5.1 Annual Review of Cell Costs - East Wanneroo Cell 1 Developer Contributions Arrangements

File Ref:	23145 – 19/56487
Responsible Officer:	Director Planning and Sustainability
Disclosure of Interest:	Nil
Attachments:	5

Issue

To consider the Annual Review of costs for the East Wanneroo Cell 1 Developer Contributions Arrangements for advertising purposes, including revision to adopted land values and a methodology to make a partial return of excess funds to contributing landowners.

Background

The Cell 1 developer contribution arrangements are subject to an Annual Review process to ensure that the cost contribution amount is correctly set to ensure the collection of sufficient funds to cover the cost of approved infrastructure items over the life of the DCP.

Developer Contribution Arrangements Cells 1

The purpose of the Developer Contribution Arrangements for Cell 1 is to coordinate the provision of standard subdivision infrastructure on behalf of developers within the East Wanneroo Cell 1 Agreed Structure Plan (ASP). These arrangements were required due to the fragmented nature of landownership within the ASP and also serve to reduce the financial burden on the City and the State Government in the provision of infrastructure to the local community.

The ASP contains the suburbs of Ashby and Tapping (**Attachment 1**), is predominately developed (96%), with the remaining landholdings consisting of several original market gardens and balance title lots, as generally depicted in **Attachment 2**.

The provisions outlined in Part 9 and Schedule 6 of District Planning Scheme No. 2 (DPS 2) provide the statutory basis for the management and implementation of the Cell 1 Developer Contributions Arrangements. In accordance with Clause 9.11.1, the City is required to annually review the Cell Costs prior to the commencement of each new financial year. The provisions of DPS 2 provide Council with the discretion to either increase, decrease or maintain the current (2006) Infrastructure Cost Per Lot (ICPL) rates through the annual review process.

The City is currently in breach of its statutory obligation, with the last Annual Review undertaken in 2006. However, although formal Annual Reviews have not been undertaken, Administration has initiated a range of actions to ensure financial accountability of the Cell accounts, with ongoing monitoring of the accounts ensuring the City's records are up-to-date.

The City has been collecting and utilising contributions from developers in the Cell to undertake Cell Works, including Public Open Space (POS) acquisition, acquisition and construction of regional roads and associated costs for the lifespan of the DCP.

Council last adopted cell cost estimates at the meeting of 29th August 2006 (Report PD11-08/06), where it was resolved to adopt the rate of $1,250,000 as the average englobo value per hectare, and a revised figure of $16,741,433 as the current Net Costs applicable to East Wanneroo Cell No. 1. The land valuation was also revised in November 2015 (PS08-

11/2015) to $1,875,000 per hectare ($2,062,500 including 10% solatium), however the ICPL has remained the same since 2006, at $25,835.54.

Transactional Audit

Administration initiated a Transactional Audit in March 2016 and although this was initially scoped to review the accuracy of Cell 1 financial data for the period 1 July 2010 to 30 June 2015, this was subsequently expanded with the time period extended from 1999 to 2016. A major component of the Audit has been investigation and analysis of the DPS 2 scheme provisions and observations on the City's compliance with legislative requirements to ensure that the City is interpreting the provisions correctly.

In this regard, it is noted that Administration has historically used a conservative interpretation of the scope of infrastructure that was covered by DCPs. However, on review, this historical interpretation was determined to be too conservative, and as a consequence the Audit & Risk Committee on 19 February 2019 recommended that a new interpretation be adopted by Council together with the recoupment of some historical municipal expenditure (i.e. charging some infrastructure such as street lighting and intersection treatments to DCPs rather than the City's municipal accounts). This represents a departure from the conservative interpretation of Cell Works conveyed to the landowners from the outset of the Cell 1 DCP and applied in the project funding reports to Council.

The specific recommendations of the Transactional Audit as endorsed by the Audit & Risk Committee on the interpretation of Cell Works, as per the following;

- Confirm that Cell Works includes the list of works prescribed in Schedule 6 of DSP 2;
- Exclude intersection treatments prior to January 2005 and not charge these costs to the DCP, with only intersection lighting (i.e. and not all lighting) being included as a Cell Work before January 2005 (prior to Amendment 17 to DPS No. 2);
- Exclude other roadworks made necessary as a consequence of development and not charging these to the DCP;
- Include and charge to the DCP only interest or other borrowing costs that were incurred by the City in order to raise funds for Cell Works, including any adjustments to interest attributed to the Cell as a result of the Audit adjustments;
- Include and charge to the DCP the specified percentage of the cost of laying a single carriageway;
- Include and charge to the DCP the full cost of earthworks for a dual carriageway;
- Include and charge to the DCP the cost of structures including kerbing, service ducts, street lighting, intersection treatments; relocation of existing services, dual use paths, and structures ultimately built for a dual carriageway; and
- Include and charge to the DCP the costs of relevant environmental offsets as required through the relevant Environment Offset Management Plan/s.

Communication to Major Cell 1 landowners

Since 2014, the major Cell 1 landowners (including Peet, Satterley and Cedar Woods) have made representations to the City that the Cell has over-collected infrastructure contributions, resulting in significant excess funds that should both be recognised and returned to them.

In response, Administration has provided regular procedural updates to the major Cell 1 landowners on the progress of the Transactional Audit and projected timing of an Annual Review. As part of this, Administration flagged the potential return of excess funds to landowners, advising that the City could potentially consider the possible return of excess funds subject to Council approval, and following the completion of the Transactional Audit.

The major Cell 1 landowners have formed a working group and have requested the City to engage with them in a pro-active manner to finalise the Annual Review. In response, a meeting was held recently with landowners on 8 February 2019 to provide them with a procedural update on the Transactional Audit and Annual Review. In this regard, Administration outlined its intention to finalise the Cell 1 Review by June 2019 with a report to be presented to the 5 March 2019 Council Meeting to consider the Annual Review and an approach to excess funds; followed by a 42 day advertising period from mid-March; and that the City will meet with landowners throughout the advertising process, with submissions to be considered by Council as soon as possible after the close of the advertising period.

Return of excess funds

As noted, the City has continued to collect contributions from landowners based on the 2006 ICPL rates. The retention of this rate, along with the following factors has resulted in an excess of funds necessary to complete the cell works in Cell 1:

- Increased residential densities;
- The acceptance of smaller lot sizes in the market;
- The generation of significant amounts of interest on the cell accounts;
- The conservative methodology for calculating Infrastructure Costs under DPS 2; and
- No Annual Review being undertaken with consideration for actual lot yields (contributions) as a relevant factor.

Due to this, the Audit & Risk Committee on 19 February 2019 recommended that Council endorses the return of excess funds in Cell 1 to landowners who have contributed, as a partial pre-payment in advance of the full development of the Cell.

Detail

There are three fundamental Council decisions required to facilitate the Annual Review, i.e. the review of the Cell's assessed land value; a review of Estimated Lot Yields and the Infrastructure Cost Per Lot; and determination on whether a partial return of excess funds is appropriate.

- *Review of Cells Assessed Land Value*

  An integral part of reviewing the Cell Costs is to establish revised land values to reflect fair market value for reviewing the cell cost estimates and compensating affected landowners for cell works through subdivision.

  The land valuation for Cell 1 was last agreed in November 2015 (PS08-11/2015) at $1,875,000 per hectare ($2,062,500 including 10% solatium).

  In accordance with Clause 9.14.3 of DPS 2, if it is necessary for any reason to ascertain the value of any land within a contribution scheme area, then the City is required to appoint a valuation panel to arrive at a consensus value; advertise the proposed value and refer submissions to the Valuation Panel for comment. After having considered the submissions and any comment from the Valuation Panel, the Council is required to fix the value to be applied. In this regard, the City engaged a valuation panel and received a consensus agreement on land value (**Attachment 3**). The valuation panel has recommended a minor reduction in the land value for Cell 1 from $1,875,000 to $1,862,500 ($2,048,750 including 10% solatium).

- *Review of Estimated Lot Yields and the Infrastructure Cost Per Lot*

Administration has prioritised the Annual Review of Cell 1 ahead of other Cells due to the significant amount of excess funds identified through the Annual Review process.

Under Clause 9.11 of DPS 2, the review of Cell Costs shall have regard for the actual lots produced (contributions paid) in the Cell since the last review, the remaining Cell Works, any amendments to the ASP, or any other factors the Council considers relevant.

The Annual Review has considered all these factors, which has resulted in a significant excess in funds being identified with the findings of the Annual Review outlined in the tables below (also refer **Attachment 4**).

Of particular importance is the 'current' estimated excess of $20.8 million after all costs (actual and estimated) have been deducted. A typical DCP calculation (under normal circumstances) would be based on a residual net liability (gross costs less income received) to be apportioned over the remaining undeveloped landowners and the associated ICPL calculated, however, this methodology fails where actual lots created (contributions) and interest are included as a relevant factor in the annual review.

It is also noted Council at the meeting of 15th December 2009 (IN05-12/09) considered the Pinjar Road realignment/upgrade project, where the Pinjar Road underpass was deleted in favour of an 'at-grade' crossing. To validate the deletion of the underpass the City (as part of the Infrastructure Audit of works) engaged Opus International to complete a walkability audit, where it has been confirmed that an underpass would not be warranted or justified in this location. However, Opus did recommend additional upgrading to footpaths to improve the 'at grade' crossing infrastructure, which has been included into the estimates for remaining cell works along Pinjar Road.

To proceed with the Review and given Cell 1's particular circumstances, it is recommended that the City utilises a return of excess methodology to revise the ICPL rate and transition into the finalisation of the Cell. This will enable a reduction in the current ICPL ($25,836) for remaining landowners by a proportion of the total estimated excess funds at full development. This will also enable Council to recognise the total excess funds that may be partially returned to those landowners that have already paid a contribution, subject to Council agreement.

The following table defines the actual Cell expenditure to date, remaining estimated expenditure and Net Transactional Audit adjustments to determine the estimated gross Cell Costs (at full development) and deducts the actual funds received (including interest), resulting in a current estimated excess of approximately $20.8 million.

Summary of Annual Review

EAST WANNEROO CELL 1 - ANNUAL REVIEW 2019	Amounts ($)	COMMENTS
Expenditure to date (Total)	$ 30,038,942.00	All actual costs, including land acqusition, DDR construction and admin charges
Remaining Expenditure (Sub-Total)	$ 5,769,112.06	POS, DDR Works (Pinjar), Admin etc (refer **Attachment 4** for details)
Transactional Audit Findings (Sub-Total)	$ 3,853,489.36	Accounting errors, Municipal recoupment etc (refer **Attachment 4** for details)
Gross Cell Cost (A)	$ 39,661,543.42	Actual plus estimated total costs
Total Payments and Interest	$ 60,496,622.69	Total ICPL Contributions, plus Interest
Nett Cell Costs (C) "A-B=C"	-$ 20,835,079.27	Current Excess
Estimated Remaining Income	-$ 3,203,606.96	Conservative estimate (based on 9 Lots per/ha)

The table below reflects the apportionment of total estimated excess funds at full development, which reflects the current excess plus estimated future income and apportions this amount over the total estimated contributions received (ICPL payments):

Apportionment of estimated Credit at full development

Estimates and Apportionment of Potential Excess Funds at Full Development			
Total Estimated Excess at Full Development	-$	24,038,686.23	Total estimated Excess
Estimated Credit for Landowner (Already Paid)	-$	23,167,362.90	Historic subdivision portion of excess
Estimated Credit for Landowner (Future Subdividers)	-$	871,323.32	Future subdivision portion of excess
Estimated Credit Per Lot (Future Subdividers)	-$	7,026.80	

The revised ICPL rate for future subdividers outlined in the following table:

Revised ICPL Rate

Infrastructure Cost Per Lot (ICPL)			
Current ICPL (2006)	**$**	**25,835.54**	**Contribution Rate (Current rate)**
Revised ICPL (2019) - Current rate less excess funds credit	**$**	**18,808.74**	**Revised ICPL (Current rate less estimated credit)**

- *Determination on a partial return of excess funds*

  A conservative return of excess Cell funds to Cell 1 landowners in advance of the full development is considered reasonable due to the following:

  - Cell 1 is predominantly developed (approximately 96%), where full development costs have been reasonably interpreted and defined.
  - A partial return that retains adequate contingency has been defined.
  - Income estimates have been finalised for the Cell, based on estimated remaining lot yield.
  - District Distributor Road works relating to the duplication of the northern section of Pinjar Road has been identified in the City's Capital Works Programme for 2019.

The Audit & Risk Committee has recommended that an amount of between 16% to 25% of the estimated return of excess funds should be retained by the City as a contingency in the return of excess funds, prior to full development of Cell 1. The recommended range in contingency was proposed, pending further investigation by Administration into possible variables and external auditing (external auditing of contingency is pending).

In reviewing the extent of contingency that should be applied, Administration has only identified two variables; remaining income from the 4% of land still to be developed and reconciliation of outstanding developer balances. The combined value of these factors equates to 12% of the estimated return to landowners that have already paid.

On this basis, Administration recommends that Council endorse the retention of 12% contingency in relation to the partial return of excess funds to landowners that have already made a contribution. This equates to a partial return of $20,387,279 and the retention of $2,780,084 excess funds by the City.

In relation to the proposed contingency it should be noted that;

- The City has completed a Transactional Audit, an Infrastructure Audit and defined cost estimates in the annual review. The total cost of outstanding cell works has been estimated at $5,769,112;
- The retention of a contingency by the City would be consistent with the landowners request for a 'partial' return (refer **Attachment 5**), pending the subdivision/development of all the land in the cell;
- The contingency will ultimately be released to contributing landowners (subject to adjustments) upon full development of the Cell, or other such time as agreed by Council; and
- Any return of excess funds should occur in a conservative manner, and as such, a contingency of 12% is recommended. It is noted that the 12% contingency figure shall be externally audited by William Buck. Council could adopt a different contingency if it so wished.

The Annual Review provisions of DPS 2 do not provide direction to Administration on how to process an early return of excess funds as a partial pre-payment to contributing landowners. Administration has relied upon cl 9.13.3 for guidance (return of excess funds at full development). However, using a 'per lot' return as defined in clause 9.13.3 of DPS No. 2 creates two issues. Firstly, earlier developers will benefit from a disproportionate return based on lots created. In this regard, prior to 2006 contribution rates varied with each annual review and ranged between $4,000 at the beginning of the DCP and $25,835 (2006 ICPL rate). The return provisions of 9.13.3 makes no allowance for adjusting the return amount based on the original ICPL rate paid by the developer. Secondly, the per 'lot' apportionment excludes large group housing/commercial lots where contributions are charged on a 'lot potential' basis and not the 'number' of lots, which would result in group housing and commercial developments not receiving a proportional return of the total excess.

Whilst Clause 9.13.3 of DPS 2 is based on lots created, Administration recommends that apportionment of total excess contributions (estimated at full development and including interest) should be based on the landowners total ICPL contributions to the total ICPL contributions received for the Cell.

On the basis of the above, there is a total estimated excess of $23,167,363 from contributions already made. Administration is recommending a 12% contingency ($2,780,084), which would result in a partial return to these landowners of $20,387,279.

Consultation

The City is required to advertise the proposed land values for a period of 28 days and the revision of Cell Costs for a period of 42 days respectively. Advertising must be carried out by means of advertisements in the West Australian and Wanneroo Times, letters sent to affected landowners and on the City's website, in accordance with the relevant provisions of DPS 2. Following Council's endorsement of this report's recommendations, Administration will proceed with advertising as per the provisions of the Scheme.

Statutory Compliance

The City is currently in breach of its obligations under Clause 9.11.1 of DPS 2 to review Cell Costs on an annual basis. The completion of the Annual Review as outlined in this report will bring Cell 1 into statutory compliance with DPS 2.

As the City has been undertaking external audits of City accounts, inclusive of the Cell 1 DCP fund annually, the City has complied with the provisions of the *Local Government (Financial Management) Regulations 1996*.

Strategic Implications

The proposal aligns with the following objective within the Strategic Community Plan 2017 – 2027:

"4 Civic Leadership

4.2 Good Governance

4.2.1 Provide transparent and accountable governance and leadership"

Risk Management Considerations

Risk Title	**Risk Rating**
ST-G09 Long Term Financial Plan	Moderate
Accountability	**Action Planning Option**
Director Corporate Strategy & Performance	manage

Risk Title	**Risk Rating**
ST-S23 Stakeholder Relationships	Moderate
Accountability	**Action Planning Option**
CEO	Manage

Whilst there are risks associated with the implementation of the Cell 1 Annual Review due to the extended period of time since the last review in 2006, and the resultant excess of funds, the above risks have been identified and considered within the City's existing Strategic risk register. Although formal reviews have not been undertaken during this time, the City has implemented ongoing monitoring of the Cell accounts. It is noted that Council is not required, in accordance with the provisions of DPS 2, to change the ICPL or return funds prior to full development, however this would not address the issue of excess balances in this cell and would perpetuate the excess funds.

The work undertaken by the City in relation to the Transactional Audit and updated interpretation of the provisions of DPS 2 reduces the City's risk of impacts on trust, probity and accountability as it will bring the City to a level of compliance. The prioritisation of the Cell 1 Annual Review in advance of Cells 2-9, and the recommended return of excess funds to contributing landowners will also mitigate the City's financial and reputational risks.

Policy Implications

Nil

Financial Implications

Administration has reviewed the City's position in relation to Cell 1 and notes the Audit & Risk Committee's recommendation that some infrastructure which has previously been funded through City's municipal accounts should have been funded by the DCP Cell 1 account. This includes environmental offsets, lighting and intersection works, which results in approximately $3,853,489 in net adjustments to the cell, as per the following;

PROPOSED TRANSACTIONAL ADJUSTMENTS AUDITED BY WILLIAM BUCK	1	COMMENT
PR-1311 Mirrabooka Ave (processed in incorrect Cell)	-$ 2,286,388.00	Correct Project Accounting Error - Cell 1 Account to be reimbursed from correct cell accounts (Cells 5 & 6)
Pinjar Road (not previously charged)	$ 4,369,843.00	Correct Project Accounting Error - Charge Cell for Pinjar Road Works (Recoupment to Municipal)
Environmental Offsets	$ 1,034,111.43	New Cost under Proper Interpretation of Cell Works to include Environmental Offset Costs (Recoupment by Municipal)
SUBTOTAL	**$ 3,117,566.43**	
Interest	$ 735,922.93	(Recoupment to Municipal)
NET CELL ADJUSTED TOTAL	**$ 3,853,489.36**	Note - Municipal Recoupment Total of $6,139,877

Administration recommends that the methodology for the Annual Review of costs for the Cell be based on the utilisation of the total 'estimated excess funds at full development' as a basis for calculating the revised Infrastructure Cost Per Lot (ICPL) for remaining landowners. In this regard, it is noted that a reduction in the current ICPL from $25,835.54 to $18,808.74 has been based on applying the estimated total excess funds at full development and by applying a per contribution estimate of returns of $7,026.80 to reduce the ICPL rate.

An amount of $23,167,363 has been identified as the estimated portion of the excess at full development applicable to those landowners that have already made a contribution. In this regard, it is recommended that the partial return of excess funds be facilitated, with a 12% contingency to be retained by the City, which will be held by the City on behalf of the contributing landowners and which will not form part of 'future' subdividers claim on future excess funds at full development. On the basis of the above, Administration is recommending a partial return of excess for $20,387,279 and the retention of 12% contingency, which equates to $2,780,084.

The methodology of partial return is recommended to be based on the developers contributions (total ICPL paid) as a proportion of total ICPL contributions collected.

Based on the above, it is recommended that a revised rate of $1,862,500 as the proposed average englobo value per hectare and a revised Infrastructure Cost Per Lot (ICPL) rate of $18,808.74 be advertised. Any excess funds generated on future subdivision or development of land within Cell 1 that is currently undeveloped will need to be apportioned over all contributing landowners within the cell upon the development of all the land within the Cell, or other timing as approved by Council.

Voting Requirements

Simple Majority

Recommendation

That Council:-

1. **APPROVES the recommendations contained within the Audit & Risk Committee Report 6.1 – *"Administration of Developer Contributions Arrangements East Wanneroo Cell 1"* of 19 February 2019, as per the following;**

   a) NOTES the background, process and timing in relation to the Annual Review of Cells 1-9 as outlined in this report.

   b) ENDORSES the application of the provisions of DPS 2 in respect of Cell Works to:

   i. Confirm that Cell Works includes the list of works prescribed in Schedule

6 of DSP 2;

ii. Exclude intersection treatments prior to January 2005 and not charging these to the DCP, with only intersection lighting (i.e. and not all lighting) being included as a Cell Work before January 2005 (prior to Amendment 17 to DPS No. 2);

iii. Exclude other roadworks made necessary as a consequence of development and not charging these to the DCP;

iv. Include and charge to the DCP only interest or other borrowing costs that were incurred by the City in order to raise funds for Cell Works, including any adjustments to interest attributed to the Cell as a result of the Audit adjustments;

v. Include and charge to the DCP the specified percentage of the cost of laying a single carriageway;

vi. Include and charge to the DCP the full cost of earthworks for a dual carriageway;

vii. Include and charge to the DCP the cost of structures including kerbing, service ducts, street lighting, intersection treatments; relocation of existing services, dual use paths, and structures ultimately built for a dual carriageway; and

viii. Include and charge to the DCP the costs of relevant environmental offsets as required through the relevant Environment Offset Management Plan/s.

c) NOTES the findings of the Transactional Audit for Cell 1.

d) ENDORSES the following methodology for the Annual Review for Cell 1, utilising the total 'estimated excess funds at full development' as a basis for calculating the revised Infrastructure Cost Per Lot (ICPL) by;

i. Applying the current Infrastructure Cost Per Lot for Cell 1;
ii. Applying an estimate for a partial return of excess funds at full development to the Infrastructure Cost Per Lot;
iii. Adopting the reduced Infrastructure Cost Per Lot for future subdividers;
iv. Supporting a return of excess funds for Cell 1 to landowners after a contingency of between 16-25% has been retained, noting that a final reconciliation of the Cell 1 accounts will occur upon development of all the land in the Cell.

e) ENDORSES the Annual Review for Cell 1 in accordance with the following process and key milestones:

i. Report to Council to consider the Cell 1 Annual Review on 5 March 2019;

ii. Public advertising of the Cell 1 Annual Review for 42 days from mid-March 2019;

iii. Consideration of submissions by Council on 7 May 2019 or at a Special Council meeting shortly thereafter.

2. APPROVES the methodology for the Annual Review of costs for East Wanneroo Cell 1 by utilising the total 'estimated excess funds at full development' as a basis for calculating the revised Infrastructure Cost Per Lot (ICPL) for remaining landowners.

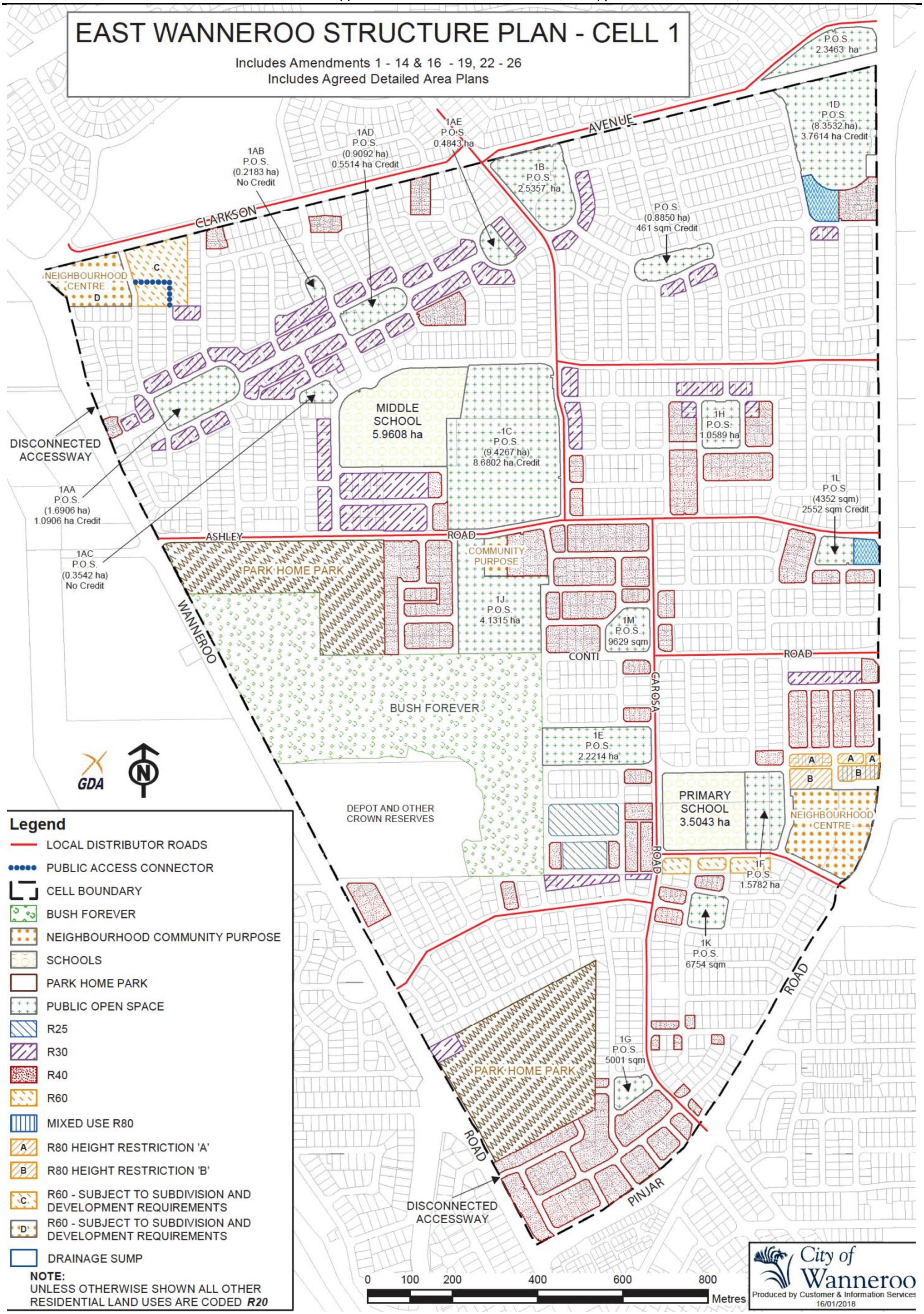
3. NOTES that the reduction in the current ICPL from $25,835.54 to $18,808.74 has been based on applying the estimated total excess funds at full development of

the cell and applying a per contribution estimate of returns of $7,026.80 to reduce the ICPL rate.

4. **NOTES that an amount of $23,167,363 has been identified as the estimated portion of excess funds at full development that is applicable to those landowners that have already made a contribution to date and that:**
   i) **A partial return of estimated excess funds is recommended, pending further reconciliation of the scheme accounts for excess funds upon development of all the land in cell in accordance with Clause 9.13.3 of District Planning Scheme No. 2, or as otherwise agreed by Council;**
   ii) **Notwithstanding the Audit & Risk Committees endorsement of a range of 16%-25%, Administration has determined that a contingency of 12% should be applied and held by the City on behalf of the contributing landowners and will not form part of the 'future' subdividers claim on future excess funds at full development of Cell 1. This contingency figure is subject to review and endorsement by external auditors William Buck.**
   iii) **The methodology of partial return is recommended to be based on the developers contributions (total ICPL paid) as a proportion of total ICPL contributions collected.**
5. **ADVERTISES the revised rate of $1,862,500.00 as the proposed average englobo value per hectare for East Wanneroo Cell 1 in accordance with Clause 9.14.3 of District Planning Scheme No. 2.**
6. **ADVERTISES the revised Infrastructure Cost Per Lot (ICPL) of $18,808.74 for East Wanneroo Cell 1 in accordance with Clause 9.11.5 of District Planning Scheme No. 2.**
7. **NOTES that any excess funds generated on future subdivision or development of land within Cell 1 (currently undeveloped) will need to be apportioned over all contributing landowners within the cell upon the development of all the land within the cell in accordance with Clause 9.13.3 or other methodology agreed by Council; and**
8. **NOTES the deletion of the underpass located immediately south of the intersection of Bonanella Entrance and Pinjar Road.**

Attachments:

1.	*Attachment 1 - East Wanneroo Cell 1 Agreed Structure Plan*	*18/469019*
2.	*Attachment 2 - Revised Cell 1 Valuation - 2019*	*19/61288*
3.	*Attachment 3- Cell 1 Overview of remaining income & expenditure*	*19/67520*
4.	*Attachment 4 - Cell 1 2019 Annual Review of Cell Costs*	*19/72164*
5.	*Attachment 5 - Joint Letter to City of Wanneroo - Feb 12 2019*	*19/72991*


EAST WANNEROO STRUCTURE PLAN - CELL 1
Includes Amendments 1 - 14 & 16 - 19, 22 - 26
Includes Agreed Detailed Area Plans
P.O.S. 2.3463 ha
1D P.O.S. (8.3532 ha) 3.7614 ha Credit
AVENUE
CLARKSON
1AE P.O.S. 0.4843 ha
1AD P.O.S. (0.9092 ha) 0.5514 ha Credit
1AB P.O.S. (0.2183 ha) No Credit
1B P.O.S. 2.5357 ha
P.O.S. (0.8850 ha) 461 sqm Credit
NEIGHBOURHOOD CENTRE
C
D
MIDDLE SCHOOL 5.9608 ha
1C P.O.S. (9.4267 ha) 8.6802 ha Credit
1H P.O.S. 1.0589 ha
1L P.O.S. (4352 sqm) 2552 sqm Credit
DISCONNECTED ACCESSWAY
1AA P.O.S. (1.6906 ha) 1.0906 ha Credit
1AC P.O.S. (0.3542 ha) No Credit
ASHLEY
ROAD
COMMUNITY PURPOSE
PARK HOME PARK
1J P.O.S. 4.1315 ha
1M P.O.S. 9629 sqm
CONTI
ROAD
WANNEROO
CAROSA
BUSH FOREVER
1E P.O.S. 2.2214 ha
A
B
GDA
N
DEPOT AND OTHER CROWN RESERVES
PRIMARY SCHOOL 3.5043 ha
NEIGHBOURHOOD CENTRE
ROAD
1F P.O.S. 1.5782 ha
1K P.O.S. 6754 sqm
ROAD
1G P.O.S. 5001 sqm
PARK HOME PARK
ROAD
PINJAR
DISCONNECTED ACCESSWAY
Legend
LOCAL DISTRIBUTOR ROADS
PUBLIC ACCESS CONNECTOR
CELL BOUNDARY
BUSH FOREVER
NEIGHBOURHOOD COMMUNITY PURPOSE
SCHOOLS
PARK HOME PARK
PUBLIC OPEN SPACE
R25
R30
R40
R60
MIXED USE R80
R80 HEIGHT RESTRICTION 'A'
R80 HEIGHT RESTRICTION 'B'
R60 - SUBJECT TO SUBDIVISION AND DEVELOPMENT REQUIREMENTS
R60 - SUBJECT TO SUBDIVISION AND DEVELOPMENT REQUIREMENTS
DRAINAGE SUMP
NOTE:
UNLESS OTHERWISE SHOWN ALL OTHER RESIDENTIAL LAND USES ARE CODED R20
0 100 200 400 600 800
Metres
City of Wanneroo
Produced by Customer & Information Services 16/01/2018

McGEES PROPERTY

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Our Ref: V114-18

5 July 2018

City of Wanneroo
Locked Bag 1
WANNEROO WA 6945
Attention: Mr Mike Hudson
Coordinator Scheme Contributions

Dear Mike

Re: Provision of Valuation Services for the East Wanneroo Development Areas - Cells 1 to 9

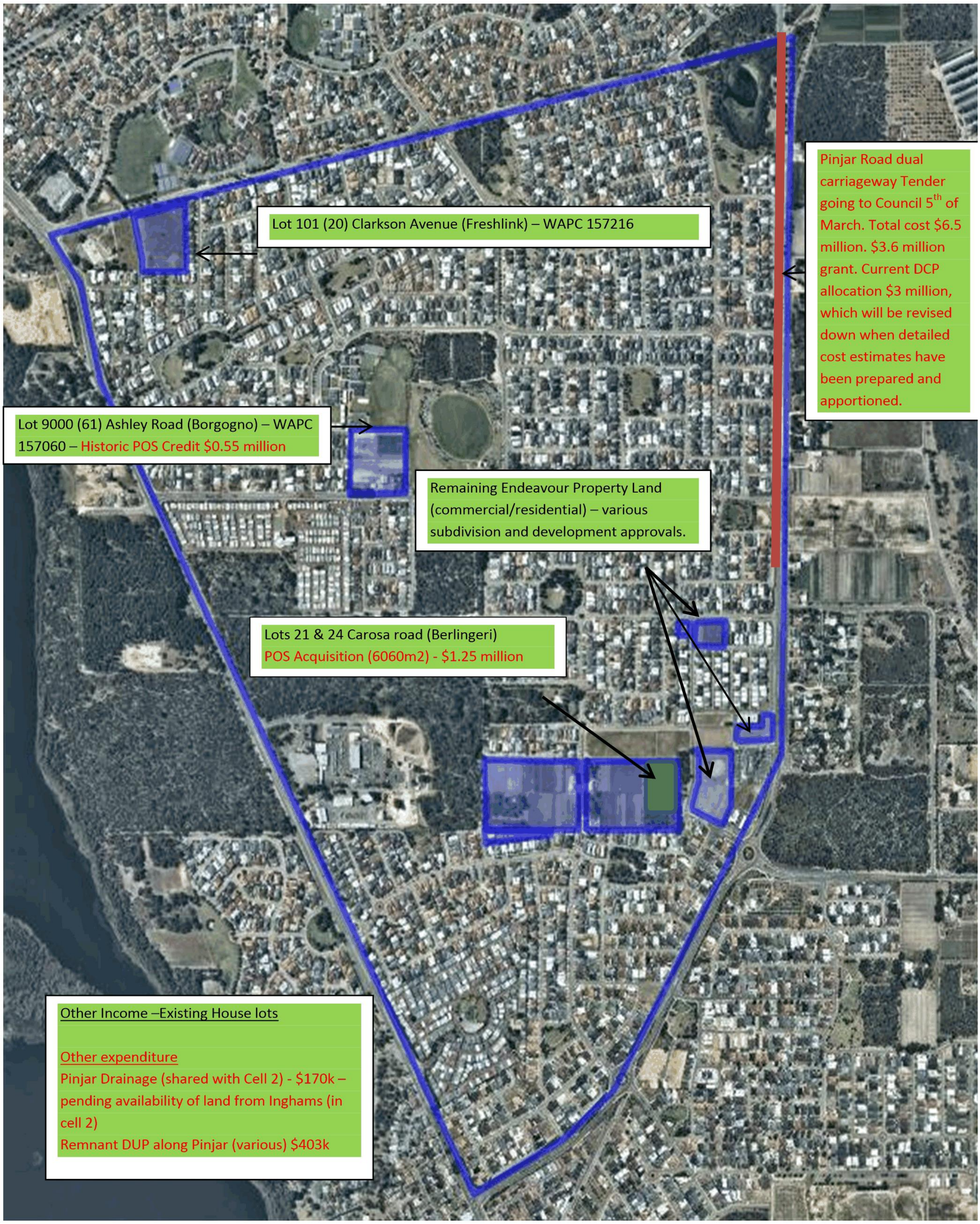
As requested, Mr Brian Zucal and myself have conferred in relation to the above matter and confirm as being fair, the following Cell Values:

Cell	Valuation Panel Recommendations $ per hectare	10% Additional Value (Solatium) $ per hectare
1	$1,862,500	$2,048,750

Wayne Srhoy AAPI, Masters (Property)
Certified Practising Valuer
Licensed Valuer No. 44175
Western Australia

B E Zucal AAPI
Certified Practising Valuer
Licensed Valuer No. 100
Western Australia

EAST WANNEROO CELL 1 – OVERVIEW OF REMAINING INCOME & EXPENDITURE (NOVEMBER 2018)



2019 Annual Review of Cell Costs – East Wanneroo Cell 1

REVIEW METHODOLOGY		
Gross Cost (A)		**Amounts ($)**
Expenditure to date	$	30,038,942.00
Remaining Expenditure		
POS	$	1,241,542.50
Historic POS Credits	$	555,397.50
DDR Works	$	3,602,638.00
DDR/Drainage Land	$	169,534.06
Admin Charges (4 years $50,000 per annum)	$	200,000.00
Financial Audit - Transactional corrections		
Mirrabooka Ave - Incorrectly Charged to Cell 1	-$	2,286,388.00
Pinjar Road - Incorrectly not charged to Cell 1	$	4,369,843.00
Environmental offset	$	1,034,111.43
Interest adjustment	$	735,922.93
Total	$	9,622,601.42
Gross Cost (A)	**$**	**39,661,543.42**
Payments Made to Date 'Actual' (B)	$	47,504,683.00
Interest Earned to Date	$	12,646,939.69
Interest to be earned up to early return to Developers	$	345,000.00
Total Payments and Interest	**$**	**60,496,622.69**
Nett Cell Costs (C) "A-B=C"	**-$**	**20,835,079.27**
Remaining Lot Yield at ELY		**124**
Estimated Remaining Income	**$**	**3,203,606.96**
Current ICPL	**$**	**25,835.54**
Revised ICPL (2019) - Current rate less estimated credit at full development	**$**	**18,808.74**
Estimates and Apportionment of Potential Excess Funds at Full Development		
Total Estimated Excess at Full Development	**-$**	**24,038,686.23**
Estimated Credit for Landowner (Already Paid)	**-$**	**23,167,362.90**
Estimated Credit for Landowner (Future Subdividers)	**-$**	**871,323.32**
Estimated Credit Per Lot (Future Subdividers)	**-$**	**7,026.80**

11 February 2019

Mr Daniel Simms
Chief Executive Officer
City of Wanneroo
Locked Bag 1
WANNEROO WA 6946

By email: daniel.simms@wanneroo.wa.gov.au
mark.dickson@wanneroo.wa.gov.au

Dear Mr Simms,

DEVELOPER CONTRIBUTION SCHEME – REVIEW AND AUDIT OF EAST WANNEROO CELL 1 – ASHBY / TAPPING

Thank you for the time spent meeting with representatives of Cedar Woods, Peet and Sattlerley last week.

Critical dates presented by the City include:

- transactional audits completed in December 2018
- Cell 1 transactional audit currently being externally audited
- report to the 'Audit and Risk Committee' on 19 February 2019
- Council meeting on 5 March 2019 to consider annual review and approach to excess funds
- 42 days advertising period, starting mid-March and finishing at the end of April
- commitment to meet with landowners/developers through this (advertising) process
- consider public submission and report to Council, target date of 7 May 2019.

We reiterate our continued disappointment in the management and administration of the Cell 1 fund. We are collectively of the view that had the City not failed to comply with its statutory obligation to conduct annual reviews for over 12 years and the resulting lack of transparency surrounding the performance of the Cell fund, the grossly excessive over-charge of developer contributions would not have been allowed to continue in the manner that it has, leading to the collection of over $20 million in surplus funds from land developers.

We welcome the City's commitment of additional resources to ensure that all 9 Cell funds are now brought into compliance with the auditing requirements under both the City's District Planning Scheme No.2 (DPS2) and the Local Government Act.

It was mentioned at the meeting, that the timely return of excess funds was an urgent priority to the landowners represented. We are also mindful of the expectation of the development industry for complete transparency and accountability in the way in which developer funds are managed, with there being a general belief that the City is charged with the responsibility of managing them for the mutual benefit of all parties. For these broader reasons, we call on the City to commit to the speedy resolution of all outstanding matters relating to Cell 1.

Having regard to the timeline outlined above, we seek the City's commitment to the following.

1. The City present to Council on 5 March 2019 this formal request that it release a Tranche 1 payment of surplus funds from Cell 1, to be refunded back to the contributing parties before the end of the current financial year.

2. Consideration of a Tranche 1 payment on 5 March is intended to provide sufficient time for the City to consider and finalise any pre-requisite actions necessary to facilitate the refund payment. These include:

    a. Council's 'in-principle' agreement to a Tranche 1 refund payment and the finalisation of its policy position through which the refund payment will be made;

    b. the City finalising the methodology on how the returned funds will be distributed, consistent with Clause 9.13.3 of DPS2 and otherwise in a manner that is fair and equitable, reflecting the developer's respective contributions to the accumulation of surplus funds. We expect that the City will liaise with us on the draft methodology immediately and that it will be included in the consultation material outlined in c) below; and

    c. early and full disclosure of all information and documentation relating to the City's Cell 1 audit. The 42-day advertising period (mid-March to end of April) will involve us setting up our own review and audit process. Any disagreement between the City and the developers is to be referred to independent arbitration.

3. We note that the Cell 1 Reserve Account will increase to $31.258 million by 30 June 2019. Our preliminary assessment, outlined in joint correspondence dated 29 January 2019, indicates only approx. $8 million is required to complete outstanding acquisitions, infrastructure works and provide ample contingency. Accordingly, we call on the Council to release a Tranche 1 refund payment in the order of $20 million. However, we see merit in deferring the final determination of the Tranche 1 refund amount to the Council meeting on 7 May 2019, where it can be considered concurrently with the audit findings and landowner submissions.

4. It is our expectation that an additional refund payment will be issued following the resolution of any audit findings and/or costings that become the subject of independent arbitration; and/or final resolution of infrastructure costs, acquisition costs or the overall completion of Cell 1 works, by the end of 2019.

We have carefully considered the position reflected in this and other recent correspondence to the City, through both legal and independent advice. Having reviewed the City's replies, including its most recent letter dated 8 February 2019, we maintain that the management of the Cell 1 infrastructure fund remains unacceptable. If the above requests are not supported, we will consider what alternative actions are necessary, in consultation with other statutory and industry bodies, to ensure that the same outcomes and timelines are still achieved.

Yours sincerely,

Ben Rosser
State Manager
CEDARWOODS PROPERTIES

Paul Lakey
Regional General Manager – West (WA, SA, NT)
PEET LIMITED

Nigel Satterley
Chief Executive
SATTERLEY

Copy: Mayor, Tracey Roberts JP
Cr Domenic Zappa (Chair Audit Committee)