3.3 FINAL ADOPTION OF LPS17 AMENDMENT 44 - MODIFICATION TO SCHEME TEXT APPLICABLE TO DEVELOPMENT CONTRIBUTION AREAS

(All Wards) (Statutory Planning)

KEY ISSUES

- City of Swan Local Planning Scheme 17 (LPS 17) was gazetted in February 2008 with text relating to Development Contribution Areas (Section 5A.2 of the Scheme document) containing wording prescribed by the Model Scheme Text (MST) adopted by the WAPC prior to the endorsement of State Planning Policy 3.6 (Development Contributions for Infrastructure).

- State Planning Policy 3.6 (Development Contributions for Infrastructure) was gazetted on 20 November 2009. Appendix 2 to this policy provides for modified model text provisions for the incorporation of Development Contribution Plans (DCPs) into Local Planning Schemes.

- Integran as consultants to Council is currently preparing Development Contribution Plans (DCPs) for the Development Contribution Areas in the Swan Urban Growth Corridor. Upon finalisation, these DCPs will have to be incorporated into LPS 17 as part of Schedule 13 – Development Contribution Areas.

- The proposed scheme amendment to align the wording in Section 5A.2 of Local Planning Scheme 17 (LPS 17) with the model text provisions provided by State Planning Policy 3.6, whilst also taking due consideration of the implementation principles applied in the DCPs under preparation, was initiated by Council on 1 September 2010.

- The subject amendment was, after permission was granted by the Environmental Protection Agency on 27 September 2010, advertised for a period of 42 days from 13 October 2010 until 24 November 2010. The City of Swan received a submission from Brookfield Residential Properties and comment from officers of the Department of Planning.

- The comments received resulted in minor modifications to the initially proposed wording of some clauses as explained in detail in the report.

It is recommended that Council resolve to adopt the proposed Scheme Amendment No.44 to replace the text applicable to Section 5A.2 in LPS 17 with amendments contained in the Recommendation to this report, and forward the modified amendment documentation to the Minister for Planning with a request for final endorsement and gazettal with the modifications.
AUTHORITY/DISCRETION

Under Section 75 of the Planning and Development Act 2005, a local government may amend a Local Planning Scheme with reference to any land within its district, or with reference to land within its district and other land within any adjacent district, by an amendment -

a) Prepared by the local government, approved by the Minister and published in the Gazette; or

b) Proposed by all or any of the owners of any land in the scheme area, adopted, with or without modifications, by the local government, approved by the Minister and published in the Gazette.

BACKGROUND

Applicant: City of Swan
Owner: Not applicable
Zoning: TPS - Not applicable
MRS - Not applicable
Strategy/Policy: State Planning Policy 3.6 (Development Contributions for Infrastructure)
City of Swan Infrastructure Strategy for Development Contributions POL-TP-138
Development Scheme: City of Swan Local Planning Scheme 17 (LPS 17)
Existing Land Use: Not applicable
Lot Size: Not applicable
Area: Not applicable
Use Class: Not applicable

DETAILS OF THE PROPOSAL

To facilitate the inclusion of Development Contribution Plans (DCPs) into Local Planning Scheme No.17 (LPS 17), it is necessary to align the outdated wording in Section 5A.2 of LPS 17 with the model text provisions provided by State Planning Policy 3.6, whilst also taking due consideration of the contribution principles applied in the DCPs under preparation.

It is proposed that Section 5A.2 of LPS17 be replaced with the modified wording contained in the Recommendation to this report.

DESCRIPTION OF SITE

The scheme amendment will apply to all land identified as part of a Development Contribution Area, already included or to be included under Schedule 13 – Development Contribution Areas of LPS 17.
SITE HISTORY/PREVIOUS APPROVALS

The proposed modifications to the Scheme text will not alter the original intent of the gazetted LPS17 to allow for DCPs.

OTHER RELEVANT PREVIOUS DECISIONS OF COUNCIL

The application of DCPs has been accepted as an instrument to deal with cost sharing arrangements for the provision of infrastructure, with the approval by Council of the Albion (4 February 2009) and West Swan East (7 April 2010) District Structure Plans and the Caversham North Structure Plan (9 June 2010).

PUBLIC CONSULTATION

A public consultation process of 42 days has been undertaken. Notice of the proposed scheme amendment was published in the West Australian and in the Echo with submissions accepted until 24 November 2010. Notice of the proposed scheme amendment was also posted on the City's website and at the customer service desk. In addition to the aforementioned a meeting to discuss the valuation methodology contained in SPP 3.6 was held between City staff, Department of Planning (DoP) officers and consulting valuers on 20 October 2010. Two meetings to workshop the proposed wording of the scheme amendment with DoP officers were also held on 2 and 8 November 2010.

One submission was received from Brookfield Residential Properties, generally supportive of the proposal (Attachment 2), with concerns raised only about the definition of "Infrastructure" and the wording of Clause 5A.2.7.1. These concerns are addressed in detail under the 'Report' heading hereunder.

CONSULTATION WITH OTHER AGENCIES AND/OR CONSULTANTS

Upon receipt of comment from the Department of Environmental Protection that an environmental report is not required, the application was referred for comment to external government departments and agencies. Only Main Roads WA replied with support for the proposal. Comments resulting from the various meetings with DoP officers are included and addressed in the Report section hereunder.

REPORT

Although this scheme amendment proposes the replacement, in total, of the current wording of Section 5A.2 with the wording contained in the Recommendation of this report, the proposed modifications mainly relate to the following (Where applicable with comments received during the submission period addressed):

- Defining terminology used (Clause 5.A2.3):
• The definition of 'Administrative Costs' is changed to include reference to 'Administrative Items'

• A definition for 'Administrative Items' is included to identify the administrative matters required to be carried out by or on behalf of the City in order to prepare, maintain and implement a DCP. The inclusion of litigation costs as part of 'Administrative Items' is proposed on the basis that the City administers the Development Contribution Plans essentially as a service to developers. It is however not a core function of the local government, and it should not be the ratepayers who bear the cost if a developer chooses to challenge a decision made by the City in the administration of the Development Contribution Plan.

  − DoP officers raised concerns about the inclusion of “litigation costs” instead of “legal costs” as proposed in SPP3.6. The term “litigation costs” was however included on specific advice from the City’s lawyers, McLeods, to clarify the intent to include litigation costs as part of legal costs. During the DoP workshops it was also emphasised that litigation costs have been allowed by the WAPC to be included in cost sharing arrangements in historic development schemes. It was agreed that the proposed wording will be kept for the WAPC to determine.

• Definitions for 'Development Contribution Area', 'Development Contribution Plan', and 'Development Contribution Plan Report' are included as required under the relevant model text provisions proposed in State Planning Policy 3.6.

• The definition for 'Infrastructure' is proposed to be modified to be more descriptive of the infrastructure items proposed in SPP 3.6:

  − The model Scheme Text provides the following definition:

    'Infrastructure’ means the standard infrastructure items (services and facilities set out in Appendix 1) and community infrastructure, including recreational facilities; community centres; child care and after school centres; libraries and cultural facilities and such other services and facilities for which development contributions may reasonably be requested having regard to the objectives, scope and provisions of this policy.

  − City Officers noted the references to SPP 3.6 (which may not exist forever) and undefined types of infrastructure in the abovementioned definition and proposed the following clear generic definition:

    'Infrastructure’ means land, goods, services and/or facilities and/or other things whatsoever required or provided for or to facilitate the subdivision or other development of land.

  − Brookfield Residential Properties in their submission pointed out that in their view the Model Scheme Text definition should be used as this relates to the scope of SPP 3.6 with the policy’s explicit description of the scope of infrastructure that can be included. It is City officers’ view that the inclusion of a definition that refers to a policy (which may be replaced) is not sustainable. It should also further be noted that all Development Contribution Plans are required to identify specific cost sharing items in accordance with State policy of the day - which currently is represented by the model Scheme Text provided
in SPP3.6. It is therefore recommended that the definition initially proposed by the City be retained.

- The definition for 'Infrastructure Cost' is included as required under the relevant model text provisions proposed in State Planning Policy 3.6, and further modified to clarify that 'Administrative Costs' are included therein.

- Definitions for 'Infrastructure Contribution Rate' and 'Infrastructure Demand' were included to clarify its use in Clauses 5A2.12.2 and 5A.2.12.3 respectively.

  - It was noted by DoP officers that Clauses 5A2.12.2 and 5A.2.12.3 do not correspond with the proposed wording in Clause 6.3.10.2 of the model scheme provisions. Clause 6.3.10.2 represents a more generic approach and will not alter the intent of the initially proposed clauses. Note that the 'Infrastructure Contribution Rate' and 'Infrastructure Demand' will be determined and addressed in the development Contribution Plan Reports for each DCP'. It is recommended that Clauses 5A2.12.2 and 5A.2.12.3 be replaced with the wording of Clause 6.3.10.2 of the model scheme provisions and that the definitions of the terms 'Infrastructure Contribution Rate' and 'Infrastructure Demand' be removed from the Scheme and rather be incorporated in the DCP Reports.

**When a Development Contribution Plan (DCP) has effect:**

Clause 5A.2.6.2, which reads as follows, is added to accommodate contribution principles contained in recent Council and WAPC resolutions on early release subdivision applications within the Swan Urban Growth Corridor:

  - 'Notwithstanding clause 5A.2.6.1, the Commission or the City by a condition of subdivision or development approval or otherwise, may require an owner to make a Cost Contribution in accordance with a draft or proposed DCP or to enter into an agreement with the City for that purpose and such a condition or agreement may give effect to a draft or proposed DCP before it has been endorsed by the Commission as part of a Structure Plan or incorporated in Schedule 13 of the Scheme.'

  - DoP officers indicated that this Clause would be more appropriate if included under Clause 5A.2.7. It is agreed that this clause could be moved to Clause 5A.2.7.3

**Subdivision and Development:**

Clause 5A.2.7 is proposed to be modified to include reference to Strata Subdivision as required under the relevant model text provisions proposed in State Planning Policy 3.6, and further clarified to include reference to Survey Strata Subdivision. This will ensure that all forms of development that may require cost sharing are catered for in the Scheme.

  - Although no objections were received to the above, both DoP officers and Brookfield Residential Properties observed that the current wording of Clause 5A.2.7.1 and 5A.2.7.3 in LPS17 does not reflect the intent of the wording proposed in the model scheme provisions. (Clause 6.3.5)

  - The current wording in LPS 17 reads:
The City is not to consider recommending subdivision, or survey strata subdivision or approve strata subdivision or development of land within a Development Contribution Area, until

(a) a Development Contribution Plan is in effect; or

(b) the Owner who has applied for subdivision, strata subdivision, survey strata subdivision or development approval has made arrangements in accordance with clause 5A.2.6.2 or clause 5A.5.16 for the payment of the Owner's Cost Contribution

It was noted that this is inconsistent with Clause 6.3.5 of the Model Scheme Text which provides that the local government shall not withhold its support for subdivision, strata subdivision or refuse to approve a development solely for the reason that a development contribution plan is not in effect.

The inclusion of Clause 5A.2.6.2 as part of this clause (as discussed under “When a Development Contribution Plan (DCP) has effect” above) will provide for the instance where a DCP has not been finalised when a development is assessed. It is therefore recommended that current Clauses 5A.2.7.1 and 5A.2.7.3 be modified to reflect that of Clause 6.3.5 of the model scheme provisions as a new Clause 5A.2.7.1 and to include the initial proposed Clause 5A.2.6.2 as Clause 5A.2.7.3.

Guiding Principles for the Development Contribution Plan:

Although no changes to the current wording of Clause 5A.2.8 is proposed with this scheme amendment, DoP officers indicated that their preference would be to include the guiding principles contained in the model scheme provisions under Clause 6.3.6 (Refer to Attachment 1) for consistency across local governments.

- Clause 5A.2.8 currently reads:

  The Development Contribution Plan for any Development Contribution Area is to be prepared in accordance with the following principles:

  (a) it is to provide for Cost Contributions to only the cost of such infrastructure items as fairly and reasonably relate to, and are reasonably required as a result of, or to facilitate the subdivision, strata subdivision, survey strata subdivision or development of land in the Development Contribution Area;

  (b) it is to provide for Cost Contributions generally in accordance with the Commission’s policies on development contributions for Infrastructure.

  (c) matters requiring land contribution, such as public open space, are to be treated as the cost of Infrastructure with any necessary adjustments to establish, where appropriate, a money equivalent; and

  (d) Cost Contributions are to be based upon the proportion that the area of that Owner’s land bears to the total area of land and Infrastructure Demand within the Development Contribution Area.

- It is the view of City staff that the specific wording proposed in the model scheme provisions (Clause 6.3.6 as contained in Attachment 1) reflects general
policy guidance status and that the current wording of Clause 5A.2.8 (previously approved by the WAPC) in fact reflects the same guiding principles in a more descriptive style normally associated with town planning schemes. It is recommended that no change be made to the existing wording of Clause 5A.2.8.

**Recommended content of Development Contribution Plans:**

During the workshop with DoP, officers identified an inconsistency between the guidance provided in SPP 3.6 and the proposed model scheme provisions.

- SPP 3.6 states that the infrastructure costs and estimates are not to be incorporated as part of the scheme but shall be formulated and advertised with the scheme amendment report and shall be reviewed annually. (To prevent having to conduct an annual amendment to the scheme.) Clause 6.3.7.1(d) of the model scheme provisions however requires the 'priority and timing for the provision of infrastructure' to be included as part of the content of a DCP. The timing of the provision of infrastructure is however determined by set 'development triggers'. (for example a road upgrade will be required with the creation of the 100th lot), which in turn is determined by ever changing market forces. It is therefore recommended that the corresponding clause in LPS17 (Clause 5A.2.9.1(d)) be deleted and that the 'priority and timing for the provision of infrastructure' be addressed in the DCP Report.

**Period of Development Contribution Plan:**

No amendments were proposed to the current Clause 5A.2.10.2 which reads as follows:

*The period during which the Development Contribution Plan is to operate may be extended and the Development Contribution Plan may be amended accordingly.*

- DoP officers have however noted that SPP3.6 proposes that this should be contained in the DCPs itself and that this existing clause in LPS17 can be deleted. It is agreed that it can be removed and is contained as such in the Recommendation of this report.

**Cost Apportionment Schedule:**

Clause 5A.2.12 was proposed to be modified to include reference to the development Contribution Plan Report as required under the relevant model text provisions proposed in State Planning Policy 3.6 and to further clarify its proposed functions.

- Although in agreement with the principle applied, DoP officers requested that the wording contained in Clause 6.3.10.2 of the model scheme provisions should be used in Clause 5A.2.12.2 for consistency across local governments:

  "The development contribution plan report and the cost apportionment schedule shall set out in detail the calculation of the cost contribution for each owner in the development contribution area, based on the methodology provided in the development contribution plan, and shall take into account any proposed staging of the development."
The proposed modification to Clause 5A.2.12 to accord with the proposed wording contained in Clause 6.3.10.2 of the model scheme provisions will not alter the intent of the clause and is contained as such in the Recommendation of this report.

Valuation:

The current definition of ‘Value’ in both LPS17 (Clause 5A.2.14.2) and the relevant model text provisions proposed in State Planning Policy 3.6 (Clause 6.3.12) include a requirement to use a specified ‘Static Feasibility Assessment Model’ when determining the value of land to be acquired for the purpose of providing infrastructure. As part of that Model, in the case of LPS 17 an appropriate profit factor, and in the case of SPP3.6 an appropriate profit and risk factor, is to be determined from which a 10% profit factor is to be excluded from the calculation. During the DCP preparation process to date it became clear that this model does not represent a model generally used by licensed valuers. It is proposed to include a definition consistent with the principle of land valuation to represent ‘the fair market value of land’ but to exclude the requirement to apply the specific ‘Static Feasibility Assessment Model’. This will allow for the most appropriate model (which may include a revised ‘Static Feasibility Assessment Model’) to be determined and agreed upon by parties in each individual case.

- Brookfield Residential Properties, in their submission supported the above. The valuation methodology was the topic of a meeting held between local government officers from various Councils and DoP officers which were addressed by the City’s consulting valuers who explained their concerns with the methodology used in SPP3.6. Essentially the valuer’s view is that the SPP3.6 methodology is not reflective of normal market transactions as it modifies the approach to profit-risk factors in a hypothetical development approach to valuation. This has the effect of increasing the perceived value by up to 29% compared to the methodology currently contained in LPS17 and up to 3.5% compared to that proposed in SPP3.6. A comprehensive report addressing these methodologies, prepared by consulting valuers, was provided to DoP officers. It was agreed by all parties that SPP 3.6 may have to be modified to address the concerns raised.

Disagreement with the amount of a cost contribution:

DoP officers noted that the current LPS provisions do not address procedures to follow in the circumstances where a landowner objects to the amount of a cost contribution. (It only addresses the procedures to follow in the event a land owner objects to the valuation of land).

- It is recommended that proposed Clause 6.3.11.6 and Clause 6.3.11.7 of the model scheme provisions be included as Clauses 5A.2.13.6 and 5A.2.13.7 in LPS17:

  "5A.2.13.6 If an owner objects to the amount of a cost contribution, the owner may give notice to the local government requesting a review of the amount of the cost contribution by an appropriate qualified person (‘independent expert’) agreed by the local government and the owner at the owner’s expense, within 28 days after being informed of the cost contribution.
  5A.2.13.7 If the independent expert does not change the cost contribution to a figure acceptable to the owner, the cost contribution is to be determined—"
(a) by any method agreed between the local government and the owner; or

(b) if the local government and the owner cannot agree on a method pursuant to (a) or on an independent expert, by arbitration in accordance with the Commercial Arbitration Act 1985, with the costs to be shared equally between the local government and owner.”

Disagreement with land value determined by Valuer:

The model text provisions proposed in State Planning Policy 3.6 (Clause 6.3.11.7) provides for the City and the owner to enter into an arbitration process in accordance with the Arbitration Act 1985 in the event that agreement on the value provided by a registered valuer cannot be reached. Clause 5A.2.14.4 (b) of LPS 17 is proposed to be modified to allow for the City and the owner to first approach the State Administrative Tribunal for a review of the matter under part 14 of the Planning and Development Act 2005. This represents a more effective process for both parties. Should this not be appropriate in a specific scenario, Clause 5A.2.21 (Arbitration) of LPS17 still provides for the parties to the dispute to follow the arbitration process in accordance with the Commercial Arbitration Act 1985.

Payment of Cost Contribution:

'Infrastructure works' as a method of payment of an owners Cost Contribution is included in Clause 5A.2.16 of LPS17 as required under the relevant model text provisions proposed in State Planning Policy 3.6 (Clause 6.3.14.1)

Shortfall or excess in Cost Contributions:

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, both the current LPS17 and the relevant model text provisions proposed in State Planning Policy 3.6 determine that the City may:

(a) make good the shortfall from its municipal fund;

(b) enter into agreements with Owners to fund the shortfall; or

(c) raise loans or borrow from a financial institution.

To allow for the event where none of the mentioned options are practical it was proposed to include a fourth option allowing the City to remove Infrastructure from a DCP.

- DoP officers noted that SPP 3.6 determines that for any modification to a DCP, a scheme amendment is always required. The removal of the above-mentioned fourth option from the Amendment Scheme is therefore accepted and contained as such in the Recommendation of this report. DoP officers also noted that Clause 5A.2.19.3 does not make provision for excess funds to be refunded to contributing Owners if they can be identified, as required by SPP 3.6. It is recommended that the wording for Clause 5A.2.19.3 be modified to that proposed in Clause 6.3.17.2 of the model scheme provisions.
OPTIONS AND IMPLICATIONS

Option 1: Council may resolve to adopt the proposed amendment to LPS17 to replace the text applicable to Section 5A.2 (Development Contribution Areas) with the proposed modified wording contained in the Recommendation (outlined below).

Implications: The Minister for Planning will take Council’s approval into account when considering whether to grant final approval to the Amendment No.44 with or without modification.

Option 2: Council may resolve not to adopt the proposed amendment to LPS17.

Implications: The City will be in a position where DCP's cannot be finalised and may be instructed by the Minister to amend LPS17 consistent with the relevant model text provisions outlined in State Planning Policy 3.6 – Development Contributions for Infrastructure.

CONCLUSION

It is necessary to align the wording in Section 5A.2 of LPS 17 with the model text provisions provided by State Planning Policy 3.6 in order to facilitate the future inclusion of DCP's into LPS 17. The process currently followed by City officers in consultation with Integran to prepare DCP's for the Urban Growth corridor identified further appropriate modifications (addressed in this report) to ensure optimum operation of the Scheme with regard to the implementation of DCPs.

ATTACHMENTS

- Draft model provisions for incorporation of development contribution plans into local planning schemes. (Appendix 2 to SPP3.6 - Development Contributions for Infrastructure)
- Schedule of Submissions

STRATEGIC IMPLICATIONS

The proposed scheme amendment will facilitate the future preparation and administration of DCP's within the Swan area of jurisdiction.

STATUTORY ENVIRONMENT

Town Planning Regulations 1967 (as amended)

Local Planning Scheme No.17
WAPC’s Statement of Planning Policy 3.6 (Development Contributions for Infrastructure).

FINANCIAL IMPLICATIONS

Finalisation of the Scheme Amendment would assist the City in its implementation of the respective DCPs for each of the proposed developments within Swan Urban Growth Corridor.

RECOMMENDATION

That the Council resolve to:

1) Adopt the comments outlined within the Schedule of Submissions.

2) Adopt the proposed Scheme Amendment No. 44 to Local Planning Scheme No.17 as follows:

"5A.2 DEVELOPMENT CONTRIBUTION AREAS

5A.2.1 Development Contribution Areas are shown on the Scheme Map as a DCA with a number and included in Schedule 13.

5A.2.2 In respect of a Development Contribution Area shown on the Scheme Map, the provisions applying to the Development Contribution Area apply in addition to the provisions applying to any underlying zone or reserve and any general provisions of the Scheme.

5A.2.3 Interpretation

In clause 5A.2, unless the context otherwise requires:

‘Administrative Costs’ includes Administrative Items and such other costs as are reasonably incurred by the City for the preparation, maintenance and implementation of a Development Contribution Plan;

'Administrative Items' mean the administrative matters required to be carried out by or on behalf of the City in order to prepare, maintain and implement a Development Contribution Plan, including financing cost, accounting, planning, engineering, and any other professional services and all costs and expenses incurred by the City in relation to litigation in any Court, Tribunal or arbitration, whether incurred before or after the incorporation of the relevant DCP in Schedule 13;

‘Cost Apportionment Schedule’ means a schedule prepared and distributed in accordance with clause 5A.2.12;
‘Cost Contribution’ means the contribution to the Infrastructure Cost and including Administrative Costs payable by an Owner pursuant to a DCP;

‘Development Contribution Area (DCA)’ means an area shown on the Scheme Map as a DCA with a number for which area a DCP is included in Schedule 13. DCAs are areas in respect of which arrangements are required in order to achieve equitable contribution by owners to the cost of shared infrastructure;

‘Development Contribution Plan (DCP)’ means a plan prepared in accordance with the provisions of Clause 5A.2 of the Scheme and incorporated in Schedule 13 to this Scheme;

‘Development Contribution Plan Report’ means a report prepared and distributed in accordance with clause 5A.2.12 of the Scheme;

‘Infrastructure’ means land, goods, services and/or facilities and/or other things whatsoever required or provided for or to facilitate the subdivision or other development of land;

‘Infrastructure Cost’ means cost reasonably incurred for the acquisition and/or construction of Infrastructure including Administrative Costs;

‘Infrastructure Strategy’ means the policy adopted by Council to outline the standards of service and Infrastructure scope envisaged and the sharing of Infrastructure across DCA boundaries; and

‘Owner’ means an owner of land that is located within a Development Contribution Area.

5A.2.4 Purpose

The purpose of having Development Contribution Areas is to:

(a) provide for the equitable sharing of Infrastructure Cost.

(b) ensure that Cost Contributions are fairly required as a result of the subdivision and development of land in the Development Contribution Area; and

(c) coordinate the timely provision of Infrastructure.

5A.2.5 Development Contribution Plan Required

5A.2.5.1 A Development Contribution Plan is required to be prepared for each Development Contribution Area.

5A.2.5.2 Where a Development Contribution Area is prescribed in the Scheme, all owners within that Development Contribution Area are required to make a Cost Contribution in accordance with the applicable Development Contribution Plan contained in Schedule 13 or detailed in a Structure Plan.
5A.2.6 **When a Development Contribution Plan has effect**

5A.2.6.1 A Development Contribution Plan does not have effect under this Scheme until it has been endorsed by the Commission as part of a Structure Plan or incorporated in Schedule 13 as part of the Scheme.

5A.2.7 **Subdivision, Strata Subdivision, Survey Strata Subdivision and Development**

5A.2.7.1 The City shall not withhold its support for subdivision, strata subdivision or survey strata subdivision or refuse to approve a development solely for the reason that a development contribution plan is not in effect.

5A.2.7.2 Clause 5A.2.7.1 does not apply to the development of a single house or outbuildings associated with a single house on a lot which has not been subdivided since the coming into operation of clause 5A.2.

5A.2.7.3 Notwithstanding clause 5A.2.6.1, the Commission or the City by a condition of subdivision or development approval or otherwise, may require an owner to make a Cost Contribution in accordance with a draft or proposed DCP or to enter into an agreement with the City for that purpose and such a condition or agreement may give effect to a draft or proposed DCP before it has been endorsed by the Commission as part of a Structure Plan or incorporated in Schedule 13 of the Scheme.

5A.2.8 **Guiding Principles for the Development Contribution Plan**

The Development Contribution Plan for any Development Contribution Area is to be prepared in accordance with the following principles:

(a) it is to provide for Cost Contributions to only the cost of such infrastructure items as fairly and reasonably relate to, and are reasonably required as a result of, or to facilitate the subdivision, strata subdivision, survey strata subdivision or development of land in the Development Contribution Area;

(b) it is to provide for Cost Contributions generally in accordance with the Commission's policies on development contributions for Infrastructure.

(c) matters requiring land contribution, such as public open space, are to be treated as the cost of Infrastructure with any necessary adjustments to establish, where appropriate, a money equivalent; and

(d) Cost Contributions are to be based upon the proportion that the area of that Owner's land bears to the total area of land and Infrastructure Demand within the Development Contribution Area.
5A.2.9 **Recommended content of Development Contribution Plans**

5A.2.9.1 The Development Contribution Plan is to specify:

(a) the Development Contribution Area to which the Development Contribution Plan applies;

(b) the Infrastructure to be funded through the Development Contribution Plan; and

(c) the method of determining the Cost Contribution of each Owner;

5A.2.10 **Period of Development Contribution Plan**

5A.2.10.1 A Development Contribution Plan shall specify the period during which it is to operate.

5A.2.11 **Land excluded**

In calculating both the area of an Owner’s land and the total area of land in a Development Contribution Area, the area of land provided in that Development Contribution Area for:

(a) roads designated under the Metropolitan Region Scheme as Primary Regional Roads and Other Regional Roads;

(b) existing public open space;

(c) government primary and secondary schools; and

(d) such other land as is set out for this purpose in the Development Contribution Plan;

is to be excluded.

5A.2.12 **Development Contribution Plan Report and Cost Apportionment Schedule**

5A.2.12.1 Within 90 days of the Commission’s endorsement as part of a Structure Plan or gazettal as part of the Scheme of a Development Contribution Plan, the City is to adopt and make available to all Owners in the DCA a Development Contribution Plan Report and a Cost Apportionment Schedule.

5A.2.12.2 The development contribution plan report and the cost apportionment schedule shall set out in detail the calculation of the cost contribution for each owner in the development contribution area, based on the methodology provided in the development contribution plan, and shall take into account any proposed staging of the development.

5A.2.12.3 The Development Contribution Plan Report and Cost Apportionment Schedule do not form part of the Scheme, but once adopted by the
City they are subject to review as provided for under Clause 5A.2.13.2.

5A.2.13 **Cost Contributions based on estimates**

5A.2.13.1 The value of Infrastructure Cost 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 City and adjusted accordingly, if necessary.

5A.2.13.2 Where a Development Contribution Plan Report and Cost Apportionment Schedule contain estimated costs, such estimated costs are to be reviewed at least annually by the City:

(a) in the case of land to be acquired, in accordance with clause 5A.2.14;

(b) in all other cases, in accordance with the best and latest information available to the City,

until the expenditure or liability on the relevant item of Infrastructure or Infrastructure Cost has occurred or been incurred.

5A.2.13.3 The City is to have such estimated costs independently certified by an appropriately qualified person whenever any estimate is first proposed or is amended and must make available such independent certification where requested to do so by an Owner.

5A.2.13.4 Where any Cost Contribution is revised the City:

(a) is to adjust the Cost Apportionment Schedule to reflect the revised estimated costs; and

(b) shall adopt and upon written request make available to Owners the revised Development Contribution Plan Report and Cost Contribution Schedule.

5A.2.13.5 The City may accept a Cost Contribution, based upon estimated costs, as a final Cost Contribution and enter into an agreement with the Owner accordingly but may stipulate that a Cost Contribution based upon estimated costs may be revised when the costs are finally determined.

5A.2.13.6 If an owner objects to the amount of a cost contribution, the owner may give notice to the local government requesting a review of the amount of the cost contribution by an appropriate qualified person (‘independent expert’) agreed by the local government and the owner at the owner’s expense, within 28 days after being informed of the cost contribution.

5A.2.13.7 If the independent expert does not change the cost contribution to a figure acceptable to the owner, the cost contribution is to be determined:
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(a) by any method agreed between the local government and the owner; or

(b) if the local government and the owner cannot agree on a method pursuant to (a) or on an independent expert, by arbitration in accordance with the Commercial Arbitration Act 1985, with the costs to be shared equally between the local government and Owner.

5A.2.14 Valuation of land

5A.2.14.1 Clause 5A.2.14 applies in order to determine the value of land to be acquired for the purpose of providing Infrastructure under the Development Contribution Plan.

5A.2.14.2 In clause 5A.2.14:

‘Value’ means the fair market value of land, at a specified date, which is defined as the capital sum that would be negotiated in an arm’s length transaction in an open and unrestricted market, assuming the highest and best use of the land with all its potentials and limitations, wherein the parties act knowledgeably, prudently and without compulsion to buy or sell.

‘Valuer’ means a licensed Valuer as defined in the Land Valuers Licensing Act 1978 agreed by the City and the Owner, or where the City and the Owner are unable to reach agreement, a Valuer appointed by the President of the Western Australian Division of the Australian Property Institute

5A.2.14.3 If an Owner objects to a valuation made by the Valuer, the Owner may give notice to the City requesting a review of the amount of the Value, at the Owner’s expense, within 28 days after being informed of the Value.

5A.2.14.4 If the Valuer does not change the Value of the land to a figure acceptable to the Owner, the Value is to be determined:

(a) by any method agreed between the City and the Owner; or

(b) if the City and the Owner cannot agree, either may apply to the State Administrative Tribunal for a review of the matter under Part 14 of the Planning and Development Act 2005.

5A.2.15 Liability for Cost Contributions

5A.2.15.1 An Owner is required to make a Cost Contribution in accordance with the applicable Development Contribution Plan and the provisions of clause 5A.2.

5A.2.15.2 An Owner’s liability to pay the Cost Contribution to the City arises on the earlier of:
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(a) the Commission endorsing its approval on the Deposited Plan or Survey Strata Plan of the subdivision of the Owner’s land within the Development Contribution Area;

(b) the commencement of any development on the Owner’s land within the Development Contribution Area;

(c) the approval of any strata plan by the City or Western Australian Planning Commission on the Owner’s land within the Development Contribution Area; or

(d) the approval of a change or extension of use by the City on the Owner’s land within the Development Contribution Area.

5A.2.15.3 Notwithstanding the timing outlined in 5A.2.15.2, an Owner’s liability to pay the Owner’s Cost Contribution does not arise if the only development carried out by the Owner is the development of the first single house or outbuildings associated with that first single house on an existing lot which has not been subdivided or strata subdivided since the Gazettal of the Development Contribution Plan.

5A.2.15.4 Where a Development Contribution Plan expires in circumstances contemplated by Clause 5A.2.10, an Owner’s liability to pay the Owner’s Cost Contribution under that Development Contribution Plan shall never the less continue in effect and in the event that no subsequent Development Contribution Plan comes into operation, an outstanding contribution of any owner shall be carried over by the City and be recovered at one of the times and in accordance with one of the processes provided for in Clause 5A.2.15.2.

5A.2.16 Payment of Cost Contribution

5A.2.16.1 The Owner, with the agreement of the City, is to pay the Owner’s Cost Contribution by:

(a) cheque or cash;

(b) transferring to the City or a public authority land in satisfaction of the Cost Contribution;

(c) transferring or providing to the City or a public authority infrastructure works in satisfaction of the Cost Contribution;

(d) some other method acceptable to the local government; or

(e) any combination of these methods.

5A.2.16.2 The Owner, with the agreement of the City, may pay the Owner’s Cost Contribution in a lump sum, by instalments or in such other manner acceptable to the City.

5A.2.16.3 Payment by an Owner of the Cost Contribution, including a Cost Contribution based upon estimated costs, where accepted by the City, constitutes full and final discharge of the Owner’s liability.
under the Development Contribution Plan in accordance with clause 5A.2.15.

5A.2.17 **Charge on land**

5A.2.17.1 The amount of any Cost Contribution for which an Owner is liable under clause 5A.2.15, but has not paid, is a charge on the Owner’s land to which the Cost Contribution relates, and the City may lodge a caveat, at the Owner’s expense, against the Owner’s certificate of title to that land.

5A.2.17.2 The City, at the Owner’s expense and subject to such other conditions as the City considers appropriate, is to withdraw a caveat lodged under clause 5A.2.17.1 where reasonably required to permit a dealing and may then re-lodge the caveat to prevent further dealings.

5A.2.17.3 If the Cost Contribution is paid in full, and if requested to do so by the Owner, the City, at the expense of the Owner, is to withdraw any caveat lodged under clause 5A.2.17.1.

5A.2.18 **Administration of Funds**

5A.2.18.1 Funds paid to the City for Cost Contributions are to be maintained within a reserve account in accordance with the Local Government Act (1995) for each Development Contribution Area.

5A.2.18.2 The purpose of such a reserve account or the use of money in such a reserve account is limited to the application of funds to cover expenses for that Development Contribution Area and identified under the relevant Development Contribution Plan.

5A.2.18.3 Expenses for the provision of Infrastructure and Administrative Costs for the Development Contribution Area will be paid from the account established under clause 5A.2.18.1.

5A.2.18.4 Interest earned on Cost Contributions credited to a reserve account, is to be applied to expenses for the Development Contribution Area to which the reserve account relates.

5A.2.18.5 The City is to publish an audited annual statement of accounts for that Development Contribution Area as soon as practicable after the audited annual statement of accounts becomes available.

5A.2.19 **Shortfall or Excess in Cost Contributions**

5A.2.19.1 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 City may:

(a) make good the shortfall from its municipal fund;

(b) enter into agreements with Owners to fund the shortfall; or

(c) raise loans or borrow from a financial institution;
5A.2.19.2 Nothing in clause 5A.2.19.1 restricts the right or power of the City to impose a differential rate or specified area rate to a specified Development Contribution Area in that regard.

5A.2.19.3 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 particular Development Contribution Area, the City 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.

5A.2.20 **Powers of the City**

The City in implementing the Development Contribution Plan has the power to:

(a) acquire any land or buildings within the Scheme area under the provisions of the Planning Act; and

(b) deal with or dispose of any land which it has acquired under the provisions of the Planning Act in accordance with the law and for such purpose may make such agreements with other owners as it considers fit.

5A.2.21 **Arbitration**

Where a dispute between an Owner and the City has not been resolved under another provision of this Scheme, the dispute is to be resolved by arbitration in accordance with the *Commercial Arbitration Act 1985*.

3) Forward the amended documentation to the Western Australian Planning Commission with a request that the Hon. Minister for Planning grant his final approval to Amendment No. 44 with the requested modifications.

4) Advise those who lodged a submission of Council's decision accordingly.

CARRIED