



Special Council Meeting

AGENDA

Tuesday 19 January 2021

**NOTICE OF MEETING
SPECIAL COUNCIL MEETING**

Dear Councillors

Notice is hereby given that a Special Meeting of Council will be held in the Council Chambers, Administration Centre, 2 Railway Road, Kalamunda on **Tuesday 19 January 2021 at 6.30pm.**



Peter Varelis
A/Chief Executive Officer
14 January 2021

Due to the City's live streaming equipment undergoing necessary maintenance this Special Council Meeting will not be live streamed. An audio recording of the Special Council Meeting will be available upon request. It is anticipated the live streaming functionality will be up and running again in February 2021.



Our Vision

Connected Communities, Valuing Nature and Creating our Future Together

Core Values

Service We deliver excellent service by actively engaging and listening to each other.

Respect We trust and respect each other by valuing our differences, communicating openly and showing integrity in all we do.

Diversity We challenge ourselves by keeping our minds open and looking for all possibilities and opportunities.

Ethics We provide honest, open, equitable and responsive leadership by demonstrating high standards of ethical behaviour.

Aspirational Values

Creativity We create and innovate to improve all we do.

Courage We make brave decisions and take calculated risks to lead us to a bold and bright future.

Prosperity We will ensure our District has a robust economy through a mixture of industrial, commercial, service and home based enterprises.

Harmony We will retain our natural assets in balance with our built environment.

Our simple guiding principle will be to ensure everything we do will make Kalamunda socially, environmentally and economically sustainable

kalamunda.wa.gov.au

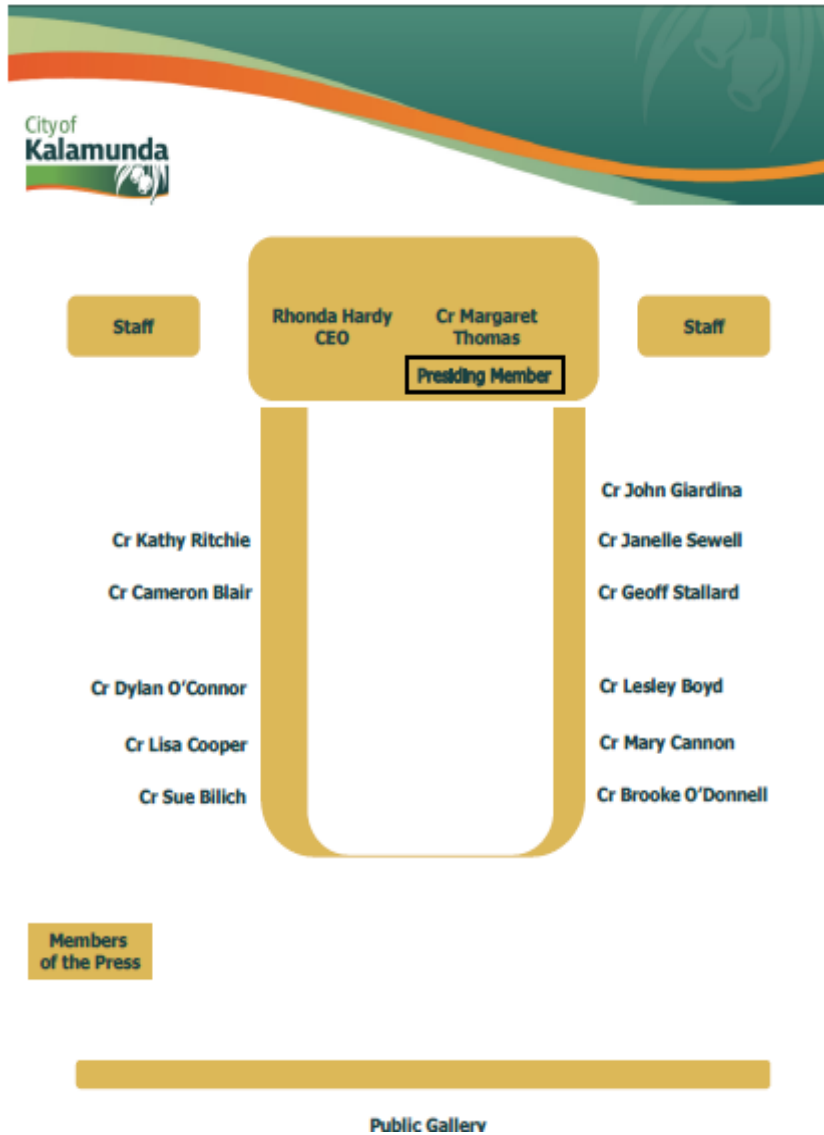
City of Kalamunda

INFORMATION FOR THE PUBLIC ATTENDING COUNCIL MEETINGS

Welcome to this evening's meeting. The following information is provided on the meeting and matters which may affect members of the public.

If you have any queries related to procedural matters, please contact a member of staff.

Council Chambers – Seating Layout



Special Council Meetings – Procedures

1. Council Meetings are open to the public, except for Confidential Items listed on the Agenda.
2. Members of the public who are unfamiliar with meeting proceedings are invited to seek advice prior to the meeting from a City Staff Member.
3. Members of the public are able to ask questions at a Special Council Meeting during Public Question Time on matters relating to the functions of this meeting.
4. To facilitate the smooth running of the meeting, silence is to be observed in the public gallery at all times except for Public Question Time.
5. All other arrangements are in general accordance with Council's Standing Orders, the Policies and decision of the City or Council.

Acknowledgement of Traditional Owners

We wish to acknowledge the traditional custodians of the land we are meeting on, the Whadjuk Noongar people. We wish to acknowledge their Elders' past, present and future and respect their continuing culture and the contribution they make to the life of this City and this Region.

Emergency Procedures

Please view the position of the Exits, Fire Extinguishers and Outdoor Assembly Area as displayed on the wall of Council Chambers.

In case of an emergency follow the instructions given by City Personnel.

We ask that you do not move your vehicle as this could potentially block access for emergency services vehicles.

Please remain at the assembly point until advised it is safe to leave.

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1. Official Opening

2. Attendance, Apologies and Leave of Absence Previously Approved

Apology

Cr Brooke O'Donnell

3. Public Question Time

3.1. 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 this meeting. For the purposes of Minuting, these questions and answers will be summarised.

4. Petitions/Deputations

5. Announcements by the Member Presiding Without Discussion

6. Matters for Which the Meeting may be Closed

8.1.1 Award of Construction Tender RFT 2020 Hale Road Widening and Enhancement

8.1.2 Award of Construction Tender RFT-2019 Road Rehabilitation of Various Sites within the City of Kalamunda

8.1.4 Local Planning Scheme No.3 - Amendment 105 - Development Contribution Area 1 – Forrestfield Light Industrial Area Stage 1 - Method for Calculating Contributions - Consideration of Submissions and Final Adoption

7. Disclosure of Interest

7.1. Disclosure of Financial and Proximity Interests

a. Members must disclose the nature of their interest in matter to be discussed at the meeting. (Section 5.56 of the *Local Government Act 1995*.)

b. Employees must disclose the nature of their interest in reports or advice when giving the report or advice to the meeting. (Section 5.70 of the *Local Government Act 1995*.)

7.2. 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.

8. Reports to Council

8.1. Chief Executive Officer Reports

8.1.1. Award of Construction Tender RFT 2020 Hale Road Widening and Enhancement

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

Previous Items	N/A
Directorate	Asset Services
Business Unit	Asset Delivery
File Reference	AD-TEN-005
Applicant	N/A
Owner	N/A

Attachments Nil

Confidential Attachment 1. Tender Evaluation Report RFT 2020

Reason for Confidentiality: Local Government Act 1995 s5.23 (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."

TYPE OF REPORT

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

STRATEGIC PLANNING ALIGNMENT

Kalamunda Advancing Strategic Community Plan to 2027

Priority 3: Kalamunda Develops

Objective 3.2 - To connect community to quality amenities.

Strategy 3.2.2 - Provide and advocate for improved transport solutions and better connectivity through integrated transport planning.

EXECUTIVE SUMMARY

1. The purpose of this report is to consider the acceptance of a tender for the Hale Road Widening and Enhancement Project as part of the infrastructure works to support the development of the Wattle Grove Cell 9 Outline Development Plan (ODP).
2. The City of Kalamunda (City) issued a Request for Tender seeking to engage a civil works contractor to undertake RFT 2020 Hale Road Widening and Enhancement.
3. It is recommended that the Council accept the tender from Tracc Civil Pty Ltd ACN 143 998 369 for a lump sum price of \$1,888,933.22 (exc GST).

BACKGROUND

4. This project involves the widening and enhancement of Hale Road between Welshpool Road East and Tonkin Highway. It includes pavement widening on the western side, installation of protection slabs over the ATCO High Pressure Gas Main, drainage modifications, median island treatments, shared path construction and full width asphalt resurfacing.
5. This Project is funded through the Cell 9 Guided Development Scheme (GDS).

DETAILS AND ANALYSIS

6. The City released tender RFT 2020 to the market on 16 September 2020 to engage a contractor to undertake the works scoped for the widening of Hale Road. Tenders closed on 22 October 2020.
7. Tenders received by the closing date were from the following companies (in alphabetical order);
 - a) BMD Constructions Pty Ltd;
 - b) BOS Civil Pty Ltd;
 - c) Civcon Civil & Project Management Pty Ltd;
 - d) Raubex Construction Pty Ltd;
 - e) Remote Civils Australia Civil Group Pty Ltd;
 - f) Tracc Civil Pty Ltd;
 - g) WCP Civil Pty Ltd.

- 8. An Evaluation Panel was convened of suitably qualified City Officers to assess the tenders received.
- 9. Tenders were assessed in a staged process of firstly checking for compliance to matters set out in the tender invitation. Compliant tenders were then assessed against qualitative criteria (again, these were set out in the tender invitation).

10. The Qualitative Criteria and weighting were determined as follows:

Qualitative Criteria	Weighting
Relevant Experience	20%
Tenderer's Resources	20%
Key Personnel Skills & Experience	20%
Demonstrated Understanding of the Requirements	30%
Local Benefits	10%

11. All tenders met the compliance criteria and then were assessed against the qualitative criteria.

12. The seven tenders were ranked as follows regarding the qualitative criteria:

Tenderer	Score	Rank
Civcon Civil and Project Management Pty Ltd	67%	1
BOS Civil Pty Ltd	65%	2
Remote Civils Australia Group Pty Ltd	61%	3
BMD Constructions Pty Ltd	60%	4
Tracc Civil Pty Ltd	60%	4
West Coast Profilers Pty Ltd	51%	6
Raubex Construction Pty Ltd	48%	7

- 13. The Tender Assessment Panel determined that a Qualitative Pass Mark (QPM) of 60% would be set for works of this nature.
- 14. Five of the seven tenderers met the required QPM of 60%. The two that did not achieve the required 60% QPM were Raubex Construction and West Coast Profilers and were eliminated from further assessment.
- 15. A price assessment was then undertaken for the five remaining tenders to determine the best value for money outcome for the City.

16. The Tender Evaluation Report is provided as Confidential Attachment 1 to this report.
17. The recommended tenderer best satisfied the City's requirements by:
- a) meeting or exceeding the qualitative assessment benchmark;
 - b) proven capacity and capability to undertake the work required;
 - c) satisfying reference checks from previous clients;
 - d) satisfying independent financial reference checks of the proposed contractor; and
 - e) providing the best value for money outcome.
18. The Panel recommends that the contract for RFT 2020 Hale Road Widening be awarded to Tracc Civil Pty Ltd ACN 143 998 369 as the preferred tenderer, for its lump sum price of \$1,888,933.22 (exc GST).
19. Not within the tender under consideration, but worthy of noting, is that other contracts will be let to enhance the landscape treatments of Hale Road including street trees.

APPLICABLE LAW

20. Section 3.57 of *Local Government Act 1995*. Part 4 of the *Local Government (Functions and General) Regulations 1996*.

APPLICABLE POLICY

21. Policy C-PP01 – Purchasing has been followed and complied with.

STAKEHOLDER ENGAGEMENT

22. Internal referrals – Nil.
23. External referrals – Project commencement and duration notices to the local residents and surrounding suburbs will be released, along with communications in conjunction with Main Roads WA.

FINANCIAL CONSIDERATIONS

24. The Hale Road Widening Project C9R1 is funded from the GDS. As noted in the November 2020 Council Report on the annual review of the GDS, the budget for the Hale Road Widening is currently \$4.41m.
25. This budget not only includes the construction tender under consideration but also Western Power and ATCO gas utility costs to relocate their services, landscaping, design and project management.

26. When the 2020/21 Budget was devised, it was planned that the utility works would form part of the overall responsibility of the road works contractor and thus the project program (and cash flow) would extend from 2020/21 to 2021/22 Financial Years.
27. The City was able to have Western Power and ATCO works undertaken as direct contracts with the City and these works are largely complete, however has required that the budget provided in 2020/21 be allocated to these works.
28. The City is in the process of finalising the revised overall budget for Hale Road Widening once all the above costs are known, however it is probable that some overall savings will be achieved primarily due to the manner in which the City has managed the utility service provider costs.
29. This has meant however from a cashflow perspective, that additional funding needs to be provided in the 2020/21 Budget (from the existing bank balance within the GDS) in line with delivery schedules of the works.
30. It is confirmed that the Trust Fund for the Cell 9 works has sufficient funding on hand to allow both the Hale Road widening and the Woodlupine Brook projects planned to commence in 2020/21 to be committed.
31. It is proposed that at the mid-term 2020/21 budget review, the necessary adjustments from the Cell 9 Trust Fund into Capital Works is made. The mid-term budget review process will commence in January 2021.
32. On occasion during the construction works, there may be a need to approve variations to the construction contract to meet the design intent. Any variations that arise would be funded from the project contingency. In awarding this contract, Council also approves any increases in the contract sum necessary from variations as determined by the Superintendent of the Contract. If the project budget cannot be maintained, further approval from Council will be sought.

SUSTAINABILITY

33. Allied to this project will be streetscape landscaping improvements including street trees which have a positive impact on environmental and amenity values for the City. This is consistent with the draft Urban Forest Strategy currently under consideration by Council.

RISK MANAGEMENT

34.

Risk: The Contractor fails to fulfil the requirements of the contract (in terms of scope, time or quality) leading to increased costs to the City or delays in project completion.		
Likelihood	Consequence	Rating
Unlikely	Moderate	Low
Action/Strategy		
a)	clearly defined scope of works and specifications have been developed;	
b)	itemised pricing of unit rates and quantities within the tender has been used and checked;	
c)	construction to be supervised by the City to validate quality; and	
d)	the contract to be entered into provides for claims against the contractor for remedial action if needed.	

CONCLUSION

35. The delivery of Tender RFT 2020 Hale Road Widening, will provide local residents and through traffic with improved road ways, better crossover access to facilities such as the Shopping Centre and tie together the previous works / projects carried out in the area, including the upgrade of street lighting. The City is satisfied that the recommended tenderer has the capability and capacity to undertake the works to the required scale of scope, time and cost.

Voting Requirements: Simple Majority

RECOMMENDATION

That Council:

1. ACCEPT the tender RFT 2020 Hale Road Widening within the City of Kalamunda from Tracc Civil Pty Ltd ACN 143 998 369 for the lump sum price of \$1,888,933.22 (plus GST).
2. APPROVE the use of project contingency funding if required within the approved project budget for any variations to the works contract necessary to achieve the intent of the contract.
3. NOTE that the 2020/21 Mid Term Budget Review will include a revised overall project budget for the Hale Road Widening and Enhancement Project.

8.1.2. Award of Construction Tender RFT-2019 Road Rehabilitation of Various Sites within the City of Kalamunda

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

Previous Items	N/A
Directorate	Asset Services
Business Unit	Asset Delivery
File Reference	AD-TEN-005
Applicant	N/A
Owner	N/A
Attachments	Nil
Confidential Attachment	1. Tender Evaluation Report RFT 2019 <i>Reason for Confidentiality: Local Government Act 1995 (WA) Section 5.23 (2) (c) - "a contract entered into, or which may be entered into, by the local government and which relates to a matter to be discussed at the meeting."</i>

TYPE OF REPORT

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STRATEGIC PLANNING ALIGNMENT

Kalamunda Advancing Strategic Community Plan to 2027

Priority 3: Kalamunda Develops

Objective 3.2 - To connect community to quality amenities.

Strategy 3.2.1 - Optimal management of all assets.

EXECUTIVE SUMMARY

1. The purpose of this report is to consider the acceptance of a tender RFT2019 to undertake the Road Rehabilitation of four roads within the City of Kalamunda (City).
2. The 2020/21 Capital Works Program identified four specific road rehabilitation projects that were of such a nature that appointing one contractor for all four projects is more effective and efficient.
3. It is recommended that the Council accept the tender from Stabilised Pavements of Australia Pty Ltd ACN 002 900 736 for a lump sum price of \$594,307.70 (ex GST).

BACKGROUND

4. The Scope of work in this contract is for the rehabilitation of pavement for four discrete sections of Abernethy Road in Forrestfield and High Wycombe. This will be done through in-situ foamed bitumen stabilisation of existing pavements. These works form part of the City's 2020/21 Capital Works Program under the Metropolitan Regional Roads Group road rehabilitation grant funding scheme.

DETAILS AND ANALYSIS

5. The City issued RFT 2019 through its E-Tendering Portal and an advertisement in the West Australian newspaper on Wednesday 14 October 2020. Tenders closed on Thursday 12 November 2020.
6. Tender submissions were received from (in alphabetical order):
 - a) Downer EDI Limited;
 - b) Stabilised Pavement of Australia Pty Ltd; and
 - c) WA Profiling & Stabilisation Pty Ltd
7. An Evaluation Panel was convened of suitably qualified City Officers to assess the tenders received.
8. Tenders were assessed in a staged process of firstly checking for compliance to matters set out in the tender invitation. Compliant tenders were then assessed against qualitative criteria (again, these were set out in the tender invitation).

9. The Qualitative Criteria and weighting were determined as follows:

Qualitative Criteria	Weighting
Relevant Experience	30%
Key Personnel Skills & Experience	20%
Tenderer's Resources	20%
Demonstrated Understanding of the Requirements	30%
Local Benefits	10%

10. All tenders met the compliance criteria and then were assessed against the qualitative criteria.

11. The three tenders were ranked as follows regarding the qualitative criteria:

Company Name	Qualitative Total Score (Weighted @ 100%)	Rank
WA Profiling & Stabilisation Pty Ltd	64%	1
Stabilised Pavements of Australia Pty Ltd	60%	2
Downer EDI Works Pty Ltd	53%	3

12. The Tender Assessment Panel determined that a Qualitative Pass Mark (QPM) of 60% would be set for works of this nature.

13. Of the three tenderers, only two met the required QPM of 60%, WA Profiling & Stabilisation Pty Ltd and Stabilised Pavements of Australia Pty Ltd.

14. A price assessment was then undertaken to determine the best value for money outcome for the City.

15. The Tender Evaluation Report is provided as Confidential Attachment 1 to this report.

16. The recommended tenderer best satisfied the City's requirements by:

- a) meeting or exceeding the qualitative assessment benchmark;
- b) proven capacity and capability to undertake the work required;
- c) satisfying reference checks from previous clients;
- d) satisfying independent financial reference checks of the proposed contractor; and

- e) providing the best value for money outcome
- 17. Of the two qualifying and compliant qualitative tender responses, Stabilised Pavements of Australia Pty Ltd demonstrated the lowest conforming Lump Sum Tender Price offer of \$594,307.70 (ex GST).
- 18. The Panel recommends that the contract for RFT 2019 Road Rehabilitation be awarded to Stabilised Pavements of Australia Pty Ltd.
- 19. In Situ Foam Bitumen Stabilisation (FBS) road reconstruction technique has recently been introduced by the City's officers to specific road projects. This technique has been proven elsewhere to provide quicker construction programs, better water and cracking resistance of the finished pavement, and better environmental outcomes through the re-use of materials profiled from roads as part of the construction.
- 20. The four sections of Abernethy Road proposed for this re-surfacing are not part of the proposed Abernethy Road duplication works currently being designed and documented by Main Roads WA as part of their larger Great Eastern Highway Interchange Project.

APPLICABLE LAW

- 21. Section 3.57 of *Local Government Act 1995*. Part 4 of the *Local Government (Functions and General) Regulations 1996*.

APPLICABLE POLICY

- 22. Policy C-PP01 – Purchasing has been followed and complied with.

STAKEHOLDER ENGAGEMENT

- 23. Internal referrals – Nil.
- 24. External referrals – Project commencement and duration notices to the local residents and surrounding suburbs will be released, along with communications in conjunction with Main Roads WA.

FINANCIAL CONSIDERATIONS

- 25. The Capital Works Project fund allocation of this works is \$770,000 ex GST. Two-thirds of the project is funded by the Metropolitan Regional Road Group, with the remaining budget made up from Municipal Funding.
- 26. On occasion during the construction works there may be a need to approve variations to the construction contract to meet the design intent.

Any variations that arise would be funded from the project contingency. In awarding this contract, Council also approves any increases in the contract sum necessary from variations as determined by the Superintendent of the Contract. If the project budget cannot be maintained, further approval from Council will be sought.

SUSTAINABILITY

Social Implications

27. This project will improve both the quality and safety of the City of Kalamunda’s existing road network

Environmental Implications

28. FBS rehabilitation projects use a substantial portion of old asphalt which is then treated during the construction on site and reused on the newly resurfaced road. As such there is good recycling benefits from reuse of old pavement materials.

RISK MANAGEMENT

29.	Risk: The Contractor fails to fulfil the requirements of the contract (in terms of scope, time or quality) leading to increased costs to the City or delays in project completion.		
	Likelihood	Consequence	Rating
	Unlikely	Moderate	Low
	Action/Strategy		
	a) clearly defined scope of works and specifications have been developed; b) itemised pricing of unit rates and quantities within the tender has been used and checked; c) construction to be supervised by the City to validate quality; and the contract to be entered into provides for claims against the contractor for remedial action if needed.		

CONCLUSION

30. The delivery of Tender RFT 2019 Road Rehabilitation of Various Sites with the City of Kalamunda will allow the City to maintain a key road within the City’s road network to a suitable standard. The City is satisfied that the recommended tenderer has the capability and capacity to undertake the works to the required scale of scope, time and cost.

Voting Requirements: Simple Majority

RECOMMENDATION

That Council:

1. Accept the tender RFT 2019 Road Rehabilitation at Various Sites within the City of Kalamunda, from Stabilised Pavements of Australia Pty Ltd ACN 002 900 736 for the lump sum of \$594,307.70 (plus GST).
2. APPROVE the use of project contingency funding if required within the approved project budget for any variations to the works contract, necessary to achieve the intent of the contract.

8.1.3. Submission on Draft State Planning Policy 4.2 - Activity Centres

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

Previous Items	Nil
Directorate	Development Services
Business Unit	Strategic Planning
File Reference	State Planning Policy 4.2 - Activity Centres
Applicant	N/A
Owner	City of Kalamunda
Attachments	<ol style="list-style-type: none"> 1. Draft State Planning Policy 4.2 - Submission Letter [8.1.3.1 - 2 pages] 2. Draft State Planning Policy 4.2 - Activity Centres [8.1.3.2 - 9 pages] 3. SPP 4.2 Implementation Guidelines [8.1.3.3 - 11 pages] 4. SPP 4.2 Issues Paper [8.1.3.4 - 9 pages] 5. SPP 4.2 Changes Table [8.1.3.5 - 5 pages]

TYPE OF REPORT

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STRATEGIC PLANNING ALIGNMENT

Kalamunda Advancing Strategic Community Plan to 2027

Priority 3: Kalamunda Develops

Objective 3.1 - To plan for sustainable population growth.

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

Priority 3: Kalamunda Develops

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

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

EXECUTIVE SUMMARY

1. The purpose of this report is for the Council to note draft State Planning Policy 4.2 - Activity Centres (SPP4.2) and consider a submission on draft SPP4.2
2. Draft SPP4.2 is proposed to replace existing *State Planning Policy 4.2 - Activity Centres for Perth and Peel* (2010) which currently guides the preparation of planning around Regional, District, Local and Neighbourhood commercial shopping and service precincts.
3. Submissions on the new Draft SPP4.2 are due Friday, 12 February 2021. It is recommended council note draft SPP4.2 and endorse the City's submission contained in Attachment 1 for the purpose of forwarding to the Department of Planning, Lands and Heritage (DPLH) for consideration by the Western Australian Planning Commission (WAPC).

BACKGROUND

4. The WAPC commenced the review the 2010 version of SPP 4.2 in May 2016 with a view of ensuring the SPP4.2 is current, relevant and implementable, by:
 - a) Conducting a targeted review focussing on implementation issues identified through stakeholder consultation.
 - b) Simplifying and streamlining the policy.
 - c) Aligning the policy to current and related State Planning Policies.
 - d) Expand the scope of SPP 4.2 to areas outside of Perth and Peel.

It should be noted that a review of the activity centre hierarchy was not included as part of the review.

5. Activity centres are multi-functional community focal points that vary in size and function. They are where people meet, relax, work and often live. They are generally well-served by transport networks with a focus on integrated pedestrian access and walkability, and may include land uses such as commercial, retail, food and hospitality, high-density housing, entertainment, tourism, civic/community, higher education, and medical services.

6. The City has prepared a draft Activity Centre Strategy (ACS), which was adopted by the Council on 26 April 2020 for the purposes of public advertising. The draft ACS will inform and guide the future planning and land use decisions for the City's activity centres. The draft ACS is anticipated to be returned to the Council for consideration of submissions and final adoption in early 2021. Draft SPP4.2 is considered to have minimal impact on the final version of the draft ACS though may affect the level of information required to support future proposals within Activity Centres.
7. The draft Kalamunda Activity Centre Plan (KACP) was adopted at the 24 March 2020 Ordinary Council Meeting. The KACP was referred to the WAPC for endorsement in April 2020. The Local Planning Scheme No. 3 Amendment No. 106, which will give statutory effect to the KACP was initiated by the Council on 24 November 2020 for public advertising. The draft SPP 4.2 is not considered to interrupt the progression of the KACP.
8. The City is currently planning to initiate a Forrestfield Precinct Structure Plan (previously called an Activity Centre Plan) in the second half of 2021 which will likely need to apply the provisions of the finalised version of SPP 4.2

DETAILS AND ANALYSIS

9. Draft SPP 4.2 (Attachment 2) and the associated Implementation Guidelines (Attachment 3) will apply to the preparation and assessment of the relevant components of planning instruments that relate to activity centres within the City of Kalamunda. This includes planning strategies, Local Planning Schemes (including reviews and amendments), precinct structure plans, other structure plans, subdivision and development applications for major development within activity centres and also activity centre uses that are located outside of activity centres.
10. The objectives of draft SPP 4.2 are to:
 - a) Provide a hierarchy and network of activity centres that meets community need and provides social, economic and environmental benefits to all Western Australians.
 - b) Enable the distribution of a broad range of goods, services and activities, including retail, commercial and mixed-use developments that do not undermine the hierarchy of activity centres,
 - c) Ensure consistency and rigour in the planning and development of activity centres.

11. While draft SPP 4.2 applies to all activity centres, its provisions are considered to be most relevant to the City's District Centres of Kalamunda and Forrestfield. In this respect, the draft SPP4.2 requires a precinct structure plan for each district centre. The term "precinct structure plan" replaces activity centre plan and reflects the introduction of State Planning Policy 7.2 Precinct Design and associated guidelines, which provides detailed design policy provisions and requirements for activity centres.
12. The City has prepared the KACP under the previous policy framework (under the existing SPP 4.2 and Model Centre Framework), however it is anticipated that a precinct structure plan for the Forrestfield district centre will be progressed in 2021, subject to funding, under the proposed SPP 4.2.
13. The nature of considerations for activity centre plans and precinct structure plans are not dissimilar, however there is greater guidance on the preparation of precinct structure plans with a focus on design of the built environment. Notwithstanding, this formed an important part of the preparation of the KACP and while the terminology of the two instruments is different they will achieve similar outcomes.
14. The proposed changes between the existing SPP 4.2 and the new draft SPP4.2 are summarised as follows:
 - a) The application of SPP4.2 will be expanded to apply to the Bunbury Region Scheme area.
 - b) The nine objectives (based around five themes) being reduced to three high level objectives supported by eight policy outcomes.
 - c) Density targets have been revised.
 - d) Land use diversity targets have been revised with a simple ratio of shop/retail to other non-residential land uses based on type of centre.
 - e) Retail needs assessment guidance has been moved from the policy document to the Implementation guidelines of draft SPP4.2 and further guidance on the scope of assessments.
 - f) Retail sustainability assessments have been renamed to "Impact Test" and the guidance has been moved from the policy document to the Implementation Guidelines of draft SPP 4.2.
 - g) The Implementation Guidelines provide reference to the need for proposals that provide elements of community benefit.
 - h) Provisions have been included to provide for (allocate land towards) Bulky Goods/large format retail, while the impacts are managed.
 - i) Guidance regarding supermarkets (zoning, access, land requirements) is provided within the Implementation Guidelines.

- j) Stronger provisions to limit 'out-of-centre' development and require an Impact Test for certain circumstances.
- k) The Model Centre Framework has been removed and replaced with State Planning Policy 7.2 Precinct Design.

An issues paper and summary document outlining the changes proposed is provided in Attachments 4 and 5.

- 15. The policy outlines considerations such as hierarchy of activity centres, recommended residential densities within walkable catchments, design and accessibility, safety, land use, consolidation of commercial tenancies and interface with the public and private realm.

APPLICABLE LAW

- 16. *Planning and Development Act 2005.*
- 17. *Local Planning Scheme No. 3*

APPLICABLE POLICY

- 18. State Planning Policy 4.2 - Activity Centres for Perth and Peel
Existing policy which will be replaced by the proposed new draft SPP4.2.
- 19. Draft SPP 4.2 makes reference to State Planning Policy 7.2 Precinct Design, which provides detailed design policy provisions and requirements for activity centres.

STAKEHOLDER ENGAGEMENT

- 20. The draft SPP4.2 was reviewed by the City from various perspectives. Generally, comments were supportive with some minor requests to clarify certain aspects such as whether the definition of a High Frequency Public Transport Route is the same as that in the Residential Design Codes Volume 1, or the alignment of retail floor space with Liveable Neighbourhoods. Submission details are provided in Attachment 1.

FINANCIAL CONSIDERATIONS

- 21. Nil

SUSTAINABILITY

- 22. The draft SPP 4.2 requires a needs assessment and impact test (previously known as Sustainability Assessment) to be completed for major development proposals to determine the impact of the proposed land use

on nearby and surrounding activity centres having regard to the activity centre hierarchy, potential loss of community services and the impact on committed and planned public and private infrastructure. This will assist with determining broader impacts of a proposal, particularly in smaller activity centres which experience greater fluctuations in business depending on local availability.

RISK MANAGEMENT

23.

Risk: That the DPLH do not consider the City's comment on the Draft SPP4.2 which results in a less refined document.		
Consequence	Likelihood	Rating
Moderate	Unlikely	Low
Action/Strategy		
Council ENDORSE the submission as per Attachment 1 for forwarding to the DPLH for consideration.		

CONCLUSION

24.

The draft SPP 4.2 is comprehensive and concise. The submission is generally supportive of the updates with some minor points of clarification. The draft SPP4.2 is not considered to have a significant impact on the City's existing KACP or upcoming ACS, however will be taken into consideration with the preparation of the Forrestfield Precinct Structure Plan anticipated in 2021 subject to budget allocation.

Voting Requirements: Simple Majority

RECOMMENDATION

That Council:

1. NOTE the draft State Planning Policy 4.2 - Activity Centres and supporting documentation as outlined in Attachments 2-5.
2. ENDORSE the draft State Planning Policy 4.2 - Activity Centres Submission for forwarding to the Department of Planning, Lands and heritage for consideration as outlined in Attachment 1.

8.1.4. Local Planning Scheme No.3 - Amendment 105 - Development Contribution Area 1 – Forrestfield Light Industrial Area Stage 1 - Method for Calculating Contributions - Consideration of Submissions and Final Adoption

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

Previous Items	OCM 27/2020, OCM 136/2020, OCM 137/2020, OCM 184/2020
Directorate	Development Services
Business Unit	Strategic Planning
File Reference	PG-STU-028
Applicant	City of Kalamunda
Owner	Various
Attachments	1. Amendment 105 Document [8.1.4.1 - 4 pages] 2. Local Planning Scheme No. 3 - Schedule 12 [8.1.4.2 - 2 pages] 3. Submission Table [8.1.4.3 - 23 pages]
Confidential attachments	1. McLeods Advice 17.01.2020 2. Mark Ritter Advice 11.10.2019

Reason for Confidentiality: Local Government Act 1995 (WA) Section 5.23 (2) (d) - "legal advice obtained, or which may be entered into, by the local government which relates to a matter to be discussed."

TYPE OF REPORT

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

STRATEGIC PLANNING ALIGNMENT

Kalamunda Advancing Strategic Community Plan to 2027

Priority 3: Kalamunda Develops

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.

EXECUTIVE SUMMARY

1. The purpose of this report is for the Council to consider submissions received on Amendment 105 to Local Planning Scheme No. 3 (LPS3) and to forward its decision to the Western Australian Planning Commission (WAPC).
2. Amendment 105 is proposed to amend the ‘Method for Calculating Contributions’ (Method) for Development Contribution Area 1 (DCA 1) under Schedule 12 of LPS3 to remove the supplementary notes listed below the equation used for calculating the Cost Contribution Rate, as follows:

Method for Calculating Contributions	<p>Contribution rate = $\frac{\text{Cost of infrastructure items} + \text{cost of administrative items (\\$)}}{\text{Net lot area of DCA (m}^2\text{)}}$</p> <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>AMD 88 GG 1/5/18</p>
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Supplementary notes to be deleted

3. Four submissions were received during the advertising of Amendment 105; two of the submissions provide comments and objections and two submissions (from State Government authorities) raising no comment (refer Attachment 3 – Submission Table)
4. It is recommended that the Council support Amendment 105 without modifications for the purposes of progressing Amendment 105 to the WAPC and the Minister for Planning for final approval.

BACKGROUND

5. LPS3 Scheme Amendment No. 48, which included DCA 1 within LPS3 was gazetted in May 2013. This allowed the City to place on development approvals and recommend to the WAPC on subdivision approvals, the obligation to pay a Cost Contribution for common infrastructure and administration costs to manage the Development Contribution Plan (DCP).
6. In May 2018, Amendment 88 was gazetted, which introduced a range of amendments to Schedule 12 of LPS3. 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 to reflect the manner in which the DCP had operated to the point in time.

7. Prior to undertaking the most recent annual review (which concluded on 28 July 2020), the City sought advice on the interpretation of the provisions of LPS3 and State Planning Policy 3.6 (SPP 3.6) relating to the calculation and application of the Cost Contribution rate. The confidential advices are comprehensive and provided for a way forward which meets the intent and principles of the DCP, LPS3 and SPP3.6. The advices are included as a Confidential Attachment for the benefit of the Council.
8. At its Ordinary Meeting (OCM) held 25 February 2020, the Council resolved as follows (relevant parts cited below):

“That Council:

...
 2. *NOTE the interpretation of the Method for Calculating Contributions in Schedule 12 of Local Planning Scheme No. 3.*
 3. *NOTE the approach to deem all Cost Contributions as interim, until the final Cost Contribution rate is known based on actual costs of infrastructure, as outlined in this report.*
 4. *NOTE the proposed process to reconcile Cost Contributions for all landowners at the conclusion of the of the Development Contribution Scheme (scheduled for 2023), as outlined in this report.*...”
9. At its OCM held 28 July 2020, the Council resolved to adopt the DCP Report and the Cost Contribution rate of \$20.97/m². The most recent DCP review and procedural adjustments to the operation of the DCP have been undertaken having regard to the advices received, as noted by the Council at its OCM held on 25 February 2020.
10. At its OCM held September 2020, the Council resolved to adopt Amendment 105 for public advertising.
11. The approach and the interpretation of the DCP outlined above is currently the subject of State Administrative Tribunal (SAT) proceedings. The SAT proceedings more specifically relate to a condition of development approval that is consistent with the City's adopted approach and interpretation of the Method of Calculating Contribution, requiring the owner to:
 - a) Pay the City a Cost Contribution based on the Final Contribution rate if determined (all infrastructure and administrative costs under the DCP and the City's LPS3, having been paid or ascertained with certainty); or if the final Contribution Rate has not been determined;

- b) Pay to the City an interim cost contribution based on the latest interim contribution rate and in that event the owner is to enter into an agreement with the City, prepared by solicitors appointed by the City, which agreement shall include provision for a charge over the whole or part of the subject land or other security acceptable to the City, secured by a caveat.


12. A comprehensive explanation of the DCP is outlined in the reports to OCM on 25 February 2020 (OCM 27/2020) and 28 July 2020 (OCM 136/2020 and OCM 137/2020). The relevant matters that have led to the City preparing and Council initiating Amendment 105 are outlined below.

- a) Prior to the DCP Review considered by the Council on 25 February 2020, the Cost Contribution rate was calculated using the whole of the Method contained within Schedule 12 of LPS3.
- b) This resulted in some landowners who had developed early, 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.
- c) The approach resulted in a situation that was inconsistent with the overarching principles of determining infrastructure contributions (outlined in SPP3.6) and specifically the principle of equity and consistency.
- d) To comply with SPP 3.6 and LPS3 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.

DETAILS AND ANALYSIS

13. With a view of ensuring LPS3 clearly outlines the correct method being applied for the purposes of calculating the Cost Contribution rate, Amendment 105 seeks to remove the supplementary notes listed below the equation used for calculating the Cost Contribution Rate, as follows:

Method for Calculating Contributions	<p>Contribution rate = $\frac{\text{Cost of infrastructure items} + \text{cost of administrative items (\\$)}}{\text{Net lot area of DCA (m}^2\text{)}}$</p> <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>AMD 88 GG 1/5/18</p>
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Supplementary notes to be deleted 

14. Two of the submissions received during advertising of Amendment 105 have requested that Amendment 105 not proceed at this time for the following reasons:

- a) The submitters consider it is inappropriate for the City to proceed until such a time as the SAT hands down its decision which is related to the City's approach and interpretation of the Cost Contribution outlined above.
- b) Amendment 105 contradicts the intent of Amendment 88, which introduced the supplementary notes that are proposed to be deleted by Amendment 105.
- c) One submission presents arguments regarding the history of the DCP, making the following key points:
 - i) The DCP process expects, anticipates and deals with rises and falls in the contribution rate through annual cost and 5 yearly scheme reviews.
 - ii) The City has changed its approach to the DCP and interpretation of the method for calculating contributions as a result of some complaints about contribution rates. The City should have maintained the DCP process that had been operating for approximately 7 years.
 - iii) The City is now attempting to retrospectively alter the DCP process and the method of calculating Cost Contributions for previous owners who had otherwise considered their contributions to be full and final.
 - iv) The City is seeking to collect contributions greater than those required for outstanding infrastructure and administration costs, to pay back contributors who have paid higher rates in the past.
 - v) The DCP is unlikely to be completed by 2023.
 - vi) Amendment 105 will not contribute to certainty of the Scheme, nor will it change the issue of equity among landowners.

Full responses to the above matters are provided in Attachment 3 – Submission Table.

15. On the issue of whether Amendment 105 should proceed in the context of current SAT proceedings, it is argued in one of the submissions that:

“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”.

“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...”

16. This submission is considered to miss the purpose of Amendment 105. Amendment 105 will directly achieve the City's objective of equity and consistency, without relying on the legal arguments for the interpretation of the Contribution Rate methodology formula in the DCP.
17. 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. Further, it will ensure that the DCP methodology will produce Contribution Rates which achieve the SPP 3.6 and the City's LPS3 objectives of fairness, equity and consistency in Cost Contributions by owners across the whole of the DCA.
18. Amendment 105 will make the City's intentions regarding 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.
19. The submission assumes that 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.
20. This submission would have the outcome of preserving a situation where some landowners will have a Cost Contribution calculated at the rate of approximately \$17/m², while other owners in the DCA, without any fault on their part, have been required to contribute at a rate in excess of \$29/m². There is lack of fairness, equity and consistency in those differences, and the arguments presented in the submission attempts to preserve the inconsistency in favour of only some landowners at the expense of others, and 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.
21. Amendment 105 will clarify the intent of the Council's OCM resolution on 25 February 2020, to bring LPS3 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 Rate.

APPLICABLE LAW

22. *Local Planning Scheme No. 3*
23. *The Planning and Development Act 2005 (PD Act)*

24. *The Planning and Development (Local Planning Schemes) Regulation 2015 (P&D Regulations)*

APPLICABLE POLICY

25. DCPs are required to be prepared in accordance with the requirements of State Planning Policy 3.6 – Development Contributions for Infrastructure.

STAKEHOLDER ENGAGEMENT

26. Under the provisions of the P&D Regulations Amendment 105 is required to be treated as a 'Complex' amendment, given that it relates to amendments to a DCP. Accordingly, Amendment 105 was required to be issued to the WAPC for examination before the amendment was advertised. The WAPC did not require modifications prior to advertising.
27. The City gave notice of the proposed amendment from 28 October 2020 to 8 January 2021 using the following methods:
- a) Newspaper advertisement;
 - b) Display a copy of the notice at the City's administration centre;
 - c) Letters to landowners and public authorities affected by the amendment; and
 - d) Website notice.
28. At the conclusion of the public advertising period, four submissions were received comprising two comments with objections and two submissions (from State Government authorities) raising no comment (refer Attachment 3 – Submission Table). The key reasons provided for objecting are discussed in the Details and Analysis section of this report.

FINANCIAL CONSIDERATIONS

29. Costs associated with preparing, advertising and finalising Amendment 105 will be borne by the existing Development Services budget.
30. Amendment 105 will ensure the future administration of the DCP, specifically the calculation of cost contributions payable by developers, is fair, equitable and consistent in accordance with the process discussed in the Background and Details and Analysis section of this report.

SUSTAINABILITY

31. Nil.

RISK MANAGEMENT

32.

Risk: The WAPC do not recommend approval to the Minister for Planning on Amendment 105 resulting in an inconsistent application between LPS3 and the DCP Report.		
Consequence	Likelihood	Rating
Major	Unlikely	Medium
Action/Strategy		
Ensure the City has sought legal advice on the proper construction and operation of the DCP, and that Amendment 105 is reviewed prior to progression and adoption. Make evident to the WAPC that the City is seeking to achieve fairness, equity and consistency through Amendment 105 which aligns with the espoused principles of SPP3.6.		

33.

Risk: The current SAT proceedings conclude with the SAT Member handing down a decision that does not align with the City’s approach to ensure fairness, equity which has the effect of the WAPC or Minister for Planning modifying or undoing Amendment 105.		
Consequence	Likelihood	Rating
Significant	Possible	High
Action/Strategy		
Ensure the City is acting in accordance with legal advice on the proper construction and operation of the DCP. Ensure the SAT is informed of the Council’s decision on whether to support Amendment 105. Make evident that the City is seeking to achieve fairness, equity and consistency through Amendment 105 which aligns with the espoused principles of SPP3.6.		

34.

Risk: Criticism is received from landowners who have not yet contributed or have contributed at lower rates.		
Consequence	Likelihood	Rating
Significant	Likely	High
Action/Strategy		
Ensure the City is acting in accordance with legal advice on the proper construction and operation of the DCP. Make evident that the City is seeking to achieve fairness, equity and consistency through Amendment 105 which aligns with the espoused principles of SPP3.6.		

CONCLUSION

35.

Amendment 105 will bring LPS3 into alignment with the City’s interpretation of the DCP, specifically the position established at the OCM

on 25 February 2020 and 28 July 2020. Amendment 105 will reduce ambiguity as to the way in which the City interprets and applies the Method of Calculating the Cost Contribution Rate.

36. Objectors may pose the argument that the Council should await the outcome of relevant SAT proceedings before progressing Amendment 105. In response to this position, the City notes the following:
- a) The matters are separate processes.
 - b) There is nothing in the City's LPS3 or the P&D Regulations which requires the City or Council to await the decision of the SAT.
 - c) 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.
 - d) Amendment 105 is seeking to achieve fairness, equity and consistency in the interests of orderly and proper planning.
 - e) Amendment 105 is seeking to achieve fairness, equity and consistency across all landowners and clarification should be provided in LPS3 to achieve this at the earliest opportunity.
37. Having regard to the above, it is recommended that Council supports Amendment 105 for the purposes of progressing Amendment 105 to the WAPC and the Minister for Planning for final approval.

Voting Requirements: Simple Majority

RECOMMENDATION

That Council:

1. NOTE submissions received during advertising of Amendment 105 to Local Planning Scheme No. 3.
2. SUPPORT Amendment 105 to Local Planning Scheme No. 3 in accordance with Attachment 1, pursuant to Section 75 of the *Planning and Development Act 2005*.
3. CONSIDER Amendment 105 to Local Planning Scheme No. 3 a complex amendment under clause 35 (2) of the *Planning and Development (Local Planning Schemes) Regulations 2015* for the following reasons:
 - a. The amendment relates to an amendment to Development Contribution Plan 1.
 - b. The amendment is not a standard or basic amendment.
4. FORWARD Amendment 105 to Local Planning Scheme No. 3 to the Western Australian Planning Commission pursuant to Part 5, Regulation 44 of the *Planning and Development (Local Planning Schemes) Regulations 2015*

9. Meeting Closed to the Public

10. Closure