



Public Agenda Briefing Forum

Notes

6 December 2022



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1. Official Opening

The Presiding Member opened the meeting at 6:32pm and welcomed Councillors, Staff and Members of the Public Gallery. The Presiding Member also acknowledged the Traditional Owners of the land on which we meet the Whadjuk Noongar people.

2. Attendance, Apologies and Leave of Absence

Councillors

South East Ward

John Giardina
Janelle Sewell
Geoff Stallard

South West Ward

Mary Cannon
Brooke O'Donnell

North West Ward

Sue Bilich
Lisa Cooper (by telephone)

North Ward

Kathy Ritchie
Margaret Thomas JP (Mayor) Presiding Member

Members of Staff

Chief Executive Officer

Rhonda Hardy

Executive Team

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

Management Team

Andrew Fowler-Tutt - Manager Approval Services
Chris Lodge - Manager Strategic Planning
Nicole O'Neill - Manager Customer & Public Relations
Adam Livingston - Communications Advisor

Administration Support

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

Members of the Public 16

Members of the Press Nil.

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Apologies

Cr Kellie Miskiewicz

Cr Dylan O'Connor

Cr Andrew Osenton

Leave of Absence Previously Approved Nil.

3. Declarations of Interest

3.1. Disclosure of Financial and Proximity Interests

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

3.1.1 Nil.

3.2. Disclosure of Interest Affecting Impartiality

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

3.2.1 Cr Lisa Cooper declared an Interest Affecting Impartiality on Item 10.1.1 for Lot 150 (720) Welshpool Road East, Wattle Grove - Proposed Garden Centre and Caretakers Dwelling. Cr Cooper is the spokesperson for Lot 20 Adelaide Street Community Awareness Group and has had dealings with Enzo Biogiani who is the project manager.

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4. Announcements by the Member Presiding Without Discussion

4.1 Nil.

5. Public Question Time

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

6. Public Statement Time

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

7. Public Submissions Received in Writing

7.1 A presentation on Item 10.1.2 has been received by David Downing.

8. Petitions Received

8.1 Nil.

9. Confidential Items Announced But Not Discussed

9.1 Item 10.1.1 Lot 150 (720) Welshpool Road East, Wattle Grove - Proposed Garden Centre and Caretakers Dwelling – Confidential Attachment - DVC Technical Note 11-07-2022

Reason for Confidentiality: Local Government Act 1995 (WA) Section 5.23 (2) (f) - "a matter that if disclosed, could be reasonably expected to - (i) impair the effectiveness of any lawful method or procedure for preventing, detecting, investigating or dealing with any contravention or possible contravention of the law; (ii) endanger the security of the local government's property; or (iii) prejudice the maintenance or enforcement of a lawful measure for protecting public safety"

9.2 Item 10.1.2 Draft Local Planning Policy 33 (LPP33) - Tree Retention – Confidential Attachment - Confidential Submitters List

Reason for Confidentiality: Local Government Act 1995 (WA) Section 5.23 (2) (b) - "the personal affairs of any person."

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10. Reports to Council

10.1. Development Services Reports

10.1.1. Lot 150 (720) Welshpool Road East, Wattle Grove - Proposed Garden Centre and Caretakers Dwelling

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

Cr Lisa Cooper declared an Interest Affecting Impartiality on Item 10.1.1 for Lot 150 (720) Welshpool Road East, Wattle Grove - Proposed Garden Centre and Caretakers Dwelling. Cr Cooper is the spokesperson for Lot 20 Adelaide Street Community Awareness Group and has had dealings with Enzo Biogiani who is the project manager.

The Manager Approval Services provided a presentation on this item.

Councillors sought clarification in relation to environmental concerns from seepage into ground water from the site.

Peter Forrest provided a statement in relation to environmental concerns in relation to this development. Mr Forrest spoke against the recommendation.

Questions were received in relation to traffic issues from:

- Justine Rowe, Wattle Grove.
- Theresa Miller, Wattle Grove
- Amelia Miller, Wattle Grove
- Mary Johnstone, Wattle Grove
- Patrick Miller, Wattle Grove

All questions relating to traffic issues where responded to by the Director Asset Services.

Anna Mackin, Wattle Grove provided a statement in relation this development. Ms Mackin spoke against the recommendation.

Theresa Miller, Wattle Grove, provided a statement in relation this development. Mrs Miller spoke against the recommendation.

Previous Items	OCM 324/2021
Directorate	Development Services
Business Unit	Approval Services
File Reference	WL-01/720
Applicant	Harley Dykstra
Owner	ACN 605 759 995 Pty Ltd

Attachments	1. Development Plans [10.1.1.1 - 3 pages]
	2. Transport Impact Statement [10.1.1.2 - 26 pages]
	3. Road Safety Audit [10.1.1.3 - 24 pages]

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4. Acoustic Assessment [**10.1.1.4** - 21 pages]
5. Bushfire Management Plan [**10.1.1.5** - 27 pages]
6. Planning Report [**10.1.1.6** - 25 pages]
7. Submitters table [**10.1.1.7** - 52 pages]
8. Landscape Report [**10.1.1.8** - 16 pages]
9. Revised Revegetation Plan Yule Brook [**10.1.1.9** - 16 pages]
10. Peritas Design [**10.1.1.10** - 1 page]
11. Peritas Technical Report 11-03-2022 [**10.1.1.11** - 27 pages]
12. Peritas Technical Report 22-04-2022 [**10.1.1.12** - 27 pages]
13. Peritas Technical Report 22-08-2022 [**10.1.1.13** - 10 pages]
14. Peritas Turning Movements 1 [**10.1.1.14** - 1 page]
15. Peritas Turning Movements 2 [**10.1.1.15** - 1 page]
16. 720 Welshpool Road East Traffic Matters [**10.1.1.16** - 6 pages]
17. Corrective Action Report [**10.1.1.17** - 6 pages]

Confidential Attachment

DVC Technical Note 11-07-2022

Reason for Confidentiality: Local Government Act 1995 (WA) Section 5.23 (2) (e) - "matter that if disclosed, would reveal - (i) a trade secret; (ii) information that has a commercial value to a person; or (iii) information about the business, professional, commercial or financial affairs of a person; - where the trade secret or information is held by, or is about a person other than the local government"

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

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STRATEGIC PLANNING ALIGNMENT

Kalamunda Advancing Strategic Community Plan to 2031

Priority 3: Kalamunda Develops

Objective 3.1 - To plan for sustainable population growth.

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

EXECUTIVE SUMMARY

1. The purpose of this report is to reconsider, pursuant to Section 31 of the *State Administrative Tribunal Act 2004*, an application for development approval for a garden centre and caretakers dwelling at Lot 150 (720) Welshpool Road East, Wattle Grove (subject site).
2. The proposed Garden Centre is consistent with the objectives of the 'Rural Composite' zone and, with the exception of a variation to Net Lettable Area (NLA) the City of Kalamunda's (the City) Local Planning Scheme No.3 (LPS3).
3. A total of 13 objections were received to the proposal. The concerns raised were principally in relation to traffic and access safety concerns. These concerns were further raised by the community at the Public Agenda Briefing Forum (PABF) held on 9 November 2021.
4. The proposal was presented to the Council meeting of November 2021 with a recommendation to defer the matter to enable the applicant to address traffic/access related issues to the satisfaction of the City. The Council resolved (OCM 324/2021) to defer the report.
5. The applicant subsequently applied to the State Administrative Tribunal (SAT) on the basis of a deemed refusal by the City due to the deferral and time taken to assess the application. Subsequently, the City and applicant agreed to enter mediation through the SAT. The mediation has progressed, leading to a technical resolution of the traffic matters. Council is now required to reconsider the application as directed by SAT under Section 31.
6. It is recommended that the proposal for the Garden Centre and Caretakers Dwelling be approved subject to conditions.

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BACKGROUND

7. **Land Details:**

Land Area	3.91ha
Local Planning Scheme zone	Rural Composite
Metropolitan Region Scheme Zone	Rural

8. The subject site comprises a land area of 3.91ha and contains an existing dwelling and associated outbuildings. A small section of Yule Brook traverses the northwest portion of the Subject Site.

9. **Locality Plan (Aerial):**



10. The surrounding area is characterised by a mix of semi-rural lifestyle properties and rural-oriented commercial land uses, notably dog kennels, garden centre, rural stock-feeders and tourism related activities. To the immediate north of the site, the land is reserved for “Parks and Recreation” and has a Bush Forever designation.

11. The property contains an existing vehicle crossover to Welshpool Road East which is designated under the MRS as an ‘Other Regional Road’ (ORR) which requires development application adjacent to the ORR to be referred to the DPLH in accordance with the instrument of delegation under the Planning and Development Act 2005 (the Act).

12. The section of Welshpool Road adjacent to the subject site is under the care and control of the City.
13. The proposal was presented to the Ordinary Council Meeting in November 2021 with a recommendation to defer the matter to enable the applicant to address traffic/access related issues to the satisfaction of the City. The Council resolved (OCM 324/2021) to defer the report.

DETAILS AND ANALYSIS

14. The applicant is seeking approval for a Garden Centre and Caretakers Dwelling repurposing existing buildings on site for the display and retail sale of a range of landscaping supplies, garden products, ornaments and implements on the subject site (Attachment 1).
15. In support of the proposal, the applicant provided the following technical reports:
 - a) Development Plans and Planning Report (Attachment 1).
 - b) Transport Impact Statement (Attachment 2).
 - c) Road Safety Audit (Attachment 3).
 - d) Acoustic Assessment (Attachment 4).
 - e) Bushfire Management Plan (Attachment 5).
 - f) Planning Report (Attachment 6).
 - g) Submission Table (Attachment 7)
 - h) Landscape Report (Attachment 8)
 - i) Revised Revegetation Plan Yule Brook (Attachment 9)
16. Further information on traffic matters was provided and is explained further below under State Administrative Tribunal Mediation section of this report (also refer Attachments 10-17).
17. The proposal comprises the following key elements:
 - a) The proposed operating hours of Monday to Saturday 7am to 5pm and Sundays and Public Holidays 8pm to 5pm.
 - b) A total of 6 to 8 Staff will be employed at the Garden Centre.
 - c) A car parking area comprising a total of 50 bays within the setback area, fronting Welshpool Road East and associated landscaping,
 - d) An additional 10 car parking bays are proposed within the development itself for staff.
 - e) A grassed overflow car parking area at the rear of the proposed Garden Centre development in the event additional car parking is required on occasion.
 - f) Open air display areas of 475sqm and 236sqm (approximately) for garden ornaments, pots and water features.

- g) Rehabilitation plantings/landscaping adjacent to Yule Brook where it traverses the north -western of Monday part of the site.
- h) A drainage basin adjacent to Welshpool Road East incorporating rain garden component.
- i) An open-air display area (500sqm) for limestone blocks, slabs and other concrete products.
- j) Bagged Products Sales area (435sqm).
- k) A pot and water feature display within the existing stable building.
- l) Bulk landscaping supplies within storage bins.
- m) Trailer parking (providing trailers for use by customers) adjoins the internal carpark.
- n) A checkout office.
- o) Storage shed within an existing outbuilding.
- p) Access/egress via a new crossover onto Welshpool Road East.
- q) The existing dwelling shall be retained for use by an onsite caretaker.

Local Planning Scheme No.3

18. Under the provisions of the LPS3 pertaining to the Rural Composite zone, clause 5.13 states:

"In this zone it is recognised that there is a mix of semi-rural and commercial land uses which the local government seeks to maintain as a balance in a rural setting. Commercial land uses within the zone will only be considered for approval when it has been demonstrated that the use is appropriate to the area and that the commercial activity will not have a detrimental impact on the surrounding area."

19. The objective of the Rural Composite Zone states:

"To provide for small semi-rural lots that can accommodate a limited range of rural and low scale commercial land uses in a manner that will not adversely affect the landscape and environmental qualities of the land are appropriate to the area."

20. With respect to land use permissibility under LPS3, a Garden Centre is classified as an 'A' use which means the use is not permitted unless the local government has exercised discretion through the advertising of the proposal to approve the use.

21. A Garden Centre is defined as:

"means premises used for the propagation, rearing and sale of plants, and the storage and sale of products associated with horticulture and gardens"

22. The use 'Caretakers Dwelling' is a 'D' discretionary land use under the Scheme LPS 3 meaning it is not permitted unless the local government has exercised discretion by granting approval for the use.

23. A Caretakers Dwelling is defined as:

"means a dwelling on the same site as a building, operation or plant used for industry, and occupied by a supervisor of that building, operation or plant"

24. The proposed uses are permissible under LPS3 and are considered consistent with clause 4.21 (Objectives of the Zones – Rural Composite) given they represent low scale commercial development that is, based on the information provided, unlikely to have an adverse impact on the surrounding land uses and environmental qualities of the site, including Yule Brook. Moreover, the proposed land uses are consistent with the character of the area which provides for a range of low scale commercial land uses.

25. With the exception of the NLA, the proposal complies with the commercial development standards identified under clause 5.14 and car parking standards identified under Table 3 of LPS3.

Development Standard	Scheme Requirement	Proposed by Applicant	Variation to Scheme
NLA	300m ²	450m ²	150m ²

26. Whilst the proposed variation represents a 50% increase to the LPS3 requirement, the increase should be considered in the context of the nature of the goods the proposed variation represents. In this regard, the existing stables will be repurposed to accommodate the display of pots and water features. The nature of the goods is not considered to represent the types of more intensive commercial and retail goods you would likely find in a commercial centre and as such, the NLA variation is unlikely to have an impact on these centres.

27. **Bushfire Planning**

The site is designated as bushfire prone under the Office of Bushfire Risk Management mapping system. State Planning Policy 3.7 (SPP 3.7) guides the implementation of effective risk-based land use planning and development to preserve life and reduce the impact of bushfire on property and infrastructure.

28. The proponent has prepared a Bushfire Management Plan (BMP) in support of the application that adequately addresses the four elements stipulated under the Guidelines (Attachment 5).

29. The BMP indicates the proposal can achieve a low-risk rating of BAL 12.5 through establishing an Asset Protection Zone (APZ) around the development. A condition has been imposed requiring the APZ to be implemented and maintained by the landowner in accordance with the Guidelines.
30. **State Administrative Tribunal (SAT) Mediation**
On the basis of deemed refusal due to the deferral and time taken to assess the application, the applicant applied to SAT for a review.
31. The City and the applicant sought to resolve the matter through mediation under SAT. As directed by SAT, the mediation process is confidential. The general outcomes of the mediation are presented within this report
32. For the SAT mediation, only traffic matters were the matters affecting the ability for the Council to consider the application. As such the mediation proceeded on the basis of:
- a) Confirming the specific technical nature of each traffic and road safety concern.
 - b) Identifying as objectively as possible, the traffic standards that apply to the different concerns.
 - c) Seeking to eliminate or manage those concerns through appropriate treatments.
33. Two parameters were presented by the City as guiding the investigations and solutions, firstly that no trees were to be removed from the median spaces for the development, and secondly that road safety risk must be minimised as much as possible, as provided through the objective application of relevant standards and policies.
34. Three specific treatments were identified to address the traffic concerns:
- a) There is proposed to be no right turn in to the property for drivers coming from the east (from Lesmurdie direction),
 - b) A left turn slip lane to the full required length of 125m will be provided for drivers coming from the west (via Tonkin Highway), and
 - c) There is proposed that only left turns out will be available for all drivers exiting the property. In other words, the crossover will be a left in left out only arrangement.

A full explanation of the traffic and access matters follows.

35. **Traffic and Access**
The issue of traffic and access represents a key element of the proposal. In this regard, the applicant submitted a Traffic Impact Statement (TIS) and Road Safety Audit (RSA) in support of the proposal as part of the original development application.
36. The proposal is expected to generate approximately 35 truck vehicle movements per day comprising 20 single axle trucks 12.5m in length for customer deliveries and 15 larger trucks 19m in length for stock deliveries. In addition, it anticipated that the business would receive up to 100 customers per day.
37. As part of the original application, DPLH referred the matter to Main Roads Western Australia (MRWA) in regard to proximity of the proposal to the proposed Tonkin Highway Interchange project.
38. MRWA provided commentary on this matter as reported to November 2021 OCM (324/2021) noting issues of non-compliance with their Driveways policy and recommended that this application is not approved.
39. Whilst MRWA do not have jurisdictional authority over this section of Welshpool Road East, due regard should be given to their comments, as the State Government experts in road traffic and safety, noting that potential exists in the future for this section of Welshpool Rd East to revert to MRWA care and control.
40. MRWA's key concerns as reported to November OCM (324/2021) were:
- a) The application had stated a right turn in from the east auxiliary lane has not been provided as removal of street trees is not permitted. If a right turn deceleration lane cannot be provided in a safe position, then this movement will not be supported.
 - b) The proposed driveway located next to the median island opening will be an unsafe outcome and is contrary to the Main Roads Driveway Policy, specifically:
 - i) Clause 2.4.4 Driveways to Commercial / Retail Developments – Driveways shall not be located opposite the termination road of a T Junction (i.e. opposite Arbor Centre access)
 - ii) 2.4.8 Median Treatments – For divided roads, no driveways shall be permitted opposite median openings
 - c) The proposed left turn in deceleration lane was substandard, and does not conform with Austroads Part 4A standards, as identified in the Road Safety Audit. MRWA were unclear why a lesser standard has been adopted.
41. MRWA recommended this application not be approved in its then proposed form (Nov 2021) in the context of the concerns raised above.

42. This proposal was originally to generate four turning movements, with accompanying concerns:
- a) A right turn in coming from the east, requiring a complying turning lane and no conflict with other traffic in the median.
 - b) A left turn in coming from the west (Tonkin Highway), requiring a fully compliant turning lane,
 - c) A left turn out heading east (towards Lesmurdie), requiring complying sight lines to the west, and
 - d) A right turn out heading west, requiring complying sight lines, sufficient gaps in traffic, median dwell space for the movement to be made safely, and no conflicting traffic in the median space.

The term “turning lane” has been used here to aid in understanding. Under the standards they’re called deceleration lanes.

43. As reported to OCM in November (OCM324/2021), the applicant proposed a number of solutions and provided technical information to address the traffic concerns. These included calculations of sight lines, assessments against various standards, and modifications to the median islands.
44. As part of the SAT mediation process, the applicant provided a number of technical responses and alternatives to address the various traffic concerns. As mentioned previously, these were submitted in confidence under SAT direction. The revised reports and plans provided by the applicant and the City appointed consultant, including a summary table of traffic matters are provided as Attachments 10 to 17.
45. Following receipt of the revised technical information in April 2022, the City sought further advice from MRWA. MRWA declined to provide further advice, referring back to their earlier two responses.
46. The City then sought advice from an independent traffic engineering experts DVC Consultants. DVC provided detailed advice to the outstanding matters, leading to the following two key recommendations:
- a) That the existing access location opposite the median of Welshpool Road East should not be supported, and that it be moved to the west to ensure only left-in and left-out movements, and
 - b) The left turn in turning lane, for drivers from the west, should be reassessed using the design speed (the lane length is derived in the standards based on the design speed which is typically 10 km/hr more than the regulatory speed zone).

47. The applicant has responded to the requirements, with the following treatments proposed (see attachments 2 and 10):
- a) No right turn in to the property will be available for drivers coming from the east, enforced by the existing median kerb arrangement, 'no right turn' sign, and a traffic island at the entrance that effectively blocks vehicles coming from the median space,
 - b) A left turn in turning lane to the full required length of 125m will be provided for drivers coming from the west (via Tonkin Highway), which includes relocating the bus stop to the western end of the turning lane, and
 - c) A left-in, left-out access crossover controlled by a 'one way' sign pointing east, and a traffic island that creates a physical obstruction to drivers attempting to turn right out of the property.
48. The no-right-turn-in constraint is expected to resolve all questions regarding appropriate right turn turning lane and conflicting vehicles in the median space (for that traffic). This resolves the concerns raised in the RSA and by MRWA. The treatment available to the developer is to install signs and create a physical barrier at the property entrance that prevents movements to and from this direction. The applicant has proposed both treatments.
49. The left turn turning lane proposed for vehicles entering the site from the west has a lane distance of 125m. This meets the Austroads Guidelines for a 'deceleration lane' on the basis of the design speed of 90 km/hr for a 70km/h posted speed limit. This resolves the concerns raised in the RSA and by MRWA.
50. The existing bus stop within the proposed turning lane was recommended to be relocated further west to the 'upstream' end of the turning lane by DVC. The applicant has shown the stop as being relocated. This provides for the most practical and safe treatment when bus stops are located within turning lanes.
51. The left-out only constraint is expected to eliminate or minimise most concerns; there would be no drivers crossing the median from the east to enter the property or dwelling in the median, no impacts on median trees, and consequently no sight lines concerns. Vehicles would not be able to leave the property to cross Welshpool Road East to the median break unless the driver exited in a dangerous manner.
52. This constraint should resolve the concerns raised in the RSA and by MRWA. The applicant has proposed a traffic island that requires drivers to exit left, to the east, as well as a one way (to the east) sign. *Note the design plan Attachment 10, PC16017-CI-1100J, shows the sign with the arrow pointing west,*

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however this is because the sign is displayed vertically on the page. The arrow when mounted will be pointing east.

53. MRWA were provided with the revised proposal on 30 August 2022, and they declined to provide further comment.
54. However as noted above, the concerns raised by MRWA based on the original proposal have now been addressed in technical terms by revised access proposals.
55. The remaining matters are unchanged from the original proposal, as the design meets current standards:
- a) The crossover is positioned with a one metre separation from the neighbouring crossover at 740 Welshpool Road East. Some vehicles exiting 720 Welshpool Road East may cross the edge of the neighbouring crossover when turning left and may, on occasion, temporarily block the sight for drivers exiting 740 Welshpool Road East.
 - b) Larger trucks exiting 720 Welshpool Road East to the left (east) may need to enter the far lane initially, before returning to the inside (north) lane.
56. The SAT mediation process is now at a point where a formal order from the SAT was issued. Pursuant to the State Administrative Act 2004, Section 31(1), the City is invited to reconsider its decision.

APPLICABLE LAW

57. *Planning and Development (Local Planning Schemes) Regulations 2015*
Metropolitan Region Scheme
Local Planning Scheme No.3
State Administrative Tribunal Act 2004, and specifically Section 31(1).

APPLICABLE POLICY

58. State Planning Policy 3.7 Planning in Bushfire Prone Areas
59. Local Planning Policy 11 – Public Notification of Planning Proposals (LPP11)

STAKEHOLDER ENGAGEMENT

60. The proposal was advertised in accordance with the provisions of LPP 11, notably:
- a) Public Notification of Planning Proposals for a period of four weeks from 16 December 2020, concluding 13 January 2020. Residents directly affected by the proposal were notified in writing.

- b) Acknowledging the community interest in the proposal, the proposal was re-advertising landowners within a 300m radius of the site commencing on 24 March and concluding on 14 April 2021. Letters were sent to all effected landowners within the 300m radius seeking comment to the proposal and including notification of the planned Community Information Session. Details of the Community Information Session have also been included on the Kalamunda Engage web page.
- c) A community information session was held on 8 April 2021 at the City’s administration centre.
- d) The proposal was forwarded to the Department of Planning Lands and Heritage and Main Roads WA for comment due to the proposed site access/egress and traffic management modifications.

61. In response to the proposal, a total of 13 submissions were received, all objecting to the proposal. The City’s response to the concerns raised are discussed below:

Submission	Officer Comment
Traffic safety concerns Welshpool Road East has a high number of crashes, there tends to be a lot of congestion east bound during peak periods.	The proponent and City have undertaken detailed assessment of traffic and road safety matters arising from the proposed development and sought to eliminate and reduce road safety risks. The current proposal has no impact on east bound traffic.
Land use permissibility – allowing commercial uses within a rural area.	The Scheme allows for the uses to be considered and for an application to be taken on its merits. The proposal is compliant with the scheme with the exception of a NLA variation which is considered appropriate given the nature of goods proposed for sale. The proposal is consistent with the objectives of the zone that allows for commercial uses to be considered.
Environmental concerns – the proposal will impact on the local biodiversity and will result in clearing of native vegetation. The proposal is located within proximity to the Yule Brook.	The proposal was referred to DWER for their comment, DWER provided a non-objection to the proposal. There is no clearing proposed as part of this application and a condition will be imposed on the approval to ensure

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	<p>vegetation is not removed from the site. The buildings are setback compliant from the Yule Brook to ensure there will be no adverse impacts on the watercourse. The City has imposed a condition requiring the rear portion of the site abutting the Yule Brook to be revegetated and rehabilitated. The City will liaise with DWER with respect to the rehabilitation plan.</p> <p>Yule Brook is a Registered Aboriginal Site (ID:36929) which will require the City to liaise with DPLH with respect to the rehabilitation plan.</p>
<p>Bushfire concerns</p>	<p>The applicant has provided a BMP and BAL assessment that was prepared by an accredited bushfire practitioner. The BAL report indicates the proposal achieves a BAL -12.5 rating and this is consistent with the SPP 3.7 and associated Guidelines.</p>

62. No further comment from surrounding residents has been sought in response to the design changes arising from the s31 mediation process through SAT.

63.

Department	Comment	Officer Comment
DWER	Non-objection	Noted
DPLH	<p>Non- Objection but recommends the following:</p> <ol style="list-style-type: none"> 1. Swept path analysis required and turning movements for RAV 4 vehicles. 2. Right hand turning pocket is recommended westbound to reduce the risk of rear end crashes. 	<ol style="list-style-type: none"> 1. The proponent submitted a revised Transport Impact Statement that includes a sightlines assessment revised safety audit and swept paths and turning movements. RAV 4 vehicles are not proposed.

	<p>3. Comments to be sought from Main Roads as the site is in proximity to the WRE/Tonkin intersection upgrades.</p>	<p>2. The proposal no longer provides for access to westbound traffic.</p> <p>3. Noted, the application was referred to MRWA as a blue road.</p>
MRWA	<p>Objection</p> <p>a) The application has stated a right turn auxiliary lane has not been provided as removal of street trees is not permitted. If a right turn deceleration lane cannot be provided in a safe position, then this movement will not be supported.</p> <p>b) The proposed driveway located next to the median island opening will be an unsafe outcome and is contrary to the Main Roads Driveway Policy.</p> <p>c) The proposed left turn deceleration lane is substandard, and does not conform with Austroads Part 4A standards, as identified in the Road Safety Audit. It is unclear why a lesser standard has been adopted.</p> <p>Main Roads recommends this application is not approved in its current form given the above public safety concerns.</p>	<p>a) The proposal no longer provides for access to westbound traffic.</p> <p>b) The proposal no longer enables access to the median, being left-in, left-out.</p> <p>c) The proposal now provides for a fully compliant slip lane.</p> <p>Main Roads WA technical responses have been responded to in more detail in Attachments 10-17.</p>

- 64. From an environmental health and engineering perspective, the City is satisfied that all stormwater and dust related issues have been addressed.

FINANCIAL CONSIDERATIONS

- 65. Should the applicant be aggrieved by a subsequent decision of Council, the applicant may seek a review of the decision through an appeal to the SAT. Should the City be required to defend an appeal through mediation and to a full hearing, it is estimated to cost approx. \$40,000 - \$60,000.
- 66. To date, the City has spent approx. \$8,500 on consultant advice through the SAT mediation process.

SUSTAINABILITY

- 67. **Social Implications**
The proposal may impact on the amenity of the surrounding lifestyle properties by virtue of the proposed activities to be conducted from the site. Conditions of approval will be imposed to ensure those impacts are appropriately managed.
- 68. **Economic Implications**
The proposed garden centre will help to stimulate the local economy and generate employment opportunities.
- 69. **Environmental Implications**
Yule brook traverses the northwest portion of the site. The proposal includes the rehabilitation along this section of the creek as a condition of approval.
- 70. Yule Brook is a Registered Aboriginal Site (ID:36929) which will require the City to liaise with DPLH with respect to the rehabilitation plan.

RISK MANAGEMENT

71.	Risk: The proposal may impact on the amenity of surrounding lifestyle properties.		
	Consequence	Likelihood	Rating
	Moderate	Unlikely	Low
	Action/Strategy		
	The City to provide appropriate conditions of planning approval to ensure potential amenity impacts are managed and adhered to.		

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72.	Risk: The Development Application is refused with insufficient planning grounds, resulting in the City incurring significant costs from the matter being referred to the SAT.						
	<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: left; padding: 2px;">Consequence</th> <th style="text-align: left; padding: 2px;">Likelihood</th> <th style="text-align: left; padding: 2px;">Rating</th> </tr> </thead> <tbody> <tr> <td style="padding: 2px;">Moderate</td> <td style="padding: 2px;">Almost Certain</td> <td style="padding: 2px;">High</td> </tr> </tbody> </table>	Consequence	Likelihood	Rating	Moderate	Almost Certain	High
Consequence	Likelihood	Rating					
Moderate	Almost Certain	High					
	<p>Action/Strategy</p> <p>The City ensures that Councillors are adequately informed of the applications assessment in regard to planning considerations and the financial implications of a SAT appeal process.</p>						

CONCLUSION

- 73. The proposal is considered by the City to be consistent with the objectives of the ‘Rural Composite’ zone and, with the exception of NLA variation, complies with all the relevant requirements of the statutory planning framework.
- 74. In response to community concerns raised at the PAB, and review of traffic considerations through the SAT mediation, the City has required a number of additional changes to the proposal to reduce traffic and road safety concerns. Following extensive traffic assessments and external advice during mediation, the proposed left-in and left-out access arrangements are expected to resolve the most significant concerns.
- 75. Having regard to the above, it is recommended that the application for a proposed Garden Centre and Caretakers Dwelling be approved.

Voting Requirements: Simple Majority

RECOMMENDATION

- 1. That Council in accordance with section 31(2) of the State Administrative Tribunal Act 2004 APPROVE the application for a Garden Centre and Caretakers Dwelling on Lot 150 (720) Welshpool Road East, Wattle Grove subject to a suitable left-in and left-out access arrangement only and the following conditions:

Conditions:

- a) The development must be carried out in accordance with the stamped approved plan(s)/drawing(s) and document(s) (including any recommendations made) listed below, stamped and returned to the applicant with this decision notice, including any amendments to those plans as shown in red.

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b)

Plan No	Title	Revision	Date	Prepared By
20843-01	Site Plan	L	17/10/2022	Harley Dykstra
20843-01	Part Site Plan	L	17/10/2022	Harley Dykstra
20843-01	Elevations & Floor Plan	D	28/01/2021	Harley Dykstra
20843-03	Landscape Plan	E	27/10/2022	Harley Dykstra
16191	Acoustic Assessment	3	25/10/2022	Herring Storer Acoustics
T16.340	Transport Impact Statement	r01f	03/11/2022	Transcore Pty Ltd
n/a	Preliminary Design Stage (Stage 2) Road Safety Audit	n/a	November 2022	Transcore Pty Ltd
20PER-18016	Bushfire Management Plan	V3	10/11/2022	Eco Logical Australia
PC16017-CI-1100	General Arrangement Plan – left in/left out crossover	J	16/07/22	Peritas
PC16017_LER-001	Applicants Traffic Responses to Traffic Issues	0	11/03/22	Peritas
PC16017_LER-003	Applicants Traffic Responses to Traffic Issues	1	22/04/22	Peritas
PC16017_LER-004	Applicants Traffic Responses to Traffic Issues	0	22/08/22	Peritas
PC16017-CI-SK4	19m Semi-Trailer Turning Movements	F	18/06/22	Peritas
PC16017-CI-SK5	19m Semi-Trailer Turning Movements	F	18/06/22	Peritas
DVCLG401	Consultant Technical Note 1		11/07/22	DV Consultants
KAL	Technical Response to Traffic Matters	A	30/09/22	City of Kalamunda

c) A Dust Management Plan is required to be submitted to the City of Kalamunda for approval prior to the issuance of the building permit. Once approved the plan is to be implemented in perpetuity.

- d) The applicant is required to submit a Site and Soil Evaluation in accordance with AS/NZS 1547 On-Site Domestic Wastewater Management. The Site and Soil Evaluation is to be conducted during the wettest time of the year and provide guidance on the most suitable placement and sizing of the effluent disposal land application area for the development.
- e) Prior to occupation of the development, a Noise Management Plan must be submitted to and approved by the City of Kalamunda
- f) The Garden Centre is permitted to operate Monday to Saturday 7am until 5pm and Sundays and Public Holidays 8am until 5pm.
- g) The Asset Protection Zone (APZ) shall be implemented and maintained in perpetuity in accordance with the APZ standards set out under Element 2 Siting and Design in the Guidelines for Planning in Bushfire Prone Areas Appendices Version 1.4.
- h) The Garden Centre must be constructed with the finished floor level matching the approved plans. Any additional proposed cut and fill to the site does not form part of this development approval and if required, amended plans must be submitted to the City of Kalamunda for approval.
- i) For the duration of the development, all stormwater drainage from roofed and paved areas is to be disposed of on site in accordance with the approved Stormwater Management Plan.
- j) Prior to issuance of the occupancy permit, all car parking areas must meet the following requirements:
 - I. The provision and maintenance of a minimum of 60 car parking spaces, must be designed, constructed sealed, kerbed, drained and line marked in accordance with the Australian/New Zealand.
 - II. The provision and maintenance of two accessible car parking spaces, that are designed, constructed, sealed, kerbed, drained and line marked that are dedicated to people with disabilities that are designed in accordance with the Australian/New Zealand Standard AS/NZ 2890.6:2009, Parking Facilities Part 6 off street parking.
 - III. Vehicle parking, manoeuvring and circulation areas are to be suitable constructed, sealed, kerbed, drained and line marked to the specification and satisfaction of the City of Kalamunda and Australian Standard AS AS2890.

- k) Car parking areas must always be available for their intended purpose and must not be used for any alternative purpose at any time.
- l) The requirements of the Transport Impact Statement must be implemented to the satisfaction of the City of Kalamunda prior to issuance of the occupancy permit.
- m) The applicant/landowner must submit detailed drawings of the deceleration lane to the satisfaction of the City of Kalamunda in consultation with Department of Planning, Lands and Heritage prior to issuance of the building permit.
- n) Construction of approved works outlined in condition l) are to be carried out and completed at the applicant/landowners cost prior to issuance of the occupancy permit.
- o) All crossovers must be designed and constructed to the specification and satisfaction of the City of Kalamunda prior to issuance of the occupancy permit.
- p) The approval does not permit vehicles entering and exiting the site that exceed 19m in length.
- q) The submitted landscape plan shall be approved by the City of Kalamunda prior to issuance of the building permit. All the landscaping noted in the approved landscape plan must be planted prior to occupation of the development and maintained thereafter, to the satisfaction of the City of Kalamunda. Any species which fail to establish within the first two planting seasons following implementation must be replaced at the landowners cost to the satisfaction of the City of Kalamunda.
- r) A Revegetation and Rehabilitation Landscape Plan for the rear portion of the site abutting the Yule Brook water course, must be submitted to, and approved by the City of Kalamunda in consultation with Department of Water and Environmental Regulation and implemented prior to issuance of the building permit.
- s) This development approval does not authorise the removal of any vegetation other than any marked for removal on the approved plan(s). The vegetation identified on the plans for retention shall be protected in accordance with AS 4970-2009 prior to works commencing on site.

Advice Notes

- a) All development must comply with the provisions of Council's Local Planning Scheme No 3 (unless otherwise approved), Health Regulations, Building Code of Australia, and all other relevant Acts, Regulations and Local Laws.
- b) Prior to construction on site, the applicant is required to obtain a building permit from the City's Building Services.
- c) Any trees requiring protection from development works should be in accordance with AS4970-2009 "Protection of Trees on Development Sites".
- d) The applicant is required to obtain a demolition permit for the existing structures on site from the City of Kalamunda.
- e) The applicant is reminded of their obligations to comply with the "Land development sites and impacts on air quality: a guideline for the prevention of dust and smoke pollution from land development sites in Western Australia", prepared by the Department of Water and Environmental Regulation.
- f) In regard to condition 3, temporary toilets or other suitable temporary measures as agreed by the City of Kalamunda may be installed as an interim measure until such time as a suitable effluent disposal system identified by the Site and Soil Evaluation is installed.
- g) The applicant is advised that under the Fly Eradication Regulations pursuant to the Health Act 1911, it is an offence to place, throw or leave or permit or cause to be placed thrown or left on the land or premises any waste food, manure, refuse, garbage, waste matter or other matter whatsoever, which is likely to attract or be a breeding place for flies, unless that food waste, manure, refuse, garbage, waste matter or other matter is covered, protected, treated or dealt with in such a manner as to effectively prevent it attracting or being a breeding place for flies.
- h) The applicant is advised that the proposed development is within a Sewage Sensitive Area as defined in the Government Sewerage Policy 2019 and as such will require a Secondary Treatment System with nutrient removal for disposal of effluent.
- i) Clearances are to be maintained from the waste-water disposal system(s) to new buildings and boundaries in accordance with the Health (Treatment of Sewage and Disposal of Effluent and Liquid Waste) Regulations 1974.

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- j) The applicant is advised that a separate planning application is required to be submitted and approved for all signage.
- 2. ADVISE the State Administrative Tribunal of its decision.

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10.1.2. Draft Local Planning Policy 33 (LPP33) - Tree Retention

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

The Manager Strategic Planning provided a presentation on this item.

David Downing provided a presentation in relation to aspects of the policy. Mr Downing does not support the policy as presented.

Councillors sought clarification in relation to issues raised by Mr Downing.

The Manager Strategic Planning provided a response to some of the matters raised by Mr Downing.

Sue Thomson provided a statement in relation to the policy. Ms Thomson spoke against aspects of the policy.

Previous Items	OCM 278/2021
Directorate	Development Services
Business Unit	Strategic Planning
File Reference	3.009297
Applicant	City of Kalamunda
Owner	N/A
Attachments	<ol style="list-style-type: none"> 1. Draft Local Planning Policy 33 Tree Retention - As Advertised [10.1.2.1 - 16 pages] 2. Local Planning Policy 33 (LPP33) - Tree Retention - Community Engagement Report 2021 [10.1.2.2 - 64 pages] 3. Western Australian Planning Commission Correspondence [10.1.2.3 - 2 pages] 4. Schedule of Submissions [10.1.2.4 - 36 pages] 5. Schedule of Recommended Modifications [10.1.2.5 - 9 pages] 6. Modified Local Planning Policy 33 Tree Retention for Final Adoption [10.1.2.6 - 23 pages]

TYPE OF REPORT

Advocacy	When Council is advocating on behalf of the community to another level of government/body/agency
Executive	When Council is undertaking its substantive role of direction setting and oversight (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 licencses, other permits or licences issued under other Legislation or matters that could be subject to appeal to the State Administrative Tribunal

STRATEGIC PLANNING ALIGNMENT

Kalamunda Advancing Strategic Community Plan to 2031

Priority 2: Kalamunda Clean and Green

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

Strategy 2.1.1 - Implementation of the Local Environment Strategy

Strategy 2.1.2 - Development and Implementation of the Urban Forest Strategy.

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

Priority 3: Kalamunda Develops

Objective 3.1 - To plan for sustainable population growth.

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

EXECUTIVE SUMMARY

1. The purpose of this report is for the Council to consider the submissions received and final adoption of Local Planning Policy 33 – Tree Retention (LPP33) following advertising.
2. The draft LPP33 was adopted by the Council on 28 September 2021 for the purpose of public advertising, and referral to the Western Australian Planning Commission (WAPC) seeking approval to vary the relevant deemed-to-comply provisions of State Planning Policy 7.3 Residential Design Codes Volume 1 (R-Codes).
3. As presented in the Community Engagement Report (Attachment 2), during advertising 43 survey responses and 22 formal written submissions were received, with an overarching sentiment in favour of LPP33.

4. The City of Kalamunda (City) received confirmation of approval from WAPC on 6 September 2022 (Attachment 3) for variations to the R-Codes Volume 1, subject to minor modifications to LPP33. A Schedule of Recommended Modifications (Attachment 5) presents both the modifications undertaken by the City in response to submissions, and the resolution adopted by the WAPC.
5. It is recommended that the Council note the submissions and modifications and adopt the modified version of LPP33 (Attachment 6) for implementation.

BACKGROUND

6. The preparation of a local planning policy to protect trees on development sites was identified as a key initiative in the City's strategic environmental framework, including the Kalamunda Clean and Green: Local Environment Strategy 2019 – 2029 (Clean and Green) and the Environmental Land Use Planning Strategy (2019) (ELUPS).
7. The purpose of LPP33 is to guide applicants and decision makers to consider the need for the removal of trees and, where possible, minimise the removal of trees of a particular size through planning and development processes.
8. LPP33 therefore provides guidance and structure for the City's decision making on tree retention, and balances provisions via exemptions and a moderate level of control for trees of a particular size and maturity that are capable of being retained during the consideration of development. LPP33 also seeks, where practical, to increase canopy cover with replanting provisions.
9. On 28 September 2021, draft LPP33 and a detailed background was presented at the Ordinary Meeting of the Council and adopted under Resolution OCM 278/2021 for the purpose of advertising, and referral to the WAPC seeking approval to vary relevant deemed-to-comply provisions of the R-Codes.
10. Draft LPP33 was advertised from 21 October to 20 December 2021 as part of a broad Community Engagement Plan, with 43 survey responses and 22 formal written submissions received, with an overarching sentiment in favour of LPP33. All written submissions and the City's responses are included in the Schedule of Submissions (Attachment 4), with submitter details included in Confidential Attachment 1.

11. Correspondence was received from the WAPC on 6 September 2022 (Attachment 3) confirming approval for variations to relevant deemed-to-comply provisions of the R-Codes and advice, subject to modifications discussed below.

DETAILS AND ANALYSIS

12. The objectives of LPP33 are to encourage and facilitate the protection and growth of trees worthy of retention to maintain and enhance canopy cover on land subject to strategic planning, subdivision and development by:
- a) Encouraging design and development that facilitates tree protection.
 - b) Balancing tree retention with built form and land use outcomes;
 - c) Maintaining and increasing canopy cover to mitigate urban heat island, reduce air pollution, sequester carbon, improve groundwater quality and contribute to wildlife habitat and native biodiversity.
 - d) Maintaining and enhancing neighbourhood amenity, character and sense of place; and
 - e) Applying a mitigation hierarchy to decision making based on four criteria to avoid clearing, minimise harm, rehabilitate, and offsets.
13. Key sections of LPP33 include:
- a) Definition of a tree worthy of retention.
 - b) Exemptions (circumstances when a tree can be removed without approval).
 - c) Provisions varying the R-Codes to provide greater protection and enhancement of tree canopy.
 - d) Tree retention requirements including protection of trees and information required to support an application for clearing.
 - e) Tree planting requirements for private land including replanting ratios and costs.
 - f) Requirements for retention and replacement / funding of street trees.
 - g) Compliance action for unauthorised impacts to trees worthy of retention; and
 - h) Appendices for definitions, tree planting requirements, indicative tree retention plan, tree label, and tree methodology.
14. **Definition of a Tree Worthy of Retention**
- A key component of LPP33 is to define a 'tree worthy of retention', and noting comments raised in submissions, is to be defined in the modified policy as follows:
- "Trees which meet the following criteria are defined under this Policy as a tree worthy of retention:*
- a) *Trees which have:*
 - i. *a height of at least 4m; and/or*

- ii. *a trunk diameter of at least 160mm, measured 1m from the ground, and/or*
 - iii. *an average canopy diameter of at least 4m; and are*
 - b) *Healthy specimens with ongoing viability if not disturbed; or*
 - c) *Trees containing hollows that may provide black cockatoo breeding habitat (including dead trees); and*
 - d) *Species not included on a Commonwealth, State or local weed register, or if*
 - i) *not included on a Commonwealth, State or local weed register; or*
 - ii) *is included on a weed register but provides important habitat for threatened bird species (e.g. Pinus species). "*
15. The above definition is generally consistent with that of a 'significant tree' under SPP 7.3 Residential Design Codes, ensuring assimilation of LPP33 with other related planning documents, and also capturing a range of tree shapes and sizes given the significant diversity in species throughout the City.
16. The definition has been modified since advertising in response to submissions received, and to insert reference to black cockatoo breeding and habitat trees for threatened bird species, to account for dead trees with hollows or weed listed trees that otherwise would not be considered a tree worthy of retention.
17. **Exemptions**
Noting comments raised by some State Agencies to recognise exemptions for public works and impacts on public assets, Section 6 of LPP33 includes a modified list of exemptions for clearing of a tree worthy of retention including:
- a) Impacted by encroachment of development works that do not require approval under Schedule 2, Part 7, cl.61 of the Planning and Development (Local Planning Schemes) Regulations 2015 (Regulations).
 - b) Adherence with approved or regulated bushfire management requirements.
 - c) Pruning of limbs directly overhanging a house or outbuilding.
 - d) Tree is included on a Commonwealth, State or local weed register.
 - e) Constitutes an immediate danger to life or property.
 - f) Causing structural damage to a building, external fixture or incidental development.
 - g) The tree protection zone is within an area required for an approved effluent disposal system.
 - h) Tree protection zone is within 0.5m mains infrastructure or 2.0m of an effluent disposal system, where damage or blockage could occur.
 - i) Within required clearance distance to power line infrastructure and pruning/management is not deemed reasonably practicable.

- j) Palm tree, fruit tree, orchard, vineyard or timber plantation; and
 - k) Identified for clearing as part of approved development.
18. In support of an application for an exemption from development approval, the LPP33 enables the City to request evidence to be submitted by a proponent including photographs of tree(s), evidence of any structural damage, and/or a report by a suitably qualified Arborist.
19. Importantly, LPP33 will not remove any exemptions currently in place for development under cl. 61 of the Regulations. This includes a single house and additions/alterations to dwellings, and a range of associated incidental works that are compliant with the deemed-to-comply requirements of the R-Codes.
20. **Provisions Varying the R-Codes**
Clause 7.3.2 of the R-Codes Volume 1 enables local governments to vary deemed-to-comply provisions through adoption of a local planning policy. A key objective for LPP33 is to increase the number of trees for residential development, particularly for larger lot sizes, as the R-Codes Volume 1 provision is not currently considered appropriate to achieve urban forest goals and retain no net loss of canopy in these environments.
21. Noting support from the WAPC (Attachment 3), LPP33 includes variations to the deemed-to-comply provisions of the R-Codes Volume 1 under Design Element 5.3.2 Landscaping and Design Element 5.3.4 Design of car parking spaces, which will:
- a) Prioritise retention of established trees worthy of retention over their replacement, where development constraints permit.
 - b) Establish planting requirements based on lot size to ensure larger lots accommodate retention and appropriate planting of trees; and
 - c) Increase planting requirements for car parking areas.
22. Based on public submissions and further review, Table 1.1 has been modified to include a minimum Deep Soil Areas (DSAs) of 10% of the site area, or 7% if existing trees are retained onsite, with tree sizes (and combinations) ranging from small, medium to large trees to be planted relative to lot sizes. This modification will support applicants and the City to apply the replanting requirements based on the characteristics of each site and development.

23. **Tree Retention**
For planning, development, building, and clearing proposals that do not meet an exemption, LPP33 sets out requirements to protect trees worthy of retention, that broadly include:
- a) Prioritising retention of established trees over replanting.
 - b) Submission of proposed development and tree information at the application stage.
 - c) Retention of canopy cover within Asset Protection Zones.
 - d) Protection measures of trees worthy of retention during works; and
 - e) Relocation of trees worth of retention, and/or offset planting within the site, adjoining verge, or nearby area of public open space.
24. LPP 33 encourages the retention of trees not directly impacted by development works, exempted or otherwise. The provisions of LPP 33 refer to a Tree Protection Zone (TPZ) - an area around the tree to provide for the viability and stability of the tree to be retained – as a measure to determine whether a tree will be impacted by the encroachment of development works. The provisions of LPP 33 will facilitate the protection of trees worthy of retention where a TPZ is not impacted by works that are otherwise exempted (eg. works that are either exempted from planning approval or that have received planning approval).
25. This would not prevent establishment of an Asset Protection Zone around a dwelling pursuant to an approved Bushfire Management Plan or City of Kalamunda Fuel Hazard Reduction Notice.
26. **Strategic Proposals**
LPP33 requires Local Planning Scheme amendments and Structure Plan proposals to be supported by technical information identifying environmental features including trees worthy of retention, and the mechanisms and measures of protection during subsequent stages of the planning framework.
27. Noting submissions received, modifications to LPP33 will guide the City with making recommendations and decisions regarding the configuration of public open space and public road network to retain environmental values, to include ecological linkages and trees worthy of retention.
28. **Subdivision**
Under the guidance of LPP33, the City may recommend that subdivision applications be accompanied by an Arborist Report to identify, retain and protect trees worthy of retention. The City may also recommend reconfiguration of the subdivision layout to maximise tree retention, such as meandering or wide road verges and/or modified lot configuration.

29. Where there is a net loss in the number of trees worthy of retention, or where Table 2 targets are not achieved, the City may recommend streetscaping with shade trees as a condition of subdivision approval.
30. **Tree Planting Requirements**
Table 2 sets out minimum tree planting requirements for various zones in LPS3 including strategic planning proposals, with generally two replacement trees of the same size classification required for removal of a tree worthy of retention in the Residential and Rural zones.
31. For development proposals in the various Industrial and Centre zones, tree planting is required to achieve respective 10% and 20% minimum canopy coverage.
32. LPP33 includes planting of one medium or large tree for every four uncovered car parking bays, with a planting area based on soil volume and width specified in new Table 2.1. Tree planting areas are to be provided as unsurfaced ground or an engineered tree well, free from utility services and other obstructions.
33. Requirements have been clarified for a minimum 2.0 metre height, two years of age, reticulation for establishment, ongoing maintenance, and species supported by the City acquired from nursery stock pursuant to relevant Australian Standards. Requirements have also been added for planting centrally within a DSA; maximum 20% permeable paving or decking for DSA; recommended authority/utility provider consultation for planting in proximity to public assets; and planting within approval timeframes.
34. **Street Trees**
LPP33 requires protection of street trees, with an increased 1.5m minimum setback to a crossover/driveway, maximum 150mm excavation depth to reduce root system impact, and approved nursery stock as per AS2303:2018 for an approved street tree planting.
35. The clearing of street trees for a development application will not be supported unless unavoidable circumstances apply, as agreed to by the City in writing. The applicant must provide an offset payment for any street tree removal, with the City's Tree Valuation Methodology is provided in Appendix 5.
36. The City undertook a comparative assessment of four street tree valuation methodologies. The City has settled on an adapted version of the City of Melbourne methodology, addressing removal costs, amenity values, ecological services value and reinstatement costs, noting the City of

Melbourne methodology may be subject to changes and improvements over time.

37. **Unauthorised Impacts**
LPP33 clarifies that the unauthorised clearing of a tree worthy of retention, or impact that compromises the ongoing health and viability of the tree, will constitute a contravention of LPS3 and compliance action may be taken.
38. LPP33 has been modified to include a clause which allows the City to:
a) apply discretion in determining appropriate replanting planting requirements for unauthorised clearing of trees worthy of retention; and
b) deviate from the 2:1 replacement ratio specified in LPP33 where appropriate after consideration of mitigating factors.
39. In considering an alternative replanting requirement / offset, the City will have regard to the following mitigating factors:
a) The environmental amenity and character of the area and its enhancement;
b) The future planned amenity of the area; and/or
c) The actions taken in advance of an application; including the outcomes of any related penalties applied for unlawful clearing.

APPLICABLE LAW

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

The P&D Act 2005 is legislation that establishes Western Australia's land use planning system and promotes the sustainable use and development of land in the State.
41. *Planning and Development (Local Planning Schemes) Regulations 2015*

Schedule 2, Part 2, cl.4 (2) *"The period for making submissions ... must not be less than the period of 21 days after the day on which the notice is first published ..."*

Schedule 2, Part 2, cl.4 (3) *"After the expiry of the period within which submissions may be made the local government must –*
(a) review the proposed policy in light of any submissions made: and
(b) resolve to-
(i) proceed with the policy without modification; or
(ii) proceed with the policy with modifications; or
(iii) not to proceed with the policy."

Schedule 2, Part 2, cl.4 (3A) *"The local government must not resolve under subclause (3) to proceed with the policy if –*
(a) the proposed policy amends or replaces a deemed-to-comply provision of the R-Codes; and
(b) under the R-Codes, the Commission's approval is required for the policy; and
(c) the Commission has not approved the policy."

Schedule 2, Part 2, cl.5 (4) *"If the local government resolves to proceed with the policy, the local government must publish notice of the policy in accordance with clause 87."*

42. Following the advertising period, Council has options to adopt LPP33 with or without modifications, or not to proceed with LPP33. It is recommended that Council adopt LPP33 subject to the Schedule of Recommended Modifications (Attachment 5).

APPLICABLE POLICY

43. *Local Planning Policy 11 Public Notification of Planning Proposals*
Identifies a minimum advertising period of 21 days for a local planning policy, with LPP33 advertised for an extended 42 day period.
44. LPP33 is to be given due regard by the City when considering strategic level planning, subdivision and development proposals, and is to be read in conjunction with:
- a) Planning and Development Act 2005
 - b) Planning and Development (Local Planning Schemes) Regulations 2015
 - c) Liveable Neighbourhoods (WAPC, 2009)
 - d) State Planning Policy 7.3 Residential Design Codes of WA Volume 1

STAKEHOLDER ENGAGEMENT

45. Pursuant to the Regulations and the City's Local Planning Policy 11 – Public Notification of Planning Proposals, draft LPP33 was advertised for extended 42 day period from 21 October 2021 to 20 December 2021.
46. Community consultation for the project was delivered via a Communications and Engagement Plan prepared in line with IAP2 best practice principles using a broad range of engagement tools including website pages, media release, posters, letters to stakeholders, community survey, newspaper advertisement, e-Newsletter, pop-up pop-in booths (x3) and social media posts. The findings are presented in the Community Engagement Report 2021 (Attachment 2).

47. The online survey received 43 responses, with 22 formal written submissions received including with the overarching sentiment in strong favour of LPP33. The City's responses to the issues raised in the written submissions are contained in the Schedule of Submissions (Attachment 3).
48. The key positives are summarised as follows:
- a) a good starting point.
 - b) thorough and well considered.
 - c) Provides environmental and aesthetic benefits.
 - d) Recognises significant trees.
 - e) The City to be commended.
49. The key challenges are summarised as follows:
- a) Complex policy.
 - b) Greater protection needed for tree root systems and under-storey native species;
 - c) Too many 'get out clauses' and insufficient penalties.
 - d) Eroding private property owners' rights and adding red tape.
 - e) Balancing outcomes with property damage and fire risk.
 - f) Support needed for (older) residents who may have difficulty maintaining properties.
 - g) Resources need to manage the implementation of the policy; and
 - h) Focused on administrative processes rather than outcomes.
50. Recommended modifications to LPP33 to address many of the issues raised by submitters are presented in the Schedule of Recommended Modifications (Attachment 5).
51. **Variations to State Planning Policy 7.3 Residential Design Codes Volume 1 Deemed to Comply Provisions - WAPC Consideration**
The City received preliminary feedback in August 2021 from the DesignWA Team at the Department of Planning, Lands and Heritage (DPLH), to assist drafting of LPP33.
52. Draft LPP33 was referred to DPLH as part of the formal consultation, and formal endorsement by the WAPC to vary relevant deemed-to-comply provisions of the R-Codes Volume 1. It is noted that some modifications were made to improve the policy and in response to submissions received, to ensure the WAPC considered the latest information and policy requirements proposed.

53. Draft LPP33 was referred to DPLH in March 2022 seeking formal comment and approval from the WAPC to vary relevant deemed-to-comply provisions of the R-Codes.
54. WAPC correspondence received on 6 September 2022 (Attachment 3) confirmed approval for amendments to relevant deemed-to-comply provisions of clause 5.3.2 Landscaping (C2.1 (iii) and (vi), C2.2 (iii) (including Tables 1.1 and 1.2) and clause 5.3.4 Design of car parking spaces (C4.3), pursuant to clause 7.3.2 of SPP 7.3.
55. The WAPC supported variations for areas with a residential density code of R25 or less, which equates to lot sizes of 350m² or greater. This decision is supported given the WAPC is anticipated to introduce the new State Planning Policy 7.3 – Medium Density Code in early 2023, which will incorporate tree retention and replanting provisions for higher densities / smaller lots.
56. The City is required to delete clause 5.3.2 Landscaping C2.2 (i), (ii) and (iv) from the deemed-to-comply section of LPP33 and relocated to the Tree Retention – General Requirements section. The City is also required to amend section 7(1) of LPP33 deleting reference to alternative design principles and include reference to Design Principles 5.3.4 Design of car parking spaces, with the provisions added to Table 1.
57. The WAPC also advised the City should make it clear that LPP33 does not remove any development approval exemptions under clause 61 of the Deemed Provisions of the Regulations; and the City will make recommendations to the WAPC on subdivision proposals with LPP33 provisions to be considered on a case-by-case basis and not to fetter subdivision application determinations by the WAPC.
58. Modifications to LPP33 addressing requirements and advice from the WAPC are also presented in Schedule of Recommended Modifications (Attachment 5).

FINANCIAL CONSIDERATIONS

59. All costs incurred during advertising and review of draft LPP33 were met through the Development Services annual budget.
60. LPP33 contains provisions for a financial offset for clearing of trees worthy of retention and street trees. To establish this arrangement, the City will create a special purpose account and adopt requisite fees in the annual Schedule of Fees and Charges. Additional procedures will also be required for the accrual and expenditure of funds. These arrangements are in the

process of being established and will be implemented as a priority upon final adoption of LPP33.

SUSTAINABILITY

61. **Social Implications**
Trees are an important consideration for community health and liveability. Retention and enhancement of tree canopy will help maintain or improve contact with nature, with research showing improvements to physical and mental health of people, including child development
62. Research also shows that being close to nature can have a calming effect on people, be conducive to creative thinking and productivity, and can boost happiness and a sense of wellbeing. Retention or replating of trees will help cool urban areas and reduce the risk of heat related illness and harm during heatwaves.
63. **Economic Implications**
There is significant research to support the conclusion that suburbs with street trees and an established tree canopy cover increases the amenity and desirability to reside in, which in-turn may positively influence median property prices.
64. This policy is not seeking to prevent landowners from developing their property in accordance with the zoning and residential density, however the policy does emphasise the importance of good design that responds to site conditions, and consideration of tree retention, which could in turn reduce development and energy use costs.
65. **Environmental Implications**
There is an array of positive environmental outcomes associated with trees and vegetation and implementation of LPP33 including:
- a) Reduce the urban heat island effect by cooling and shading urban areas during summer;
 - b) Providing essential habitat for native wildlife.
 - c) Reduces air and water pollution.
 - d) Reduces flooding events.
 - e) Filters and stabilises waterways and maintains healthy soil:
 - f) Improves resistance to disease; and
 - g) Provides environmental resilience in a changing climate.
66. Trees on private property, street trees, and trees in public open space and regional reserves, will collectively provide better environments for wildlife, and human health and wellbeing.

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RISK MANAGEMENT

67.

Risk: The Tree Retention Policy is not adopted by Council and the City does not have an adopted approach to managing loss of tree canopy cover, and consequently amenity and biodiversity.		
Consequence	Likelihood	Rating
Significant	Likely	High
Action/Strategy		
Council adopts the Tree Retention Policy for a balanced approach to facilitate tree retention to address protection and enhancement of tree canopy for broad benefits, with defined exemptions from approval for tree removal in certain circumstances.		
68.

Risk: If trees are planted under City direction in City managed areas (i.e., road reserves/verges or parks/reserves), the City assumes responsibility for the tree and claims for damages caused by the tree (e.g. structural damaged caused roots).		
Consequence	Likelihood	Rating
Moderate	Likely	Medium
Action/Strategy		
The City will continue to apply and improve practices to retain trees while minimising liability risk, in consultation with industry and other local authorities. Any claims for damage are to be address in the first instance through the City's insurer. There is a need to ensure future tree planting includes sufficient separation to driveways and other privately owned structures.		
69.

Risk: Adoption of the Tree Retention Policy increases resourcing pressures in dealing with policy queries, planning proposals, development applications and compliance.		
Consequence	Likelihood	Rating
Moderate	Likely	Medium
Action/Strategy		
The City has procedures in place for processing planning proposals, development applications and compliance matters. Staff will be trained to ensure efficient implementation of the policy. Supporting guidance has been prepared including a valuation methodology procedure for tree offsets and a tree planting guide. Resourcing needs will be considered on an ongoing basis in line with reviews to the policy.		

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CONCLUSION

70. The purpose of LPP33 is to carefully consider the need for the removal of trees and, where possible, minimise the removal of trees of a particular size and maturity through, the planning and development process. LPP33 also seeks, where practical, to increase canopy cover with replanting provisions.
71. The objectives of LPP33 are consistent with the City's strategic intent established under Clean and Green and ELUPS, together with other supporting strategies. Furthermore, LPP33 is consistent with design principles established under existing and proposed State Planning Policies (R-Codes) that generally seek to retain significant trees and/or provide new trees to maintain and enhance the tree canopy and local sense of place.
72. LPP33 represents a balanced and considered position and adoption will strengthen the City's planning processes and practices to manage trees worthy of retention and planting of additional trees to achieve sustainable urban tree canopy outcomes.
73. The proposed changes to LPP33 as set out in Schedule of Recommended Modifications (Attachment 5) address some issues raised by submitters and WAPC requirements and will improve the clarity and provisions of LPP33 to achieve the planning purpose and objectives of the policy.
74. The success and implementation of LPP33, over time, will be monitored through the City's Urban Forest Strategy.
75. It is therefore recommended that Council adopt LPP33.

Voting Requirements: Simple Majority

RECOMMENDATION

That Council:

1. NOTE the submissions received during public advertising of draft Local Planning Policy 33 - Tree Retention as contained in the Community Engagement Report 2021 (Attachment 2), the Western Australian Planning Commission correspondence (Attachment 3), and the staff responses to submissions contained in the Schedule of Submissions (Attachment 4).
2. ADOPT Local Planning Policy 33 - Tree Retention (Attachment 6) with modifications, in accordance with Schedule 2, Part 2, Clause 4(3)(b)(ii) the *Planning and Development (Local Planning Scheme) Regulations 2015*.

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3. ACKNOWLEDGE Local Planning Policy 33 – Tree Retention may undergo minor graphical, illustrative and clause numbering changes prior to the final version being published.

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10.2. Asset Services Reports

No reports presented.

10.3. Corporate Services Reports

No reports presented.

10.4. Office of the CEO Reports

10.4.1. Code of Conduct - Complaints Management

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

No presentation provided.

Previous Items	SCM 02/2022
Directorate	Office of the CEO
Business Unit	Governance and Legal
File Reference	
Applicant	
Owner	

Attachments	1.	Draft Governance 20 Code of Conduct Complaints Management 2022 with c [10.4.1.1 - 15 pages]
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TYPE OF REPORT

Advocacy	When Council is advocating on behalf of the community to another level of government/body/agency
Executive	When Council is undertaking its substantive role of direction setting and oversight (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

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STRATEGIC PLANNING ALIGNMENT

Kalamunda Advancing Strategic Community Plan to 2031

Priority 4: Kalamunda Leads

Objective 4.1 - To provide leadership through transparent governance.

Strategy 4.1.1 - Provide good governance.

EXECUTIVE SUMMARY

1. The purpose of this report is for Council to consider a recommendation from the Behaviour Complaints Committee (BCC) with respect to a proposed revised Council Policy Governance 20: Code of Conduct Complaints Management (Policy).
2. The review of the Policy was initiated by the BCC as a consequence of issues encountered during the consideration of initial complaints of alleged breaches of the City of Kalamunda Code of Conduct for Elected Members, Committee Members and Candidates (Code of Conduct).
3. It is recommended that Council accept the recommendation from the BCC and approve consequential changes to the complaint handling process.

BACKGROUND

4. The current Policy was developed from a pro-forma model provide by the WA Local Government Association (WALGA) to assist local governments and Councils fulfil their statutory obligations under the State Government mandated Code of Conduct introduced in early 2021.
5. The new provisions obligated local governments and Councils to consider and decide on complaints of alleged breaches of Divisions 2 and 3 of the Code of Conduct.
6. In order to assist Council undertake this task, it adopted a Complaint Management Policy, The Policy adopted by Council included provision for the establishment and operation of a Behaviour Complaints Committee.
7. During consideration of a complaint of an alleged breach of the Code of Conduct, the BCC identified a number of issues with the current Policy and process.

At a Special Council Meeting in February 2022, Council endorsed a proposal for the BCC to review and recommend changes to the Policy.

DETAILS AND ANALYSIS

8. Whilst it is imperative to have a complaint management policy/process, it is recognised that the process should also be efficient and provide for timely consideration of any complaints.
9. The BCC considered that one of the main concerns is the use of this style of committee to receive, consider and recommend outcomes to Council, adds an unnecessary layer of bureaucracy/red tape to process and delays the timely consideration of complaints.
10. It was also considered that a number of other processes in the current Policy were not suitable to ensure effective and timely consideration of complaints.
11. A revised Governance 20 Policy has been developed and is provided as Attachment 1. The revised Policy is based on similar policies adopted by local governments, particularly the City of South Perth.
12. The major changes to the current Policy are:
 - a) Abolition of the Behaviour Complaints Committee
 - b) Deletion of the Alternate Dispute Resolution provision (was clause 4.4 f).
 - c) Stream-lining provisions with respect to receipt, handling, the assessment and investigation of complaints.

The revised Policy still retains the assessment and investigation of complaints by an independent third party.
13. Additionally, research of other local government processes has revealed that the Chief Executive Officer should be the appointed Complaints Officer. This role requires the CEO to receive all complaints, decide as to the validity of the complaint, and if valid, issue the complaint to an independent party.
14. The CEO is not required to assess, investigate, or determine complaints as this would place the CEO in a position of perceived bias. The CEO is essentially the administrator of the complaint process, and if required, can delegate the role to a City officer or an external party.
15. Once a complaint is referred to an external party an independent assessment and report with recommendations will be issued. The CEO will issue the report and the findings to the Council. The Council can either accept or reject or alter the recommendations of the independent party's report.

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16. This process is the same process that occurred prior to the Model Code of Conduct coming into effect.

APPLICABLE LAW

17. *Local Government Act 1995.*
Local Government (Model Code of Conduct) Regulations 2021.
City of Kalamunda Code of Conduct for Elected Members, Committee Members and Candidates

APPLICABLE POLICY

18. *City of Kalamunda Governance 20 - Complaints Management Policy*

STAKEHOLDER ENGAGEMENT

19. The consideration and development of the revised Policy has been undertaken by the BCC.
20. It is not considered appropriate to seek community comment on this Policy as it is effectively an internal process.

FINANCIAL CONSIDERATIONS

21. No additional expenditure is expected to be incurred as a consequence of adopting the revised Policy.

SUSTAINABILITY

22. N/A

RISK MANAGEMENT

23.

Risk: The lack of a simple and fast process for handling complaints will result in higher costs, undue stress for those involved and could be seen as being unfair.		
Consequence	Likelihood	Rating
Moderate	Likely	Medium
Action/Strategy		
Adopt the revised model being presented in this report.		

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CONCLUSION

24. The revised Policy provides for a more efficient and stream-lined process for the management of complaints of alleged breaches of the Code of Conduct.

Voting Requirements: Absolute Majority

RECOMMENDATION

That Council:

1. NOTE the review of Governance Policy 20 – Code of Conduct Complaints Management.
2. ADOPT revised Governance Policy 20 – Code of Conduct Complaints Management (Attachment 1)
3. Pursuant to section 5.8 of the *Local Government Act 1995*, DISBANDS the Behaviour Complaints Committee
4. Pursuant to clause 11.3 of the City of Kalamunda Code of Conduct Elected Members, Committee Members and Candidates, RECINDS the appointments of the Director Corporate Services and Governance Advisors as Complaints Officers and APPOINTS the Chief Executive Officer.

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10.4.2. Western Australian Local Government Association (WALGA) Best Practice Governance Review

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

The CEO provided verbal presentation.

Cr O'Donnell indicated a preference to have the options ranked within the recommendation.

Previous Items	
Directorate	Office of the CEO
Business Unit	Governance
File Reference	
Applicant	
Owner	
Attachments	<ol style="list-style-type: none"> 1. WALGA DISCUSSION PAPER 2022 [10.4.2.1 - 20 pages] 2. WALGA REVIEW Consultation Paper Model Options [10.4.2.2 - 22 pages]

TYPE OF REPORT

▮ Advocacy	When Council is advocating on behalf of the community to another level of government/body/agency
Executive	When Council is undertaking its substantive role of direction setting and oversight (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

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STRATEGIC PLANNING ALIGNMENT

Kalamunda Advancing Strategic Community Plan to 2031

Priority 4: Kalamunda Leads

Objective 4.1 - To provide leadership through transparent governance.

Strategy 4.1.1 - Provide good governance.

Strategy 4.1.2 - Build an effective and efficient service based organisation.

EXECUTIVE SUMMARY

1. The purpose of this report is to provide feedback to the Western Australian Local Government Association (WALGA) on its Best Practice Governance Review Consultation paper.
2. The objective of the review is to ensure WALGA's governance and engagement models are contemporary, agile, and maximise engagement with members.
3. This report recommends that the City of Kalamunda advise WALGA of its preference governance model being Option 4.

BACKGROUND

4. WALGA developed its Corporate Strategy 2020-25 and in doing so identified as a key strategic priority to undertake a Best Practice Governance Review.
5. The objective of the review is to ensure WALGA's governance and engagement models are contemporary, agile, and maximise engagement with members.
6. Other drivers for the review included
 - Misalignment between key governance documents Constitution, Corporate Governance Charter, State Council Code of Conduct, and Standing Orders stemming from varying amendments
 - State Council's 3 September 2021 resolution requesting amendment to the Constitution to deal with matters related to State Councillors' Candidature for State and Federal elections
 - Proposed legislative reforms to remove WALGA from being constituted under the Local Government Act 1995
 - Constitutional requirements for WALGA to become a registered organisation under the Industrial Relations Act 1979 which would

enable WALGA to make applications in its own right to the Western Australian Industrial Relations Commission

7. In March 2022 State Council commissioned the Best Practice Governance Review and established a Steering Committee (BPGRSG) to guide the Review.

DETAILS AND ANALYSIS

8. The Key outputs from the BPGR Steering Committee meetings included:
- Agreement on five comparator organisations being the Australian Medical Association, the WA Chamber of Commerce and Industry, the WA Chamber of Minerals and Energy, the Australian Hotels Association and the Pharmacy Guild and the review of governance models of Local Government Associations in other Australian States and Territories, and New Zealand
 - Drafting of governance principles that will underpin future governance models
 - Finalisation of governance principles and principle components across the domains of Representative, Responsive and Results Oriented.
9. The governance model principles and principle components across the domains of Representative, Responsive and Results Oriented. The principles were endorsed at the WALGA AGM on 3 October 2022.
10. Governance model options being presented by WALGA included:
- Option 1 Two tier model, existing zones
 - Option 2 Board, regional bodies
 - Option 3 Board, amalgamated zones
 - Option 4 Member elected board, regional groups
 - Option 5 Current model
11. **Option 1 - Two tiered model – Board supported by Policy Council with existing zones**

Board

The Board would comprise of 11 Members/Directors with 8 elected from and by the Policy Council (4 from the Metro, 4 from Country) and 3 independent Members/Directors appointed by the Board. The Board elects the President

The Board would meet 6 times per year and be responsible for governance of WALGA including strategy, financial oversight, policy development and endorsement, advocacy priorities, employment of CEO, etc.

Policy Council

The Policy Council would comprise 24 members plus President. Members elected by and from the Zones (5 Metro Zones, 12 Country Zones). The Zones select the members, 12 from Metro 12 Country Zones)

The Policy Council would meet at least 2 times per year to contribute to policy positions and advocacy for input into Board, and to liaise with Zones on policy and advocacy.

The Policy Council can form Policy Teams, Policy Forums and Committees, which would have responsibility for specific functions, such as policy development

Zones

Zones will meet at least 2 times per year to raise policy issues, elect representatives to the Policy Council, and undertake regional advocacy and projects as directed by the Zone.

12. Pros

A smaller board would make decision making more efficient and provide diversity and different views through having non-elected member independent board members.

A policy Council would be able to focus on specific policy issues which would likely make policy making less complicated than the existing model.

13. Cons

This model adds another layer by having a Policy Council this may result in a less efficient WALGA as well as less agile.

Furthermore, it will require more time from councillors to participate who are nominated for Zones, then Policy Council and possibly on the Board. Mid-sized councils, like Kalamunda, will likely find themselves at a disadvantage in participating as the number of councillors are reduced in 2023.

14. Commentary

This model would be more desirable if there are two Policy Councils formed one for metro councils and one for the Regions to give better focus on issues relating to the vastly different needs of country and metro councils.

Furthermore, if zone meetings are reduced from 4 to 2 it will likely have transparency issues arise for WALGA as it may become a resource intensive information sharing forum rather than decision making.

15. **Option 2 Board with regional bodies****Board**

The Board would comprise of 11 Members/Directors with 8 elected from and by the Policy Council (4 from the Metro, 4 from Country) and 3 independent Members/Directors appointed by the Board. The Board elects the President

The Board would meet 6 times per year and be responsible for governance of WALGA including strategy, financial oversight, policy development and endorsement, advocacy priorities, employment of CEO, etc.

Regional Bodies

Five Regional Bodies would be formed:

1. Metro
2. North, South, East and Central
3. Country
4. Mining Pastoral, Agricultural, Peel
5. South West/Great Southern, Regional Capitals

Local Governments can nominate their preferred regional body, with membership of the regional bodies to be determined by the board. Regional Bodies would meet at least 2 times per year to contribute to policy development and advocacy, and to elect Board members 1 from each of the Metro Regional Bodies and 1 from each of the Country Regional Bodies.

Policy Teams, Forums, Committees Membership would be drawn from the Board and Regional Bodies with some independent members. These groups would be responsible for specific functions such as policy development as determined by the Board.

16. **Pros**

A smaller board would make decision making more efficient and provide diversity and different views through having non-elected member independent board members.

Regional Boards would be able to focus on specific policy issues relating to the needs of their areas which would likely make policy making more efficient and relevant.

17. **Cons**

This model would likely result in less direct participation from local governments unless all LGAs can participate on a regional body or have a way to feed their views into the regional bodies. For example, the metro regional body would have 31 members if all metro LGAs were to participate which would likely make it unwieldy and dysfunctional.

18. **Commentary**
 This model could be improved if there were two Metro Regional Boards, once for inner metro LGAs and one for the outer growth councils. The issues facing growth councils are vastly different from those surrounding the CBD.

19. **Option 3 Board with amalgamated zones**

Board

The Board would comprise 15 Members/Directors with 12 elected from the Zones (6 from Metro/Peel, 6 from Country). The Board will appoint up to 2 independent, skills or constituency directors. The President to be elected by the Board.

The Board would meet 6 times per year and be responsible for governance of WALGA including strategy, financial oversight, policy development and endorsement, advocacy priorities, employment of CEO, etc.

Zones

The Zones would be:

Metro/Peel:

- Central Metropolitan
- East Metropolitan
- North Metropolitan
- South Metropolitan
- South East Metropolitan
- Peel

Country*:

- Wheatbelt South
- Wheatbelt North
- Mid-West / Murchison /Gascoyne
- Pilbara / Kimberley
- South West / Great Southern
- Goldfields / Esperance

The Zones would meet at least 2 times per year to contribute to policy development and advocacy, and to elect Board members.

Policy Teams /Forums /Committees would be utilised with membership drawn from Board with some independent members and would be responsible for specific functions such as policy development as determined by the Board.

20. Pros
A smaller board would make decision making more efficient and provide diversity and different views through having non-elected member independent board, however 15 is still a large number so there would likely be moderate efficiency gains in this case.
- This model provides a fair spread of representation by all the LGAs through the retention of zones that are being amalgamated.
21. Cons
It is unclear if the zones will still be required to consider the Board's agendas, and if so, then holding a smaller number of meetings than the Board would be a problem in terms of decision making for the Board. It is unclear if the Zones role in policy development would be a duplication with Policy team etc.
22. Commentary
This model needs more clarity about how it will function. The role of Zones need further clarification before this model can be assessed fully.
23. **Option 4 Member elected board and regional groups**
- Board**
The Board would comprise of 11 Members/Directors with 8 elected from and by the Policy Council (4 from the Metro, 4 from Country) and 3 independent Members/Directors appointed by the Board. The Board elects the President
- The Board would meet 6 times per year and be responsible for governance of WALGA including strategy, financial oversight, policy development and endorsement, advocacy priorities, employment of CEO, etc.
- Policy Teams /Forums /Committees would be utilised with membership drawn from Board with some independent members and be responsible for specific functions such as policy development as determined by the Board. These groups would meet at least 2 times per year.
- Regional Groups**
Regional Groups would be determined by members to suit needs E g Regional Capitals, GAPP, Regional Councils, CEO Group, and existing Zones and would feed into policy development processes and undertake advocacy and projects as determined by the groups.

24. Pros
 A smaller board would make decision making more efficient and provide diversity and different views through having non-elected member independent board members.
- The Regional Bodies would be advantageous in many ways as they would have the knowledge and skills to look at matters from within their areas, thus creating opportunity for greater relevance.
- This model draws on the expertise of groups that currently exist and hence would not require any further support or resourcing from WALGA.
25. Cons
 There may be less elected Members participation in this model and hence information flows to Councils may be reduced.
26. Commentary
 This model would be more desirable if the WALGA Board agendas were distributed to all LGAs ahead of a meeting. LGAs could then table the agenda and consider any items the LGA needs to provide commentary back to the Board prior to board meetings. That may address any loss of information flow.
27. **Option 5 Current model**
 The State Council has 24 members plus the President Members elected by and from the Zones (12 from 5 Metropolitan Zones, 12 from 12 Country Zones). State Council is responsible for the governance of WALGA including strategy, financial oversight, policy development and endorsement, advocacy, employment of CEO, etc. State Council is responsible for considering the State Council Agenda, elect State Councillors, and undertake regional advocacy projects as directed by the Zone.
28. WALGA currently uses Policy Teams / Forums / Committees Membership drawn from State Council with some independent members and are responsible for specific functions such as contributing to policy development, financial oversight etc as determined by State Council.
29. Pros
 The current model provides large participation for LGAs via State Council and the zones.

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30. Cons
 The current model has been viewed as being too large to be an agile and efficient decision making body. The current model requires all zones to consider agenda items which makes timelines for decision making around advocacy delayed. Advocacy matters need to be agile, flexible and adaptive to be highly effective.

The broad scope of the matters that State Council deal often have little or no relevance to all LGAs as they are regional specific matters. Streamlining the current model is needed.

31. Commentary
 Retaining the current model would result in an outdated approach to governance and advocacy. Likewise, the current use of the zones tends to be inefficient and in many cases zones meetings are down on elected member participation.

Agendas are mostly information dissemination rather than decision making. Often matters of advocacy are submitted late or by flying minutes due to the nature of the current structure and does not enable WALGA to be as effective and efficient as it could be under a more modern and leaner structure.

APPLICABLE LAW

32. Nil.

APPLICABLE POLICY

33. Nil.

STAKEHOLDER ENGAGEMENT

34. Not Applicable.

FINANCIAL CONSIDERATIONS

35. N/A

SUSTAINABILITY

36. Not Applicable

RISK MANAGEMENT

37.	Risk: By not participating in providing feedback to WALGA the City could lose effective representation for metropolitan area.						
	<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: left; padding: 2px;">Consequence</th> <th style="text-align: left; padding: 2px;">Likelihood</th> <th style="text-align: left; padding: 2px;">Rating</th> </tr> </thead> <tbody> <tr> <td style="padding: 2px;">Insignificant</td> <td style="padding: 2px;">Likely</td> <td style="padding: 2px;">Low</td> </tr> </tbody> </table>	Consequence	Likelihood	Rating	Insignificant	Likely	Low
Consequence	Likelihood	Rating					
Insignificant	Likely	Low					
	Action/Strategy						
	Provide a position to WALGA.						

CONCLUSION

38. The City in assessing the best model for WALGA has based its choice on:
- Achieving equal representation between metropolitan and regional local governments.
 - The most efficient and effective model for agile advocacy.
 - The most contemporary governance model.

Based on the above criteria and the information provided by WALGA, the City has ranked the proposed model options:

- 1) Option 4
- 2) Option 3
- 3) Option 2
- 4) Option 1
- 5) Option 5.

39. The City considers that both Option 3 and 4 would be suitable options but based on the information currently available, Option 4 is preferred.

Voting Requirements: Simple Majority

RECOMMENDATION

That Council ADVISE the Western Australian Local Government Association that the City of Kalamunda governance model preference is Option 4.

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10.4.3. Nature Fund Proposal

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

The Manager Customer & Public Relations provided a presentation on this report.

Councillors sought clarification in relation to the concept of the fund.

Previous
Items

Directorate Office of the CEO
Business Unit Public & Customer Relations
File Reference
Applicant
Owner

Attachments 1. Ltr to Councilllors re Enviro Levy June 2022 final
[10.4.3.1 - 2 pages]

TYPE OF REPORT

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

STRATEGIC PLANNING ALIGNMENT

Kalamunda Advancing Strategic Community Plan to 2031

Priority 1: Kalamunda Cares and Interacts

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

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

Strategy 1.1.3 - Facilitate opportunity to pursue learning.

Priority 1: Kalamunda Cares and Interacts

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

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

Strategy - 1.2.1 Facilitate a safe community environment.

Priority 1: Kalamunda Cares and Interacts

Objective 1.3 - To support the active participation of local communities.

Strategy 1.3.1 - Support local communities to connect, grow and shape the future of Kalamunda.

Priority 2: Kalamunda Clean and Green

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

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

Strategy 2.1.5 - Community engagement and education in environmental management.

Priority 3: Kalamunda Develops

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

Strategy 3.2.1 - Ensure existing assets are maintained to meet community expectations.

Priority 4: Kalamunda Leads

Objective 4.2 - To proactively engage and partner for the benefit of community.

Strategy 4.2.1 - Actively engage with the community in innovative ways.

EXECUTIVE SUMMARY

1. The purpose of this report is to consider a request from the Nature Reserves Preservation Group, Inc (NRPG) regarding creation of a proposed Nature Fund to fund environmental initiatives.
2. Whilst commendable in concept, it would be prudent to seek the views of the community before the City of Kalamunda (City) sets up such a scheme
3. The recommendation is to undertake community consultation about the idea of a proposed 'Nature Fund.'

BACKGROUND

4. The City has received a request from NRPG for the City to consider establishing a 'Nature Fund' to be funded by voluntary ratepayer contributions.
5. It would operate as a Reserve Account for a specific purpose within the City's accounting and budgeting standards.

DETAILS AND ANALYSIS

6. NRPG have recognised the City's support for environmental initiatives in previous years funded through a combination of rates funding and grants as well as limited ability for City to significantly increased rates funding for environmental initiatives.
7. They has suggested the City initiate a 'Nature Fund' which can be funded by a voluntary ratepayer 'Environmental Levy' and could be included in the Rates notice to City residents, together with a brief description on why it is needed and how it would be used. It is proposed the dollar donation amount would be optional to the ratepayer.
8. Examples of these types of similar initiatives in other parts of Australia include:

Ku-Ring-Gai Council (Sydney) "Environmental Levy":

<https://www.krg.nsw.gov.au/Environment/Environmental-levy>

Brisbane's "Bushland Preservation Levy"

<https://www.brisbane.qld.gov.au/clean-andgreen/natural-environment-and-water/biodiversity-in-brisbane/protecting-the-naturalenvironment/bushland-preservation-levy>
9. The City is not aware of any current 'Nature Levy's' in Western Australia.
10. The NRPG note, "Inclusion of this payment option with the Rates notice would cost the City no more, and give concerned residents a chance to contribute and feel a pride and part in their surrounds. It would require only a 'tick box' and the ratepayer's nominated dollar amount on the notice. Such a levy may, may even be accepted as an 'in kind' contribution when attracting outside funding."

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11. However, such a scheme would incur City management time in administration and disbursement of any funds raised.
12. A copy of the letter received by the NRPG is provided as Attachment 1.
13. The City has no basis to work from to determine if such a scheme will make meaningful impacts upon environmental funding. As such it is appropriate that community feedback is sought to ascertain what possible level of ratepayer funding support may exist and willingness to participate.
14. It is deemed necessary to undertake this consultation and seek further direction from Council prior to undertaking the necessary preparations for the 2023/2024 budget process.

APPLICABLE LAW

15. *Local Government Act 1995*

APPLICABLE POLICY

16. Service 5: Communication and Engagement.

STAKEHOLDER ENGAGEMENT

17. The City proposes to undertake community consultation to gauge the level of community support amongst the wider population.

Questions will be posed regarding whether ratepayers would support voluntary contributions to such a scheme as well as potential levels of funding that they would offer.
18. It is proposed that this take the form of a communications and engagement project, which is open for a minimum of 60 days.

FINANCIAL CONSIDERATIONS

19. Consultation on the proposal will cost approximately \$500.00

SUSTAINABILITY

20. If the community is supportive of the proposal it has to the potential to enhance the City's environmental sustainability.

RISK MANAGEMENT

21.

Risk: The City is criticised for seeking more funding from ratepayers in tight economic circumstances.		
Consequence	Likelihood	Rating
Moderate	Possible	Medium
Action/Strategy		
Community engagement emphasises the voluntary nature of the proposal. That it is proposed to be optional.		

Risk: The City is criticised for determining to proceed or not proceed with the proposal without seeking community views.		
Consequence	Likelihood	Rating
Moderate	Likely	Medium
Action/Strategy		
Undertaking community engagement provides Council with evidence to base a subsequent decision upon. A comprehensive community engagement report is proposed to be presented to Council post engagement.		

CONCLUSION

- 22. The novel nature of this proposal to be managed by the City suggests that prior to determining whether to proceed or not, that the views of the community be sought.
- 23. It is proposed that the consultation will commence in early 2023.

Voting Requirements: Simple Majority

RECOMMENDATION

That Council APPROVE community consultation to take place in regard to the Nature Reserves Preservation Group, Inc’s proposal for a Nature Fund to be developed for the City of Kalamunda and a subsequent report be provided for consideration.

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11. Closure

There being no further business, the Presiding Member declared the Meeting closed at 7:45pm.

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

Signed: _____
Presiding Member

Dated this _____ day of _____ 2022.