

Submission Table – Forrestfield / High Wycombe Industrial Area – Stage 1 – Development Contribution Plan Review

Submission	Officer Comment
<b>Submission 1 - Objection</b>	
<p>a) Clearly the incompetence of the City of Kalamunda is why we are in this situation and they should be held accountable for all past errors in estimations and calculation of the DCP.</p>	<p>The Local Planning Scheme No. 3 (LPS 3) provides for adjustments of Cost Contributions based on estimated costs, and for estimated costs to be independently certified. While it is acknowledged that there have been instances where estimated costs have changed, these costs were adjusted and reviewed independently in accordance with the provisions of LPS 3.</p>
<p>b) The current proposal for the DCP is completely unacceptable and I cannot believe what the City of Kalamunda is trying to get away with. The Guidelines state: Payment by an owner...including a cost contribution based upon estimated costs.. constitutes full and final discharge of the owners liability... This suggestion of asking for a further payment is therefore not legally possible. The idea of collecting extra money by the end of the life of the DCP to “pay back” aggrieved landowners is also not permitted by the Guidelines.</p>	<p>It is understood that the submitter is referring to clause 6.5.14.3 of LPS 3, which states:</p> <p><i>“Payment by an Owner of the cost contribution, including a cost contribution based upon estimated costs in a manner acceptable to the local government, constitutes full and final discharge of the Owner’s liability under the development contribution plan and the local government shall provide certification in writing to the owner of such discharge if requested by the Owner.”</i></p> <p>It is noted that, for a cost contribution to be deemed to be a full and final discharge of the Owner’s liability, it must be made in a manner acceptable to the local government.</p> <p>LPS 3 also 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, the City enters into a specific agreement with the owner stipulating the payment based on estimates is a final payment.</p>
<p>c) The Guidelines state: Contributions are for the initial capital requirements only.... The Guidelines also state: All development contributions should be clearly identified and methods of accounting for escalation agreed upon at the commencement of a DCP. This clause doesn’t give any room for changing the method of accounting after 7 years. Please stop wasting our time and money, when I thought the City of Kalamunda could not possibly ruin the situation any more than they have over the past 10 years, you continue to surprise me.</p>	<p>It is understood that the submitter is referring to State Planning Policy 3.6 – Development Contributions for Infrastructure (SPP 3.6). The following is included under section 5.1 – Scope of SPP 3.6:</p> <p><i>“The contributions are for initial capital requirements only and not for ongoing maintenance and/or operating costs of the infrastructure”.</i></p> <p>There is no proposal under the current DCP to fund ongoing maintenance or operating costs of the infrastructure items included.</p> <p>Under section 5.2 – Principles underlying development contributions, principle number 4 (Certainty) in SPP 3.6, the following is stated:</p> <p><i>“All development contributions should be clearly identified and methods of accounting for escalation agreed upon at the commencement of a development.”</i></p> <p>This principle provides for methods of accounting to be agreed upon the commencement of a development. The City has adopted an approach to enter</p>

		into an agreement with landowners as a condition of development approval. The agreement will be to formalize 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. In this regard it is considered the proposed approach is in accordance with the Certainty principle under SPP 3.6. Furthermore, the approach ensures that all landowners contribute to the cost of infrastructure in a fair and equitable manner.
<b>Submission 2 - Objection</b>		
1.	<p>I refer to your letter of 25 March 2020 regarding the above and am pleased to provide this submission on the 2020 DCP Review Report, on behalf of my client – <b>[Client name removed]</b>).</p> <p>In this submission, unless stated otherwise, references to “Sections” relate to Sections of the advertised 2020 DCP Review Report for the Forrestfield/High Wycombe Industrial Area Stage 1.</p>	Noted.
	a) In the first part of Section 2 (page 6), the letter sequence k) – o) should be relabelled (a) – e).	This error has been corrected in the latest version of the DCP report.
	b) Section 2.1 refers to a Valuation Report undertaken in July 2019. This is some 6 months prior to the DCP Review date of 31 January 2020 and will be closer to 12 months old when Council reconsiders this review after public advertising. Does the City have a more recent valuation, or confirmation from its Valuer that the July 2019 valuation is still considered valid, having regard to the possible market impacts of COVID-19?	The land value estimate is generally obtained at the time that infrastructure costs are estimated. In this case, the land value was obtained in July 2019 when the City initiated DCP review. The City has received an updated Valuation Report completed in March 2020. This has been attached to the latest version of the DCP report.
	c) Section 2.2.1 states that if external funding is received for the construction of a shared path on Berkshire and Dundas Roads, then “the City will consider the removal of the shared path item from the DCP”. We contend that if external funding is secured for this infrastructure item, then the City must remove this cost from the DCP, rather than merely ‘considering’ its removal. We recommend the wording of Section 2.2.1 be amended to reflect this.	<p>The phrasing of Section 2.2.1 has been amended as follows:</p> <p>“In anticipation of construction funding being provided for this project, the City has amended Berkshire Road to remove the shared path item and instead include the completion of, and necessary repairs to, the existing 2m wide footpath to fulfil the intent of the LSP.”</p>
	d) Section 2.2.6 refers to a development application for Lot 50 Sultana Road West, which will not require access via Nardine Close. This would suggest that future development can be accommodated on Lot 50 without accessing Nardine Close. That being the case, we encourage the City to consider amending the Agreed Structure Plan for the area, to – replace Stage 2 with an emergency access/egress route on the north-west side of Lots 50 and 51 Sultana Road West, thereby eliminating the cost burden on the DCP to fund Stage 2 of the Nardine Close extension. We estimate this would generate a substantial saving to the DCP in the order of \$300,000 to \$400,000.	<p>The City has investigated the cost implications associated with not constructing Stage 2 of the Nardine Close, including land acquisition and an emergency accessway. This will be presented to the Council for consideration and any LSP amendments can proceed following a decision on the matter.</p> <p>The phrasing of Section 2.2.6 has been amended accordingly.</p>
	e) There appears to be a calculation error in the “Total” column of the Costs Table	This is correct, the discrepancy is due to the \$80,000 State Government

	<p>included in Section 2.5. This Table lists the Total DCP Costs as \$14,998,969.34, whereas the individual cost items that make up this figure actually sum to \$15,078,969.35 – a difference of \$80,000. We understand this variance is attributable to the \$80,000 State Government contribution towards the Milner/Berkshire Road Intersection, described in section 2.2.10 as having already “been accounted for in the costs included in the DCP”. If this is the case, for added transparency, a line item should be included in the Table to more overtly identify this deduction (e.g. Less State Govt. Contribution - \$80,000).</p>	<p>contribution towards the Dundas / Berkshire / Milner intersection. The Estimates Cost Table under Section 2.5 of the DCP Report has been amended to include a line item for the \$80,000 contribution.</p>
	<p>f) Section 3.2 (Area Inputs) identifies the Total Contribution Area as 690,411m<sup>2</sup>, inclusive of 38,326.50m<sup>2</sup> of Road Reserves. This Total Contribution Area is the same as that stated in Section 3.1 of the previous DCP Report (Revised October 2018), although the area of Road Reserves in the DCP Area is now 10,011m<sup>2</sup> more than previously stated. There is no detail provided in the DCP Report to explain this variation. We therefore request this information for further consideration. Additionally, any future variations between successive DCP Report calculations should be documented in detail in those reports.</p>	<p>The inclusion of the additional 10,011m<sup>2</sup> is an administrative error. The table under Section 3.2 of the DCP Report has been updated to remove the error. A new table has been included under Section 2.3 to reflect the areas historically acquired, which should clearly outline the area inputs that make up the total road reserve areas.</p>
	<p>g) The following comments relate to the Table in Appendix H:</p> <ul style="list-style-type: none"> <li>a. In the left-hand column, the Financial Year labelled “20/21 YTD” should be “2019/20 YTD”.</li> <li>b. The date adopted for the YTD costs (31 January 2020) is some 6 years and 9 months (or 81 months in total) after the DCP gazettal date in May 2013. The Actual costs listed in the column second from the left sum to \$562,328.55, which reconciles with the Cumulative Admin Costs in the column second from the right. This figure (\$562,328.55) divided by 81 months equates to an average monthly Administration cost of \$6,942.33; multiplied by 12 months this equates to an average annual Administration cost of \$83,307.93, rather than \$89,581.40 as stated in the second column from the left. We therefore recommend that the Average Admin Cost amount is reduced to reconcile with this calculation.</li> <li>c. Further to b. above, if the average annual Administration cost in Appendix H is based on calculations to the end of the 2018/19 financial year rather than to the period ending 31 January 2020, then the calculation periods used in the DCP review will not align with each other and some costs will therefore be distorted (either understated or overstated). This has proven to be problematic in other local government DCP reviews and should be addressed. To rectify this, a single calculation and reporting period must be used for each DCP review. In this case, that period would best be the 2019/20 year to date ending 31 January 2020.</li> <li>d. The word Cumulative has been misspelled in the column second from the right.</li> <li>e. We object to the Future Administration Costs, for the following reasons: <ul style="list-style-type: none"> <li>i. The amount listed for “Agreements for future contributions” (\$50,000/year over three years) is excessive, unjustified and would apply</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>a. The table under 8.11 Appendix H has been amended with “2019/20 YTD”.</li> <li>b. The average admin cost in the advertised version of the DCP report was calculated up to the end of the 2018/19 financial year and did not include the 19/20 YTD to 31 Jan 2020. The method included in this submission is considered sound and will be adopted for the purposes for finalizing the DCP report.</li> <li>c. It is agreed that there should be a single calculation and reporting period. The administrative costs will be included up until the end of March 2020.</li> <li>d. This spelling error has been corrected in the updated DCP report.</li> <li>e. Responses to i-vi: The City has reconsidered the estimated amount for Agreements. It is noted that not all agreements will be identical, although it is acknowledged that there will be similar elements to these agreements that might over time reduce the cost of preparing the agreements. The estimated cost for preparing these agreements has been updated to approximately \$3,000 per agreement (\$90,000 for total cost of preparing agreements for the remaining 31 contributors), which is considered to appropriately account for professional fees, search fees, caveat lodgement fees and PEXA fees. It is further noted that there is no nexus between the amount of remaining infrastructure work and administrative costs.</li> <li>f. A reduction of administrative costs to the extent suggested in this submission would not appropriately cover the costs of preparing the required agreements. Refer to response (e) above.</li> </ul>

	<p>in addition to the numerous other Administration cost items listed. These 'other' Administration costs in themselves sum to \$85,000 p.a. which exceeds the City's actual average Administration costs by almost \$2,000.</p> <ul style="list-style-type: none"> <li>ii. If the cost to prepare the aforementioned "Agreements" is based on a quote from one of the City's legal providers, then we urge Council to obtain a separate quote(s), as that amount is entirely unacceptable.</li> <li>iii. Paragraph 46 of the report to Council on 25 February 2020 states that 31 lots remain to be developed in the DCP Area. We presume (from Paragraph 54 of that report) that the legal agreements are intended to apply just to those 31 lots, equating to a cost of \$4,838.71/lot. This cost might be considered acceptable for a unique, 'one-off' legal agreement, however in reality only a single legal agreement will need to be prepared for this DCP, which will then be applied uniformly to all 31 lots. Even if the cost of preparing this single template legal agreement is inflated to \$10,000 p.a. for the remaining three years of the DCP, the resultant cost saving to the DCP will be \$40,000 p.a. or \$120,000 over the next three years.</li> <li>iv. The total future Administration cost of \$135,000 p.a. represents an unsubstantiated 62% increase on the City's actual average annual Administration costs referred to in b. above.</li> <li>v. The total future Administration cost of \$405,000 for the remaining three years of the DCP represents 72% of the City's total actual Administration costs over the preceding 6 years and 9 months of the DCP. This does not reconcile with the fact that – most of the DCP infrastructure has been completed or has been commenced and is soon to be completed, thereby reducing (not increasing) future Administration costs towards conclusion of the DCP.</li> <li>vi. The future annual and total Administration costs would likely represent one of the highest (if not the highest) Administration costs levied under any DCP in Western Australia.</li> </ul> <p>f. For the reasons set out in e. above, we recommend that the cost of "Agreements for future contributions" be reduced to \$10,000 p.a. and \$30,000 overall, representing a total cost saving to the DCP of \$120,000. This will result in a future Administration cost of \$95,000 p.a., which is still considered excessive at more than \$10,000 greater than the average annual Administration costs to date, but less unreasonable than what is currently proposed.</p>	
	<p>h) The DCP Report should include a financial report of the Forrestfield Industrial Scheme Stage 1 Reserve Account, as at the review date (31 January 2020). This would provide greater transparency and accountability over the management of DCP funds and would enable affected stakeholders to identify account balances; transfers to and from the reserve; interest earnings and contributions collected. A high-level summary of the City's Cash Backed Reserves as at 31</p>	<p>A report with the latest financial statements has been attached to the DCP Report.</p>

	<p>January 2020 was included in Attachment 10.5.4.4 of the Ordinary Council Meeting Agenda of 24 March 2020. That summary identified a closing balance of \$580,041 in the DCP Reserve Account as at 31 January 2020.</p>	
	<p>i) Beyond the comments provided in Paragraph 46 of the report to Council on 25 February 2020, the DCP Report should include an assessment of the rate of development and collection of contributions to date, and projections of the same for the future. This will allow the City to publish a forecast cashflow model and to calibrate the DCP priorities and infrastructure expenditure against the DCP's capacity to collect contributions for those purposes. By way of example:</p> <ul style="list-style-type: none"> <li>• Since gazettal of the DCP in May 2013, it has taken some 6 years and 9 months to develop 49.62% of the DCP Area (being 323,546.50m<sup>2</sup>, equating to an average rate of development of 3,994.40m<sup>2</sup>/month). Based on this past rate of development it would take more than 6 years and 10 months to develop the remaining 328,538m<sup>2</sup> of land in the DCP Area.</li> <li>• Even if future development in the DCP Area occurred at twice the right of past development, all contributions would still not be collected for another 3 years and 5 months – this would be beyond the current life of the DCP.</li> <li>• In our opinion and in the wake of COVID-19, it is unlikely that the remaining 50.38% of land in the DCP Area will be developed in the final 3 years of the DCP's life.</li> <li>• Whilst the provision of additional shared infrastructure will incentivise some additional development in the DCP Area, we do not expect that development will be so accelerated as to achieve completion of the area by May 2023.</li> </ul>	<p>The lifespan of this DCP is limited at 10 years from its adoption in 2013. In the event that there is a need to extend the timeframe for this DCP an amendment to the Local Planning Scheme No. 3 will be required.</p> <p>Indicative projections will be provided in the DCP report.</p>
	<p>j) According to the Tables in Section 2.5 and Appendix H of the DCP Report, the total remaining (future) cost of all infrastructure and administrative items is \$6,547,533.01, ignoring any prospective or recommended cost savings referred to in this submission. The remaining developable area is quoted in Paragraph 46 of the report to Council on 25 February 2020 as being 328,538m<sup>2</sup>, which will yield future contributions of \$7,556,374 based on the advertised contribution rate of 23.00/m<sup>2</sup>. Added to this income will be interest earnings, which are conservatively estimated at a total of \$15,000 for the life of the DCP, plus cash-in-bank in the DCP reserve account of \$580,041 (as at 31 January 2020). The resultant estimated future DCP income amounts to \$8,151,415 – an excess of \$1,603,881.99 over the funding that is actually needed to deliver all remaining infrastructure items and pay all the City's future administration costs. This excess will only increase as a result of any cost savings applied over the remaining term of the DCP. This funding excess essentially represents the earlier overpayment of DCP contributions by past developers, and the unnecessary withholding of those surplus contributions until conclusion of the DCP. We contend this is not a fair, equitable, or sustainable outcome.</p> <p>As a suitable way forward, Council could apply a contingency of (say) 10% to the total remaining DCP costs, which would result in a total adjusted cost (including</p>	<p>As outlined in the Council report on 25 February 2020, 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. In order to equitably distribute costs for all landowners, it is not possible to reconcile cost contributions based on estimated costs. The final contribution rate needs to be determined based on actual costs.</p>

	<p>contingency) of \$7,202,286.31. This generous 10% contingency would amount to \$654,753.30 and would apply in addition to the individual contingency amounts already included for each infrastructure item in Appendices A – F of the DCP Report. Despite the addition of this contingency, the forecast future DCP income would still exceed this amount by \$949,128.69. In the interim, pending the formal conclusion and reconciliation of the DCP, this amount could comfortably be refunded back to earlier developers (such as <b>[developer name removed]</b>.) who overpaid their DCP contributions. We therefore recommend that Council applies this approach in order to truly bring fairness, equity, and currency to the DCP now, rather than deferring this outcome for a further three years (or more), once the DCP has been concluded.</p>	
	<p>k) We note and agree with the comments in Paragraphs 20, 21, 22 and 23 of the Report to Council on 25 February 2020, which recognise the need to bring parity and equity to the DCP by correcting the disproportionate and unfair cost burden borne by earlier developers in the DCP Area. To ensure this is appropriately addressed in the DCP Report, we recommend that Council include as a priority in Section 4 of the DCP Report, the reimbursement of excess contributions paid by previous developers in the DCP Area. We further request Council's:</p> <ol style="list-style-type: none"> <li>a. Formal written agreement of the reimbursement owed to my client; and</li> <li>b. Inclusion of a prioritised cost item in Section 4 of the DCP Report for the gradual payment of this reimbursement to my client (and other affected stakeholders) over the remaining three years of the DCP, with the final refund amount payable upon conclusion and reconciliation of the DCP.</li> </ol>	<p>Refer to response to (j) above. The City is prepared to enter into an agreement to reconcile costs when all cost contributions have been made or accounted for and a final cost contribution is determined.</p>
	<p>l) Based on the figures included in the advertised DCP Report, we have calculated that <b>[(Client name removed)]</b> is owed a DCP refund of \$477,418. This has been determined as follows:</p> <ol style="list-style-type: none"> <li>a. <b>[(Client name removed)]</b> (through development entity <b>[(Client name removed)]</b>) paid the following cash contributions to the City under the DCP (totalling \$1,189,829): <ul style="list-style-type: none"> <li>• \$624,796.00 paid on 8 January 2016</li> <li>• \$520,233.00 paid on 9 June 2016</li> <li>• \$44,800.00 paid on 14 June 2016</li> </ul> </li> <li>b. In addition to the payments above, <b>[(Client name removed)]</b> also ceded land (free of cost) for the purposes of road reserves, which would have otherwise needed to be acquired by the DCP to the value of \$635,180.</li> <li>c. The combination of a) and b) above amount to a total cash and in-kind contribution of \$1,825,009.</li> <li>d. <b>[(Client name removed)]</b> contributions were paid in respect of its combined landholdings in the DCP Area (at that time), which totalled 58,579m<sup>2</sup> (Net Lot Area).</li> <li>e. The total contribution value in c) divided by the net developable area in d) results in an average overall contribution rate of \$31.15m<sup>2</sup>.</li> <li>f. The revised contribution rate specified in the current DCP review is</li> </ol>	<p>Noted. When a final cost contribution rate is determined, a full assessment of the previous contributions made will be undertaken and any surplus or shortfall will be reconciled with landowners accordingly.</p>

	<p>\$23.00/m2 for the Net Developable Area of all land across the entire DCP Area. By comparison, <b>(Client name removed)</b> average contribution amount of \$31.15m2 represents an overpayment of \$8.15/m2. When multiplied over <b>(Client name removed)</b> total Net Lot Area of 58,579m2 this equates to an overpayment of \$477,418.</p>	
	<p>m) Further to the preceding Items 10 and 11, we implore Council to draw on the current DCP account balance and any cost savings identified through this review to begin reimbursing past contributing landowners in the DCP Area who have contributed excessively to shared costs and have therefore unduly subsidised the contributions paid by subsequent developers in the area. Repayment of these excess contributions has never been more important than now, given the severe economic impacts being experienced in the property and development sector as a result of the global COVID-19 pandemic. Issuing a reimbursement now (whether partly or wholly) will:</p> <ul style="list-style-type: none"> <li>• be at no cost to the City or its community;</li> <li>• complement Council's COVID-19 response and recovery initiatives by sustaining and then stimulating economic activity;</li> <li>• support the continuation of land development projects within and beyond the City of Kalamunda;</li> <li>• support the full spectrum of employment in the property and land development sector;</li> <li>• bolster the financial resilience of landowners and developers with current and potential future projects in the City of Kalamunda to withstand the impacts of COVID-19; and</li> <li>• align with recent State Government announcements encouraging local governments to use their reserve funds for economic stimulus.</li> </ul>	<p>The economic benefits of issuing a reimbursement now are noted, however to facilitate a final contribution rate and reconcile costs for landowners, there is a need to prioritise infrastructure. Refer to response to (j) above.</p>
	<p>n) Moving forward, in the interests of equity, transparency and accountability, we recommend that all future DCP Review Reports and informing documents be made publicly available. If that documentation includes legitimate confidential information pursuant to the <i>Local Government Act 1995</i>, then that confidential information should be provided to Council Members under separate cover, such that the Officer Report (with or without redacting) is available for public inspection ahead of any decision being made.</p>	<p>Noted.</p>
	<p>o) Council at its meeting on 26 November 2019 (Resolution 281/2019) invited my client to provide particularised information outlining the development contribution refund amount that my clients assert they are entitled to and the legal basis for the same. This was provided by letter dated 18 February 2020 although we are unsure if or how this was considered by Council in the context of the current DCP Review.</p> <p>We look forward to Council's consideration of this submission and continuing our positive engagement with City staff, with a view to formalising the quantum and timing of a DCP refund for my client.</p>	<p>A letter was provided to the submitter on 20 February 2020 advising that the City has undertaken an annual review of the DCP Report as well as a thorough review of the method of calculation of the contribution rate for the DCP. The letter further advised that the review, and the recommended way forward, is documented in a report to the Council that was presented at the Ordinary Council meeting on 25 February 2020. The requests for a development contribution refund will be considered in the context of the approach outlined through this DCP review.</p>

Submission 3		
	<p><b>Forrestfield / High Wycombe Industrial Area Stage 1 DCP Development Plan Report 2020 Submission</b></p> <p>a) <b>2.2.1 Berkshire Rd.</b></p> <p>Remove: <i>Adjusting power line crossing to provide unrestricted clearance for RAV 7 vehicles.</i></p> <p>Berkshire Rd is already a designated, unrestricted RAV 7 route. RAV routes are determined by vehicle length, not by height. There are no developments, now or planned within Stage 1 that will require over height permits. This item does not meet the Need &amp; Nexus criteria.</p> <p>Remove: Construction of shared path. Funding has been granted. Refer: Perth Bicycle Network Grants project #12 2020-21 &amp; 21-22.</p>	<p>Regarding the six consumer aerials that cross Berkshire Road, these range between 4.99m and 7.32m in height. Five of the six consumer aerials fall within a 'Danger Zone' under Wester Power policies (within 1m of a maximum vehicle height). These consumer aerials are required to be undergrounded to provide unrestricted access for RAV7 vehicles.</p> <p>Regarding footpaths, the phrasing of Section 2.2.1 has been amended as follows:</p> <p>"In anticipation of construction funding being provided for this project, the City has amended Berkshire Road to remove the shared path item and instead include the completion of, and necessary repairs to, the existing 2m wide footpath to fulfil the intent of the LSP."</p>
	<p>b) <b>2.2.3 Milner Rd.</b></p> <p>Only a portion of the cost of upgrading of Milner Rd should be borne by Stage 1 DCP.</p> <p>The original LSP had Milner Rd with a cul-de-sac at the Berkshire intersection and widened on one side only by 1.5 m.</p> <p>The Berkshire cul-de-sac was only removed and replaced with the original full movement intersection as a result of the commencement of the Airport Link rail project and Forrestfield North development proposal. Both of these projects will generate significant increased traffic numbers. Refer: TBB LSP review. This review also stated that Road 1 should "probably" be left in the Stage 1 LSP because it would assist to relieve the pressure on the Milner/Berkshire intersection as a result of the increased traffic created by these other projects that are outside the LSP area. The result is that the DCP is totally funding 2 major road upgrades, Road 1 and Milner Rd because of projected major traffic flows passing through Stage 1 from external sources.</p> <p>Milner Rd not only services commercial traffic from Stage 1 but also from properties on the opposite side of Milner Rd and both Imperial and Eureka Rds. Aerial photos clearly show 17 properties that are associated with trucks and machinery. 2 of them are clearly used to store and refurbish oversize school class rooms that come and go on a regular basis and others currently operate road trains.</p>	<p>Since the inception of the DCP, it has identified Milner Road as being wholly funded by the DCP. Milner Road is required to be upgraded to the standard of construction for industrial purposes to facilitate the development of the Forrestfield / High Wycombe Industrial Area. The development of the industrial area to the north of the Forrestfield / High Wycombe Industrial Area has historically developed without a DCP serviced by the existing road network.</p> <p>Future upgrades, beyond those prescribed through the existing DCP, will be required to facilitate development within the Forrestfield North Residential and Transit Oriented Development precinct.</p> <p>The City is advised that a minimum carriageway width of 10m should be provided for Milner Road.</p>

	<p>Though I have no complaint with widening Milner Rd to 10m (providing the total cost is not paid by the DCP), I would point out that RAV route suitability is not dependent on road width. There are many 7m and 8m wide RAV routes throughout the state, meaning that a 10m wide Milner Rd is not essential to satisfy Stage 1 requirements. Dundas Rd north of Berkshire is a RAV 4 route and it is only 7m wide.</p> <p>The requirement for the Stage 1 DCP to pay for the total upgrade of Milner Rd does not go anywhere near satisfying the Need &amp; Nexus criteria.</p> <p>SPP 3.6 addresses this matter quite clearly:  <i>Development contribution plans will, therefore, need to identify growth trends based on service catchment areas, translate these trends into the infrastructure and facilities necessary to meet these increasing needs within the catchment, and allocate the costs of meeting these needs to existing residents and new residents proportional to their need for the infrastructure and facilities. This will ensure fairness and equity. It will mean that existing residents (through councils) and new residents (through developers) will share the burden of the cost of the additional infrastructure and facilities proportional to the need.</i></p> <p>The cost of this item to the DCP should only be a pro rata amount of probably 50% or less of the stated \$1,022,590 not the full cost.</p>	
	<p>c) <b>2.2.4 Nardine / Ashby Close</b>  Development cost quoted at Dec OCM is \$1,624,459 not \$1,613,941.60 as stated.</p>	<p>Noted. The actual costs have been verified and adjusted accordingly.</p>
	<p>d) <b>2.2.5 Bonser Rd.</b>  I note that the initial agreement with the landowner was for a road cost of \$485,349 in Feb 2019. This has already blown out by 21% to \$587,657 in 12 months and the road is only about 50% completed. How can this be justified if latest and best available figures were used in Feb 2019?</p>	<p>The estimated costs presented at the OCM on 25 February 2020 were based on tender and contract prices. The previous amount was based on estimates.</p> <p>Through the finalisation of the design of Bonser Road, it was made evident that levels were required to be raised to ensure feasible integration with adjoining properties and drainage outcomes. The increases in costs are reflective of this finalised design.</p>
	<p>e) <b>2.2.6 Nardine Close Extension (Road 2A)</b>  I look forward to the removal of this item subject to development of lot 50. Please note further comment under appendix E regarding allocation of costs should this go ahead.</p>	<p>Noted.</p>
	<p>f) <b>2.2.10 Milner / Dundas / Berkshire Intersection.</b>  The total cost of this item should never have been included in the DCP. The City should not have accepted a \$430,000 fee to pay for the complete</p>	<p>While Dundas Road itself is not specifically included, the upgrades to the intersection of Berkshire / Milner Roads does necessitate road upgrades over the Dundas Road section of the intersection, including utility relocations.</p>

<p>undergrounding of cables at that intersection. The cables include HT wires that pass through the LSP area connecting the Forrestfield switch yard to suburban High Wycombe and to Forrestfield. They do not service the area of the DCP. DCPs in other areas specifically preclude H.T. power lines that pass through their area. Examples of these can be seen in new subdivisions all over the metro area. The DCP should only have been charged a pro rata amount.</p> <p>Upgrade of Dundas Rd was previously removed from the DCP (see section 1.4 of the DCP report) because it was irrelevant to the DCP. LSP modification report of February 2017 states: <i>Remove all recommended upgrades to Dundas Rd.</i> The cost of rebuilding the Dundas Rd part of the intersection should be reimbursed to the DCP.</p> <p>Of the commercial traffic at this intersection, 15% is through traffic north and south in Dundas Rd. None of these vehicles enter or leave Berkshire Rd or Stage 1. Of the rest of the commercial traffic using this intersection, just 13% is generated by the Stage 1 LSP area.</p> <p>SPP 3.6 addresses this matter quite clearly:  <i>Development contribution plans will, therefore, need to identify growth trends based on service catchment areas, translate these trends into the infrastructure and facilities necessary to meet these increasing needs within the catchment, and allocate the costs of meeting these needs to existing residents and new residents proportional to their need for the infrastructure and facilities. This will ensure fairness and equity. It will mean that existing residents through councils and new residents (through developers) will share the burden of the cost of the additional infrastructure and facilities proportional to the need.</i></p> <p>The City is negligent, having never undertaken comprehensive studies of traffic flow at this intersection to ascertain usage attributable to Stage 1, especially since Milner Rd has only been left open because of predicted increasing traffic from the station and FFN.</p> <p>The City must reimburse the DCP with a co-payment relative to the actual Need and Nexus of the Stage 1 area.</p>	<p>The Berkshire/Milner intersection is required to be upgraded to the standard of construction for industrial purposes to facilitate the development of the Forrestfield / High Wycombe Industrial Area.</p> <p>Future upgrades will be required to facilitate development within the Forrestfield North Residential and Transit Oriented Development precinct.</p> <p>Accordingly the DCP has not been structured to reimburse landowners as requested by this submission.</p>
<p>g) <b>2.2.11 Bush Forever Fencing.</b>  The Bush Forever has been owned and maintained by the government since 1999, 14 years before this LSP was ratified.  The latest edition of this LSP approved on 24 Feb 2020, states in section 7.8 Bush Forever:  <i>The current intention is to fence those sections of the Bush Forever land that abut public roads with fencing consisting of pine posts and rails with a chainmesh infill between the</i></p>	<p>The matter regarding Bush Forever fencing has been discussed with the Department of Planning, Lands and Heritage and it is their expectation that the DCP repay the cost of the fencing. This infrastructure item is also included in Schedule 12 (k) of the Local Planning Scheme No. 3.</p>

posts.

*It is considered that this interface solution offers the following advantages:*

*It will limit the capacity for any rubbish to go into the Bush Forever land...*

*It will limit readily available public access to the Bush Forever land....*

Fencing on Sultana Rd is already pine post and chainmesh.

On the Nardine Cl and Road 2A boundaries are 2m high chainmesh and barbwire fences that have been there since before the road reserve was purchased. This fence is far superior in achieving the desired outcomes than one of pine posts.



Nardine Cl



Road 2A



Sultana Rd West

This item should be deleted from the DCP because it is unnecessary.

	<p><b>h) 2.3 Land for Road Reserve.</b>          Lot 547 Berkshire Rd: If an agreement was reached with the owner in February 2019 regarding land exchange in lieu of fees of \$17.01/m<sup>2</sup>, why is this land listed at a price of \$240/m<sup>2</sup> and not at the Feb 2019 price of \$220/m<sup>2</sup>?</p> <p>Land acquisition of 670m<sup>2</sup> on lot 50 Sultana Rd was supposed to have been removed at the last review as any access for subdivision purposes on that lot is the responsibility of the owner. The un-subdivided lot will have road access from the cul-de-sac at the end of Road 2A on lot 51.</p>	<p>The agreement relating to Lot 547 provided that the value of road land is in accordance with the requirements of the DCP Report as at the date of vesting of the road land in the Crown.</p> <p>The 670m<sup>2</sup> for Lot 50 relates to the land required to facilitate the construction of a cul-de-sac head associated with stage 2 of Nardine Close extension (Road 2a). Should stage 2 process, the cul-de-sac head is proposed to be located centrally over lots 50 and 51. Approximately 670m<sup>2</sup> would be required.</p>
	<p><b>i) 2.4 Administrative Items.</b>          The scheme was adopted at the beginning of 2013 after probably 2 years or more of detailed planning. That is now a total of 9 years of planning.          The OCM report para 27 states: <i>The major infrastructure items within the DCP have been constructed....</i>          SPP 3.6 says rate reviews are: <i>...to be based on the best and latest estimated costs available...</i>          In order to have the best estimates available, then surely detailed plans for remaining infrastructure items should have already been completed.          Why then are the remaining administration costs over the remaining 3 years still 41% of the total?</p>	<p>The City has progressed designs for the two remaining major infrastructure items Milner Road and Sultana Road West to 85%.</p> <p>The remaining administration costs have increased because of additional costs for preparing legal agreements associated with the revised approach adopted at OCM on 25 February 2020.</p>
	<p><b>j) 3. Development Contribution Methodology.</b>          The formula shown is not the method for Calculating Contributions as stated in Schedule 12 of LSP3.</p> <p>Removing the description of the factors of the formula is a blatant misrepresentation of what Schedule 12 actually says.</p>	<p>As outlined in the OCM report on 25 February 2020, the approach (method of calculation) applied previously has resulted in a situation that is inconsistent with the overarching principles of determining infrastructure contributions (outlined in State Planning Policy 3.6) 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.</p>
	<p><b>k) 8.1 Appendix A: Berkshire Rd</b>          All costs relating to footpaths should be deleted as Government funding has already been approved.          6.7: Berkshire Rd is an existing unrestricted RAV 7 route. All vehicles have the same maximum height limit of 4.3m and as the cable has not been pulled down by any of the 670 trucks and road trains that pass through Berkshire Rd every day, one would assume it is more than 4.3m high.          This item should be removed by the Need and Nexus clause.</p>	<p>Regarding footpaths, the phrasing of Section 2.2.1 has been amended as follows:</p> <p>"In anticipation of construction funding being provided for this project, the City has amended Berkshire Road to remove the shared path item and instead include the completion of, and necessary repairs to, the existing 2m wide footpath to fulfil the intent of the LSP."</p> <p>Regarding the six consumer aerials that cross Berkshire Road, these range between 4.99m and 7.32m in height. Five of the six consumer aerials fall within a 'Danger Zone' under Wester Power policies (within 1m of a maximum vehicle height). These consumer aerials are required to be undergrounded to provide unrestricted access for RAV7 vehicles.</p>

<p>l) <b>8.2 Appendix B: Milner Rd.</b> I note that after 9 years of planning, no detailed design drawings have been prepared. This item states that cost estimates are still based on a “typical” drawing and are not specific to Milner Rd. Item 5.4 includes asphaltting the existing road surface as well as any widened section. Over the last 3 years there have been approximately 100,000 semitrailer movements on this road surface attributable to the railway project. The City has been collecting funds, on a regular basis, from the railway project especially to pay for the required resurfacing because of pavement damage. It should not be a cost to the DCP.</p>	<p>Designs for Milner Road have been progressed to 85% and the costs have been updated accordingly.</p> <p>The contribution from the joint venture constructing the Forrestfield Airport Link project is for maintenance associated with additional vehicle movements in the area. These vehicle movements will likely conclude prior to Milner Road being upgraded. The item listed under Milner Road is for a new surface, not for maintenance.</p>
<p>m) <b>8.5 Appendix E: Road 2A</b> Stage 1 of this road is approximately 290m in length at a cost of \$562,565 Stage 2 should be only about 120m but is estimated at \$540,658, 2½ times the rate. Does this estimate still include the extension at the rear of lot 50 that was supposed to be removed at the last review, as the quantities indicate a road length of about 200m?</p>	<p>It is confirmed that the extension at the rear of Lot 50 were removed from the estimated costs.</p>
<p>n) <b>8.6 Appendix F: Sultana Rd</b> Remove 7.3 Maintenance for trees. This is not a capital expense and SPP 3.6 expressly prohibits charges for maintenance so it should be removed. Relocation of power pole 7.8. (price based on Dundas/Milner/Berkshire quote). After 2 years of initial planning, and 7 annual reviews, the “latest and best” estimate is still relying on a Shawmac guestimate. And we know how accurate they have been! Why has there never been a W/P quote obtained to find out the actual price?</p>	<p>Schedule 12 (J) of the Local Planning Scheme No. 3 includes the provision of maintenance. Where trees are required to be installed, it is an established practice that landscaping is maintained for a minimum period of two years to optimise survival rates. The two year period commences at the time of planting.</p> <p>Notwithstanding the above, the item for supplying, installing and maintaining trees has been removed in light of detailed designs for Sultana Road West and insufficient room on the verge to accommodate trees, without locating the trees within (at the lowest point of) the drainage swales.</p>
<p>o) <b>8.11 Appendix H: Administration Items.</b> Agreements for future contributions of \$150,000 equates to about \$6,500 per remaining contributor or more than 10% of the extra \$60,000 you are planning to charge each of them. This change of methodology has not come about because of anything any landowner has done and any subsequent legal costs should be borne by the City.</p>	<p>The estimated cost for agreements for future contributions (\$150,000), when divided by the 31 remaining contributors, amounts to approximately \$4,838.</p> <p>This estimated cost has been reconsidered and reduced to approximately \$3,000 for each remaining contributor.</p> <p>The legal agreements are required to administer the DCP in accordance with the Local Planning Scheme No. 3 and therefore form an administration cost under the DCP.</p>
<p><b>OCM Council Report Feb 25 2020 [note numbers below relate to corresponding paragraph numbers in OCM report 25 February 2020]</b></p> <p>The following should be read in conjunction with the OCM 25 February 2020 report 10.5.11</p>	<p>The inclusion of contributions collected (funds held as money), 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.</p>

	<p>p) <b>14.</b> This is exactly what is supposed to happen according to LSP3 schedule 12.  <i>Cost of infrastructure = remaining infrastructure costs – funds held as money</i>  <i>Net lot area = Contribution area – (Area of road reserve + Developed area)</i></p> <p>SPP 3.6: 4. Certainty .... <i>methods of accounting for escalation agreed upon at the commencement of a development.</i></p>	
	<p>q) <b>15.</b> It is used elsewhere and in Cell 9 because it is the correct method.</p>	<p>Cell 9 operates under separate provisions of the Local Planning Scheme No. 3 and is not subject to the requirements and principles under State Planning Policy 3.6.</p>
	<p>r) <b>20.</b> Over the years items of infrastructure have been added and removed. Land prices have similarly risen and fallen. The LSP is subject to a 5 year review. These reviews allow for major changes to the LSP as a result of changed circumstances within the area. There is nothing written anywhere that says the methodology of cost calculation should, or can be altered. There will always be a differential of rate between early and late payers. The gamble always will be, will it go up or down.</p>	<p>There is no specific reference to a requirement to review the method of calculating the development contribution. As outlined in the OCM report on 25 February 2020, the approach (method of calculation) applied previously has resulted in a situation that is inconsistent with the overarching principles of determining infrastructure contributions (outlined in State Planning Policy 3.6) 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.</p>
	<p>s) <b>21.</b> There is no basis for this comment. The very first landowner to pay, on 9 July 2013, has waited 7 years to gain any benefit. Two landowners in Sultana Rd paid their contributions in 2014. The DCP report says that there will be no upgrade to Sultana Rd until co-funding is available to complete the upgrade. As this will now need to come from the FFN DCP. They probably won't see any benefit for their contribution during my lifetime.</p>	<p>It is correct that the calculation method that was previously applied would result in 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. In the interest of equity, all landowners should make a contribution towards all of the infrastructure identified in the DCP and required to facilitate the industrial development envisaged, irrespective of whether the infrastructure was built prior to or after the development occurs and the contribution is made.</p>
	<p>t) <b>22.</b> While the system allows for infrastructure to be added and removed, land prices to fluctuate, inflation movement and demand variation in the cost of infrastructure construction, it is not possible to evenly distribute the costs over the 10 year DCP life.</p>	<p>At the end of the DCP's lifespan, or when all cost contributions have been made or accounted for, the final contribution rate will have captured the fluctuations to land value and infrastructure cost, which will provide the most equitable, consistent and accountable outcome possible.</p>
	<p>u) <b>23.</b> Where is this "requirement to review the calculation" written?</p> <p>The "Certainty" principle says:  <i>All development contributions be clearly identified and methods of accounting for cost adjustments determined at the commencement of a development.</i></p> <p>The "consistency" principle says:  <i>...the methodology for applying contributions should be consistent.</i></p>	<p>There is no specific reference to a requirement to review the method of calculating the development contribution. As outlined in the OCM report on 25 February 2020, the approach (method of calculation) applied previously 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.</p>

	<p>v) <b>24.</b> Perhaps there have not been any significant drops in infrastructure estimates in other DCPs because the administrators did their job properly from the beginning. As an example, even though the WAPC notified the city in June 2012, before the original DCP was adopted, that all properties had to have a road frontage, this was not included in the LSP and the DCP until the next annual review in December 2013.</p> <p>That is one of the reasons that the rate increased from \$23.03 to \$28.49 at that time.</p>	<p>It is understood that this comment relates to the inclusion of Nardine Close extension (Road 2a) in the DCP. It is noted that infrastructure costs did increase between Councils adoption of the cost contribution (OCM 183/2012) in December 2012 and in the subsequent review in December 2013 (OCM 211/2013). This was as a consequence of the WAPC's modifications to the LSP to require road access to the lots located where Road 2a is currently proposed.</p>
	<p>w) <b>25.</b> These are not "supplementary notes". They are the definitions of the factors of the formula. You cannot just delete them and change the meaning or intent of the formula at any time, just to suit your own ends.</p>	<p>This is inconsistent with advice received by the City.</p>
	<p>x) <b>26.</b> By attempting to address an equity issue in this way goes completely against the "Certainty" and "Consistency" and possibly the "Transparency" principles. I would point out that the "Equity" principle refers only to:</p> <p><i>...contributions should be levied from all developments ....based on their relative contribution to need.</i></p> <p>There is no way that this suggests all contributions should be equal at the end of 10 years.</p> <p>The City of Wanneroo charged everybody the same rate for 10 years, and that didn't end happily!</p>	<p>In the case of this DCP, the "relative contribution to need", the unit of charge is based on the total area of the owner's land.</p> <p>The approach outlined in the OCM report on 25 February 2020 is considered to provide the most equitable, consistent and accountable outcome possible.</p>
	<p>y) <b>29.</b> It is amazing that Milner Rd went from a simple closure and Cul-de-sac at Berkshire Rd to a \$1 million RAV 7 intersection. The rest of Milner Rd went from a 1½m widening on one side, to 1½m on both sides and in spite of these and other additions the contribution rate dropped from \$31.23 to \$17.01 at the last review.</p>	<p>It is acknowledged that changes in the planning framework for the locality resulted in changes to the road system, which impacted on the infrastructure works required in the DCP including Milner Road. The reduction of the contribution rate is principally a result of reduced infrastructure costs (principally utility relocation cost estimates) and the interpretation of the method for calculating the contribution rate in the DCP.</p>
	<p>z) <b>31.</b> SPP 3.6 states quite categorically;  <i>6.3.14.3 Payment by an owner of the cost contribution, including a cost contribution based upon estimated costs....constitutes full and final discharge of the owner's liability under the development contribution plan....</i>          It can't be any simpler than that!</p>	<p>Clause 6.5.14.3 of Local Planning Scheme No. 3 (LPS 3) States:</p> <p><i>"Payment by and Owner of the cost contribution, including a cost contribution based upon estimated costs in a manner acceptable to the local government, constitutes full and final discharge of the Owner's liability under the development contribution plan and the local government shall provide certification in writing to the owner of such discharge if requested by the owner. "</i></p> <p>Note that the payment of a cost contribution is required to be in a manner acceptable to the local government and CI 6.5.11.4 of LPS 3 requires the City to</p>

		enter into an agreement with landowners in order to accept a cost contribution based on estimates as a final contribution. The City has not entered into agreements with landowners who have previously made cost contributions to finalise those cost contributions.
aa) <b>32.</b> In light of the previous paragraph and with reference to LSP3, the annual reviews are to review "estimated infrastructure costs" and to "reflect changes in funding and revenue sources". There is no mechanism or ability to establish a final contribution rate after all infrastructure has been constructed and paid for.		The Local Planning Scheme No. 3 Cl. 6.5.11.1 states: <i>"The determination of Infrastructure Costs and Administrative Costs is to be based on amounts expended, but when expenditure has not occurred, it to be based on the best and latest estimated costs available to the local government and adjusted accordingly, if necessary."</i>
bb) <b>33.</b> There is an assumption that all landowners will have commenced development and paid a contribution by 2023. The report accompanying Amendment 88 assumed (wrongly) that most properties in the area would be developed within 5-7 years after the commencement of the scheme. This report shows that only 50% of the land is developed after 7 years and that is sure to slow in the next 2 years or so, based on the latest economic outlook.  You won't have collected all the money, or completed all of the infrastructure or indeed have any way to reconcile anything. How long will it take to credit higher contributors?		The lifespan of this DCP is limited at 10 years from its adoption in 2013. In the event that there is a need to extend the timeframe for this DCP an amendment to the Local Planning Scheme No. 3 will be required. The City will include some indicative forecasts for development and cashflow in the DCP Report.
cc) <b>34.</b> See paragraph 31. If you cannot persuade the lower contributors to donate more for the cause, all the effort for equity goes out the window. Some will still have paid more and some will have paid less.		The approach outlined in the OCM report on 25 February 2020 is considered to provide the most equitable outcome possible
dd) <b>35.</b> This obviously will make the reconciliation very difficult, or impossible, depending on how many are involved.		Noted.
ee) <b>39.</b> Lands for roads have been purchased from landowners at different prices. Is there equity in that?		Purchasing land by negotiation requires land valuations to be prepared by a qualified Land Valuer. The determination of land value is in accordance with Cl. 6.5.12 of Local Planning Scheme No. 3 and is not required to meet the DCP equity principle.
ff) <b>40.</b> The landowners that have paid at a lower rate will still be unequal to all the rest as there is no legal ability for the City to demand any further funds from these landowners.		Cl 6.5.11.4 of LPS 3 requires the City to enter into an agreement with landowners in order to accept a cost contribution based on estimates as a final contribution. Given the City has not entered into agreements with landowners, the previous cost contributions are not deemed to be final. This is a matter that will require the City's further consideration leading up to and during the time that the final costs are reconciled.
gg) <b>42.</b> The payments cannot be considered as interim, retrospectively. LSP3 part 6.5.14.3 ... <i>a payment of contributions constitutes full and final discharge of</i>		Clause 6.5.14.3 of Local Planning Scheme No. 3 (LPS 3) States:

	<p><i>the owners liability.</i></p>	<p><i>"Payment by and Owner of the cost contribution, including a cost contribution based upon estimated costs in a manner acceptable to the local government, constitutes full and final discharge of the Owner's liability under the development contribution plan and the local government shall provide certification in writing to the owner of such discharge if requested by the owner. "</i></p> <p>Note that the payment of a cost contribution is required to be in a manner acceptable to the local government and Cl 6.5.11.4 of LPS 3 requires the City to enter into an agreement with landowners in order to accept a cost contribution based on estimates as a final contribution. The City has not entered into agreements with landowners who have previously made cost contributions to finalise those cost contributions.</p>
	<p>hh) <b>43.</b> See above. LSP3 part 6.5.14.3 states: .. <i>the local government shall provide certification in writing to the owner of such discharge if requested by the owner.</i> It does not say that final discharge is dependent on receiving notification in writing. There is no mention in either SPP 3.6 or LSP3 of the word "interim" in any clause.</p>	<p>The submitter is correct regarding Cl. 6.5.14.3, however Cl. 6.5.11.4 states:</p> <p><i>"Where a Cost Contribution has been calculated on the basis of an estimated cost, the local government –</i></p> <p>a) <i>Is to adjust the Cost Contribution of any Owner in accordance with the revised estimated costs; and</i></p> <p>b) <i>May accept a Cost Contribution, based upon estimated costs, as a final Cost Contribution and enter into an agreement with the Owner accordingly.</i></p> <p>While there is no specific mention of the word "interim", Cl 6.5.11.4 (a) allows for cost contributions to be adjusted in accordance with revised estimated costs.</p>
	<p>ii) <b>44.</b> Unfortunately this solution is based on the misguided assumption that there will be enough money in the cash account to complete all infrastructure by 2023 and that all owners will have paid. As I pointed out be in paragraph 21, co-funding for Sultana Rd is highly unlikely by 2023, and so "all actual infrastructure costs" still won't be known.</p>	<p>The lifespan of this DCP is limited at 10 years from its adoption in 2013. In the event that there is a need to extend the timeframe for this DCP an amendment to the Local Planning Scheme No. 3 will be required.</p>
	<p>jj) <b>47/48.</b> If an agreement was reached in February 2019 with owners of Lot 547 Berkshire Rd for land in- lieu when the valuation was \$220/m<sup>2</sup>, why is this land included at the proposed future valuation of \$240/m<sup>2</sup>?</p>	<p>The agreement provided that the value of road land is in accordance with the requirements of the DCP Report as at the date of vesting of the road land in the Crown.</p>
	<p>kk) <b>53.</b> See comments under 8.11 Appendix H.</p>	<p>Response provided to (O) above.</p>
	<p>ll) <b>54/55.</b> By definition in LSP3, <i>"Cost Contributions" means the contribution ....payable by an owner pursuant to a Developer Contribution Plan.</i></p> <p>LSP3 6.5.13.2 ... <i>An owners liability to pay the Cost Contribution arises on the earlier of (a), (b), (c) or (d). The liability arises only once upon the earliest of the listed events.</i></p>	<p>Clause 6.5.14.3 of Local Planning Scheme No. 3 (LPS 3) States:</p> <p><i>"Payment by and Owner of the cost contribution, including a cost contribution based upon estimated costs in a manner acceptable to the local government, constitutes full and final discharge of the Owner's liability under the development contribution plan and the local government shall provide certification in writing to the owner of such discharge if requested by the owner. "</i></p>

	<p>LSP3 6.5.14.3: <i>Payment by an owner of the cost contribution, including ..... based on estimated costs .... Constitutes full and final discharge.</i></p> <p>There is no mechanism in the DCP to allow the City to force an agreement for future additional payments as a condition for Development Approval.</p>	<p>Note that the payment of a cost contribution is required to be in a manner acceptable to the local government.</p> <p>Clause 11.1.1 (a) of LPS 3 provides the for the local government to enter into agreements with owners:</p> <p><i>"11.1.1 The local government in implementing the Scheme has the power to –</i>  <i>1. Enter into an agreement with any owner, occupier or other person having an interest in land affected by the provisions of the Scheme in respect of any matters pertaining to the Scheme;"</i></p>
	<p>mm) <b>63.</b> The "Cost Contribution" referred to, is by definition, the amount "still to be paid" by an owner. It is not an amount that "has already been paid."</p> <p>Therefore by definition, 6.5.11.4 simply means to adjust the Cost Contribution (the amount still payable) by any Owner in accordance with the revised estimated costs. This does not include any contribution that has already been paid in full and satisfied all further obligation.</p>	<p>The definition of Cost Contribution is:  <i>"Cost Contribution' means the contribution to Infrastructure Costs and Administrative Costs payable by an Owner pursuant to a Development Contribution Plan"</i></p> <p>The definition does not refer to the amount as "still to be paid" and the term "payable" does not necessarily define the time of payment as being past or future tense.</p>
	<p>nn)<b>67.</b> The intent and principles are far from met by these changes. It trashes most of the Guiding Principles in the pursuit of equality. There is nothing in any of the overarching documents that gives the slightest hint that every landowner should pay at the same rate.</p>	<p>The principles underlying development contributions, namely equity, consistency and accountability as provided under Local Planning Scheme No. 3 and State Planning Policy 3.6 have guided the approach taken by the City in this review. It is not considered reasonable or in line with principles for the City to accept contributions at a rate, knowing that in doing so, owners will be required to bear more or less than their fair share of the DCP costs.</p>
	<p>oo)<b>71.</b> SPP 3.6 has clear methods for dealing with over or under funding at the end of the life of a scheme. The proposed process is not one of the stated methods.</p> <p>SPP 3.6 states: <i>Development Contributions can only be for the provision of capital items. The costs associated with design and construction of infrastructure (including land costs) and the cost of administration are considered capital items and can be included in the DCP.</i></p> <p>This does not leave any room to raise extra funds for any other purpose including to credit some land owners.</p>	<p>Ultimately this DCP is consistent with SPP3.6 in its intent to ensure each land owner will, at the conclusion of the DCP, have been required to make an equitable contribution towards the design and construction of infrastructure and administrative items.</p>
	<p>pp)<b>72.</b> This is not possible.</p>	<p>Cl 6.5.11.4 of LPS 3 requires the City to enter into an agreement with landowners in order to accept a cost contribution based on estimates as a final contribution. Given the City has not entered into agreements with landowners, the previous cost contributions are not deemed to be final. This is a matter that will require the City's further consideration leading up to and during the time that the final costs are reconciled.</p>

	<p>qq) <b>84.</b> The existing methodology, through the annual reviews is designed to ensure that the Scheme balances with the final payment.</p>	<p>Ultimately the method being applied through this DCP review will result in the contributions balancing against infrastructure costs and administrative costs.</p>
	<p>rr) <b>Conclusion.</b>  The City appears to be basing its argument for changing the calculation methodology on clause 6.5.11.4 of the scheme, but this must be read in conjunction with the whole document, not in isolation.  The "Cost Contribution" is defined as the amount "owing" not an amount previously "paid."   If contributions have been paid before an adjustment of estimates, and they have been paid in full at that time, then that constitutes a final discharge of liability. That liability arises at any one of the events listed in 6.5.13.2, not at some later review, years down the track.   It also says that contribution liability arises only once at the earliest of the listed events.   There is no clause anywhere in the Scheme that allows for provisional payments before or after any annual review.   With reference to "Agreements" for future "Interim" payments, I fail to see any legal standing in an agreement of liability for an undetermined amount to be payable at an undetermined time, perhaps years down the track. This is just not possible. I cannot see any clause anywhere in either LPS3 or SPP3.6 that would give any legal ability for the City to change the Methodology during the life of this Scheme. There is no provision in either LSP3 or SPP 3.6 to collect contributions for any other purpose than "initial capital requirements only."   There is a "utopian" assumption that at the end of 3 years almost every landowner will have paid their contributions and you will sit down at the table and "square up." By your figures, in order just to pay for all remaining infrastructure items, contributions on a further 290,000m<sup>2</sup> will have to be paid. While this is possible to achieve in 3 years, current economic outlook shows it will be difficult. Current indications are that in the foreseeable future, contributions will be collected on only about 100,000m<sup>2</sup>, which is a long way short of even finishing the required infrastructure.   If this situation was to occur, then how will you ever reconcile with "actual cost figures," and how will you ever be able to offer credits?   The thrust of the argument appears to be to ensure all landowners pay at the same contribution rate. The Guidelines and the Scheme don't allow for this to happen.</p>	<p>Noted. The conclusion summarises the detailed questions above, see responses provided above in this regard.</p>

	<p>That is why there must be annual reviews and a total review of the Scheme at least every 5 years. Even if the City had borrowed the necessary funds to complete the infrastructure up front, later contributors would pay more than earlier ones because interest would continue to accrue on their unpaid contributions. The letter to landowners notifying of this public submission says that any credit or refund is anticipated to be directed to the original contributing owner, subject to a subsequent owner not objecting.</p> <p>Section 6.3.17.2 of SPP 3.6 states: <i>If there is an excess of funds...when all cost contributions have been made and accounted for...the local government is to refund excess funds to contributing owners for that DCA. To the extent, if any, that it is not reasonably practicable to identify owners.....any excess funds shall be applied, to the provision of additional facilities....</i></p> <p>Not only is that quite clear, but why would the City want to create or buy into any dispute between the current and former owners of any property? On the matter of equity between contributors, I draw your attention to Cell 9. Contribution Rate = Net Outstanding Costs divided by Remaining Lot Yield. Cell 9 contribution rate has risen from \$7,100 per block to as high as \$27,816 in 2015 and back to \$24,187 currently on ever shrinking block sizes. Are there any inequity issues there, or is that just the way it is?</p> <p>The City must not, and cannot legally pursue any change to the Stage 1 DCP during its agreed 10 year life time. Any issue highlighted by any landowner over previous higher rates is an issue for the City to deal with itself.</p>	
<b>Submission 4</b>		
	<p>RE: Forrestfield/High Wycombe Industrial Are a -Stage 1 - Development Contribution Plan (DCP)</p> <p>Further to a letter received dated the 25th March 2020 in relation to the above please find below my submission on the DCP report:</p> <p>Introduction</p> <p>a) These submission are prepared for and on behalf of:</p> <ul style="list-style-type: none"> <li>a. <b>[Company name removed]</b>; and</li> <li>b. <b>[Company name removed]</b>, (Developer).</li> </ul> <p>b) The Developer seeks to develop a warehouse and office on the land located at Lots 220 &amp; 221 (32 &amp; 26) Nardine Close, High Wycombe WA 6057 (Property).</p>	<p>Noted. These are introductory statements.</p>

<p>c) The Developer submitted a planning application to the City of Kalamunda (City) on 2 December 2019.</p> <p>d) The City granted a planning approval on 12 March 2020 subject to a number of conditions (Planning Approval).</p> <p>e) The Property is located within the City of Kalamunda's "Forrestfield I High Wycombe Industrial Area - Stage 1", which is subject to a Development Contribution Plan (DCP).</p> <p>f) The City held an Ordinary Council Meeting on 25 February 2020 (OCM).</p> <p>g) At that OCM, the City's Council passed the following resolutions:</p> <ol style="list-style-type: none"> <li>1. <i>"NOTE the confidential advice in the Confidential Attachment.</i></li> <li>2. <i>NOTE the interpretation of the Method for Calculating Contributions in Schedule 12 of Local Planning Scheme No. 3.</i></li> <li>3. <i>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.</i></li> <li>4. <i>NOTE the proposed process to reconcile Cost Contributions for all landowners of the of the Development Contribution Scheme (scheduled for 2023), as outlined in this report.</i></li> <li>5. <i>ADOPT the Forrestfield I High Wycombe Industrial Area Development Contribution Plan Report (Attachment 1) for the purposes of public advertising.</i></li> <li>6. <i>ADOPT the interim Cost Contribution Rate of \$23/m2, for the purposes of public advertising.</i></li> <li>7. <i>NOTE that the interim rate will be applied immediately to enable the timely issue of development approvals and building licences.</i></li> <li>8. <i>AUTHORISE the Chief Executive Officer advertise the interim Cost Contribution Rate and issue correspondence to landowners accordingly."</i></li> </ol> <p>h) In respect of the City's decisions made at the OCM to adopt the DCP Report and adopt the "Interim Cost Contribution Rate of \$23/m2" (for the purposes of public advertising), the City seeks submissions by 24 April 2020.</p> <p>i) Set out below are the Developer's submissions on the matter.</p>	
--	--

	<p><b>Submissions</b></p> <p><b>Method for Calculating Contributions - amendment made to DCP without due process</b></p> <p>j) The Development Contribution Area is described in Schedule 12 of the City's Local Planning Scheme No. 3 (LPS 3).</p>	Noted.
	<p>k) Under the heading "Method for Calculating Contributions" in Schedule 12 of LPS 3, the DCP states:</p> <p><i>"Contribution rate = Cost of infrastructure items + cost of administrative items (\$)</i>  <i>Net lot area of OCA (m2)</i>  <i>Net lot area = Contribution Area - (Area of Road Reserve + Developed Area)</i></p> <p><i>Cost Contribution Schedule adopted by the local government for DCA 1 which will be reviewed annually.</i></p> <p><i>Cost of infrastructure items = remaining infrastructure costs - funds held as money AMO 88 GG 1/5/18"</i></p>	Noted.
	<p>l) At pages 124 - 126 of the OCM Minutes, the City details its "new" method for calculating contributions purportedly under the DCP calculation method.</p>	The word "new" was not used in the 25 February 2020 OCM report in the context of describing the method for calculating contributions.
	<p>m) In particular, the City states at page 126 of the OCM Minutes (emphasis added):</p> <p><i>"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, <u>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).</u></i></p> <p><i>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."</i></p>	Noted.
	<p>n) Contrary to the statement in the paragraph 25 that the words below the equation are mere "supplementary notes", there is nothing in Schedule 12 of LPS 3 to that effect or that the additional words below the equation are not part of the substantive "Method for Calculating Contributions" itself.</p>	<p>Cl. 6.5.10.2 of LPS 3 provides that the DCP Report and the Cost Apportionment Schedule are to set out in detail the calculation of the cost contribution for each owner in the DCA, "... <u>based on the methodology provided in the Development Contribution Place ...</u> " (emphasis underlined).</p> <p>The clause does not require the methodology in the DCP necessarily to be strictly and literally applied in working out cost contributions, but rather the</p>

		calculation of the cost contribution for each owner is to be based on the methodology. As outlined in the OCM report on 25 February 2020, the supplementary notes result in an outcome that is not consistent with the principles underlying development contribution plans.
	o) The City also stated on page 126 of the OCM Minutes: "the interpretation and application of the calculation methodology is required to be reviewed to ensure the arrangement is administered in an equitable manner."	Noted.
	p) That is, the City wishes to re-interpret the DCP - but by omitting words within the DCP as to the calculation method. In effect, the Council Resolutions seek to repeal parts of the calculation method.	Refer to response to (n) above.
	q) This is also reflected in the DCP Report itself at page 16 under the heading "3. Development Contribution Methodology".	Noted.
	r) Under that heading, the City sets out the equation from Schedule 12 of LPS 3 but omits the words below the equation.	Noted.
	s) This is in stark contrast to the 2018 DCP Report at page 11, which sets out the full calculation method from Schedule 12 of LPS 3 and applies the full calculation method to determine the rate.	The reasons for this change in the calculation method is outlined in paragraphs 12 - 26 of the Ordinary Council Meeting minutes 25.2.2020.
	t) What the City is now saying in the DCP Report with respect to the calculation method (ie ignoring words and "defined terms" within the DCP as to the calculation method) amounts to an amendment of the DCP (which is a part of LPS 3) without following the due process for amending a local planning scheme.	The City has received advice that an amendment is not necessary in order to apply the method of calculation without the supplementary notes, noting the response to (n) above. However, the City will clarify the approach adopted at the Council on 25 February 2020 through an amendment in the future.
	u) Clause 5.4 of State Planning Policy 3.6 - Development Contributions for Infrastructure (SPP 3.6) states:  <i>"A development contribution plan does not have effect until it is incorporated into a local planning scheme. As it forms part of the scheme, the Town Planning Regulations 1967, including <u>advertising procedures and the requirement for Ministerial approval, will apply to the making or amendment of a development contribution plan.</u>"</i>	Noted.
	v) Also see the comment at the top of page 4696 of SPP 3.6, which is to the same effect.	Noted.
	w) The Town Planning Regulations 1967 (WA) have since been repealed and amendments to local planning schemes are now dealt with by Part 5 of the Planning and Development (Local Planning Schemes) Regulations 2015 (WA).	Noted.

<p>x) Part 5 regulation 34 and Part 7 regulation 72 of the Planning and Development (Local Planning Schemes) Regulations 2015 (WA) require any amendment to a DCP to follow a "complex" scheme amendment process as per Part 5, Division 2 of the said regulations.</p>	<p>Refer to responses to (n) and (t) above.</p>
<p>y) The City has not complied with those procedural requirements prior to taking the position that the words within the DCP as to the calculation method should now be ignored.</p>	<p>Refer to responses to (n) and (t) above.</p>
<p>z) That the DCP Report is to conform with the actual DCP text was acknowledged by the City in its 2018 DCP Report at page 14 as follows:</p> <p><i>"6.2 Matters Addressed in Development Contribution Plan - Scheme Amendment 88</i></p> <p><i>Through implementation of the DCP there have been a number of interpretations of the DCP Report that are inconsistent with the DCP Scheme. This section of the DCP Report identifies the matters that have been addressed in a review of the DCP Scheme to ensure the DCP Report operates in conformance with the DCP Scheme.</i></p> <p><i>Subsequent to adoption of this DCP Report the City will initiate the process to ensure the DCP Scheme is brought into alignment.</i></p> <ul style="list-style-type: none"> <li>o <i>Methodology for the valuation of land. The DCP Scheme refers to the static feasibility model in order to determine the value of land. This has not been the case for implementation of the DCP where a direct comparison approach has been utilised. The DCP Scheme needs to reflect the land value approach taken to date. It is not uncommon for the valuation approach to be deferred to the DCP Report.</i></li> <li>o <i>Cul-de-sac at the intersection of Berkshire Road and Milner Road has been modified to a through connection.</i></li> <li>o <i>Include the construction of Bonser Road (Road 1) and not just the land component.</i></li> <li>o <i>Calculation methodology changed to Net Lot Area not Total Lot Area and additional definition provided for clarity."</i></li> </ul>	<p>The reasons for this change in methodology is outlined in paragraphs 12 – 26 of the Ordinary Council Meeting minutes 25 February 2020.</p>
<p>aa) In short, section 6.2 of the 2018 DCP Report acknowledges that a DCP Report and its practical application must conform with the DCP text itself.</p>	<p>The reasons for this change in methodology is outlined in paragraphs 12 – 26 of the Ordinary Council Meeting minutes 25 February 2020.</p>
<p>bb) Alternatively, the City is required to follow the necessary procedural steps to amend a local planning scheme, such as was done for Local Planning Scheme No. 3 - Amendment No. 88, if the City wishes to amend the DCP to allow for a</p>	<p>Refer to responses to (n) and (t) above.</p>

	new, amended application of the scheme.	
	cc) It is also noted that, despite the similarities in form and content between the 2018 and 2020 DCP Reports, section 6.2 has been omitted from the 2020 DCP Report.	The reasons for this change in methodology is outlined in paragraphs 12 – 26 of the Ordinary Council Meeting minutes 25 February 2020. A summary of these reasons will be inserted into the DCP Report.
	<p>dd) Section 6 of the 2020 DCP Report merely states, on page 19:</p> <p><b>"6. Operational Matters</b></p> <p><i>This section of the DCP Report addresses various operational matters associated with the DCP.</i></p> <p><b>6.1 Principles</b></p> <p><i>Refer Clause 6.5.6 of LPS3."</i></p>	Noted.
	<p><b>Deeming all cost contributions as "interim" - breach of planning principles</b></p> <p>ee) The City now seeks to deem all cost contributions, including those already paid, as "interim" cost contributions to allow for a "new" reconciliation process at the conclusion of the DCP.</p>	The word "new" was note used in the 25 February 2020 OCM report in the context of describing the reconciliation process at the conclusion of the DCP.
	<p>ff) As stated on page 128 of the OCM Minutes:</p> <p><i>"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.</i></p> <p><i>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."</i></p>	Noted.
	<p>gg) The 2020 DCP Report also states below the table of Estimated Costs on page 15:</p> <p><i>"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. 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 all payments being considered interim until the conclusion of the DCP, the shortfall will no longer occur as all</i></p>	Noted.

	<p><i>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."</i></p>	
	<p>hh) It is submitted that the City's proposed amendments to the calculation method and proposed deeming of all cost contributions as "interim" will result in a contributor's actual required cost contribution no longer being transparent or certain, in breach of planning principles.</p>	<p>The purpose of the adopted approach is to make a responsible and considerate provision enabling landowners to comply with the obligation to make a cost contribution, and ensuring that the cost contribution made will be equitable, consistent with contributions made by other owners, and transparent.</p> <p>Regarding the principle of certainty, the rate finally assessed by the method of calculation applied will be fair and equitable. A rate assessed before all costs are finally ascertained, should not be treated as a final rate to determine contributions for the simple reason that in doing so, a greater burden for the finally ascertained infrastructure costs may fall upon subsequent contributing landowners, and vice versa. A rate assessed early in the life of the DCP may result in an unrealistically high level of contributions operating unfairly against the interest of early contributors, and therefore to the unfair advantage of later contributors. The approach in this case is a pathway to achieving an ultimate fair outcome, and therefore provides ultimate certainty and fairness/equity.</p>
	<p>ii) There is a breach of SPP 3.6 planning principles under the following emphasised parts:</p> <p><i>"4. OBJECTIVES OF THE POLICY</i></p> <p><i>The objectives of this policy are-</i></p> <ul style="list-style-type: none"> <li><i>• to promote the efficient and effective provision of public infrastructure and facilities to meet the demands arising from new growth and development;</i></li> <li><i>• to ensure that development contributions are necessary and relevant to the development to be permitted and are charged equitably among those benefiting from the infrastructure and facilities to be provided;</i></li> <li><i>• to ensure consistency and transparency in the system for apportioning, collecting and spending development contributions;</i></li> <li><i>• to ensure the social well-being of communities arising from, or affected by, development.</i></li> </ul> <p><i>5.2 Principles underlying development contributions</i></p> <p><i>Development contributions must be levied in accordance with the following principles-</i></p>	<p>Comments provided in the below following rows.</p>

	<p>1. <i>Need and the nexus</i></p> <p><i>The need for the infrastructure included in the development contribution plan must be clearly demonstrated (need) and the connection between the development and the demand created should be clearly established (nexus).</i></p> <p>2. <i>Transparency</i></p> <p><i>Both the method for calculating the development contribution and the manner in which it is applied should be clear, transparent and simple to understand and administer.</i></p> <p>3. <i>Equity</i></p> <p><i>Development contributions should be levied from all developments within a development contribution area, based on their relative contribution to need.</i></p> <p>4. <i>Certainty</i></p> <p><i>All development contributions should be clearly identified and methods of accounting for escalation agreed upon at the commencement of a development.</i></p> <p>5. <i>Efficiency</i></p> <p><i>Development contributions should be justified on a whole of life capital cost basis consistent with maintaining financial discipline on service providers by precluding over recovery of costs.</i></p> <p>6. <i>Consistency</i></p> <p><i>Development contributions should be applied uniformly across a Development Contribution Area and <u>the methodology for applying contributions should be consistent.</u></i></p> <p>7. <i>Right of consultation and arbitration</i></p> <p><i>Land owners and developers have the right to be consulted on the manner in which development contributions are determined. They also have the opportunity to seek a review by an independent third party if they believe that the calculation of the contributions is not reasonable in accordance with the procedures set out in the draft Model Scheme Text in appendix 2.</i></p> <p>8. <i>Accountable</i></p> <p><i>There must be accountability in the manner in which development contributions</i></p>	
--	--	--

	<p><i>are determined and expended.</i></p> <p><i>5.7 Development contributions not to be imposed as a condition of rezoning</i></p> <p><i>Local governments are not to impose development contributions beyond the scope of Western Australian Planning Commission policy as conditions or prerequisites for rezoning. The rezoning process is not to be used to impose unreasonable demands on land development outside the scope of Western Australian Planning Commission policy.</i></p> <p><i><u>Development contributions must be formulated through an open and transparent process, with the opportunity to comment in accordance with the process specified in 5.3. or through development contribution plans or voluntary agreements that are transparent and follow the due planning process.</u></i></p>	
	<p>jj) There is also a breach of LPS 3 planning principles at cl 6.5.6 (emphasis added):</p> <p><i>"6.5.6 Guiding principles for development contribution plans</i></p> <p><i>The Development Contribution Plan for any Development Contribution Area is to be prepared in accordance with the following principles -</i></p> <p>a) <i>Need and the nexus</i></p> <p><i>The need for the Infrastructure included in the plan must be clearly demonstrated (need) and the connection between the development and the demand created should be clearly established (nexus).</i></p> <p>b) <i>Transparency</i></p> <p><i><u>Both the method for calculating the development contribution and the manner in which it is applied should be clear, transparent and simple to understand and administer.</u></i></p> <p>c) <i>Equity</i></p> <p><i>Development contributions should be levied from all developments within a Development Contribution Area, based on their relative contribution to need.</i></p> <p>d) <i>Certainty</i></p> <p><i><u>All development contributions should be clearly identified and methods of accounting for cost adjustments determined at the commencement of a development.</u></i></p> <p>e) <i>Efficiency</i></p>	<p>Comments provided below in the following rows.</p>

	<p><i>Development contribution should be justified on a whole of life capital cost basis consistent with maintaining financial discipline on service providers by precluding over recovery of costs.</i></p> <p><i>f) Consistency</i></p> <p><i>Development contributions should be applied uniformly across a development contribution area and <u>the methodology for applying contributions should be consistent.</u></i></p> <p><i>g) Right of consultation and review</i></p> <p><i>Owners have the right to be consulted on the manner in which development contributions are determined. They also have the opportunity to seek a review by an independent third party if they believe the calculation of the costs forming part of the contributions is not reasonable.</i></p> <p><i>h) Accountable</i></p> <p><i>There must be accountability in the manner in which development contributions are determined and expended."</i></p>	
	<p>kk) It is noted that the OCM Minutes stated on page 126:</p> <p><i>"23. The [previous] 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."</i></p>	<p>Noted.</p>
	<p>ll) However, it is submitted that in seeking to apply the principle of equity above all else, the City's revised method of calculating cost contributions, particularly the new automatic deeming of all cost contributions as "interim", breaches other planning principles, especially those of Transparency and Certainty.</p> <p>The proposed reconciliation process constitutes retrospective action in contravention of both SPP 3.6 and LPS 3</p>	<p>The purpose of the adopted approach is to make a responsible and considerate provision enabling landowners to comply with the obligation to make a cost contribution, and ensuring that the cost contribution made will be equitable, consistent with contributions made by other owners, and transparent.</p> <p>Regarding the principle of certainty, the rate finally assessed by the method of calculation applied will be fair and equitable. A rate assessed before all costs are finally ascertained, should not be treated as a final rate to determine contributions for the simple reason that in doing so, a greater burden for the finally ascertained infrastructure costs may fall upon subsequent contributing landowners, and vice versa. A rate assessed early in the life of the DCP may result in an unrealistically high level of contributions operating unfairly against the interest of early contributors, and therefore to the unfair advantage of later</p>

	<p>mm) Clause 5.3 of SPP 3.6 sets out how development contributions are to be imposed (underlined emphasis added):</p> <p><i>"5.3 Imposition of development contributions</i></p> <p><i>Development contributions may relate to the requirements of public utility providers (such as water, sewerage, and electricity), state government requirements and the requirements of local government.</i></p> <p><i>Where local governments are seeking development contributions beyond the standard provisions outlined in appendix 1, they must be supported by a development contribution plan which identifies the need for such infrastructure for the relevant development contribution area or by a voluntary agreement between a developer and the relevant local government. This need may not arise where there is one development and the need for the development contribution is created by that development. Any condition for contributions in this case must be consistent with the principles outlined in section 5.2.</i></p> <p><i><u>There are three stages to the imposition of development contributions.</u></i></p> <p><i><u>5.3.1 Development contributions are formulated and agreed.</u></i></p> <p><i><u>The development contribution plan is used to prescribe the cost contributions for owners in a development contribution area. Areas requiring a development contribution plan, and the infrastructure needs and costs for such area, will generally be identified as part of the process of developing or amending planning schemes.</u></i></p> <p><i>5.3.2. Development contributions are calculated and applied.</i></p> <p><i>Development contributions are generally calculated and applied by way of conditions of subdivision, strata subdivision or development, particularly in greenfield areas. Development contributions may also be sought in infill and redevelopment areas at the time of subdivision, strata subdivision or development.</i></p> <p><i>They may be calculated and applied as-</i></p> <ul style="list-style-type: none"> <li><i>• standard conditions of subdivision or strata subdivision;</i></li> <li><i>• conditions of development.</i></li> </ul> <p><i>Alternatively, contributions can be implemented through voluntary legal</i></p>	<p>contributors. The approach in this case is a pathway to achieving an ultimate fair outcome, and therefore provides ultimate certainty and fairness/equity.</p> <p>Noted.</p>
--	---	---

	<p><i>agreements.</i></p> <p><i>This applies to subdivisional works such as roads, drainage and the provision of power, water and telecommunications and other items outlined in appendix 1. They may also be applied as conditions of development. The calculation will be to apply the detail of the developer contribution plan to the development, including any offsets for the ceding of land or construction of infrastructure.</i></p> <p><u>5.3.3. Development contributions become due and payable.</u></p> <p><u>Development contributions become due and payable as part of the subdivision clearance process or prior to the commencement of development. Clearance of deposited plans, or strata plans as the case may be, to enable the issuance of titles, should not occur until full payment, as calculated and applied, has been finalised. Development contributions are only payable on the proportion of land within a plan being requested for clearance in a development."</u></p>	
nn)	There is no provision in this cl 5.3 process for retrospective action under a reconciliation process. In particular, the first step refers to contributions being formulated and agreed, while the third and final step refers to the contribution becoming due and payable before the development commences.	At this stage in the life of the DCP, it would not be acceptable to the City unless there was a mechanism to ensure that a payment by the owner of a contribution estimated at a given time is capable of being revised at a later time when costs are no longer based on estimates, but have either been paid or otherwise ascertained with certainty. It is only upon receiving payment that is acceptable (based on actual costs) to the City that the City would deem the contribution as final. The provisions of LPS 3 provide for this process.
oo)	There is no fourth step that refers to reconciliation. Therefore, retrospective action, such as a payment reconciliation, is not allowed under SPP 3.6 in the absence of explicit words to the contrary, and there are no such explicit words in the DCP.	Refer to the response to (nn) above.
pp)	The Western Australian Planning Commission sought comment on a revised SPP 3.6 (Draft SPP 3.6) towards the end of 2019. The Draft SPP 3.6 has no bearing on the current matter because, by virtue of sections 29(2) and 31(3) of the Planning and Development Act 2005 (WA), an amendment of a State planning policy has no force or effect until it is approved by the Governor and published in the Government Gazette, which has not occurred with respect to Draft SPP 3.6.	Refer to the response to (nn) above.
qq)	In any event, it is noted that the City's proposed deeming of all cost contributions as "interim" to make way for a retrospective reconciliation process is also not contemplated under the Draft SPP 3.6 in its current form.	Refer to the response to (nn) above.
rr)	The Guidelines to the Draft SPP 3.6 refer to "Interim arrangements for DCP contributions" on page 13, but these "interim arrangements" concern the	Refer to the response to (nn) above.

	<p>situation where a developer or land owner seeks approval to subdivide or develop land after the DCP has been advertised but prior to finalisation and gazettal. That is not the situation here - the DCP is already established and well under way.</p>	
	<p>ss) It is also noted that the City has to date operated on the basis of estimated contributions required and then revising those estimates, as allowed under clauses 6.5.11.4 and 6.5.11.5 of LPS 3:</p> <p><i>"6.5.11.4 Where any Cost Contribution has been calculated on the basis of an estimated cost, the local government -</i></p> <p><i>(a) is to adjust the Cost Contribution of any Owner in accordance with the revised estimated costs; and</i></p> <p><i>(b) may accept a Cost Contribution, based upon estimated costs, as a final Cost Contribution and enter into an agreement with the Owner accordingly.</i></p> <p><i>6.5.11.5 Where an Owner's Cost Contribution is adjusted under clause</i></p> <p><i>6.5.11.4, the local government, on receiving a request in writing from an Owner, is to provide the owner with a copy of estimated costs and the calculation of adjustments."</i></p>	<p>Noted.</p>
	<p>tt) The City also refers to cl 6.5.11.4 of LPS 3 as its legal basis for the proposed reconciliation process. The OCM Minutes state on page 127 (emphasis added):</p> <p><i>"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 <u>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.</u></i></p> <p><i>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.</i></p> <p><i>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."</i></p>	<p>Noted.</p>
	<p>uu) However, it is submitted that clauses 6.5.11.4 and 6.5.11.5 of LPS 3 are about</p>	<p>Refer to the response to (nn) above.</p>

	<p>varying the cost contributions after revising the "estimated costs" and nothing more. The "estimated costs" are the estimated costs of the development or infrastructure required. These clauses do not allow for a reconciliation process between developers, retrospectively, when the actual costs of the infrastructure have not changed, but that is what the City is now purporting to do.</p>	
	<p>vv) This submission accords with clause 6.5.14.3 of LPS 3, which states (emphasis added):</p> <p><i>"6.5.14.3 Payment by an Owner of the cost contribution, including a cost contribution based upon estimated costs in a manner acceptable to the local government, constitutes full and final discharge of the Owner's liability under the development contribution plan and the local government shall provide certification in writing to the owner of such discharge if requested by the Owner."</i></p>	<p>Refer to the response to (nn) above.</p>
	<p>ww) That is, liability is discharged even on the payment of a cost contribution based upon estimated costs. This clause does not allow for a developer's liability to be retrospectively revived because the City's estimate of costs was wrong or because the City has retrospectively deemed an already-discharged payment as merely "interim".</p>	<p>It is noted that, for a cost contribution to be deemed to be a full and final discharge of the Owner's liability, it must be made in a manner acceptable to the local government.</p> <p>LPS 3 also 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, the City enters into a specific agreement with the owner stipulating the payment based on estimates is a final payment.</p>
	<p>xx) Further, clause 6.5.17 of LPS 3 already deals with both shortfalls and excesses in cost contributions, without referring to reconciliations between developers:</p> <p><i>"6.5.17 Shortfall or excess in cost contributions</i></p> <p><i>6.5.17.1 If there is a shortfall in the total of Cost Contributions when all cost contributions have been made or accounted for in a particular Development Contribution Area, the local government may -</i></p> <p><i>(a) make good the shortfall;</i></p> <p><i>(b) enter into agreements with Owners to fund the shortfall; or</i></p> <p><i>(c) raise loans or borrow from a financial institution, to fund the shortfall, but nothing in this clause restricts the right or power of the local government to impose a differential rate to a specified Development Contribution Area in that regard.</i></p> <p><i>6.5.17.2 If there is an excess in funds available to the development contribution area when all Cost Contributions have been made or accounted for in a</i></p>	<p>Refer to the response to (ww) above.</p>

	<p><i>particular Development Contribution Area, the local government is to refund the excess funds to contributing Owners for that Development Contribution Area. To the extent, if any, that it is not reasonably practicable to identify Owners and/or their entitled amount of refund, any excess in funds shall be applied to the provision of additional facilities or improvements in that Development Contribution Area."</i></p>	
yy)	<p>Essentially, by clause 6.5.17, no individual developer will be forced to make good a shortfall, while excesses are simply to be refunded to the original contributors and not reimbursed by another developer.</p>	<p>Refer to the response to (ww) above.</p>
zz)	<p>Since clause 6.5.17 does not refer to the reconciliation process that the City contemplates, where later developers will be forced to make good any shortfall or reimburse amounts paid by previous developers, the City's form of retrospective reconciliation is not allowed under LPS 3 as clause 6.5.17 is intended to be the sole avenue for dealing with such shortfalls and excesses.</p>	<p>Refer to the response to (ww) above.</p>
	<p><b>Conditions on development approvals cannot be used to enforce the retrospective reconciliation process</b></p> <p>aaa) The OCM Minutes state on page 130:</p> <p><i>"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.</i></p> <p><i>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."</i></p>	<p>The City is advised that conditions can be used to require an adjustment of an owner's interim cost contribution.</p> <p>The purpose of the condition is to make a responsible and considerate provision enabling the developer to comply with the obligation to make a cost contribution, and ensuring that the cost contribution made will be equitable, consistent with contributions made by other owners, and transparent.</p>
bbb)	<p>The City proposes to impose conditions as part of development approvals to enforce developers' cost contributions, which, as already discussed, the City now deems "interim" and to be retrospectively reconciled at the conclusion of the DCP.</p>	<p>Refer to the response to (aaa) above.</p>
ccc)	<p>The City has sought to do so with respect to the Developer. Condition 2 of the Developer's Planning Approval requires the Developer to enter into an agreement with the City to secure the Developer's "interim" cost contributions by caveat.</p>	<p>Noted.</p>
ddd)	<p>As stated above, it is submitted that the City's new reconciliation process decided during the 25 February OCM constitutes illegal retrospective action.</p>	<p>Refer to the response to (ww) above.</p>

<p>eee) It is also submitted that the City cannot impose conditions as part of development or planning approvals to enforce such illegal retrospective action.</p>	<p>Refer to the response to (aaa) above.</p>
<p>fff) The City can secure a developer's cost contribution via caveat under clause 6.5.15 of LPS 3:</p> <p><i>"6.5.15 Charge on land</i></p> <p><i>6.5.15.1 The amount of any Cost Contribution for which an Owner is liable under clause 6.5.13, but has not paid, is a charge on the Owner's land to which the Cost Contribution relates, and the local government may lodge a caveat, at the Owner's expense, against the certificate of title to that land.</i></p> <p><i>6.5.15.2 The local government, at the Owner's expense and subject to such other conditions as the local government thinks fit, can withdraw a caveat lodged under clause</i></p> <p><i>6.5.15.1 to permit a dealing and may then re-lodge the caveat to prevent further dealings.</i></p> <p><i>6.5.15.3 If the Cost Contribution is paid in full, the local government, if requested to do so by the Owner and at the expense of the Owner, is to withdraw any caveat lodged under clause 6.5.15."</i></p>	<p>Noted.</p>
<p>ggg) However, while such a caveat can secure a developer's original liability to pay a cost contribution, the caveat cannot be used to enforce an additional future payment required by the City's reconciliation process, which is an illegal retrospective action.</p>	<p>Cl. 6.5.15.1 of LPS 3 provides for a caveat to be lodged where the amount of any Cost Contribution for which an Owner is liable has not been paid. The Cost Contribution liability is also subject to Cl. 6.5.14.3, which requires the cost contribution to be <i>"... in a manner acceptable to the local government"</i>.</p>
<p>hhh) The same is submitted with respect to other conditions on development approvals that do not involve a caveat. As the City's proposed reconciliation process constitutes illegal retrospective action, a City decision to grant development approval subject to a condition that enforces the illegal retrospective action would be beyond the City's jurisdiction as a planning authority, and so subject to legal challenge.</p>	<p>It is considered from the terms of cl.6.5 of the City's LPS 3 that it is open to the City, where cost contributions are based on estimates, to revise the estimate of an owner's cost contribution from time to time, to receive part payment of a cost contribution, and to make agreements with an owner as to the payment of the whole, or any balance, of a cost contribution. In this regard the City is acting in accordance with its statutory responsibilities.</p>
<p>iii) Further, the City should have regard to the document titled "Development Assessment Panel Practice notes: Making Good Planning Decisions" published by the Department of Planning, Lands and Heritage (Practice Note).</p>	<p>Noted.</p>
<p>jjj) The Practice Note is primarily directed towards development assessment panels, but it is also intended as a guide to local governments that make planning decisions and includes the legal requirements for valid conditions on</p>	<p>Noted.</p>

	development approvals.	
	<p>kkk) As to what constitutes a valid condition on a development approval, the City should have regard to the following on page 44 of the Practice Note:</p> <p><i>"4.2 Test of validity</i></p> <p><i>The test of validity of a condition of planning approval is well known: Newbury District Council v Secretary of State for the Environment [1981] AC 578. This test was recently endorsed by the High Court of Australia in Western Australian Planning Commission v Temwood Holdings Pty Ltd (2004) 221 CLR 30 at [57].</i></p> <p><i>A condition is valid if</i></p> <ol style="list-style-type: none"> <li><i>1. it has a planning purpose;</i></li> <li><i>2. it fairly and reasonably relates to the development, and</i></li> <li><i>3. it is not so unreasonable that no reasonable planning authority could have imposed it.</i></li> </ol> <p><i>To this, we add a fourth limb, which is:</i></p> <ol style="list-style-type: none"> <li><i>4. the condition is certain and final."</i></li> </ol> <p>lll) All four of the tests of validity are relevant here.</p>	Noted.
	mmm) Pages 49 - 51 of the Practice Note contains case law that supports the existence of the fourth test.	Noted.
	nnn) The Developer submits that imposing conditions on development approvals to enforce the proposed retrospective reconciliation process would not be certain or final, in breach of the fourth test of validity.	The City is advised that the condition satisfies the requirements for certainty and finality.
	<p><b>Applying the "interim" rate immediately - breach of planning principles</b></p> <p>ooo) At the OCM, the City's Council also resolved:</p> <p><i>"7. NOTE that the interim rate will be applied immediately to enable the timely issue of development approvals and building licences."</i></p>	Noted.
	ppp) It is submitted that the City's immediate application of the "interim" rate is a breach of planning principles.	Noted.

	<p>qqq) There is a breach of the following SPP 3.6 planning principles:</p> <p><i>"5.2 Principles underlying development contributions</i></p> <p><i>Development contributions must be levied in accordance with the following principles-</i></p> <p><i>1. Right of consultation and arbitration</i></p> <p><i>Land owners and developers have the right to be consulted on the manner in which development contributions are determined. They also have the opportunity to seek a review by an independent third party if they believe that the calculation of the contributions is not reasonable in accordance with the procedures set out in the draft Model Scheme Text in appendix 2.</i></p> <p><i>2. Accountable</i></p> <p><i>There must be accountability in the manner in which development contributions are determined and expended.</i></p> <p><i>5.7 Development contributions not to be imposed as a condition of rezoning</i></p> <p><i>Development contributions must be formulated through an open and transparent process, with the opportunity to comment in accordance with the process specified in 5.3, or through development contribution plans or voluntary agreements that are transparent and follow the due planning process."</i></p>	<p>There is no statutory requirement for the City to advertise a DCP review. As noted in the comments above in response to (t), the City does not consider that the interpretation of the method for calculating the cost contribution amounts to an amendment to the LPS 3. Notwithstanding this, the City does routinely undertake public advertising during a review of the DCP for good governance and transparency.</p>
	<p>rrr) Similarly, there is also a breach of the following LPS 3 planning principles at cl 6.5.6:</p> <p><i>"6.5.6 Guiding principles for development contribution plans</i></p> <p><i>The Development Contribution Plan for any Development Contribution Area is to be prepared in accordance with the following principles -</i></p> <p><i>g) Right of consultation and review</i></p> <p><i>Owners have the right to be consulted on the manner in which development contributions are determined. They also have the opportunity to seek a review by an independent third party if they believe the calculation of the costs forming part of the contributions is not reasonable.</i></p> <p><i>h) Accountable</i></p> <p><i>There must be accountability in the manner in which development contributions</i></p>	<p>Refer to the response to (qqq) above.</p>

	<p><i>are determined and expended."</i></p>	
	<p>sss) That is, the immediate application of the "interim" rate, in advance and regardless of any submissions received in the subsequent advertising process, breaches the land owners' and developers' rights of consultation and arbitration, as well as accountability in the process of determining the immediate "interim" rate.</p> <p><b>Conclusion</b></p> <p>ttt) 72. In conclusion, the Developer submits that:</p> <ul style="list-style-type: none"> <li>i. the City's "new" method for calculating contributions under the DCP calculation method (ie ignoring words and "defined terms" within the DCP as to the calculation method) amounts to an amendment of the DCP (ie an amendment to LPS 3);</li> <li>ii. the City has not undertaken the required process for amending a local planning scheme and is therefore not permitted to apply the existing calculation method within the DCP in the "new" way proposed;</li> <li>iii. until such an amendment has been made, the City must apply the existing calculation method within the DCP in the same way as it did in the 2018 DCP Report (ie by not ignoring words and "defined terms" within the DCP as to the calculation method);</li> <li>iv. in regard to the City attempting to deem all cost contributions, including those already paid, as "interim" cost contributions to allow for a "new" reconciliation process at the conclusion of the DCP: <ul style="list-style-type: none"> <li>a. the City has not undertaken the required process for amending a local planning scheme and is therefore not permitted to do this;</li> <li>b. until such an amendment has been made, the City must apply the existing DCP, which does not provide for "interim" cost contributions and a final reconciliation between developers;</li> <li>c. (iii) the existing DCP operates on the basis of estimated contributions required and then revising those estimates as allowed under clauses 6.5.11.4 and 6.5.11.5 of LPS 3;</li> <li>d. clauses 6.5.11.4 and 6.5.11.5 of LPS 3 are about varying the cost contributions after revising the "estimated costs" and nothing more. The "estimated costs" are the estimated costs of the development or infrastructure required. These clauses do not allow for a reconciliation process between developers, retrospectively;</li> </ul> </li> </ul>	<p>Refer to the response to (qqq) above.</p> <p>This is a summary of the detailed submission provided in the rows above. Responses provided above.</p>

	<ul style="list-style-type: none"> <li>e. clause 6.5.17 of LPS 3 already deals with both shortfalls and excesses in cost contributions, without referring to reconciliations between developers;</li> <li>f. by clause 6.5.17 of LPS 3, no individual developer is required to make good a shortfall, while excesses are simply to be refunded to the original contributors and not reimbursed by another developer;</li> <li>g. deeming all cost contributions as "interim" will result in a contributor's actual required cost contribution no longer being transparent or certain, in breach of State Planning Policy 3.6 and the City's LPS 3; and</li> <li>v. in regard to the City's recently introduced planning approval conditions relating to "interim" cost contributions and a "new" reconciliation process, those conditions are unlawful as they seek to enforce illegal retrospective actions that are not provided for in the existing DCP;</li> <li>vi. the immediate application of the "interim" rate, in advance and regardless of any submissions received in the subsequent advertising process, breaches the land owners' and developers' rights of consultation and arbitration, as well as accountability in the process of determining the immediate "interim" rate, in breach of State Planning Policy 3.6 and the City's LPS 3;</li> <li>vii. for the reasons set out above:             <ul style="list-style-type: none"> <li>a. Council's decision to adopt the DCP Report and "interim cost contribution rate of \$23/m2 should be rescinded including the decision to "immediately" apply that rate; and</li> <li>b. the City should apply the DCP as per the 2018 DCP Report and adopt a contribution rate calculated in accordance with the DCP.</li> </ul> </li> </ul>	
<b>Submission 5 - Objection</b>		
	<p><b>Re: Submission on DCP Report and method of calculation of the Contribution Rate</b></p> <p>In response to The City of Kalamunda's adjustments to the contribution rate and justifications for doing so, concerns on accountability of certain issues need to be addressed;</p>	<p>Noted.</p>
	<p>a) The City of Kalamunda has stated that "to comply with the requirements of the SPP3.6 that contributions that have been paid, or to be paid are an interim</p>	<p>The purpose of the adopted approach is to make a responsible and considerate provision enabling landowners to comply with the obligation to</p>

	<p>payment based on estimated costs or a combination of estimated and actual costs”.</p> <p>No such clause to this effect can be found in SPP3.6. The City of Kalamunda’s LPS3 must remain within the guidelines set out by SPP3.6 which clearly states under clause;</p> <p>6.3.14.3 Payment by an owner of the cost contribution, including a cost contribution based upon estimated costs in a manner acceptable to the local government, constitutes full and final discharge of the owner’s liability under the development contribution plan and the local government shall provide certification in writing to the owner of such discharge if requested by the owner.</p> <p>This clause would suggest that the City of Kalamunda has no recourse to attain funds from owners whose contribution payments have fallen below the final contribution value. It appears that the Council is aware of this limitation with its adhoc reference to spread the equity of contribution payments with its vague reference to a case by case basis. Furthermore, it would not be until all these individual cases has been finalised and ALL owners agree to make additional payments that an even share across all landowners could be ascertained.</p> <p>It is not the approach as set out by the SPP3.6 that has created equity issues rather the City of Kalamunda has been negligent in its DCP calculation, which has led to significant variations impacting on some landowner’s contributions. As set out in clause 6.3.11.6, these owners had the opportunity to have these cost contributions reviewed within the methods and timeframe outlined within this section. Any claims made after the completion of the contribution transaction, and any liability for them remains the responsibility of the City Of Kalamunda and such liability cannot be transferred to landowners under the guise of inequity. Nor can it be added to the cost of the DCP as clause 5.4 of SPP3.6 which states that “Development contributions can only be for the provision of capital items. The costs associated with design and construction of infrastructure (including land costs) and the cost of administration are considered capital items and can be included in the development contribution plan”.</p>	<p>make a cost contributions under SPP 3.6 and LPS3, and ensuring that the cost contribution made will be, in line with these instruments, equitable, consistent with contributions made by other owners, and transparent.</p> <p>The comments raising concern regarding the process adopted are noted, however ultimately cost contributions are not being increased to facilitate the reconciliation process and, ultimately, cost contributions will be associated with capital items that are identified in the DCP.</p>
	<p>b) The City of Kalamunda has stated that “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”.</p> <p>Whilst the SPP3.6 refers to equitability of sharing of the costs of infrastructure and administrative items between owners, this is not to be confused with an</p>	<p>The comments regarding changes to land value, market conditions, economic conditions, and costs that influence the overall infrastructure estimates are noted.</p> <p>The City is progressing with the adopted approach to address inequitable outcomes associated with the method of calculation applied previously. This is</p>

	<p>even share as stated and appears to be the aim by the council. Many variables in timing and market conditions would have also influenced changes or variances in contribution rates which cannot be ascertained to calculate an equitable share.</p> <p>Changes in land values, market conditions and costings, inflation rates, interest rates, benefits obtained through earlier payment of contributions, together with the City of Kalamunda land acquisition values (towards development of stage 1) which have been tied to values of DCP contributions are only a limited example of variables that would also need to be considered across the entire industrial development in any adjustment towards equitability between owners.</p> <p>The City of Kalamunda had followed the SPP3.6 guidelines, specifically 6.3.11.1 where the determination of Infrastructure costs and administrative costs is to be based on amounts expended, but when expenditure has not occurred, it is to be based on the best and latest estimated costs available to the local government and such estimated costs are to be reviewed at least annually by the local government. I am assuming that at the time of these calculations the City was operating on a fair and equitable basis one impartial to any bias. I would suggest that any changes to the DCP based on changing the calculation methodology after 7 years to supposedly evenly share the costs between landowners is inequitable, being that it is no longer impartial and being influenced by the bias of past owners and/or the City of Kalamunda's previous errors.</p>	<p>discussed in detail within the report to OCM on 25 February 2020. The approach is supported by advice that is considered to, at this stage of the life of the DCP, bring the matter into alignment with the principles outlined in SPP 3.6 and LPS3.</p>										
	<p>c) The City of Kalamunda has stated that "The majority of major infrastructure items within the DCP have been constructed, including the Ashby/Nardine Close connection and major restricted Access Vehicle Classification 7 intersection upgrades".</p> <p>This is in contradiction to the 2.5 Estimated Cost Table on the DCP Report presented at the Ordinary Council Meeting on the 25<sup>th</sup> February 2020 which shows 45% of the infrastructure is still to be completed. This highlights further inflated inaccuracies with the current DCP estimates.</p> <p>Specific areas of concern are;</p> <table border="1" data-bbox="593 1543 1418 1778"> <thead> <tr> <th>Details</th> <th>Value (\$)</th> </tr> </thead> <tbody> <tr> <td>Berkshire Road Footpath to be funded by State Government</td> <td>128,000</td> </tr> <tr> <td>Stage 1, only 50% contribution to Milner Road</td> <td>511,295</td> </tr> <tr> <td>Nardine Road Extension (Road 2A) Stage 2 not required</td> <td>1,300,000</td> </tr> <tr> <td>Bush forever Fencing – existing fencing is superior to required level and capital replacement not required - maintenance issue</td> <td>105,000</td> </tr> </tbody> </table>	Details	Value (\$)	Berkshire Road Footpath to be funded by State Government	128,000	Stage 1, only 50% contribution to Milner Road	511,295	Nardine Road Extension (Road 2A) Stage 2 not required	1,300,000	Bush forever Fencing – existing fencing is superior to required level and capital replacement not required - maintenance issue	105,000	<p>Regarding Berkshire Road, in January 2020, the City received State Government funding to undertake a design for shared paths on Berkshire and Dundas Road. Subject to the designs and construction estimates being finalised in 2021, construction funding is expected to follow. In anticipation of construction funding being provided for this project, the City has amended Berkshire Road to remove the shared path item and instead include the completion and necessary upgrades to the existing 2m wide footpath.</p> <p>Berkshire Road also includes costs associated with adjustments to consumer line crossings to provide for unrestricted clearance for RAV7 vehicles.</p> <p>Since the inception of the DCP, it has identified Milner Road as being wholly funded by the DCP. Milner Road is required to be upgraded to the standard of construction for industrial purposes to facilitate the development of the Forrestfield / High Wycombe Industrial Area. The development of the industrial area to the north of the Forrestfield / High Wycombe Industrial Area has historically developed without a DCP serviced by the existing road network.</p> <p>Regarding the Nardine Close extension, it is not recommended that this item be removed from the DCP until the City is certain that this road is not required</p>
Details	Value (\$)											
Berkshire Road Footpath to be funded by State Government	128,000											
Stage 1, only 50% contribution to Milner Road	511,295											
Nardine Road Extension (Road 2A) Stage 2 not required	1,300,000											
Bush forever Fencing – existing fencing is superior to required level and capital replacement not required - maintenance issue	105,000											

	<table border="1" data-bbox="596 308 1418 415"> <tr> <td>Nardine Close / Milner Road Intersection</td> <td>27,605</td> </tr> <tr> <td>Berkshire / Milner Road Intersection</td> <td>85, 528</td> </tr> <tr> <td><b>TOTAL</b></td> <td><b>1,697,428</b></td> </tr> </table> <p>Further concerns regarding estimations of an amount of 41% still outstanding in administration costs for a near completed project needs to be addressed.</p>	Nardine Close / Milner Road Intersection	27,605	Berkshire / Milner Road Intersection	85, 528	<b>TOTAL</b>	<b>1,697,428</b>	<p>and development has commenced for the place of worship at Lot 50 Sultana Road West.</p> <p>The matter regarding Bush Forever fencing has been discussed with the Department of Planning, Lands and Heritage and it is their expectation that the DCP repay the cost of the fencing. This infrastructure item is also included in Schedule 12 (k) of the LPS 3.</p> <p>It is unclear what is being referred to regarding the intersection works listed.</p> <p>Administrative costs have been reduced given the cost of legal agreements has decreased following a reconsideration of these costs.</p>
Nardine Close / Milner Road Intersection	27,605							
Berkshire / Milner Road Intersection	85, 528							
<b>TOTAL</b>	<b>1,697,428</b>							
	<p>d) The City of Kalamunda has changed and purposefully omitted key information from the Development Contribution of Methodology calculation which has been used over the previous 7 years of the Forrestfield/High Wycombe Industrial Area DCP, and outlined as being used by other metropolitan DCP's.</p> <p>Given that the methodology originally outlined is commonly used by other DCP's would suggest that the method is standard and acceptable practice. The fact that the City of Kalamunda has failed to correctly adjust costs and hence the DCP contribution correctly on an annual basis does not warrant changing the methodology to suit the current requirements of the council, to justify errors that have been made on their behalf.</p> <ul style="list-style-type: none"> <li>i. Failing to deduct the Developed Area from the Contribution Area in calculating Net Lot Area             <ul style="list-style-type: none"> <li>a. and</li> </ul> </li> <li>ii. The Representation of remaining infrastructure costs as total cost of infrastructure</li> </ul> <p>These two changes together with the omission in the 2020 DCP report on how these terms have been previously defined within a DCP is clearly a misrepresentation to owners accessing this report. The change in this calculation manipulates the accepted practice of DCP calculation methodology to distribute the cost of the DCP evenly it does not reflect an equitable distribution based on the many variables aforementioned.</p> <p>These issues outlined are only some concerns with the City of Kalamunda's ability to competently manage the Forrestfield / High Wycombe Industrial Development over the past 7 years. The City of Kalamunda needs to take responsibility for any errors made on their behalf rather than transferring costs to land owners who they assume can afford to fund their mistakes.</p>	<p>The approach adopted by the Council on 25 February 2020 to exclude the supplementary notes from its calculation of the cost contribution was not due to an incorrect adjustment of costs, but rather to ensure the principles equity are maintained in the administration of the DCP moving forward.</p> <p>The DCP report does not misrepresent the approach outlined in the Council report on 25 February 2020. The reasons for applying the calculation method are clearly explained in this report.</p>						

Submission 6		
a) Complete mismanagement of DCP and its funds.  Kalamunda Council is the administrator of the DCP and should be held accountable for errors in calculations and estimates and all you will do is pass on the financial stuff up to existing landowners.		The purpose of the adopted approach is to make a responsible and considerate provision enabling landowners to comply with the obligation to make a cost contribution, and ensuring that the cost contribution made will be equitable, consistent with contributions made by other owners, and transparent.
b) How can the contribution rate fluctuate so much, Administration incompetency?  Why are we copping the whole 1.022 million cost upgrade of Milner road when it should be 50% cost like Sultana Rd west?		<p>The principal reason for fluctuations to the contribution rate is that some infrastructure items have either been removed or modified, and other items have been more accurately estimated over time. This has occurred in the context of changes to the planning framework for the area.</p> <p>The apportionment of infrastructure costs for the DCP area identified that, at the time that the DCP was prepared, 50% of infrastructure costs for Sultana Road West would be funded by future stages of industrial development.</p>
c) The upgrade to Berkshire, Milner, Dundas road intersection was originally going to be a cul de sac but now we have an extra \$980,636.00 cost, to be fair it should be 50%.		This intersection was required to be upgraded to the standard of construction for industrial purposes to facilitate the development of the Forrestfield / High Wycombe Industrial Area. Future upgrades will be required to facilitate development within the Forrestfield North Residential and Transit Oriented Development precincts.
d) The Bush forever "chain mesh" fencing is already there and doesn't need replacing and why is there an estimated remaining cost there for \$105,875.33 inflating the contribution rate?		The matter regarding Bush Forever fencing has been discussed with the Department of Planning, Lands and Heritage and it is their expectation that the DCP repay the cost of the fencing. This infrastructure item is also included in Schedule 12 (k) of the LPS 3.
e) The \$128,913.71 footpath on Berkshire road has been approved and funded by the state government and so why is that still in our remaining costings inflating the contribution rate?		in January 2020, the City received State Government funding to undertake a design for shared paths on Berkshire and Dundas Road. Subject to the designs and construction estimates being finalised in 2021, construction funding is expected to follow. In anticipation of construction funding being provided for this project, the City has amended Berkshire Road to remove the shared path item and instead include the completion, and necessary upgrades, to the existing 2m wide footpath.
f) Why does Sultana rd west have "maintenance of trees for 2 year period" at a cost of \$33 898.00 when the guidelines SPP3.6 (5.4)"contributions are for initial capital requirements" ?		<p>Schedule 12 (j) of the LPS 3 includes the provision of maintenance. Where trees are required to be installed, it is an established practice that landscaping is maintained for a minimum period of two years to optimise survival rates. The two year period commences at the time of planting.</p> <p>Notwithstanding the above, the item for supplying, installing and maintaining trees has been removed in light of detailed designs for Sultana Road West and insufficient room on the verge to accommodate trees, without locating the</p>

		trees within (at the lowest point of) the drainage swales.
	g) The relocation of 1 power pole on the corner of Sultana and Milner road has a quoted figure of \$350,000.00, that is ridiculous. You have based it on quote from Dundas/Milner/Berkshire but you think after all this time you would get a proper quote from Western Power? The cost to relocate a power power on the corner of Nardine and Milner was about \$43,000.00	This item has been reviewed in the context of bringing the Sultana Road West and Milner Road designs up to an 85% engineering design standard. The revised cost is approximately \$271,000.
	h) The SPP3.6 (6.3.6) states Certainty- "All development contributions should be clearly identified and methods of accounting for cost adjustments determined at the commencement of a development" and not change the accounting method after 7 years.	The purpose of the adopted approach is to make a responsible and considerate provision enabling landowners to comply with the obligation to make a cost contribution, and ensuring that the cost contribution made will be equitable, consistent with contributions made by other owners, and transparent.
	i) The SPP3.6(6.3.14.3) states "Payment by an owner of the cost contribution... . constitutes full and final discharge of the owners liability" and SPP3.6 (5.4) "Development Contributions can only be for the provision of capital items" and not to pay back developers or landowners who have paid the higher rate. Should the disgruntled owners who paid the higher rate ask for reimbursement or take court action this should be out of the councils own pocket due to mismanagement.	Ultimately cost contributions are not being increased to facilitate the reconciliation process and cost contributions will be associated with capital items that are identified in the DCP.  It is noted that, for a cost contribution to be deemed to be a full and final discharge of the Owner's liability, it must be made in a manner acceptable to the local government.
<b>Submission 7</b>		
	a) Thankyou for the opportunity to present our comments and objections to the DGP report 2020 for the Forrestfield/High Wycombe Industrial Development. We are the owners and live at 166 Sultana Road West, High Wycombe (lot 308 formerly lot 52). Our property is involved in Nardine Close extension stage 1 and Stage 2.	Noted.
	b) We object to the scheduled priorities (page 17). We believe settlement of land acquisition required for public purposes (ie Bushfire access driveway lot 308) and land not able to be developed (Nardine Cudersac on Private land lot 308) should be prioritised higher than Bonser Road Construction. As Clearly stated in DCP review in December 2018 and DCP review 2020 (page 17, Section 4(b)), acquisition of land for public use is a high priority for the DCP.	Further consideration will be given to the priority of purchasing the remaining portion of lot 308 in the context of the Council's decision whether to keep stage 2 of the Nardine Close extension (Road 2a) in the DCP and having regard to the principles for prioritisation under the DCP.
	c) We object to the purchase of land for public purpose (ie Bushfire access, driveway of lot 308) being included in the budget for Nardine Close Extension Stage 2 and strongly feel the land acquisition should be part of Nardine Extension Stage 1 (ie bushfire access for Stage1) and the land acquisition should have been settled when the road for stage1 was completed (July 2019). This portion of our land is currently required for	Noted. Refer to the officer comment regarding (b) above.  The alleged safety issues are currently being investigated.

	<p>Bushfire access for the surrounding community if a fire occurs in bushforever land, especially lot 51, lot 50 and residents on Smokebush Place following the completion of Nardine Close Extension Stage 1. Currently the local community is using our driveway for convenient access to Berkshire Road/Roe Hwy, especially with road works on Milner Road. We have 2 children and access to our driveway is now unsafe due to local traffic (often at unsafe speeds). Our letterbox is located at the road verge on Sultana Road West and now it is unsafe to collect our mail. I have raised this issue in two meetings (May 2019 and February 2020) with the City of Kalamunda.</p>	
	<p>d) In good faith we accepted the acquisition of land for the construction of Nardine Close extension stage 1 which allows industrial road access for our lot (at the time lot 52) and our neighbour lot 51. To allow the industrial access for lot 50 and the construction of Nardine Close extension stage 2, a temporary culdersac was constructed at the termination of Nardine Close extension stage 1 (completed July 2019). Approximately 1/3 of the RAV4 culdersac and road reserve was constructed on our land which has not been acquired by the DCP. This agreement was signed in December 2016 and still has not been resolved. As indicated by the City of Kalamunda, the construction of Nardine Close extension stage 2 may not occur for several years and combined with the planned development of lot 50 as a place of worship, we feel stage 2 is problematic and would like to object to the construction of Nardine Close Extension stage 2. Our objection is based on unreasonable time delays, access already provided for Lot 50 on Sultana Road West and possible restrictions to RAV4 truck access caused by illegal parking around truck culdersac from attendees to place of worship (as experienced at existing temple in Kalamunda).</p>	Noted.
	<p>e) We ask for our land including the temporary culdersac and surrounding road reserve to be immediately acquired by the DCP and include the costs in an additional budget for Nardine Close extension stage 1. This would allow the development of Lot 308 (formerly lot 52) with a clearing understanding of land use available and provide a reasonable industrial truck crossover for entry into lot 51 (which is currently very narrow and not appropriate for RAV4 access). Removal of Nardine Close extension stage 2 from the DCP would allow a clear understanding for sale and development of lots 50, 51 and 308, provide open clear access to all lots and facilitate faster industrial development providing contribution funds for the DCP which is the highest priority of the DCP (page 17 go DCP 2020).</p>	Noted. Refer to the officer comment regarding (b) above.
<b>Submission 8</b>		
	<p>a) As land owners of 170 Sultana Road West (Plot 50), who have submitted a DA to CoK for the development of a Community Centre and Place of</p>	The construction of the emergency access way (EAW) was previously intended to be delivered as part of stage 2 of the Nardine Close extension (Road 2a).

	<p>Worship, we request that the Emergency Access Way (EAW), adjacent to Plot 50 &amp; 51, be taken up on top priority because we intend to start development of the property within a reasonable time after our detailed engineering drawings are ready and our funding strategies are put into action.</p> <p>The community members and well-wishers of this development will be enthused and confident to support this project thru financial contribution if they are able to see that the infrastructure as per the Structure Plan is in place before occupying the premises and hence request you to give priority for the development of the EAW.</p>	<p>However, in the event that the Council resolve to remove stage 2 of the Nardine Close extension from the DCP, the EAW will form an individual item and its priority will be considered having regarding the guiding principles for prioritising infrastructure under the DCP.</p>
--	---	--