

10.5.11. Forrestdfield / High Wycombe Industrial Area Stage 1 - Development Contribution Plan Report - Adoption for Public Advertising

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

Previous Items	SCM 230/2018
Directorate	Development Services
Business Unit	Strategic Planning
File Reference	PG-STU-028
Applicant	City of Kalamunda
Owner	Various

Attachments	1. Draft Development Contributions Plan Report [10.5.11.1 - 40 pages]
Confidential Attachment	1. <u>Reason for Confidentiality:</u> <i>Local Government Act 1995 (WA) Section 5.23 (2) (d) - "legal advice obtained, or which may be entered into, by the local government which relates to a matter to be discussed."</i> 2. <u>Reason for Confidentiality:</u> <i>Local Government Act 1995 (WA) Section 5.23 (2) (d) - "legal advice obtained, or which may be entered into, by the local government which relates to a matter to be discussed."</i>

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

STRATEGIC PLANNING ALIGNMENT

Kalamunda Advancing Strategic Community Plan to 2027

Priority 3: Kalamunda Develops

Objective 3.1 - To plan for sustainable population growth.

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

EXECUTIVE SUMMARY

1. The purpose of this report is for the Council to consider and adopt the Forrestfield / High Wycombe Industrial Area Stage 1 – Development Contribution Plan (DCP) Report annual review (Attachment 1) for the purposes of public advertising.
2. As a consequence of matters arising from the 2018 DCP Report annual review, the City of Kalamunda (City) has undertaken a thorough review and analysed the DCP to determine compliance with relevant Local Planning Scheme No. 3 (LPS3) provisions and the requirements established through State Planning Policy 3.6 – Development Contributions for Infrastructure (SPP3.6).
3. In this regard, the City has undertaken a review of the method of calculation of the contribution rate for the DCP. As a result of this review, the methodology for the DCP has had to be amended to ensure that it is equitable to all landowners within the arrangement (early contributors and later contributors).
4. It is recommended that the Council adopt the DCP Report and the interim Cost Contribution rate of \$23.00/m² for the purposes of public advertising. In the context of the findings of the review and change in rate, it has also proposed that the revised interim rate be used immediately as the applicable rate for new developments being approved within the DCP area.

BACKGROUND

5. **Locality Plan:**



6. The Scheme Amendment to include the DCP Scheme within the City's LPS3 was gazetted in May 2013. This allowed the City to place on development and subdivision approvals, the obligation to pay a Cost Contribution for common infrastructure and administration costs to manage the DCP.
7. Following the gazettal of the DCP, the Council was required to adopt a DCP Report and cost apportionment schedule. The DCP Report and the associated cost apportionment schedule sets out, in detail, the calculation of cost contributions for development in accordance with the methodology shown in the DCP.

8. The DCP Report needs to be a dynamic document to maintain the currency of the cost of infrastructure, land and other DCP items. The DCP Report does not form part of LPS3 but, once adopted by the Council, is required by Clause 6.5.11.2 of LPS3 to be reviewed at least annually.

9. **Previous Reviews**

Historical rates for the DCP Report review are as follows:

Date Adopted	Cost Contribution Rate
December 2012	\$23.03/m ²
December 2013	\$28.49/m ²
June 2015	\$31.23/m ² Reduced to \$29.66/m ² to account for only 50% of the cost of Sultana Road West.
December 2016	\$29.79/m ²
December 2018	\$17.01/m ² Comprehensive review of utility cost estimates resulting in significant reduction in cost.

10. At its Special Meeting held 3 December 2018, the Council resolved to adopt the DCP Report and the Cost Contribution rate of \$17.01/m².

11. Prior to undertaking the most recent annual review, the City sought advice on the interpretation of the provisions of the LPS3 and SPP 3.6 relating to the calculation and application of the DCP rate. The confidential advices are comprehensive and provide for a way forward which meets the intent and principles of the DCP, LPS3 and SPP3.6. The advices are included as a Confidential Attachment for the benefit of Council.

12. The most recent DCP review and procedural adjustments to the operation of the DCP have been undertaken having regard to the advices received. It is recommended that the Council note the advice.

DETAILS AND ANALYSIS

13. **Method for Calculating Contributions**

The Method for Calculating Contributions (Method) is contained within Schedule 12 of LPS3. This section contains an equation and supplementary notes used for calculating the Cost Contribution Rate as follows:

$$\text{Contribution Rate} = \frac{\text{Cost of Infrastructure Items} + \text{cost of administrative items (A)}}{\text{Net lot area (m}^2\text{)}}$$

EQUATION

$$\text{Net lot area} = \text{Contributor Area} - (\text{Cost of Road Reserve} + \text{Developed Area})$$

NOTES

Cost Contribution Schedule adopted by the local government for DCP 1 which will be reviewed annually.

$$\text{Cost of Infrastructure Items} = \text{remaining infrastructure costs} - \text{funds held as money}$$

14. Since the inception of the DCP in 2012, the City has taken into account the 'funds held as money' in the DCP reserve account and divided the outstanding infrastructure and administrative costs by the remaining landowners who were yet to develop.
15. Based on the City's review, this also occurs in several other DCPs around the metropolitan area.
16. The application of the above equation, together with the supplementary notes, means that after each landowner makes their cost contribution over time, the developed area is deducted from the 'net lot area'. The constructed infrastructure and money collected is also removed from the equation, leaving only the remaining (estimated) infrastructure and administrative costs to be divided by the net lot area of undeveloped land.
17. Since the reduced Cost Contribution Rate from \$29.79 to \$17.01, the City extensively analysed the DCP to determine compliance with relevant LPS3 provisions and the principles established through SPP3.6.
18. The matter was also brought to the City's attention by some early contributors and was identified as a result of significant changes in infrastructure estimates as they relate to utility services.
19. The approach undertaken resulted in some landowners who had developed early, with a rate based on preliminary cost estimates, contributing at a higher rate than landowners who have developed at a later time and with a rate based on the actual cost of infrastructure or more refined estimates.
20. The inclusion of contributions collected, based on higher estimates, as part of the equation also reduced the cost contributions of later landowners, raising issues of equity to those early contributors.
21. In addition to the equity issues, the calculation method applied results in the landowners, who are yet to contribute, only making a contribution towards infrastructure that is yet to be built, and not infrastructure that has already been built, and to which the landowner and the development receives a benefit.

22. In summary, the cost of all infrastructure required to be delivered by the DCP has not been evenly distributed amongst all landowners over the course of the DCP's operation.
23. The approach has resulted in a situation that is inconsistent with the overarching principles of determining infrastructure contributions (outlined in SPP3.6) and specifically the principle of equity. Accordingly, the interpretation and application of the calculation methodology is required to be reviewed to ensure the arrangement is administered in an equitable manner.
24. Previous DCP reviews did not highlight the issue in relation to the use of contributions collected in the equation. Based on the City's review, the use of contributions collected also occurs in several other DCPs within the metropolitan area. However, what is evident in these DCPs is that there have not been any significant drops in infrastructure estimates as has occurred in this instance.
25. In order to comply with the requirements of LPS3 and SPP3.6, and to proceed with the operation of the DCP in a practical and equitable manner, the equation included in the above Method should still be used, but the City should not have regard to the supplementary notes included below the equation (in particular the use of 'funds held as money' or contributions collected).
26. This will result in all infrastructure and administrative costs (based on both estimates and on actual costs) being divided by the net lot area (all developable area minus road reserves) and will address the equity issues.
27. **Reconciliation of Interim Cost Contributions**
The major infrastructure items within the DCP have been constructed, including the Ashby / Nardine Close connection, Stage 1 of the Nardine Close extension, and major intersection upgrades for Restricted Access Vehicle Classification (RAV) 7. The construction of Bonser Road has also commenced.
28. There are some infrastructure items (ie. Stage 2 of the Nardine Close extension, Milner Road, Sultana Road West and the bush forever fencing) that are yet to be constructed. These items will progressively be constructed as priorities in the DCP are reviewed and funds become available.

29. In addition, there are some other infrastructure items that have either been previously removed or modified (ie. Dundas Road and the Berkshire / Milner intersection) as part of reviews to the planning framework for the area, or that may no longer be required, resulting in changes to the infrastructure items within DCP over time.
30. The changes over time have affected the contribution rates that have applied over the same period, along with the transition from estimated costs to actual costs as the rate is continuously reviewed and infrastructure is progressively delivered.
31. LPS3 and SPP3.6 establishes that the contributions that have been paid, or the initial contributions to be paid, are an interim payment based on estimated costs, or a combination of estimated and actual costs unless, pursuant to Clause 6.5.11.4 of LSP3, the City enters into a specific agreement with the owner stipulating the payment based on estimates is a final payment.
32. In the absence of a specific agreement, it is only once all the final infrastructure costs have been established (constructed and paid for) can a final contribution rate for all landowners be determined.
33. At this time, which is estimated to be in approximately three years (at the conclusion of the 10-year DCP operative timeframe outlined in Schedule 12 of LSP3), final invoices or credits for the interim Cost Contributions made will need to be issued. This will mean that some landowners who have paid higher amounts will be provided a credit and some landowners who have paid lower amounts may be required to make an additional contribution.
34. In relation to the landowners who have paid a lower amount, this matter will be considered by Council at the conclusion of the operation of the DCP when all infrastructure costs and the final financial position of the DCP is known.
35. At the conclusion of the DCP (approx. three years), there may still be some landowners who have not yet developed. The City will have to establish a separate agreement with those landowners to ensure contributions are collected at a future time when they, or a future owner of the land, decide to develop.
36. As part of the review, it has been identified that the owner of any proposed development will be required to enter into an agreement with the City as a condition of development approval.

37. The agreement will be to formalise the contribution process and ensure security over future payments, as well as providing certainty for any potential credits that may be due at the end of the operation of the DCP.
38. The costs for preparing these agreements have been estimated and are included within the administrative costs within the DCP.
39. Based on the City's analysis to date, many landowners that have developed have contributed at a rate higher than the draft Cost Contribution rate outlined in this report, and are envisaged to be eligible for a credit at the conclusion of the operation of the DCP.
40. For those that have made contributions at the lower rate, as noted above, the Council will consider the requirement for any possible future payment at the conclusion of the operation of the DCP.
41. Initial versions of the DCP calculated contributions based on a gross area (calculated based on total land area) and collected on a net area (deducting areas for road reservations). This resulted in a short fall of contributions of approximately \$195,463.
42. Under the previous DCP calculation methodology, the short fall was proposed to be dealt with by Council at the end of the DCP. As a result of the most recent review, and with payments being considered interim until the conclusion of the DCP, the shortfall will no longer occur as all contributions will be reconciled to the final DCP amount. In this context, the deduction that was previously included has been removed from the calculation of the DCP rate.
43. In summary, based on the requirements of LPS3 and SPP3.6, Cost Contributions that have been made to date are considered interim payments (in the absence of any formal agreement. Furthermore, all future contributions will be considered interim payments until the end of the DCP.
44. At the conclusion of the DCP, when the final contribution rate is known (based on actual costs of all infrastructure), all previous interim contributions made will need to be reconciled against the final rate based on actual costs of the final list of infrastructure items delivered.
45. **DCP Review**
At each DCP Report review, all factors contributing to the contribution rate must be revised. The significant factors reviewed are as follows:
- a) Remaining developable land;
 - b) Land requiring acquisition;

- c) Land valuation;
- d) Estimated and actual costs of infrastructure works;
- e) Administration costs; and
- f) Priority of infrastructure works.

Further discussion regarding these factors are provided below.

46. **Remaining developable land**

The future developable area is expected to provide the Cost Contributions necessary to account for the infrastructure and administrative costs. As of the end of January 2020, 31 of the 52 lots (approx. 60% of lots) within the Development Contribution Area were undeveloped equating to approximately 328,538m² of 652,084.5m² (approx. 50% of land area).

47. **Land Requiring Acquisition**

As at 13 February 2020, 16,277.5m² has been acquired and 12,041m² requires acquisition, representing approximately 57% of all land required for road construction.

Acquired Area (m²)	Cost (\$)
16,277.5	\$4,225,510
Requiring Acquisition (m²)	Cost (\$)
12,041	\$2,889,840

48. **Land Valuation**

Land to be acquired has been identified in the DCP. In July 2019, an independent valuer provided an estimated rate at which land should be acquired at through the DCP. The valuation concluded on a land value rate of \$240/m², increasing from \$220/m² at the December 2018 DCP review.

49. Lot 51 Sultana Road West requires the partial demolition of an existing masonry garage to permit the construction of stage 2 of Road 2A to facilitate development of the area.

50. In March 2017, the City engaged a quantity surveyor to estimate the cost of demolishing the garage, partial reimbursement for the loss of the built form and costs required to “make good” the remaining parts of the residence.

51. This was again reviewed when updating the cost estimates following advertising of the DCP report. The cost has been estimated at approx. \$100,000. This cost has been included in the estimate to construct stage 2 of Road 2A.

52. **Estimated and Actual Costs of Infrastructure Works**
As at the end of January 2020, approximately \$3.37m is required to complete the remaining infrastructure works, with \$3.62m spent on infrastructure works to date. Details of these estimates are provided in Attachment 1.
53. **Administrative Items**
As at the end of January 2020, \$562,328.55 of administrative costs have been spent from the DCP and an estimated \$405,000 is required to administer the DCP for the remaining 3 years, until the conclusion of the 10-year DCP operative timeframe under Schedule 12 of LPS3. Details of these estimates are provided in Attachment 1.
54. As part of the revised process, the applicant/owner of any proposed development will be required to enter into an agreement with the City as a condition of development approval for the provision of cost contributions. The administrative costs have been reviewed to include the cost of the preparation of the agreement for the remaining properties to be developed within the DCP area.
55. To avoid any further under-payments, it is recommended that the new rate, and requirement for agreements, be applied immediately as a condition of development approval. This approach will also avoid unnecessary delays to the issue of development approvals and building licences.
56. **Priority of Infrastructure Works**
The following items were identified as priorities in the previous DCP reviews and are either completed works or under construction:
- a) Nardine / Ashby Close design, land acquisition and construction;
 - b) Nardine Close / Milner Road intersection design and construction;
 - c) Ashby Close / Berkshire Road intersection design and construction;
 - d) Berkshire / Milner Road intersection design and construction; and
 - e) Nardine Close Extension (Road 2A: Stage 1) design and construction.
57. Subject to the availability of funding, the following items are now considered current priority items:
- a) Ongoing administration costs, including designs to support detailed cost estimates;
 - b) Bonser Road (previously referred to as Road 1), land acquisition, design and construction. The construction of Bonser Road is currently underway and, with the City's agreement/supervision, being prefunded by a landowner.

- c) Nardine Close Extension (Road 2A: Stage 2) design, land acquisition and construction. In the event that Stage 2 is not required, given land use changes in the area, this item will be replaced with the design, land acquisition and construction of an emergency accessway on the north-west side of Lots 50 and 51 Sultana Road West.
- d) Milner Road construction; and
- e) Sultana Road West construction.

58. With regard to Stage 2 of the Nardine Close extension (Road 2A), the City is currently considering a development application for a place of worship on Lot 50 Sultana Road West that would utilise Sultana Road West as access entirely, and would not require internal light industrial oriented access to the Forrestfield / High Wycombe Industrial area, via Nardine Close.
59. It is therefore possible that, if this development proposal proceeds, Stage 2 of the Nardine Close extension will not be required. The City will consider, at the time the building has commenced construction, amending the Local Structure Plan and DCP to remove Stage 2, however will maintain an emergency access way for bushfire purposes.
60. If Stage 2 is removed from the DCP, it will reduce the overall infrastructure and land acquisition costs and be another matter that is required to be settled as part of the reconciliation process.

APPLICABLE LAW

61. **Local Planning Scheme No. 3**
The Cost Contributions are administered and determined in accordance with the provisions of Clause 6.5 and Schedule 12 of LPS3.
62. Clause 6.5.11.2 of LPS3 requires the DCP cost estimates to be reviewed at least annually.
63. Clause 6.5.11.4 of LPS3 requires the adjustment of Cost Contributions that are calculated on the basis of an estimated cost (and revised estimated cost), contemplates an agreement between the City and the landowners to establish a final Cost Contribution based on estimated costs.

APPLICABLE POLICY

64. The review of the DCP has been undertaken in accordance with the requirements of the Western Australian Planning Commission's (WAPC) State Planning Policy 3.6 – Development Contributions for Infrastructure.

STAKEHOLDER ENGAGEMENT

65. Following the Council's adoption of the draft DCP Report and an interim Cost Contribution rate, advertising will be undertaken with the landowners within the Development Contribution Area in accordance with *Local Planning Policy 11 – Public Notification of Planning Proposals*. Specific correspondence explaining the process will be issued to landowners along with an offer for a one-on-one meeting to explain the outcomes and process.
66. Consulting were engaged to undertake an independent and comprehensive review of infrastructure cost estimates, these estimates have formed the basis of unconstructed works within the DCP Report.
67. Prior to undertaking the most recent annual review, the City sought advice on the interpretation of the provisions of the LPS3 and SPP 3.6 relating to the for the calculation and application of the DCP rate. The confidential advices are comprehensive and provide for a way forward which meets the intent and principles of the DCP, LPS3 and SPP3.6. The advices are included as a Confidential Attachment for the benefit of Council.
68. The most recent DCP review and procedural adjustments to the operation of the DCP have been undertaken having regard to the advices received. It is recommended that the Council note the advice.

FINANCIAL CONSIDERATIONS

69. The operation of the DCP presents a major administrative responsibility for the City. While the DCP is self-funded, the City has an implicit obligation to efficiently and effectively manage the revenues and works.
70. The remaining developable area is reliant on the DCP to provide the necessary infrastructure to facilitate development. In particular, the timely provision of roads and drainage is critical for industrial precincts as most developments rely on these improvements for suitable access.
71. As noted in the Details and Analysis Section of this report, the reconciliation of costs will be required at the end of the DCP's 10 year operative life (2023). This process will involve a credit to those landowners who have paid at a higher rate, with the funds necessary to make this credit being available in the DCP reserve account.
72. Additional contributions may be required from those landowners who have paid at a lower rate. Based on the proposed interim rate, the anticipated payments would total approximately \$300,000.

- 73. The Council will consider the reconciliation of any possible future payment at the conclusion of the operation of the DCP.

SUSTAINABILITY

Social Implications

- 74. The provision of infrastructure in a timely, coordinated and responsible manner can have a significant impact on the quality of life for both existing and future residents.
- 75. Impacts on the quality of life need to be considered at both a micro and macro level, with infrastructure planning needing to deliver net community benefits and recognising that the expectations of not every single landowner will be able to be satisfied.

Economic Implications

- 76. The implementation of DCPs, as a basic principle, are not intended to deliver infrastructure, services or similar that would not ordinarily be provided through subdivision and development processes; as such, a DCP does not offer any direct economic benefits to an area. DCPs can, however, assist in the timely, efficient and equitable provision of infrastructure that may in turn facilitate economic growth and employment creation.

Environmental Implications

- 77. The proposed DCP infrastructure is identified in areas where vegetation is predominantly cleared. A portion of road reservation abuts a Bush Forever Reserve and during the construction phase, due consideration will have to be given to ensure impacts to this area are minimised.

RISK MANAGEMENT

78.	Risk: Not undertaking the review so the Development Contribution Plan is not in alignment with current infrastructure and administrative costs.		
	Consequence	Likelihood	Rating
	Rare	Significant	Medium
	Action/Strategy		
	Ensure the Council is aware that a DCP review is required to ensure the new rate is reflective of projected costs to deliver infrastructure works and land purchases. Additionally, Clause 6.5.11.2 of LPS3 requires the DCP		

Report is reviewed at least annually.

79.	Risk: There is insufficient money collected in the DCP to fund infrastructure upgrades.		
	Consequence	Likelihood	Rating
	Possible	Major	High
	Action/Strategy		
	Ensure that the City enters into agreements with landowners to ensure the adjustment of Cost Contributions at the end of the DCP's operational life. Undertake annual reviews to ensure the scope of infrastructure remains relevant and to maintain the currency of the cost of infrastructure, land and other DCP items.		

80.	Risk: Errors are contained within the DCP estimates and calculation.		
	Consequence	Likelihood	Rating
	Possible	Moderate	Medium
	Action/Strategy		
	Ensure figures are audited and sourced from financial statements. Ensure cost estimates are reviewed annually and provided by an independent consultant.		

CONCLUSION

- 81. The recommendations contained within this report regarding the interpretation of the Method and establishing an interim Cost Contribution is necessary to ensure an equitable DCP for the remainder of the DCP's operative life (until approx. 2023).
- 82. A process has been proposed to reconcile Cost Contributions only once a final cost contribution is established (i.e. when all the infrastructure is built, and the actual cost of the infrastructure is known). This exercise will involve credits being issued to some landowners who made a higher contribution, and the City may seek additional Cost Contributions from other landowners who contributed at a lower rate.
- 83. The Council will consider the reconciliation of any possible future payment from these owners at the conclusion of the operation of the DCP.

84. It is important to establish an interim rate to ensure that the DCP does not continue to under collect Cost Contributions, and to minimise the risk of there being a shortfall of funds to deliver the remaining infrastructure identified in the DCP.
85. Accordingly, it is recommended that the Council adopt the DCP Report and the interim Cost Contribution rate for the purposes of public advertising.
86. It is also recommended that the interim rate and requirement for an agreement for new developments be applied to current development applications as a condition of approval.

Voting Requirements: Simple Majority

RECOMMENDATION

That Council:

1. NOTE the confidential advice in the Confidential Attachment.
2. NOTE the interpretation of the Method for Calculating Contributions in Schedule 12 of Local Planning Scheme No. 3.
3. NOTE the approach to deem all Cost Contributions as interim, until the final Cost Contribution rate is known based on actual costs of infrastructure, as outlined in this report.
4. NOTE the proposed process to reconcile Cost Contributions for all landowners at the conclusion of the of the Development Contribution Scheme (scheduled for 2023), as outlined in this report.
5. ADOPT the Forrestfield / High Wycombe Industrial Area Development Contribution Plan Report (Attachment 1) for the purposes of public advertising.
6. ADOPT the interim Cost Contribution Rate of \$23/m², for the purposes of public advertising.
7. NOTE that the interim rate will be applied immediately to enable the timely issue of development approvals and building licences.
8. AUTHORISE the Chief Executive Officer advertise the interim Cost Contribution Rate and issue correspondence to landowners accordingly.