noted. Also refer to the response to 20 above.
27. The City's <i>new</i> interpretation of the DCP is the subject of legal proceedings between the Developer and the City in the State Administrative Tribunal (DR 68/2020).		Noted. The making and amending of Local Planning Schemes is a role for local governments, the WAPC and the Minister. The SAT has no role in the process.
28. In those legal proceedings, the Tribunal is considering the City's <i>new</i> interpretation of the DCP and will decide whether that <i>new</i> interpretation is consistent with the DCP provisions within LPS 3.		Noted. Refer to the response to 27 above.
29. The proceedings went to a final hearing on 10 December 2020 before Senior Member Willey who heard extensive submissions made both for and against the City's <i>new</i> interpretation of the DCP.		Noted. Refer to the response to 27 above.
30. At the conclusion of the hearing, the Senior Member reserved his decision and indicated that his decision would not be delivered until "sometime in the New Year".		Noted. Refer to the response to 27 above.

	31. Given the City's position that proposed Amendment 105 is to bring LPS 3 into alignment with the City's <i>new</i> interpretation of the DCP, the Developer submits that it is entirely inappropriate for the City to proceed with proposed Amendment 105 until such a time as the Tribunal hands down its decision in regard to the City's <i>new</i> interpretation of the DCP.	Amendment 105 is appropriate for the reasons outlined in the responses to 14 and 20 above.
	32. If the City does not wait for the Tribunal's decision and proceeds to advance proposed Amendment 105, there is a real and significant risk that Amendment 105 will have to be undone because the Tribunal finds that the City's new interpretation of the DCP is incorrect.	<p>This submission is considered to miss the point of Amendment 105. Amendment 105 will directly achieve the City's objective of fairness, equity and consistency, without relying on the legal arguments for the interpretation of the Contribution Rate methodology formula in the DCP.</p> <p>The purpose of the City in proposing Amendment 105 is to ensure that a formula for calculating the Contribution Rate will be included in the DCP which will remove any doubt on the methodology, and will ensure that the DCP methodology will produce Contribution Rates which achieve the SPP 3.6 and the City's LPS 3 objectives of equity and consistency in Cost Contributions by owners across the whole of the DCA.</p> <p>In short, the purpose of Amendment 105 is to make the City's intentions in regard to fairness, equity and consistency in cost contributions clear and unequivocal, and to remove the need to rely on a legal interpretation of the presently inequitable provisions in the methodology section of the DCP.</p>
	33. Accordingly, for the sake of certainty and consistency, the Developer submits that proposed Amendment 105 should not proceed at this time and instead, only re-visited by the City following the handing down of the Tribunal's decision in DR/2020.	<p>This submission assumes an interpretation of the presently inequitable provisions in the Contribution Rate methodology section of the DCP will provide certainty and consistency. In fact, what will more reliably provide certainty and consistency is the passing of Amendment 105. That will ensure that there will be the highest possible level of equity and consistency in the Cost Contributions by owners across the whole of DCA 1.</p> <p>This submission would have the unfortunate outcome of preserving a situation where the submitter will have its Cost Contribution calculated at the rate of approximately \$17/m<sup>2</sup>, while other owners in the DCA, without any fault on their part, have been required to contribute at a rate in excess of \$29/m<sup>2</sup>. There is a lack of fairness, equity and consistency in those differences, and the landowner's attempt to preserve the inconsistency in its favour is not considered to result in an acceptable outcome. The submission is predicated on an aim to achieve a high level of inequity and inconsistency in cost contributions by owners in DCA 1, and is not supported.</p>
3. Main Roads WA	In response to your correspondence received 29 October 2020, Main Roads advises that it has no comment to make regarding the above scheme amendment.	Noted.
4.	<p>1. <b>THE AMENDMENT</b></p> <p>The City should not proceed with LPS 3 Amendment 105.</p>	Noted.

	<p>The proposed amendment is just 1 line, however, there is so much background to the reasons it has been initiated.</p> <p>The consequences of amending this 1 line are extensive and the financial ramifications for landowners are substantial.</p>	
	<p><b>2. BACKGROUND</b></p> <p>2.1 This DCP has been in place since January 2013 and was gazetted on 10 May 2013. At all times the City has maintained that this DCP is compliant with City of Kalamunda Local Planning Scheme 3 (LPS 3) provisions and the requirements established through State Planning Policy 3.6 – Development Contributions for Infrastructure (SPP 3.6).</p>	<p>Noted.</p>
	<p>2.2 Both SPP 3.6 and City of Kalamunda LPS 3 schedule 12, require a DCP to be reviewed at specified times.</p> <p>SPP 3.6 clause 6.3.8 states:</p> <p><i>Comments</i>  <i>A development contribution plan must specify the period during which it is to operate. ....</i>  <i>If the period is 10 years or longer, then reviews should occur at 5-year intervals (with the cost apportionment schedule to be reviewed at least annually).</i></p> <p>LPS 3 schedule 12 Review Process states:</p> <p><i>The plan will be reviewed when considered appropriate, though not exceeding a period of 5 years, having regard to the rate of subsequent development in the development contribution area since the last review and the degree of development potential still existing.</i></p> <p><i>The estimated infrastructure costs will be reviewed at least annually to reflect changes in funding and revenue sources and indexed based on the Building Cost index or other appropriate index as approved by the qualified person undertaking the certification of costs.</i></p>	<p>Noted.</p>
	<p>2.3 The City has, generally, complied with these requirements.</p>	<p>Noted.</p>
	<p><b>3. LPS 3 Amendment 88.</b></p> <p>3.1. Following a major review of the Forrestfield/ High Wycombe Industrial Stage 1 LSP carried out in 2016, on 1 May 2018, LPS 3 amendment 88 was gazetted by WAPC.</p> <p>This amendment included changes to some infrastructure items, the removal of others that were seen to no longer be required due to changes in external circumstances. For example, planning for the Forrestfield Airport Link.</p>	<p>Noted.</p>

	<p>Also included in Amendment 88 was a <b>clarification</b> of the contribution calculation formula.</p>	
	<p>3.2. OCM Minutes report adopted on 19 December 2016 states:</p> <p>17. <i>Revised Methodology:</i></p> $\text{Contribution rate} = \frac{\text{cost of infrastructure items} + \text{cost of administrative items}}{\text{Net lot area of DCA (m}^2\text{)}}$ <p><i>Net lot area = lot area – (area of road reserve + developed area)</i></p> <p><i>Cost of infrastructure items = remaining infrastructure costs – funds held as money</i></p> <p>18. <i>An additional definition has been included as part of the contribution methodology to clearly outline the components that make up the cost of infrastructure items. The cost of infrastructure items is defined as the future infrastructure costs minus the money held in reserve funds (collected cash contributions including interest).</i></p> <p>31. <i>Furthermore, the Amendment will ensure the ongoing financial sustainability of the DCP by ensuring the calculation and collection methodologies align and do not operate the arrangement into deficit.</i></p>	<p>Noted.</p>
	<p>3.3. This was not a change to the calculation methodology that had been in use, but clarification and confirmation of the method in use at that time.</p> <p>It should be noted that the clarification to the components of the formula in Amendment 88 were accepted by the Council and it was gazetted by WAPC in May 2018.</p>	<p>Noted.</p>
	<p>3.4. In 2017 Amendment 88 was advertised for public comment. 16 landowner submissions were received and reviewed by the City. Not a <b>single one of these 16 landowners objected</b> to the “additional definition” added to the formula.</p>	<p>Noted.</p>
	<p>4. <b>Contribution rates.</b></p> <p>4.1 The City has, in the past, claimed that 4 landowners paid at a contribution rate of \$28.49 and 8 landowners paid contributions at a rate of \$31.23/m<sup>2</sup>.</p> <p>This statement was misleading.</p>	<p>It is understood that the City provided this information in its statement of Issues, Facts and Contentions to the State Administrative Tribunal. The context in which this was provided was to outline the Cost Contribution rate applicable at the time that payment was made, not the adjusted rate in 2016 (\$29.66/m<sup>2</sup>). It is acknowledged that there were adjustments made to the Cost Contribution due to 100% of infrastructure costs associated with Sultana Road West being included rather than 50%.</p>
	<p>4.2 All landowners who had paid prior to 30 November 2016 were given refunds of approximately \$1.57/m<sup>2</sup> (plus interest). The contribution reimbursements and interest were paid on 31 December 2016.</p>	<p>Noted. The City’s officers have not verified the figures cited in this submission as it has no specific bearing on Amendment 105.</p>
	<p>4.3 The actual Contribution rate paid by the first 4 landowners after refunds was \$26.91/m<sup>2</sup>. The next 8 payments were, after refunds, \$29.66/m<sup>2</sup>.</p>	<p>Noted. See response to 4.2 above.</p>

	<p>No landowner has paid more than \$29.66/m<sup>2</sup>.</p>	
	<p>4.4 After the annual cost review in December 2016 the contribution rate was declared at \$29.79/m<sup>2</sup>.</p>	<p>Noted.</p>
	<p>4.5 As a result of further refinement of infrastructure needs and cost estimates, in the next annual cost review the contribution rate was reduced to \$17.01/m<sup>2</sup> in December 2018.</p> <p>The rate reduction was not as a result of the clarification of the formula components, included in Amendment 88, but purely because of the latest and best estimates of outstanding infrastructure costs.</p>	<p>The Contribution Rate reduction was exaggerated by the method of calculation used in December 2018 because the calculation included only estimated costs of future infrastructure and divided this by the undeveloped land area. Given both the estimated costs and land area reduced, this had the effect of also reducing the Cost Contribution.</p>
	<p>4.6 Where cost contributions are based on estimates, SPP 3.6 states:</p> <p style="padding-left: 40px;"><i>6.3.11.1 The determination of infrastructure costs and administrative costs is to be based on amounts expended, but when expenditure has not occurred, it is <b>to be based on the best and latest estimated costs available</b> to the local government and adjusted accordingly, if necessary. (emphasis added)</i></p> <p style="padding-left: 40px;"><i>6.3.11.3 The local government is to have such <b>estimated costs independently certified</b> by appropriate qualified persons and must provide certification to an owner when requested to do so. (emphasis added)</i></p>	<p>Noted.</p>
	<p>4.7 The City has always maintained that they have used the latest and best estimates as required, at every annual review.</p>	<p>Noted.</p>
	<p>5. <b>Complaint.</b></p> <p>5.1 After this new rate of \$17.01 was declared in December 2018, two landowners who had paid previously, at a higher rate, approached the City for a refund of part of their contributions.</p>	<p>Noted.</p>
	<p>5.2 City of Kalamunda OCM Minutes of 26 November 2019 resolution 281/2019 reads:</p> <p><i>That Council Request the Chief Executive Officer to write to the Coxon Group (trading as Carrooda Pty Ltd and Sansom Nominees Pty Ltd) and to MEM Properties Pty Ltd to advise that the City:</i></p> <ul style="list-style-type: none"> <li><i>a) Neither accepts, nor denies each companies' request to the City for a refund of a part of each of their respective Cost Contributions paid towards the Forrestfield High Wycombe Industrial Development Stage 1, as each has set out in their respective written requests to the City;</i></li> <li><i>b) Invites each company to provide fully particularised calculations to the satisfaction of the City, as to how each assert that such refunds are calculated; and</i></li> <li><i>c) Invites each company to provide fully particularised written submissions setting out the legal basis upon which each consider that a refund is due pursuant to the City's Local Planning Scheme 3.</i></li> </ul>	<p>Noted.</p>

<p>5.3 There was no suggestion at that time or in that resolution, that the contribution payments made by either landowner was an interim payment and no hint that there would be a reconciliation of costs and contributions at the end of the DCP.</p>	<p>Noted.</p>
<p>5.4 It was only since, and as a consequence of the actions of these two landowners, that the City reviewed and altered the DCP at the following annual cost review, advertised in February 2020 and passed by Council in June 2020.</p>	<p>Noted.</p>
<p>5.5 In answer to a question by one of these landowners published in the minutes of SCM 3 December 2018, the Director Development Services said:</p> <p><i>..... Contributions are paid at the time that development approval is issued and building licenses are sought. Once the payment is made, it is extinguished; there is no recourse to refund or adjust the rate as it defines over time</i></p>	<p>Noted.</p>
<p>5.6 It appears that no single landowner who has paid at a rate higher than \$17.01, has used the appeal process, open to them under SPP 3.6 and LPS 3, to dispute the calculation of their contribution at the time it was payable. Nor did they object to the clarification of the formula in Amendment 88.</p>	<p>Noted.</p>
<p>5.7 Amendment 105 wishes to now alter the Method of Calculation and apply it retrospectively to allow landowners who have previously paid to apply for a refund, well beyond their respective appeal dates.</p>	<p>The purpose of the City in proposing Amendment 105 is to ensure that a formula for calculating the Contribution Rate will be included in the DCP which will remove any doubt on the methodology, and will ensure that the DCP methodology will produce Contribution Rates which achieve the SPP 3.6 and the City's LPS 3 objectives of fairness, equity and consistency in Cost Contributions by owners across the whole of the DCA.</p>
<p><b>6. 2020 Annual Review of Costs.</b></p>	
<p>6.1 The 2020 annual review of costs included a new interpretation of the terms of the DCP, the definitions within the contribution formula, and a declaration that all contributions already paid and all contributions yet to be paid to be treated as "interim contribution payments."</p>	
<p>6.2 City of Kalamunda OCM report adopted on 28 July 2020 states:</p> <p><i>44. In summary, based on the requirements of LPS 3 and SPP 3.6, cost contributions that have been made to date are considered interim payments (in the absence of any formal agreement). Furthermore, all future contributions will be considered interim payments until the end of the DCP.</i></p> <p><i>107. Based on the recommended method and inputs for establishing the Cost Contribution discussed earlier in this report..... the Cost Contribution Rate is determined by dividing the total cost of infrastructure and administrative items by the net lot area of the DCA. The following formula has been used in this regard:</i></p> <p style="text-align: center;"><i>Cost of infrastructure items + cost of administrative items</i></p> <p><i>Contribution rate = -----</i></p> <p style="text-align: center;"><i>Net lot area of DCA</i></p>	<p>Noted.</p>

	<p>6.3 This new interpretation of the formula dispenses with the definitions of the terms within the formula (the funds held as cash and area that has already been developed.)</p> <p>The definitions removed from the formula are the same ones that were specifically included in Amendment 88 in 2018.</p>	Noted.
	<p>6.4 The term "Interim Payment" does not exist in either SPP 3.6 or in LPS 3.</p> <p>Section of 5.4 of SPP 3.6 uses the term "interim situation." That "interim situation" is referring only to a time prior to the gazettal of a contribution plan when contributions can be calculated but not collected.</p>	Noted.
	<p><b>7. Development Approvals.</b></p> <p>7.1 The City stated in OCM report adopted on 28 July 2020:</p> <p>40. <i>As part of the review, it has been identified that the landowners of any proposed development will be required to enter into an agreement with the City as a condition of development approval.</i></p> <p>41. <i>The agreement will be to formalise the contribution process and ensure security over future payments, as well as providing certainty for any potential credits that may be due at the end of the operation of the DCP.</i></p>	Noted.
	<p>7.2 Condition 2 of a DA recently issued to a developer is a formalisation of these points.</p> <p><i>Prior to the issue of an occupancy permit, the owner of the subject land is to:</i></p> <p>a) <i>Pay to the City a cost contribution based on the Final Contribution Rate if determined (all infrastructure and administration costs under DCP 1 in the City's LPS 3 having been paid or ascertained with certainty); or if the Final Contribution Rate has not been determined;</i></p> <p>b) <i>Pay to the City an Interim Cost Contribution based on the latest Interim Cost Contribution Rate and in that event the owner is to enter into an agreement with the City ..... which shall include provision for a charge over the whole or part of the subject land.....</i></p>	Noted.
	<p>7.3 A DA issued to another landowner in DCA1 on 6 March 2013 stated:</p> <p><i>Condition 9. A contribution to the Shire of Kalamunda in accordance with Schedule 12 of the Shire of Kalamunda Local Planning Scheme No. 3 shall be paid for cell infrastructure costs for the Forrestfield Industrial Area. The contribution shall be <b>paid in full</b> prior to the issue of the certified building license. (emphasis added)</i></p> <p>The DCP was not gazetted or incorporated into Schedule 12 of LPS 3 until 10 May 2013.</p>	Noted. It is understood that the amendment was seriously entertained at this time.
	<p>7.4 On 6 March 2013, the entire DCP costs were estimates, as no contributions had been collected and therefore no money had been spent on any infrastructure.</p> <p>The DA directed that the contributions were to be <b>paid in full</b>, based entirely on <b>estimated costs</b> of all infrastructure.</p>	It is accepted that the contributions were required to be paid in full based on estimated costs, but it is not appropriate to say that the payment was accepted as a final contribution. A payment of an assessed contribution is not the same as a payment made in final settlement of the developer's contribution obligation.

<p>7.5 Another DA issued to a different landowner on 1 December 2015 stated:</p> <p style="text-align: center;"><i>Condition 2. A contribution to the Shire of Kalamunda in accordance with Schedule 12 of the Shire of Kalamunda Local Planning Scheme No. 3 shall be paid for cell infrastructure costs for the Forrestfield Industrial Area. The contribution shall be <b>paid in full</b> prior to lodgement of the building permit application.</i> (emphasis added)</p> <p>The tender for construction of the first item of infrastructure, Nardine Close link road was let on 7 June 2016. The requirement to pay this contribution was therefore also based completely on estimated costs of all infrastructure.</p>	<p>Noted.</p>
<p>7.6 There were approximately 10 landowners in total whose contributions were based on estimated infrastructure costs for the entire DCP as they paid prior to the commencement of any infrastructure construction.</p>	<p>Noted.</p>
<p>7.7 The City claims that later contributors are somehow gaining a financial advantage over earlier payers as they are only contributing to outstanding infrastructure costs.</p> <p>The City's OCM report adopted on 28 July 2020 states:</p> <p style="text-align: center;"><i>21. In addition, the calculation method resulted in the landowners, who are yet to contribute, only making a contribution towards infrastructure that is yet to be built, and not infrastructure that has already been built, and to which the landowner and the development receives a benefit.</i></p>	<p>Noted.</p>
<p>7.8 As can be seen above, the first 10 landowners all paid their contributions for infrastructure that was yet to be built. In fact, all contributors have only paid for infrastructure yet to be built as it can't be built until enough contributions have been collected to pay for it.</p>	<p>Noted.</p>
<p>7.9 Amending the method of calculation at this stage, is changing the whole structure behind the DCP, which has been in operation all these years. Obviously, there are less infrastructure items to be completed, but there are now fewer landowners to be held responsible for those costs. Costs of infrastructure and needs and nexus change over a period of 10 years.</p> <p>This is exactly how the DCP is designed to operate.</p>	<p>Refer to the response to 5.7 above.</p>
<p><b>8. Interim contributions.</b></p> <p>8.1 The Condition 2 referred to in para 7.2 above, which is to be included in all future DAs, allows the City a right to claim an unknown future payment at an unknown future time. The time will depend totally on the speed of the development of the rest of the properties within the DCA. This could take many years.</p>	<p>The final cost contribution will be established at the time that infrastructure costs have either been paid or been ascertained with certainty. The final cost contribution of each of the owners whose liability to contribute by reason of having obtained subdivision approval or commenced development will also have been triggered and will be determined. At that time, the City will be able to collect final contributions from those owners who have developed their land.</p> <p>There is a confident expectation that by the conclusion of the DCP's lifespan (10 years) by May 2023, the cost of all infrastructure works will either have been paid or determined with a high degree of certainty. It is the City's expectation</p>

		that there would be enough certainty to permit final contributions to be collected. If there are still items of infrastructure outstanding (not yet constructed), the City will, by this time, have sufficient information to ascertain a final cost contribution and enter into agreements with landowners agreeing to that final contribution.						
	8.2 It is submitted that the reason for Amendment 105, and the introduction of an Interim contribution, is to allow the City to raise funds in excess of those required to complete construction of outstanding infrastructure items in the DCP. It is further submitted that the purpose is in fact to build a fund in order to “pay back” money to some contributors through a reconciliation process.	The submission that the reason for the imposition of condition 2 is to allow the Respondent to raise funds in excess of those required to complete construction of outstanding infrastructure items in the DCP is incorrect and is misleading. The intent of the Respondent is to collect sufficient funds to cover all infrastructure costs and to distribute the cost burden fairly, equitably and consistently between all owners within the DCA, who will be able to take advantage of the infrastructure provided.						
	<p>8.3 City of Kalamunda OCM report adopted on 28 July 2020 states:</p> <p style="padding-left: 40px;"><i>50. As of the end of March 2020, 31 of the 52 lots (approx. 60% of all lots) within the Developer Contribution Area were undeveloped equating to approximately 328,715m<sup>2</sup> of 662,344.4m<sup>2</sup> (approx. 50% of land area).</i></p> <p>The Developer Contribution Plan 2020, undated, but attached to the minutes of the 28 July 2020, and also attached to Amendment 105, lists the estimated outstanding costs of the DCP in section 2.5.</p> <p style="padding-left: 40px;"><i>The following table provides a summary of the estimated cost for all infrastructure, land and other items within the DCP.</i></p> <p>Relevant items listed in that table are:</p> <table style="margin-left: 40px; border-collapse: collapse;"> <tr> <td style="padding-right: 20px;">Subtotal of remaining infrastructure is</td> <td>\$5,125,805.73</td> </tr> <tr> <td>Remaining administration items is</td> <td>\$345,000</td> </tr> <tr> <td>Total remaining costs</td> <td>\$5,470,805.73</td> </tr> </table>	Subtotal of remaining infrastructure is	\$5,125,805.73	Remaining administration items is	\$345,000	Total remaining costs	\$5,470,805.73	Noted.
Subtotal of remaining infrastructure is	\$5,125,805.73							
Remaining administration items is	\$345,000							
Total remaining costs	\$5,470,805.73							
	8.4 The DCP General Ledger shows cash balance on 31 March 2020 of \$499,773.84.	Noted.						
	<p>8.5 Using the current interim contribution rate of \$20.97, adopted by Council on 28 July 2020, the City is anticipating collecting contributions of \$6,893,153.50 from the remaining undeveloped landowners.</p> <p>Added to the cash already held, that is total of \$7,392,927.34.</p> <p>Funds collected by interim contributions will result in total contributions exceeding those required to complete the DCP by \$1,922,121.61</p>	<p>The intent of the Respondent is to collect sufficient funds to cover all infrastructure costs and to distribute the cost burden fairly, equitably and consistently between all owners within the DCA, who will be able to take advantage of the infrastructure provided.</p> <p>Infrastructure costs are defined in LPS 3 as:</p> <p><i>“Infrastructure Costs means such costs as are reasonably incurred for the acquisition and construction of infrastructure”</i></p>						
	8.6 Clause 6.5.1 of LPS 3 states:							

	<p><i>“Cost Contribution” means the contribution to <b>infrastructure costs</b> and <b>administrative costs</b> payable by an owner pursuant to a DCP. (emphasis added)</i></p> <p>Likewise, clause 6.3.1 of SPP 3.6 states:</p> <p><i>“Cost Contribution” means the contribution to the <b>cost of infrastructure and administrative costs</b>. (emphasis added)</i></p> <p>It is submitted that there is no provision to allow collection of funds in excess of that required for construction of the outstanding required infrastructure and administration.</p>	
	<p>8.7 The City contends that without an “interim” contribution clause, the DCP may fail due to lack of funding.</p> <p>In a recent SAT hearing regarding this DCP, the City’s Statement of Issues para 3.6 states:</p> <p><i>To the extent that the Applicants represent the interests of other owners of land within DCA 1 who are seeking to obtain the benefit of the \$17.01 cost contribution rate that the applicants are seeking, there can be no prospect of achieving equity and consistency ....., and the risk of liability falling on the ratepayers of the City instead of the owners.... will become likely, if the DCP continues.</i></p>	Noted.
	<p>8.8 The DCP is specifically designed to be self-sufficient and to prevent the likelihood of failing. DCPs are also designed to stage the construction of infrastructure and land purchases dependent on the timing and collection of contributions. That is the purpose of annual cost reviews which divide the latest cost estimates of outstanding infrastructure by the remaining undeveloped land area.</p> <p>As stated in clause 6.3.7.1 of SPP 3.6</p> <p><i>The DCP is to specify-</i></p> <p><i>d) the priority and timing for the provision of infrastructure.</i></p> <p>The method of calculation utilised until February 2020 ensured this process was sound.</p>	<p>The DCP Report also outlines the principles for priority of infrastructure items.</p> <p>The construction of Amendment 105 would equally enable funds to be levied in a coordinated manner and for annual reviews to consider estimated costs and the prioritisation of outstanding infrastructure.</p>
	<p>8.9 City of Kalamunda OCM report (Amendment 88) adopted on 28 November 2016 included a paragraph that specifically addressed this issue:</p> <p><i>31. Furthermore, the Amendment will ensure the ongoing financial sustainability of the DCP by ensuring the calculation and collection methodologies align and do not operate the arrangement into deficit.</i></p>	Noted.
	<p>8.10 The introduction and adoption of Amendment 105 and changing the method of calculation ensures far more funds are collected than necessary to requirements. The City assured that Amendment 88 was there to protect and maintain the integrity of the DCP.</p>	Noted. Also refer to response to 8.2 above.
	<p><b>9. Principles of a DCP.</b></p> <p>9.1 SPP 3.6 and LPS 3 outline the <b>Principles</b> underlying development contributions.</p> <p>Three of these principles are Equity, Certainty and Consistency.</p>	Noted.
	<p>9.2 Equity.</p>	The LPS 3 establishes that annual reviews are required to review estimated costs and land value.

	<p><i>Development contributions should be levied from all developments within a development contribution area, based on their relative contribution to need.</i></p> <p>9.2.1 The Collins dictionary defines equity to mean:  <i>“The quality of being <b>fair and reasonable</b> in a way that <b>gives equal treatment</b> to everyone.”</i> (emphasis added)</p> <p>Equity is about things being “<b>fair and just</b>” for everyone rather than promoting things being “<b>equal</b>” for everyone.</p> <p>This does not mean that all landowners should pay an <b>equal</b> contribution, but that the same <b>method</b> of calculating and applying their contributions should be used.</p> <p>9.2.2 If all landowners were required to pay an equal rate, then there would be no requirement for annual cost reviews.</p> <p>9.2.3 Furthermore, if all land is not developed within the initial 10-year life of the DCP, and it is extended for a further 10 years, it will be impossible to determine equal payments over a potential 10-20 year time frame.</p> <p>9.2.4 In its argument for the new calculation methodology, the subject of Amendment 105, and its desire to equalise the contributions, the City has completely ignored the rise and fall in the mandated annual land valuations for land bought (and sold) from landowners.</p> <p>Land has been, and will be bought from different landowners at different times at different valuations.</p> <p>In a number of cases, the purchase price of the land has been used to offset the owner’s contributions.</p>	<p>The annual review also considers priority and timing of infrastructure and any relevant changes to the planning framework.</p> <p>It is possible for different land values to be considered at the reconciliation process.</p>
	<p>9.3 Certainty.</p> <p><i>All development contributions should be clearly identified <b>and methods of accounting for escalation</b> agreed upon <b>at the commencement of a development.</b></i> (emphasis added)</p> <p>9.3.1 This principle is self- explanatory and recognises escalation. It also shows that the accounting method cannot be changed 7 years after the commencement of the DCP.</p> <p>9.3.2 The notion that an interim contribution payment allows the Respondent to claim an undetermined payment (or credit), at some future undetermined time, does not satisfy the principle of certainty. The DCP is unlikely to be complete by March 2023.</p>	<p>Noted. Refer to response 8.2 above.</p>

	<p>9.3 Consistency.</p> <p><i>Development contributions should be applied uniformly across a DCA and the <b>methodology for applying contributions should be consistent.</b> (emphasis added)</i></p> <p>9.4.1 This does not suggest that all contributions should be of an equal dollar value.</p> <p>It means the <b>method of calculation</b> and <b>application is consistent</b> and does not allow changes in either throughout the 10-year life of the DCP.</p>	Noted. The description of the principle also uses the word “uniformly”.
	<p>9.4 In summary of the above principles, <b>certainty</b> anticipates an <b>escalation</b> in costs that will be reflected in changes to future contribution rates. The principle of <b>consistency</b> relates only to the <b>application</b> of the contributions which does not mean <b>equalising</b> the contribution rate.</p>	Noted.
	<p><b>1. Objectives of SPP 3.6</b></p> <p>10.1. Two of the objectives of this policy are;</p> <ul style="list-style-type: none"> <li>• <i>To ensure that developments contributions are necessary and relevant to the development to be permitted and are <b>charged equitably</b> among those benefitting from the infrastructure and facilities to be provided. (emphasis added)</i></li> <li>• <i>To ensure <b>consistency</b> and transparency in the <b>system</b> for apportioning, collecting and spending development contributions. (emphasis added)</i></li> </ul>	Noted.
	<p>10.2. Neither of these objectives indicate that individual contribution rates should be equal, but that the <b>system</b> of determining them should be consistent and equitable.</p> <p>These objectives were adhered to until February 2020.</p>	Noted. It is argued that the changes to the City's approach and interpretation presented to the Council in February 2020 has introduced greater fairness, equity and consistency.
	<p><b>2. Comparison to other DCPs</b></p> <p>11.1. The City in OCM report 25 February 2020 states:</p> <p>14. <i>Since the inception of the DCP in 2012, the City has taken into account the “funds held as money” in the DCP reserve account and divided the outstanding infrastructure and administrative costs by the remaining landowners who are yet to develop.</i></p> <p>15. <i>Based on the City's review, this also occurs in several other DCPs around the metropolitan area.</i></p> <p>It should be noted that there is no example shown of any other method of calculation used anywhere else.</p>	Noted.
	<p>11.2 The City is administrator of another similar scheme recently renamed as the Wattle Grove Cell 9 Guided Development Scheme.</p>	Noted. The City's Wattle Grove Cell 9 was set up within a Guided Development Scheme well before the publication of SPP 3.6. Any issues identified with Cell 9

	<p>The objectives and operation of this scheme is similar to those of the DCP of DCA1.</p> <p>The annual cost review for this scheme was adopted at council OCM on 24 November 2020 after having been advertised for public comment.</p>	<p>cannot be a reason for acceptance of an inappropriate result from DCA 1 and its DCP in regards to the application of Clause 6.5 in LPS3 or SPP3.6.</p>
	<p>11.3 Cost contributions in the Cell 9 scheme have risen from an initial \$7,100/block in 2001 to a high of \$27,816/block in 2015. The new rate for 2020 is to be \$22,275/block. This equates to a rise from inception to 2015 of almost 400%.</p> <p>The current proposal is almost 20% lower than 2015.</p>	<p>Refer to response to 11.2 above.</p>
	<p>11.4 The City doesn't appear to be concerned about any perceived inequity caused by these significant fluctuations in the Cell 9 contribution rate.</p>	<p>Refer to response 11.2 above.</p>
	<p>11.5 In the accompanying council report the calculation methodology is shown to be the same as has been used in the DCA 1 DCP since 2012.</p> <p>OCM Agenda Report adopted on 24 November 2020 states:</p> <p>40. <i>Calculation Methodology.</i>  <i>Schedule 11 of LPS 3 sets out the Cell Infrastructure Contribution requirement.</i>  <i>The calculation for this requirement is derived as follows:</i></p> <p><i>Net outstanding costs = remaining costs - funds held as money</i></p> <p><b>Remaining lot yield</b> = R Code yield or Commercial zone equivalent (emphasis added)</p> <p style="text-align: right;"><i>Net outstanding costs</i></p> <p><i>Contribution Rate = -----</i></p> <p style="text-align: right;"><i>Remaining lot yield</i></p> <p>(The contribution is per lot in this case as it is a residential area whereas DCA1 is industrial and uses a square metre rate.)</p> <p>41. <i>Funds held as money</i>  <i>A recent review of the Forrestfield/ High Wycombe Stage 1 Industrial area DCP found that funds held as money were incorrectly factored into the calculation of the DCP rate, due to the provisions of Clause 6.5 in the City's LPS 3 and SPP 3.6. The City undertook a review of the cell 9 GDS to determine whether funds as money had also been incorrectly included in the GDS rate methodology.</i></p> <p>42. <i>The City determined that funds held as money had been factored into the GDS for the following reasons:</i></p> <p>a) <i>The GDS is not subject to the provisions of Clause 6.5 of LPS 3 and SPP 3.6. The GDS is only subject to the provisions of Schedule 11 of LPS 3.</i></p> <p>b) <i>A historic review of past GDS reviews found that the funds held as money has been factored into the GDS rate methodology since very early in the GDS</i></p>	<p>Noted.</p>

	<p><i>history (and likely since inception.) The following GDS reports were reviewed ..... All GDS reports factored in funds held as money as part of the rate methodology. Refer to .....</i></p> <p>c) <i>It would be impractical to review the GDS rate methodology given the historic implications associated with reviewing the GDS since inception, which has been operating for approximately 20 years and is nearing the end of its operation.</i></p> <p>d) <b>There have been no objections</b>, to the City's knowledge, received on the rate methodology for the GDS. (emphasis added)</p>	
	<p>11.6 This report leads to the conclusion that the change of interpretation and of the calculation methodology in Amendment 105 for DCA 1, is only as the result of an objection by some landowners.</p>	<p>Objections to the revised Cost Contribution rate of \$17.01/m2 caused the City to seek advices on the proper construction and application of the DCP. The objections in themselves did not result in the change of interpretation and ultimately Amendment 105.</p>
	<p>11.7 The new proposed method of calculation in Amendment 105 completely ignores funds held in cash in the DCP.</p>	<p>Noted.</p>
	<p><b>3. Payments</b></p> <p>12.1 SPP 3.6 clause 6.3.13.2 (and LPS 3 clause 6.5.13.2) state:</p> <p><i>An owner's liability to pay the owner's cost contributions to the local government arises on the earlier of –</i></p> <p>a) <i>.....</i></p> <p>b) <i>the commencement of any development on the owner's land....</i></p> <p><i>The liability arises only once upon the earliest of the above listed events.</i></p> <p>SPP 3.6 clause 6.3.14.3 (and LPS 3 clause 6.5.14.3) state:</p> <p><i>Payment by an owner of the cost contribution, including a <b>cost contribution based upon estimated costs</b> in a manner acceptable to the local government, constitutes <b>full and final discharge</b> of the owner's liability under the DCP and the local government shall provide certification in writing to the owner of such discharge <b>if requested by the owner.</b> (emphasis added)</i></p>	<p>Noted.</p>
	<p>12.2 The City now claims that all previous contribution payments made in the 7 years prior to February 2020 were only "interim" payments because they were based only on estimated costs.</p> <p>As shown in the DAs issued in March 2013 and December 2015, referred to in section 7 above, the City made payment of the "full" contribution a condition of development approval.</p>	<p>Cl.6.5.11.4 provides that where any Cost Contribution has been calculated on the basis of an estimated cost, the local government is to adjust the cost contribution of any owner in accordance with the revised estimated costs. The City may also accept a cost contribution, based upon estimated costs, as a final cost contribution and enter into an agreement with the owner accordingly to settle the acceptance of the final cost contribution and the terms of acceptance.</p> <p>Cl.6.5.14.3 provides that payment by an Owner of the cost contribution, including a cost contribution based upon estimated costs, in a manner acceptable to the local government, constitutes full and final discharge of the</p>

	<p>An invoice was subsequently issued by the City and paid in good faith by the landowner. By accepting that payment without any further condition, the City has been paid <b><i>"in a manner acceptable to the local government"</i></b>.</p> <p>This acceptance <b><i>"constitutes a full and final discharge"</i></b>.</p>	<p>owner's liability under the DCP and in that event, the local government is required to provide certification in writing to the owner of such discharge, if requested. Under this clause, an owner only receives a final discharge if a contribution is paid 'in a manner acceptable to the local government'.</p>
	<p>12.3 The issue of a written discharge is <b>not</b> a mandatory component of the process. It is a discretionary option for the landowner and therefore is not <b>essential</b> to satisfy a <b><i>"full and final discharge"</i></b>.</p>	<p>Refer to response to 12.2 above.</p>
	<p><b>13 Requirement for Scheme Amendment</b></p> <p>13.1 City of Kalamunda OCM report adopted 28 July 2020 states:</p> <p style="padding-left: 40px;">23. <i>A key area of concern raised through submissions received during advertising of the DCP report, was the City's interpretation of LPS 3 to disregard certain words in the "method for calculating contributions" would require an amendment to the LPS 3..... through a scheme amendment.</i></p> <p style="padding-left: 40px;">24. <i>In this regard, the City has been advised that the approach adopted does not constitute or require an amendment to LPS 3.</i></p>	<p>Noted.</p>
	<p>13.2 However, clause 6.3.5 of SPP 3.6 states:</p> <p style="text-align: center;"><i>Comments</i></p> <p style="text-align: center;"><i>Any amendment to a development contribution plan will require a scheme amendment in order to become enforceable.</i></p>	<p>Noted.</p>
	<p>13.3 The City has now accepted new advice to initiate the scheme amendment that was previously deemed unnecessary.</p>	<p>The purpose of Amendment 105 is to make the City's intentions regarding equity and consistency in cost contributions clear and unequivocal, and to remove the need to rely on a legal interpretation of the presently confused provisions in the methodology section of the DCP. Amendment 105 will once approved assist landowners with making proper and informed decisions in regard to developing their land.</p>
	<p>13.4 City of Kalamunda OCM report adopted 22 September 2020 states:</p> <p style="padding-left: 40px;">5. <i>In May 2018, Amendment 88 was gazetted, which introduced a range of amendments to Schedule 12 of LPS 3. Among other amendments, supplementary notes were introduced through Amendment 88 with a view of clarifying / defining the terms used in the equation for calculating the Cost Contribution Rate.</i></p>	<p>Noted.</p>

	<p>14 Amendment 105 has been proposed to clarify the intent of the Council's OCM resolution on 25 February 2020, to bring LPS 3 into alignment with the City's interpretation of the DCP, which will introduce transparency and prevent any ambiguity regarding the Cost Contribution Rate.</p>	
	<p>13.5 As stated in para 3.2 above, in May 2018 the WAPC gazetted the inclusion of the supplementary notes in the calculation formula to "clearly outline the components" of the formula and to "ensure the ongoing financial sustainability of the DCP."</p>	<p>Noted.</p>
	<p>13.6 Obviously, the City, the Council, the WAPC, the Minister and the landowners were happy with the clarity of the notes accompanying the formula in Amendment 88 in 2018.</p> <p>The 16 landowner submissions relating to Amendment 88, published on 4 September 2017, did not show a single objection regarding the calculation formula.</p> <p>There is no reason to now remove these supplementary notes, 2½ years later to clarify a new interpretation of the same formula.</p>	<p>Amendment 88 reflected and sought to define the way in which the DCA had operated up until the Amendment was adopted. Among other modifications to LPS 3, this introduced the terms 'developed area' and 'cost of infrastructure items' to the Method for Calculating Contributions in Schedule 12 of LPS 3.</p> <p>The application of the equation together with the introduced terms, meant that after each landowner makes their Cost Contribution over time, the development area is deducted from the 'net lot area'. The constructed infrastructure and money collected is also removed from the equation, leaving on the remaining (estimated) infrastructure and administrative costs to be divided by the net lot area of undeveloped land.</p> <p>As a result of the preparation of more precise designs and a comprehensive review of utility relocation cost estimates in 2016/2017 a significant reduction of estimated costs was identified and resulted in the reduction of the Cost Contribution rate in December 2018 from \$29.79/m<sup>2</sup> to \$17.01/m<sup>2</sup>.</p> <p>The approach undertaken resulted in some landowners who had developed early, with a rate based on preliminary cost estimates, contributing at a higher rate than landowners who have developed at a later time and with a rate based on the actual cost of infrastructure or more refined estimates.</p> <p>On the present understanding of the appropriate methodology, in order to achieve an equitable outcome where Contribution Rates remain uniform throughout the life of the DCP, the formula more appropriately should be as proposed under Amendment 105.</p>
	<p><b>14. Reconciliation</b></p> <p>14.1 The City has advised that the purpose of the new interpretation of the contribution calculation formula is to promote equity between all contributing landowners.</p>	<p>Equity and Consistency.</p>
	<p>14.2 The process to achieve this is to establish all infrastructure and administration costs at the completion of the scheme and to equalise all landowner's contributions. This will require future landowners that are yet to contribute, paying more than is currently needed to complete the DCP and using these excess funds to repay earlier, higher paying landowners.</p>	<p>Noted.</p>
	<p>14.3 City of Kalamunda OCM 25 February report states:</p>	<p>Noted.</p>

	<p>72. <i>Additional contributions may be required from those landowners who have paid at a lower rate. Based on the proposed interim rate, the anticipated payments would total approximately \$300,000.</i></p> <p>82. <i>A process has been proposed to reconcile Cost Contributions only once a final cost contribution is established (ie. when all the infrastructure is built and the actual cost of the infrastructure is known). This exercise will involve credits being issued to some landowners who made a higher contribution, and the City may seek additional Cost Contributions from other landowners who contributed at a lower rate.</i></p>	
14.4	<p>At a recent SAT hearing, the City's legal representative, in a response to a question by the Presiding Member, admitted that there was little chance of the City being able to recoup additional funds from the landowners who had paid previously at a lower rate.</p>	Noted.
14.5	<p>That being the case, there is no chance the City can deliver, through Amendment 105, their objective of all landowners paying at the same rate. The lower paying landowners will still have paid less than everyone else.</p>	Noted. This is not a reason to not proceed with attempts to make the DCP as equitable as possible.
14.6	<p>The DCP has bought land from several landowners at different rates, with more yet to be purchased. The scheme mandates that the remaining required land is revalued each year.</p> <p>Some landowners have offset their sale price against their contribution rate.</p> <p>Without taking this into account in the reconciliation process the City will again fail to achieve its interpretation of equity.</p> <p>The sale contracts with landowners who have sold land to the DCP, of course, cannot be altered retrospectively.</p>	It is possible to account for the land values and cost contributions that have been offset into account at the reconciliation process.
15	<p><b>Conclusion.</b></p>	Noted.
15.1	<p>A new interpretation of the objectives and principles was introduced at the 2020 annual review of DCP costs.</p>	
15.2	<p>Just 2 years ago, in Amendment 88, the original, and operating interpretation was reinforced to "clearly outline the contribution calculation formula." This clarification was gazetted by WAPC in May 2018.</p> <p>Now, with just a little over 2 years before this DCP concludes, the City has initiated Amendment 105 to change the "clarification" in Amendment 88.</p> <p>This action extinguishes all <b>Certainty</b> in the DCP for landowners.</p>	Noted. The reasons for taking this action are outlined in the response to 13.6 above.
15.3	<p>As a result of some complaints about contribution rates, the City created new rules for the DCP, rules that don't appear to be used in any other DCPs.</p>	The City sought advice prior to the approach and interpretation adopted in the DCP review concluding in July 2020.

	<p>The City has always maintained the cost estimate figures have been the latest and best available. If that is the case, then the process of the DCP is sound and has been working as it should.</p> <p>If that can be shown not to be the case, then that is a matter between the complainants and the City as administrators of the scheme.</p>	
15.4	<p>As demonstrated previously, the DCP process expects, anticipates and deals with rises and falls in the contribution rate through annual cost and 5 yearly scheme reviews.</p> <p>Instead of conveying that message to the complainants, and standing by the DCP process, the City has sought to alter the DCP process. It has applied these alterations retrospectively to all landowners in DCA 1.</p> <p>If the complainants were to have a case, based on the rate of their contributions, it would not be as result of failure of the system of the DCP and the calculation formula, but as a result of incorrect cost estimates. In other words, not a system failure but a data failure.</p>	Noted.
15.5	<p>Neither the objectives, nor principles of DCPs, intend, allow or anticipate all landowners paying an equal contribution rate. They merely say there must be equity in the process of determination.</p> <p>When following the original process, every landowner's contribution has been determined on outstanding infrastructure cost estimates.</p>	Noted.
15.6	<p>It appears that that landowners who paid a higher rate did not object to their contribution rate at the time or use the dispute processes available within the DCP.</p>	Noted.
15.7	<p>Every contribution paid before January 2020 has been a full and final discharge of their liabilities as there is no requirement for a written discharge from the City and contributions can only be charged once, at the commencement of their development.</p>	Refer to response to 12.2 above.
15.8	<p>Collection of contributions greater than those required for the latest and best estimated outstanding infrastructure and administration costs, is clearly not permitted under SPP 3.6 or LPS 3.</p>	Refer to response to 8.5 above.
15.9	<p>SPP 3.6 has a mechanism for dealing with the conclusion of a DCP at the end of its life.</p> <p>The City has not shown any clear way of concluding the scheme under the new interpretation, instead relying on the assumption that all landowners will have paid their contributions by March 2023.</p>	This is incorrect. The City does not rely on all landowners making their contribution by March 2023. Rather the final cost contribution will be established at the time that infrastructure costs have either been paid or been ascertained with certainty. The final cost contribution of each of the owners whose liability to contribute by reason of having obtained subdivision approval or commenced development, has been trigger, will be determined. At that time,

	<p>Not all landowners will have paid their contributions by this time.</p>	<p>the City will be able to collect final contributions from those owners who have developed their land.</p> <p>There is a confident expectation that by the conclusion of the DCP's lifespan (10 years) by May 2023, the cost of all infrastructure works will either have been paid or determined with a high degree of certainty. It is the City's expectation that there would be enough certainty to permit final contributions to be collected. If there are still items of infrastructure outstanding (not yet constructed), the City will, by this time, have sufficient information to ascertain a final cost contribution and enter into agreements with landowners confirming that final contribution.</p> <p>Other owners who have not developed at that time will remain liable for their cost contributions, the obligation to pay which will be triggered by the levying of a contribution by the City, which may, and in most cases will be, through the imposition of a condition on subdivision or development approval.</p>
	<p>15.10 There is no provision in SPP 3.6 or LPS 3 to allow the term "interim contribution".</p>	<p>Cl.6.5.11.4 infers the possibility of the LG accepting a cost contribution based upon estimated costs without agreeing to accept that contribution as a final cost contribution.</p>
	<p>15.11 Amendment 105 does not serve any purpose.</p> <p>The DCP operated as it was designed until February 2020.</p> <p>The proposed change to the calculation formula will not address the City's new interpretation of the objectives of a DCP. It will not contribute to <b>Certainty</b> of the scheme, nor will it change the perceived issue of <b>Equity</b> among the landowners.</p>	<p>The purpose of Amendment 105 is to make the City's intentions in regard to equity and consistency in cost contributions clear and unequivocal. A change to this position, to the extent that it results in an inequitable and inconsistent outcome, is considered highly unlikely and inconsistent with the principles of SPP 3.6 and LPS 3.</p>