

## **PART 10 - EAST WANNEROO PLANNING AND DEVELOPER CONTRIBUTIONS ARRANGEMENTS – CELLS 1 TO 9**

### **10.1 LOCAL STRUCTURE PLANS**

Council has prepared Local Structure Plans for Cells 1 – 9 inclusive in East Wanneroo in accordance with the provisions of Part 9 of the Scheme for the purpose of facilitating subdivision and development of the land comprised in such Cells. Irrespective of the provisions of Part 9, after an Agreed Structure Plan has been adopted for a Cell in East Wanneroo, it shall not be modified without the approval of the Council and Western Australian Planning Commission.

### **10.2 FINANCIAL RECORDS**

10.2.1 The Council shall for the purpose of properly managing the implementation of a Local Structure Plan for each Cell, establish Cell Accounts for each Cell into which contributions from owners of land within that Cell which are made in accordance with this Part will be credited and from which all payments for Infrastructure Costs associated with the implementation of the Local Structure Plan for that Cell and any acquisition by Council under subclause 10.10.13 will be paid.

10.2.2 The Cell Accounts shall be maintained in accordance with the provisions of the Local Government (Financial Management) Regulations 1996 and shall be audited on an annual basis.

Council shall make available for inspection to any owner of land within a Cell on request, a detailed statement of accounts for that Cell.

### **10.3 CELL AREA DEVELOPMENT**

Within each Cell, Cell Works will be undertaken for the benefit of land contained within the Cell as generally set out in Schedule 9.

With a view to implementing Cell Works for each Cell in the most economical and prompt manner possible, the Council shall determine the order and manner in which the Cell Works are to be carried out and may appoint contractors to carry out such works where it considers it appropriate to do so.

### **10.4 CALCULATION OF AREA OF A CELL**

10.4.1 The Area of a Cell is calculated by deducting from the total area of the Cell (represented by the sum area of all the land in the Cell).

(a) the total of the land areas in a Cell for public purposes as shown on the Local Structure Plan for the relevant Cell including:

- ◆ Crown Reserves;
- ◆ High school sites;

- ◆ The roads set out in Schedule 9 and drainage and underpasses associated with such roads;
  - ◆ The Public Open Space depicted on the Local Structure Plan for the relevant Cell;
  - ◆ Land reserved “Other Major Highways” under the Metropolitan Region Scheme; and
- (b) The land areas of any other developments which in the opinion of the Council have a limited subdivision or development potential.

10.4.2 Additionally, for the purpose of estimating lot yields for apportioning the cost of acquiring land for public open space in accordance with Clause 10.6, the Area of a Cell will be further reduced by the proposed land area of any private school sites within the Cell as shown on the relevant Local Structure Plan.

## **10.5 CALCULATION OF PUBLIC OPEN SPACE CONTRIBUTIONS**

10.5.1 (a) All owners of land in Cells 1 to 6 and 9, are required to contribute towards the provision of 10% of the Area of a Cell for public open space the cost of which shall form part of the Cell Costs. For the purpose of calculating public open space contributions for Cells 1 to 6 and 9 the area of public open space referred to in Clause 10.4.1 shall not be deducted from the area of a Cell.

With the exception of the Landsdale District Centre site, the area of all local/neighbourhood/district shopping centre sites will be included in the Area of a Cell, and the area of school sites and land required for local drainage shall be deducted from the Area of a Cell to form the basis for determining the total area of public open space to be provided in a Cell; and

(b) All owners of land in Cells 7 and 8 shall be required to contribute towards the provision of public open space as part of the Cell Costs, where such public open space is identified by way of environmental impact assessment, buffer or any other requirements on the relevant Local Structure Plan.

10.5.2 Public open space shall include:

- (a) all community purpose sites; and
- (b) those reserves previously given up for public open space on historic subdivisions being:
  - ◆ Reserve 27294
  - ◆ Reserve 27071
  - ◆ Reserve 34683 (in respect of Cell 5 only)
  - ◆ Reserve 24794
  - ◆ Reserve 24881

- ◆ Reserve 27340
- ◆ Reserve 25489  
(‘the Reserves’)

10.5.3 (a) If a land holding in a Cell previously contributed land for one of the Reserves referred to in subclause 10.5.2 (b) as part of an historic subdivision, the present owner of such land holding shall be allowed an appropriate adjustment in the Infrastructure Cost payable in respect of that landholding. The allowance due to an owner is the proportion of the total value of the Reserve, subject to the provisions of paragraphs (b), (c) and (d) of this subclause, that the area of the owner’s landholding bears to the total land area in the historic subdivision and shall be calculated in accordance with the following formula:

$$S = (G \div H) \times V$$

Where:

S = the value of the proportion of the historic contribution that an owner’s land in a Cell made to a Reserve, subject to the provisions of paragraphs (b), (c) and (d) of this subclause, for which the owner is entitled to be paid the Assessed Value (“the Credit”).

H = the total land area of the historic subdivision which contributed to the Reserve.

G = the area of the owner’s land within the historic subdivision area.

V = value of the reserve, subject to subclause 10.5.3(b)

- (b) The area of a Reserve that is to be valued is, for the purpose of calculating public open space in this clause, to be limited to 10% of the area of the historic subdivision that created it whether or not the actual area of the Reserve exceeds that proportion.
- (c) The value to be applied under paragraph (b) of this subclause shall be the same as the value established from time to time of public open space for the purpose of calculating the relevant Cell Costs.
- (d) Credit shall be allowed for public open space in historic subdivision once only. If public open space in an historic subdivision has been the subject of allowance under paragraph (c) of this subclause, no further allowance shall be made in respect of that public open space on any further subdivision of land from the historic subdivision, whether the further subdivision is a conventional green title, survey strata or strata subdivision.

- 10.5.4 If a land holding of an owner now overlapping two or more Cells was previously part of land which was subdivided and contributed land for one of the Reserves referred to in subclause 10.5.2 (b), even if the Reserve is not in the same Cell as the current land holding, or is not in any Cell, then the allowance due to the present owner may be spread as a Cell Cost across the different Cell Accounts for the Cells in which such land holding is situated.
- 10.5.5 In the case in subclauses 10.5.3 and 10.5.4, the present owner of the land which historically contributed the Reserve will still be required to contribute to the public open space component of the calculation of the Infrastructure Costs described in Clause 10.6 for each Cell without regard to the public open space contribution previously made on the historic subdivision.
- 10.5.6 The allowance due to an owner may be paid or allowed at the time such owner subdivides or develops any part of the owner's landholding generally in accordance with the Local Structure Plan for the Cell in which the landholding is situated. Such payment may, at the discretion of the City, be credited against the Cell Infrastructure Costs payable by the owner for the subdivision or development.

## **10.6 CALCULATION AND APPORTIONMENT OF CELL WORKS AND COSTS – INFRASTRUCTURE COSTS**

- 10.6.1 Cell Costs shall be estimated by the Council and recovered from owners of land in each Cell in the manner provided for in this Part.

Cells 1 to 6 and 9 – Infrastructure Cost Per Lot:

- 10.6.2 Council will, for the purposes of apportioning Cell Costs to Owners in Cells 1 to 6 and 9, make an estimate of the lot yield for each Cell called the 'Estimated Lot Yield'. This will be calculated by determining the number of hectares in the Area of a Cell and multiplying that area by 9;
- 10.6.3 The contribution to be made by each owner of land within a Cell to the implementation of the Cell Works for that Cell (to the extent that the land relates to Cells 1 to 6 and 9) shall be an Infrastructure Cost, based on an Infrastructure Cost Per Lot which is to be calculated by the Council in the following manner:

- (a) The Infrastructure Cost Per Lot is determined by first deriving the Net Cell Cost:

(i)  $A - B = C$

Where:

A = gross cost of Cell Works being the total of fixed actual and estimated future costs which will be based on costs estimated no more than 12 months in advance. Such estimates shall be based on an average for each Cell cost and recognise all factors affecting the development of the

relevant Cell and associated constraints the Council will encounter in the provision of the Cell Works. This shall include (but not be limited to) variable market conditions and the nexus between the time frame of development and provision of Cell Works

B = payments made to date by owners of land who subdivide or develop land within a Cell calculated on the basis of whichever is the lesser of:

- (1) the lots produced at the rate of 9 lots per hectare for the Area equivalent of the land holding of an owner; or
- (2) the actual number of lots produced by the land holding of an owner;

C = Net Cell Costs;

and then dividing the Net Cell Cost by the subdivision potential of the balance of the Area of a Cell remaining unsubdivided.

(ii)  $C \div D = E$

Where:

D = the number of lots to be produced to achieve 9 lots per hectare for the Area equivalent of the unsubdivided balance area of a Cell;

E = the Infrastructure Cost Per Lot.

- (b) The Infrastructure Cost payable by each owner of land in Cells 1 to 6 and 9 inclusive is calculated by multiplying the number of lots produced by the Infrastructure Cost Per Lot.
- (c) Infrastructure Costs shall not be payable for land that is used for government school sites.

#### 10.6.4 Cells 1 to 6 and 9 – Determination of Potential Lots to Which the Infrastructure Cost Per Lot Applies

In addition to the number of lots on which the Infrastructure Cost payable by each owner pursuant to subclause 10.6.3(b) is assessed, a further Infrastructure Cost Per Lot shall be payable on the potential lots/dwellings capable of being produced, assessed in accordance with the following provisions:

- (a) where land is identified by Council as having potential or the capability of being developed for grouped housing development or for any other non-public purpose land uses, the Infrastructure Cost per lot will be charged on the basis that the lot has residential subdivision potential at R20 density at the time that lot is created. This shall be calculated by

Council by dividing the total area of the lot by 450m<sup>2</sup> to derive a lot potential for the lot;

- (b) where Council is satisfied that an area of land is intended to be developed as a church or a private school and Council considers it appropriate in the circumstances, the Infrastructure Cost per lot may be charged on the basis of the Estimated Lot Yield referred to in subclause 10.6.2 or any other agreed basis;
- (c) where a subdivision is proposed for land on which a dwelling exists and a smaller lot is created to contain the dwelling, the lot containing the dwelling (“the existing house lot”) will be subject to an Infrastructure Cost Per Lot contribution based on the Residential R20 density described in subclause 10.6.4(a). If, however, the owner of such land can demonstrate that the size of the existing house lot is required to accommodate the dwelling, landscaping and other outbuildings associated with that dwelling and that the actual development potential of that lot may not exist without substantial cost and redevelopment, then Council may, at its discretion, reduce the Infrastructure Cost Per Lot contribution payable for the existing house lot provided any future subdivision or development of the existing house lot will incur further contributions as outlined in subclause 10.6.4(a);
- (d) where a subdivision of the kind contemplated in subclause 10.6.4(c) is proposed the Council may impose on the balance of the lot excluding the existing house lot (“the remaining land”) an Infrastructure Cost Per Lot contribution based on the R20 development potential of that lot as prescribed in Paragraph (a) of this subclause. Council may reduce or defer such payment if:
  - (i) the owner of such a lot can demonstrate that the subdivision was primarily carried out to create the existing house lot and to effect the sale of the remaining land; and
  - (ii) the size of the remaining land is such that it will be developed in stages or will be further subdivided.

#### 10.6.5 Cells 7 & 8 Calculation of Infrastructure Cost Per Square Metre

The infrastructure contribution to be paid by owners of land in Cells 7 and 8 shall be calculated on the basis of the number of square metres of each Cell which are capable of being developed (“the Infrastructure Cost Per Square Metre”).

The Infrastructure Cost to be paid by each owner of land in Cells 7 and 8 is calculated as follows:

$$X \div Y = Z$$

Where

X = gross cost of Cell Works being the total of fixed actual and Estimated Future Costs the calculation of which will be based on costs anticipated no more than six (6) months in advance. Such estimates shall be based on an average for each Cell cost and recognise all factors affecting the development of the relevant Cell and associated constraints the Council will encounter in the provision of the Cell Works. This shall include (but not be limited to) variable market conditions and the nexus between the time frame of development and provision of Cell Works.

Y = the area of a Cell which the Council estimates by deducting all land for existing and future roads, proposed drainage sites and other land for public purposes as depicted on the Agreed Structure Plan for the Cell from the total area of a Cell.

Z = the Infrastructure Cost Per Square Metre.

#### 10.6.6 Cell 7 & 8 Variables Affecting the Calculation of Infrastructure Costs

- (a) In the case of subdivision and strata subdivision, the Infrastructure Cost contribution of an owner of land within Cell 7 or 8 will be calculated by multiplying the Infrastructure Cost per Square Metre by the total area of each lot proposed to be created with the exception of land or lots created for public purposes; and
- (b) in the case of development, the contribution of an owner of land within Cell 7 or 8 will be calculated by multiplying the Infrastructure Cost Per Square Metre by the total area of the land that the Council considers to be the subject of the Application to Commence Development or an application for a Building Licence including the area of all structures, car parking, storage, landscaping, necessary setbacks and the like.

### 10.7 RE-ASSIGNMENT OF USES OF LAND

Where land originally proposed on a Local Structure Plan in any Cell for any use and/or density, is subsequently subdivided and/or developed for a purpose and/or density and for which no Cell Costs or only partial Cell Costs have previously been paid under clause 10.6 hereof, such land will be liable for the full payment of the Cell Costs. The level of contribution required will reflect the rate of Infrastructure Cost Per Lot or Per Square Metre (or part thereof as applicable) current at the time the further subdivision or development occurs.

### 10.8 RECOUPMENT OF INFRASTRUCTURE COSTS

Subject to the agreement of the Western Australian Planning Commission, Council may retrospectively obtain payment of Infrastructure Costs from any owner or former owner of land within a Cell where the appropriate Infrastructure Contribution payment as required by subclauses 10.10.6 (a) – (c) was inadvertently not required or made.

## **10.9 APPLICATION OF FUNDS IN CELL ACCOUNTS AND PRIORITISATION OF CELL WORKS**

### **10.9.1 Borrowing of Funds (Including borrowings from other Cell Accounts to carry out Cell Works)**

Council may borrow funds contained in another Cell Account or borrow from any other permitted source to undertake or to complete Cell Works in a Cell or where it can be demonstrated that such borrowing will generally be of benefit to owners of land in a particular Cell.

### **10.9.2 Accounting for Borrowings in Cell Accounts**

Where funds are borrowed pursuant to subclause 10.9.1, the Council shall at all times keep proper accounts of any such transactions and shall charge interest at the rate applicable to the scheme accounts from time to time.

### **10.9.3 Changes in Priority of Cell Works**

Council, with the objective of minimising any borrowing and in managing the land acquisition and road construction programme for each Cell, may use funds in a Cell Account to undertake any Cell Works for that Cell as Council sees fit. The components used to calculate the Infrastructure Cost contributions shall not determine or limit Council's decision as to whether any Cell Work should be carried out in priority to another.

## **10.10 ESTIMATES OF INFRASTRUCTURE COSTS**

10.10.1 The Council may, upon receiving any written request from an owner of land in a Cell make an estimate of Infrastructure Costs and issue an estimate to the enquirer which states the rate of contribution of Infrastructure Costs for the subject Cell. All estimates issued by Council in writing, are valid for a period not exceeding six (6) months from the date of issue. The estimate will be based on the calculation described in Clause 10.6 and will be an estimate of the Infrastructure Costs that will apply in six (6) months from the date of issue.

10.10.2 Where an owner of land in a Cell seeks to make a payment for Infrastructure Costs based on the estimate provided under subclause 10.10.1 and the Infrastructure Costs being charged by Council at the time are less than the amount of the estimate, then the owner may pay the lesser amount.

10.10.3 Where an owner has been provided with an estimate of the Infrastructure Cost for any land of the owner within a Cell and the owner subsequently pays a sum equal to that estimate within the time allowed for under subclause 10.10.1, then the owner is not liable to pay further Infrastructure Costs in relation to that land unless the estimation provided by the Council was calculated in error, then subclauses 10.10.5 (a) to (c) and Clause 10.8 would apply.

10.10.4 The provisions of subclause 10.10.3 shall not apply to those owners or former owners of land in a Cell who, prior to the adoption of a Local

Structure Plan for the Cell have made a payment to Cell Works on the basis of Infrastructure Cost Contribution that is less than the contribution rate required after the Local Structure Plan for the relevant Cell came into effect. In such circumstances, Council may seek a further payment from those owners who have made such payments, which represents the difference between such payment and the amount of the owner's contribution calculated as if the payment was made at the time the Local Structure Plan for that Cell came into effect.

Owners shall make the further payment stipulated by Council on demand in accordance with subclause 10.10.5(d).

10.10.5 The contribution of an owner to Cell Costs by way of payment of Infrastructure Costs shall be paid:

- (a) prior to Council providing written advice to the Commission confirming that conditions relating to a conventional green title, survey strata or strata subdivision or amalgamation have been completed to enable the Commission to endorse its approval to the relevant plan or deposited plan (diagram of survey) pursuant to Regulation 10 of the Western Australian Planning Commission Regulations 1962 or as otherwise required of the relevant local government and/or Western Australian Planning Commission under the Strata Titles Act 1985 and its Regulations; or
- (b) prior to the issue of a Building Licence for any development (including a use) on the land of an owner in a Cell; or
- (c) at the time of granting of development approval by the Council or the Commission for the commencement of any development on land of the Owner in a Cell involving the creation or production of any new lot or residential unit; or
- (d) whether or not an owner has reached the stage of subdividing or amalgamating or carrying out any use or development on land within a Cell subject to the approval of the Commission, such owner shall be liable to pay to the Council the Infrastructure Costs or such part thereof as the Council from time to time requires as from the date of posting to him by or on behalf of the Council by prepaid post addressed to the owner's last address known to the Council of a notice informing such owner of the amount of the appropriate proportion or part then required and calling on the owner to make payment. Within six (6) months of the posting to an owner of such a notice the owner shall pay the sum sought together with any interest accrued to the date of payment.

Council shall advertise or cause to be advertised in a newspaper circulated in the District any requirement for Infrastructure Contributions to be paid under subclause 10.10.5(d) to all affected landowners.

10.10.6 Having regard to the availability of funds in the relevant Cell Account and the priority of Cell Works, the Council shall endeavour to offset any

credit to which an owner is entitled under this Part against the Infrastructure Contribution first assessed to be payable by that owner after determination of the credit.

- 10.10.7 If the date upon which the liability of an owner or former owner to pay Infrastructure Costs cannot be ascertained with certainty by reference to the time of the commencement of a development including a use involving the creation or production of a new or additional dwelling, then the date upon which the Infrastructure Costs shall be treated as being due and payable shall be the date of posting by the Council to the owner of a demand for payment of the contribution by prepaid letter addressed to the owner at the last address known to the Council of the owner.
- 10.10.8 The Council may agree (but is not required) to allow an owner to defer part of any Infrastructure Costs payable by such owner prior to or upon such costs becoming due and payable until a date acceptable to the Council and subject to payment of interest. Any interest payable pursuant to subclause 10.10.9 shall only be calculated on the balance of the Infrastructure Costs outstanding.
- 10.10.9 Interest shall be paid on all overdue Infrastructure Costs at the rate payable from time to time on judgement debts pursuant to Section 142 of the Supreme Court Act, 1935 from the date the contribution became due until the date of payment, although on application by an owner, the Council may agree to suspend or waive such interest or any part thereof if satisfied that it would be fair and equitable to make such allowance.
- 10.10.10 Any overdue Infrastructure Costs relating to land in a Cell shall be a liquidated debt due to the Council by the owner of such land and may be recovered by the Council in a court of competent civil jurisdiction.
- 10.10.11 Additionally, any overdue Infrastructure Costs relating to land in a Cell shall be a charge on that land and the Council may lodge a caveat against the title of the land in respect thereof. The Council may at the cost of the owner of such land and subject to such other conditions as Council considers appropriate, withdraw a caveat to permit dealings and thereafter re-lodge the caveat to prevent further dealing until such costs are paid. Upon the payment of all Cell Costs contributions in respect of any land, and if requested to do so the Council shall withdraw any such caveat which it has lodged on the title to that land at the request of and at the expense of the Owner.
- 10.10.12 The Council may, but is not required, to accept land within the Cell to the value of any amount due to Council in respect of Infrastructure Costs in lieu of payment of that amount. The land can either be provided to Council on an en globo basis or as serviced and developed land. Any such land shall only be valued on a fair market value basis by a licensed valuer who is a member of the Australian Institute of Valuers and Land Economists (Inc) (WA Division) ("AIVLE") acceptable to the parties or if no such agreement can be reached as nominated by the President for the time being of AIVLE.

The Council shall hold any land so acquired for future sale and expenditure of the proceeds on Cell Works, or for transfer to an owner in exchange for land required to be contributed for other Cell Works, on a fair market value basis.

- 10.10.13 Where Council is required to acquire land for Cell Works and the owner of the land requests that Council acquire the balance of the lot, Council may, subject to availability of funds within the Cell Account for that Cell, acquire such land. If deemed appropriate by the Council, funds may be drawn from another approved source.
- 10.10.14 Where Council acquires land pursuant to subclause 10.10.13, it may at its absolute discretion, either offer this land for sale on a fair market value basis to an adjoining owner or other interested party or alternatively subdivide or develop this land in accordance with the prescribed zoning and the Agreed Structure Plan for the Cell.
- 10.10.15 Where Council sells any land pursuant to subclause 10.10.14 the proceeds of sale shall be credited to the Cell Account from which the acquisition, subdivision or development costs were drawn and they shall not form part of the Council's Municipal Fund unless the acquisition, subdivision or development costs were drawn from that Fund.

## **10.11 REVISION OF CELL COSTS, ESTIMATED LOT YIELDS, AND AREAS CAPABLE OF BEING DEVELOPED**

- 10.11.1 The Council shall from time to time review Cell Costs provided such reviews are conducted at least on an annual basis and in any event prior to the commencement of each new financial year.
- 10.11.2 Council shall, at the time it reviews Cell Costs, review:
- (a) the Estimated Lot Yield referred to in subclause 10.6.2 in respect of Cells 1 to 6 and 9;
  - (b) the Infrastructure Cost per Lot in respect of Cells 1 – 6 and 9;
  - (c) the remaining area of Cells 7 and 8 which is capable of being developed;
- having regard for the actual lots produced in each Cell since the last review, the remaining Cell Works, any amendments to the Local Structure Plan and any other factors the Council considers relevant.
- 10.11.3 When calculating or reviewing Cell Costs, Council will have regard to the value of the land required for Cell Works and include an amount of 10% over and above the assessed value of such land, to ensure that Council has or will receive sufficient funds in the Cell Accounts to acquire land for Cell Works relating to the 9 Cells in East Wanneroo to meet its obligations for appropriate payment to such owners, and ensure

the Cell Works can be completed in a manner that minimises the need for external borrowing. The Council may also apply a further amount above the Assessed Value to recognize any compulsory taking of land and/or acquisition of structures.

- 10.11.4 The Council, in reviewing the various elements pursuant to subclauses 10.11.1 and 10.11.2, may revise or amend any of those elements and any Infrastructure Costs payable by an owner of land in a Cell.
- 10.11.5 Following revision or amendment of the elements mentioned in subclauses 10.11.1 to 10.11.3 inclusive, the Council shall notify by way of public advertising all owners of land in a Cell that are affected by the outcome of the review advising of the availability of details concerning the review and revisions and inviting comment.
- 10.11.6 Following the issue of the invitation pursuant to subclause 10.11.5 a period of 42 days shall be allowed from the date such advertising commenced for an owner affected by the review to object to the revision of Cell Costs and any other finding of the review, other than the Assessed Value which shall be dealt with under Clause 10.14. An owner who lodges an objection under this clause shall submit with the objection supporting evidence from a suitably qualified person in the specific field of the cost revision being objected to and can only object to those elements that have been altered as part of the review. Any objection received by the Council in accordance with this subclause during this period shall be assessed by the Council and if not agreed by the Council, shall be referred by the Council to the arbitration of a single arbitrator in the manner provided by the Commercial Arbitration Act, 1985. The arbitrator shall be bound by the provisions of Part 10 and Schedule 9 of the Scheme and the Local Structure Plan for that Cell.
- 10.11.7 If the parties are unable to agree upon the arbitrator, the arbitrator may be nominated by the President for the time being of the Law Society of Western Australia (or its successor) on the application of any party. The costs of each party involved in the arbitration process will be borne by that party, however, in the case where the arbitrator believes an objection to be frivolous or where a party has unnecessarily frustrated the process of arbitration, the Arbitrator may at his discretion, award costs against the erring party.
- 10.11.8 The Council shall after each annual review and as part of the updating of the business plans prepared for Cells, prepare a summary financial statement for each Cell stating all income, expenditure and works undertaken for the preceding financial year. This statement will be forwarded to the Commission together with a schedule of any revisions that have been made pursuant to this clause. The Commission may provide the Council with any comment or objection it may have pursuant to subclause 10.11.6.

## 10.12 PRE-FUNDING OF CELL WORKS

- 10.12.1 An owner of land with a Cell may, with the prior approval of the Council, undertake any or all of the Cell Works referred to in Schedule 9.
- 10.12.2 Where an owner wishes to undertake Cell Works pursuant to subclause 10.12.1, the owner shall, before commencing to carry out such works, first lodge a formal claim for the cost of those Cell Works with the Council which reserves the right to review and accept or reject the claim, and to permit or prevent the owner from carrying out the works until such time as the owner's claim has been agreed. Council will endeavour to respond to an owner's claim within 60 days.
- 10.12.3 If Council agrees that an owner can pre-fund Cell Works the owner shall at all times maintain proper and itemised records of all relevant expenditure, including receipts and invoices and provide copies of the same to the Council on request. Where the cost of carrying out such works exceeds the amount of the claim originally agreed to by Council, Council may accept or reject the additional cost or any part thereof.

Any dispute regarding the entitlement of the owner to additional reimbursement from the Cell Account shall be referred to the arbitration of a single arbitrator in the manner provided by the Commercial Arbitration Act 1985 and if the parties are unable to agree upon the arbitrator he may be nominated by the President for the time being of the Law Society of Western Australia (or its successor) on the application of any party.

- 10.12.4 Where the Council accepts a claim for an entitlement to re-imburement for the carrying out of Cell Works, Council shall record the extent of the claim and if necessary adjust the extent of Cell Costs accordingly.
- 10.12.5 Where an owner seeks a credit for a contribution to Cell Works (whether by the provision of land or the construction of any works) against his Infrastructure Cost liability and Council has previously agreed to the carrying out of such works by that owner on that basis, then the credit to be given to the owner will be calculated on the basis of the greater of the value of the Cell Works as ascribed by the Council in the calculation of the Cell Costs or the cost incurred by that owner.
- 10.12.6 Notwithstanding subclause 10.12.5, where an owner has pre-funded works and the credit allowed by Council exceeds the obligation for payment towards Infrastructure Costs by the owner under this Part, the owner shall be refunded the excess after Council has received sufficient contributions from other owners in that Cell towards meeting all the anticipated Cell Costs.

## 10.13 FINANCE

- 10.13.1 The Council may (but is not obliged to do so) raise loans or provide funds from other sources for the purpose of providing the finance

necessary for the implementation of the designated Cell Works and any interest or charges incurred in doing so will be deemed to be a Cell Cost.

- 10.13.2 Where a Cell remains with no further land remaining from which a contribution to Cell Works can be levied by the Council under the provisions of this Part, Council may (but is not obliged to do so) complete any outstanding Cell Works.
- 10.13.3 In the event that upon the subdivision, development or strata subdivision of all the land in the Cell, the Infrastructure Contributions received by the Council exceeds the amount necessary to complete the Cell Works in a Cell and meet all of the Cell Costs, the amount of such excess will be distributed amongst the owners who made Infrastructure Cost payments to the Cell Account in accordance with subclause 10.6.3.

The amount of any excess that an owner may be entitled to receive shall be in the same proportion to the total excess money that the number of lots produced by the owner bears to the total number of lots produced in a Cell. The amount payable to an owner under this clause shall be reduced by the amount of any shortfall in the payments made by that owner to their assessed Infrastructure Costs.

If an owner or other person or persons, corporation or other legal entity entitled to an interest in a Cell cannot be located by the Council after the giving of public notice by way of an advertisement in a newspaper on at least two occasions and writing to their last known address as shown in the Council records and no request for a claim is received by the Council within a period of six months from a decision being made by the Council to distribute excess funds, that owner's proportion of the surplus funds may be expended, subject to the approval of the Minister of Planning, either towards further improvements and facilities within the Cell or transferred to the Cell Account of an abutting Cell where insufficient funds will be received to complete Cell Works that are common to both Cells and thereafter such an owner shall have no claim in respect to such money.

#### **10.14 ACQUISITION OF LAND FOR CELL WORKS, PAYMENT, VALUATION AND COMPULSORY ACQUISITION**

- 10.14.1 Without limiting the generality of Clause 8.1 if an owner fails or refuses to transfer any part of the land of the owner which is required as part of the Cell Works following the giving of any notice by the Council requiring such land, the Council may forthwith or after giving such formal notices as to the Council shall seem appropriate in the circumstances, compulsorily acquire the relevant portion of that owner's land within the Cell.
- 10.14.2 Where land has been compulsorily acquired and a lawful claim for compensation has been served on the Council, the Council may claim compensation for betterment under section 11(2) of the Act and the value attributed to the betterment of the land the subject of the claim shall be

set off against any compensation otherwise payable to the claimant under the Land Administration Act 1997 or any re-enactment of its provisions related to compulsory acquisition and compensation.

## 10.14.3

- (a) Subject to subclause 10.14.6, if it is necessary, for any purpose, to ascertain the value of any land, such value shall be determined by two licensed valuers appointed from time to time by the City herein referred to as “the Valuation Panel”. The members of the Valuation Panel may confer as to value, and if they are unable to arrive at a consensus value, they shall confer with the Chief Executive Officer of the City (“CEO”) or the officer to whom the CEO delegates that function from time to time. If the valuers with the officer cannot arrive at a consensus value then the officer shall select a value which represents the median value between the two values nominated by the valuers on the Valuation Panel and will be advertised under the next following paragraph (“the Proposed Value”).
- (b) As soon as possible after the Proposed Value has been ascertained it shall be advertised at least once in each a newspaper circulating within the State and a newspaper only circulating locally, and an opportunity for submissions within a period of not less than 28 days from the latest advertisement shall be given. Additionally, a written notification to the same effect should be given to any owner of land within the relevant Cell who, at the time of advertising, has received approval to subdivide land within the Cell but who has not made a contribution to Cell Costs on that subdivision. That notification shall allow not less than 28 days from its date for submissions to be made in regard to the Proposed Value.
- (c) The City shall as soon as possible consider all submissions made on the Proposed Value and may refer any submission to the Valuation Panel for comment, but where a submission is accompanied by expert valuation advice based on the valuation principles contained in this Part, it shall be referred by the City to the Valuation Panel for comment. Having considered the submissions and any comment from the Valuation Panel, the Council shall fix upon the value to be applied under this clause (“the Assessed Value”) until the next Assessed Value has been determined.
- (d) It is intended that any Assessed Value should apply for no more than 12 months but while an Assessed Value remains current it shall stand as the value of land within the relevant Cell for all purposes under this Part.
- (e) Where land is acquired, otherwise than by compulsory taking, for the purpose of determining the amount to be paid to the owner from whom the land is acquired the value of the land shall be calculated according to the same Assessed Value as was applied to the Infrastructure Contribution paid or payable by that owner on the subdivision of land in the same deposited plan as contains the land acquired.

- 10.14.4 In ascertaining the Assessed Value under Clause 10.14.3, all land shall be valued in its broad acre form as depicted on 1 January 1989, ignoring any services or infrastructure provided in accordance with the provisions of the relevant Local Structure Plan and applying the following principles:
- (a) regard is to be had to the land classifications and zonings existing at the date of valuation;
  - (b) the date of valuation is to be the date on which the Council requests the Valuation Panel to provide the relevant Assessed Value;
  - (c) ignoring any improvements or works on the land;
  - (d) ignoring any condition of the land which might require rectification or remediation;
  - (e) in selecting relevant sales evidence, regard should be had first to values derived from land in the same Cell, and if that is not adequate evidence, from nearby or similar Cells in the East Wanneroo area, in priority to any other sales evidence;
  - (f) the method of valuation shall otherwise be in accordance with normal fair market valuation principles.
- 10.14.5 Where land is acquired in the circumstances contemplated in Clause 10.14.3(e), the Council shall pay to the owner an additional amount not more than 10% of the amount calculated under that clause. This provision does not apply to public open space referred to in Clause 10.5.2(b).
- 10.14.6 Where land is acquired for a Cell Work it shall be valued without regard to the Cell Work and the purpose for which the land is acquired shall not be taken into consideration.
- 10.14.7 Where the Council has acquired land for Cell Works it may lease such land and/or any associated buildings until the land is required for the purpose for which it was acquired or for any other period the Council determines to be appropriate. Any land that is acquired for Cell Works shall only be leased or rented for uses that do not affect or detrimentally impact on the surrounding residents or land uses and the future use and enjoyment of the land for the purpose the land was acquired for. All rent and other money received by it under the lease shall be credited to the Cell Account for the Cell from which the land was acquired.
- 10.14.8 Where land required for Cell Works is ceded to the Crown prior to the Minister for Planning granting final approval and publication of Amendment No.35 in the Government Gazette and the appointment of the Valuation Panel by the City under Clause 10.14.3, the land shall be valued in-accordance with the following subclauses by a licensed valuer appointed from time to time by the Council herein referred to as “the Council Valuer”.

- (a) land value shall be the capital amount that an unencumbered estate in fee simple of the land en globo might reasonably be expected to realise upon sale and reflecting that:
  - (i) if the land is zoned or to be zoned for residential or industrial or any higher purpose, then the land shall be valued on a fair market value basis accordingly;
  - (ii) if the land is zoned Rural or Special Rural and is not proposed by the Scheme to be rezoned for any higher purpose then the land shall be valued on a fair market value basis according to its existing zoning; and
  - (iii) The value placed upon the land of any owner of land within a Cell may be revised from time to time by the Council Valuer provided that if it is necessary as a result of such revision, the Valuer may reconsider the values placed on other land and make such re-evaluations as he considers just and equitable.
- (b) Subject to the provisions of the Clause 10.14.8 (a), the Council Valuer shall apply the following provisions when valuing land;
  - (i) The method of valuation shall be in accordance with normal fair market valuation principles;
  - (ii) Unless the provisions of the Scheme indicate a contrary intention, the date of valuation shall be the date upon which the Council gives notice to the owner in writing that it requires the land, or the date upon which the Council and the owner agree that the land should be made available, and if neither of those provisions applies, the relevant time shall be the date upon which the land is made available for the relevant Cell Works.
- (c) If an owner of land that is the subject of such a valuation rejects the value ascribed to such land by the Council Valuer, the owner may give notice of such rejection to the Council within 28 days after having been informed of the value. If the Council does not agree to change the value to a figure acceptable to the owner, the value shall be determined by arbitration in accordance with Section 11(4) of the Act.
- (d) Clause 10.14.8 does not apply to those reserves previously transferred to the Crown for public open space on historic subdivisions as identified in Clause 10.5.2(b).