



City of Cockburn
Audit & Strategic Finance Committee
Agenda Paper

For Thursday, 21 November 2019

CITY OF COCKBURN

**SUMMARY OF AGENDA TO BE PRESENTED TO THE AUDIT & STRATEGIC
FINANCE COMMITTEE MEETING TO BE HELD ON THURSDAY, 21 NOVEMBER
2019 AT 6:00 PM**

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CITY OF COCKBURN

AGENDA TO BE PRESENTED TO THE AUDIT & STRATEGIC FINANCE COMMITTEE TO BE HELD ON THURSDAY, 21 NOVEMBER 2019 AT 6:00 PM

1. DECLARATION OF MEETING

2. APPOINTMENT OF PRESIDING MEMBER (IF REQUIRED)

3. DISCLAIMER (TO BE READ ALOUD BY PRESIDING MEMBER)

Members of the public, who attend Council Meetings, should not act immediately on anything they hear at the Meetings, without first seeking clarification of Council's position. Persons are advised to wait for written advice from the Council prior to taking action on any matter that they may have before Council.

**4. ACKNOWLEDGEMENT OF RECEIPT OF WRITTEN
DECLARATIONS OF FINANCIAL INTERESTS AND CONFLICT
OF INTEREST (BY PRESIDING MEMBER)**

5. APOLOGIES & LEAVE OF ABSENCE

Chief Executive Officer Stephen Cain - Apology

6. PUBLIC QUESTION TIME

7. CONFIRMATION OF MINUTES

**7.1 MINUTES OF THE AUDIT & STRATEGIC FINANCE COMMITTEE
MEETING - 18/7/2019**

RECOMMENDATION

That Committee confirms the Minutes of the Audit & Strategic Finance Committee Meeting held on Thursday, 18 July 2019 as a true and

accurate record.

8. DEPUTATIONS

9. BUSINESS LEFT OVER FROM PREVIOUS MEETING (IF ADJOURNED)

Nil

10. DECLARATION BY MEMBERS WHO HAVE NOT GIVEN DUE CONSIDERATION TO MATTERS CONTAINED IN THE BUSINESS PAPER PRESENTED BEFORE THE MEETING

11. COUNCIL MATTERS

11.1 LEGAL PROCEEDINGS BETWEEN COUNCIL AND OTHER PARTIES

Author(s) J Fiori

Attachments 1. Legal Register 2018-2019 FY\$2,000 And More
(CONFIDENTIAL)

RECOMMENDATION

That Council receive the report on legal proceedings commenced or responded to by the City during 2018- 2019 financial year as noted in the Confidential attachment.

Background

At its meeting held on 13 December 2018, Council adopted Policy 'Legal and Expert Advice and Proceedings Between the City and Other Parties' (the Policy) and associated delegated authority to clarify the methodology by which legal or other expert advice is provided to Elected Members to enable them to perform their civic function. As a result the "Legal Advice Register" provided annually to the Audit and Strategic Finance Committee is now limited to the notification of those issues which are in relation to, or a result of a Council resolution, or where the amount related to administrative advice is of such an amount to warrant Council's attention only.

Submission

N/A

Report

Clause 1 *Application* of the Policy states:

This Policy applies in relation to legal and other expert advice sought by Council, and legal proceedings commenced or responded to by the City of Cockburn, or any person acting in their capacity as a representative of the City of Cockburn and for whom the City of Cockburn is vicariously liable.

Clause 3 *Commencing Legal Proceedings* of the Policy states:

'(7) The Chief Executive Officer shall establish and maintain a procedure which enables those matters which are subject to the terms of this section to be centrally recorded and updated.

(8) A record of the procedure mentioned in (7) above shall be presented to the Audit and Strategic Finance Committee at least

annually, or as often as considered appropriate by the CEO as requested by the Audit and Strategic Finance Committee.'

A Summary of the Legal Proceedings commenced or responded to by the City during the 2018-2019 financial year, as a result of a Council resolution, or of significant amount that warrants Council's attention has been circulated under separate confidential cover.

Strategic Plans/Policy Implications

Leading and Listening

Deliver sustainable governance through transparent and robust policy and processes

Budget/Financial Implications

The table below highlights the legal fees expensed during 2018-2019 with commensurate, where relevant, reimbursements, fines and penalties arising from the incurring of the legal expenditure. The table lists the legal services cost incurred for:

- legal advice \geq \$2,000 per subject matter.

Legal services costs incurred 2018- 2019 for legal matters \geq \$2,000	
Legal Firms	Actual Paid
Frichot and Frichot	\$35,839.10
Kott Gunning	\$73,447.39
McLeods	\$430,047.54
CS Legal	\$19,084.50
Total General	\$558,418.53
Fines and Penalties Income	(\$91,090.00)
Net Legal Fees (after fines and penalties)	\$467,328.53

The above includes parking, litter and firebreak infringements.

Legal Implications

N/A

Community Consultation

N/A

Risk Management Implications

There are no risks associated with this recommendation, However failure to present this report to the Council annually presents a compliance risk in accordance with Council adopted Policy 'Legal and Expert Advice and Proceedings Between the City and Other Parties'.

Advice to Proponent(s)/Submissioners

N/A

Implications of Section 3.18(3) *Local Government Act 1995*

Nil

12. PLANNING & DEVELOPMENT DIVISION ISSUES

Nil

13. FINANCE & CORPORATE SERVICES DIVISION ISSUES

13.1 REVIEW OF MONETARY AND NON-MONETARY INVESTMENTS FOR THE FINANCIAL YEAR 2018-2019

Author(s) S Downing
Attachments N/A

RECOMMENDATION

That Council receive the information.

Background

Policy 'Investments of Funds' Clause 5.2 requires:

An Annual Report on the performance of the investment portfolio will be submitted to Council outlining the performance of the portfolio for the financial year."

Submission

N/A

Report

As per the Policy Investment of Funds, the following report is divided into two parts. The first part is a report on cash investments held by the City and the second part is for non-cash investments.

Cash Investments

The City earned the following interest income during 2018-2019 (LY2017-2018):

- Municipal/Reserve funds (MFR) \$4.991m (\$4.393m);
- Rates – Administration Interest \$0.462m (\$0.422m);
- Rates – Penalty Interest \$0.246m (\$0.213m);
- Deferred Pension rates \$0.024m (\$0.020m);
- ESL Interest \$0.035m (\$0.018m); and
- Total Interest income \$5.760m (\$5.066m).

Interest income from the surplus cash in the municipal fund and reserves (MFR) totalled \$4.991m (\$4.393m). The interest rates earned by the MFR over the twelve months varied from 2.71% (2.73%) in July 2018 to 2.64% (2.68%) in June 2019.

The interest income earned from the other four sources, Rates – Penalty Interest, Rates – Administration Interest, Deferred Pension Rates and ESL Interest, was not earned on the management of surplus cash but on outstanding debts due to the Council. The *Local Government Act 1995* provides the heads of power for a Council to impose interest on outstanding rates. Rates – Administration Interest and ESL Interest are charged at 3.5%, whilst Rates – Penalty Interest is charged at 7%. The Local Government Act has a maximum interest rate of 11%. The Council has always elected to impose a lower interest rate.

The rate for Deferred Pension Rates for 2018-2019 was 2.26%.

All surplus funds are invested in accordance with the *Local Government Act 1995*, associated regulations and Council's Investment Policy. All cash investments/term deposits were and are compliant with Council's Investment Policy.

The surplus funds are invested in term deposits with APRA regulated financial institutions apart from two investments. The amendment to the regulations requiring Council's only invest in term deposits with a maturity less than twelve months was gazetted with an over-rider allowing existing investments with a maturity greater than twelve months and in non-term deposits to go to maturity ("Grandfathering").

The last remaining "grandfathered" investment is the reverse mortgage backed security, Emerald. The original investment was \$3m in three \$1m tranches. The City is currently receiving interest at the rates of 2.06%, 1.73% and 1.43% on the respective tranches. Additional 'step-up' interest is also accruing on these three tranches at 0.9%, 1.5% and 1.9% respectively, which will be paid to the City upon maturity.

The current balance of 'step-up' interest owing to the City is \$342,931. The outstanding balance for the Emerald investment is \$2.575m.

Non-Cash Investments

The City has substantial freehold land on its balance sheet. As at the 30 June 2019 that total was \$82.95m (LY \$84.11m). The makeup of the land comprises sumps, reserves, land available for sale, freehold parks and land which Council buildings and facilities occupy.

The Council's Land Management Strategy 2017 had identified a range of land assets that are surplus to requirement or land that could be made saleable with investment from Council. The concept is to monetise freehold land (where possible) so as to re-invest in income producing property to receive a stream of rental income. The Land Management Strategy provides for a reconciliation of the freehold land and that which is surplus to requirements.

Rental Income

The rental income earned for 2018-2019 on commercial properties and lands including Cockburn Health & Community Centre, GP Super Clinic, Port Coogee Marina Pens and Office, Youth Centre (office & commercial), commercial areas of Cockburn ARC totalled \$4.87m (LY \$4.583m) excluding GST and Variable outgoings. The current value of commercial real estate is \$73.06m (as at 30 June 2019 on a written down value for buildings and at valuation for land).

The net rental revenue from the Cockburn Health and Community Centre is quarantined within a financial reserve for the purpose of future maintenance requirements for the facility. This is to ensure that there is no future demand for the Municipal Fund to meet capital or operating maintenance costs. The City also quarantines funds received from the Naval Base Shacks to meet the future capital maintenance needs of this unique asset.

Land Sales

The following land sales were settled in 2018-19:

- Lot 23 Russell Road Hammond Park \$1.27m;
- Lot 33 Davilak Road Hamilton Hill \$1.136m;
- Lots 25 and 17 Imlah Court Jandakot \$1.78m; and
- 29 March Street Spearwood \$0.91m.

Total land sales and settlements (ex-gst) \$5.10m

The City sold the development lot at Lot 7 Linkage Way Cockburn Central to Development WA (formerly Landcorp) and purchased Lot 104 Veterans Parade Cockburn Central (West) from Development WA:

- Sold Lot 7 Linkage Way Cockburn Central - \$2.32m
- Purchased Lot 104 Veterans Parade Cockburn Central (West) - \$2.32m

Land sold and settled in 2019-20

- 61 Delaronde Drive Success \$0.65m (August 2019);
- 46 Riverina Parade Munster \$0.35m (November 2019); and
- 1 Semple Court South Lake \$2.59m (January 2020).

Land sold and not settled

- Lots 9004 and 805 Merevale Gardens Beeliar \$6m

Due to settle on 30 November 2020

Funds received from the sale of surplus land are placed into the Council's Land Development and Investment Fund Reserve.

Strategic Plans/Policy ImplicationsCity Growth

Continue revitalisation of older urban areas to cater for population growth and take account of social changes such as changing household types.

Community, Lifestyle & Security

Foster a greater sense of community identity by developing Cockburn Central as our regional centre whilst ensuring that there are sufficient local facilities throughout our community.

Economic, Social & Environmental Responsibility

Create opportunities for community, business and industry to establish and thrive.

Leading & Listening

Ensure sound long term financial management and deliver value for money.

Budget/Financial Implications

All items are reported in the financial statements of the City.

Legal Implications

N/A

Community Consultation

N/A

Risk Management Implications

This is an information only report on the investments undertaken by the City on behalf of the Council.

Advice to Proponent(s)/Submitters

N/A

Implications of Section 3.18(3) *Local Government Act 1995*

Nil

13.2 LAND DEVELOPMENT AND DEVELOPER CONTRIBUTIONS AUDIT

Author(s)	N Mauricio
Attachments	1. City of Cockburn Land Development and Developer Contributions Internal Audit ↓

RECOMMENDATION

That Council adopts the findings and recommendations of the Land Development and Developer Contributions Audit Report as attached to the Agenda.

Background

At its July 2016 meeting, the Audit and Strategic Finance Committee (ASFC) adopted a three year Strategic Internal Audit Plan. The Internal Audit Plan was developed through the City's Risk Review Group (comprising cross functional managers), with input from the Internal Auditor. The audit planning was informed by the City's Operational and Strategic Risk Registers, where assessed risk levels influenced audit priorities.

The audit of the City's land development and developer contributions governance frameworks was included in the adopted Strategic Internal Audit Plan as it had a substantial risk rating assigned at the time. Bringing this audit report through the ASFC to Council marks the completion of this audit objective and advises what measures have or will be taken to address or further mitigate identified risks to the City.

Submission

N/A

Report

Deloitte was engaged in November 2018 to undertake an Internal Audit of the City's processes and controls in relation to its land development and developer contributions functions. Whilst all the audit work had been completed by February 2019, the final report was significantly delayed due to personnel issues and changes at Deloitte.

Audit Scope

The scope of the audit as contained within the strategic Internal Audit Plan 2016-2019 was to assess the adequacy of the management control framework relating to land development projects and the City's developer contribution schemes. The audit was to determine the extent to which the City was complying with key legislative, planning scheme, policies, procedures, guidelines, and other requirements in delivering land development projects and administering the developer contribution

schemes. In particular, it assessed the adequacy of the City's processes and controls for:

- Appropriately acquiring land for a public purpose and selling land to prospective purchasers; and
- Appropriately collecting and applying funds collected via developer contributions in accordance with statutory requirements.

Audit Observations

The audit made a number of positive observations, including that the City has:

- An experienced and committed strategic planning team with a strong understanding of the obligations attached to these activity areas;
- Strong technical practices and well established systems and processes are in place;
- Demonstrated a continuous improvement approach to further strengthen its systems and processes; and
- Published material and guidance to inform developers and other interested parties on the City's approach to land development in accordance with its land development strategy and statutory requirements.

With specific regard to its land development (acquisition and disposal), the audit found:

- Due consideration is given to the impact on third party land when designing public works;
- Land development projects are supported by accurate feasibility assessments, in accordance with statutory requirements and in line with the City's Land Management Strategy;
- Independent land valuations are obtained and disclosed in a timely manner, in accordance with statutory requirements;
- There is ongoing engagement with the City's stakeholders in line with its Land Management Strategy; and
- Negotiations and communications with land owners to be undertaken in a structured and transparent manner, in accordance with statutory requirements.

Audit observations specific to the City's administration of the Developer Contributions Scheme were:

- The timely levy and collection of developer contribution charges as agreed;

- The correct application of developer contributions collected, in accordance with statutory requirements;
- The use of an independent quantity surveyor to provide infrastructure cost estimates adds rigor and validity to the contribution schemes, including an annual review of estimated costs;
- There is ongoing assessment of developer contribution charges to ensure they are made in accordance with State Planning Policy 3.6 Development Contributions for Infrastructure; and
- Annual reporting and auditing of activity and closing balances is completed for each Developer Contribution Plan.

Improvement Opportunities

Whilst the audit observations were mostly positive and reassuring to the City, also not having detected any statutory breaches, there were some areas noted for improvement as summarised below (more detailed commentary is provided within the audit report):

1. Land Development: Policy framework for compulsory land acquisition (Moderate Risk Rating)

Recommendation:

By setting a more instructive policy framework to guide staff and Council on how to conduct good faith negotiations and to manage related risks when purchasing land for public works, the City will be more effective in its engagement with impacted landowners, negotiation of fair compensation and its resulting management of risks involved in compulsory land acquisitions.

Management Comment/Action Plan:

The process drafted by the Manager Strategic Planning will be formalised into a Standard Procedure and communicated to all relevant staff. (Target date: December 2019)

2. Land Development: Commercial approach to sale of land assets (Minor risk rating)

Recommendation:

The City could take a more commercial approach to the sale of its land assets by delaying its required disclosure of land valuations until after negotiations with interested parties have concluded.

Management Comment/Action Plan:

Strategic Planning will prepare an internal procedure for the sale of land assets. This procedure for example may recommend relevant options to consider at the time of sale including providing a price range to provide to agents/prospective

purchasers rather than the specific valuation price.
(Target date: February 2020)

3. Developer Contributions: Managing the impact of cost under-estimations (Moderate Risk Rating)

Recommendation:

By assessing and better understanding the cause and impact of under-estimating costs at the commencement of new DCPs, the City can make more informed decisions on its options for improving the initial calculation of developer contribution charges.

The City will then be able to better manage its exposure to:

- Shortfalls in contributions where it is not able to sufficiently increase charges
- Potential unfair treatment of developers in the latter stage of the DCP, who face relatively higher contribution charges.

Management Comment/Action Plan:

In line with the recommendation, Strategic Planning will raise the profile and appreciation of the development contributions framework amongst the City's Strategic Business Unit and Project Managers (Target date: December 2019).

4. Developer Contributions: Embedding good practice in administration of DCPs (Minor Risk Rating)

Recommendation:

The City can build more confidence that its practices comply with statutory obligations for calculating and administering developer contribution charges by using the City's performance management program to measure staff performance in meeting key responsibilities.

Management Comment/Action Plan:

- (a) Strategic Planning will raise the proposal to incorporate key staff obligations/responsibilities and resulting performance indicators into the City's Performance Management Framework with HR for consideration and potentially presenting to the Senior Managers Team (SMT).
- (b) If there is agreement to proceed, the Coordinator Strategic Planning will liaise with HR Learning and Development staff to develop suitable performance indicators. (Target date: June 2020)

It should be noted that these improvements will further strengthen what is already considered industry leading practice, particularly for developer contributions administration. The City's DCP model and practices are highly regarded within the sector, receiving praise and

acknowledgement from the planning industry and attracting a number of Local Governments seeking the City's advice.

Strategic Plans/Policy Implications

Leading and Listening

Deliver sustainable governance through transparent and robust policy and processes.

Budget/Financial Implications

N/A

Legal Implications

N/A

Community Consultation

N/A

Risk Management Implications

The audit found that several improvements to controls and practices have already been made since the 'substantial' risk ratings were assigned to the following operational risks:

- Operational Risk ID 244 'Failure to achieve an accurate analysis on the feasibility of land development' (now has a moderate risk rating),
- Operational Risk ID 247 'Failure to collect and apply funds collected via developer contributions in accordance with the statutory requirements' (now has a moderate risk rating)

Combined with the observations and recommendations made by this internal audit, these improvements will help the City to further reduce its risk exposures and best meet the critical success factors within each of its land development and developer contribution functions.

Advice to Proponent(s)/Submitters

N/A

Implications of Section 3.18(3) *Local Government Act 1995*

Nil



City of Cockburn

Land development and Developer contributions internal audit

September 2019

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Inherent Limitations

The Services provided are advisory in nature and have not been conducted in accordance with the standards issued by the Australian Auditing and Assurance Standards Board and consequently no opinions or conclusions under these standards are expressed.

Because of the inherent limitations of any internal control structure, it is possible that errors or irregularities may occur and not be detected. The matters raised in this report are only those which came to our attention during the course of performing our procedures and are not necessarily a comprehensive statement of all the weaknesses that exist or improvements that might be made. Our work is performed on a sample basis; we cannot, in practice, examine every activity and procedure, nor can we be a substitute for management's responsibility to maintain adequate controls over all levels of operations and their responsibility to prevent and detect irregularities, including fraud.

Any projection of the evaluation of the control procedures to future periods is subject to the risk that the systems may become inadequate because of changes in conditions, or that the degree of compliance with them may deteriorate. Recommendations and suggestions for improvement should be assessed by management for their full commercial impact before they are implemented.

We believe that the statements made in this report are accurate, but no warranty of completeness, accuracy, or reliability is given in relation to the statements and representations made by, and the information and documentation provided by City of Cockburn personnel. We have not attempted to verify these sources independently unless otherwise noted within the report.

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This report is intended solely for the information and internal use of the City of Cockburn in accordance with our terms of reference accepted on 21 November 2018 and is not intended to be and should not be used by any other person or entity. No other person or entity is entitled to rely, in any manner, or for any purpose, on this report. We do not accept or assume responsibility to anyone other than the City of Cockburn for our work, for this report, or for any reliance which may be placed on this report by any party other than the City of Cockburn.

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Introduction

As part of the City of Cockburn's (the **City**) 2018/19 Internal Audit activity, Deloitte was assigned to undertake an assessment of the City's processes and controls in relation to its Land Development and Developer Contributions functions.

Reference to operational risks

The internal audit relates to the following operational risks, which are identified as Substantial Risks in the City's Operational Risk Register:

- 244 Failure to achieve an accurate analysis on the feasibility of **land development**
- 247 Failure to collect and apply funds collected via **developer contributions** in accordance with the statutory requirements.

* Additional potential impacts raised during this internal audit are outlined in the Scope section below, as threats to 'What Must Go Right'.

Purpose

The purpose of this internal audit was to assess the adequacy of processes and controls designed to:

1. **Land development:** Appropriately (a) acquire land for a public purpose and (b) sell land to prospective purchasers
2. **Developer contributions:** Appropriately collect and apply funds collected via developer contributions in accordance with statutory requirements.

Scope

The following areas were included in the scope of the internal audit. Our focus was on 'What Must Go Right' within the City's land development and developer contributions activities and we tested controls around the relevant key threats¹:

What must go right (Critical success factors)	Threats (to achievement of critical success factors)
<p>1. Land Development</p> <p>(a) The City is effective in its:</p> <ul style="list-style-type: none"> i. Design to limit third party land impacts ii. Clear narrative of why the public work is needed iii. Engagement with impacted landowners iv. Negotiation of fair compensation. <p>(b) Council understands and sets an effective policy framework to provide confidence about what should represent good faith negotiation to achieve fair compensation for purchasing land for public works</p> <p>(c) The City is effective in its approach to receiving and negotiating any offers which are received for its land assets according to the decision-making principles set through the Land Management Strategy.</p>	<ul style="list-style-type: none"> • The City does not: <ul style="list-style-type: none"> ○ Create a clear narrative to support acquiring land for a public work ○ Moderate design to limit impacts on third party owned land ○ Manage engagement with impacted landowners effectively ○ Negotiate fair compensation effectively ○ Achieve optimal return for the sale of its interests in land • The City may not achieve maximum value-adding potential through adequate planning.

¹ Threat are identified as potential risks to guide internal audit activity, and are not intended to describe current circumstances or actual issues

What must go right (Critical success factors)	Threats (to achievement of critical success factors)
<p>2. Developer contributions</p> <p>(a) The City's assessments of developer contribution charges are in accordance with <i>State Planning Policy 3.6 Development Contributions for Infrastructure</i></p> <p>(b) The City accurately calculates developer contributions (including forward estimates)</p> <p>(c) The City appropriately levies the developer contribution charges</p> <p>(d) Timely collection of developer contributions as agreed</p> <p>(e) The City's application of funds collected via developer contributions is in accordance with statutory requirements.</p>	<ul style="list-style-type: none"> • The City's policies and procedures do not align with State Planning Policy 3.6 and associated regulatory requirements • Those requirements are not effectively communicated or understood, resulting in assessments being made without an adequate understanding of State Planning Policy 3.6 and associated regulatory requirements • Inconsistent, inadequate and/or non-compliant practices are applied to the assessment, collection and application of developer contributions • Inadequate monitoring of the developer contribution levy included in terms resulting in forgone developer contributions.

Background and context

Land Development

The City's land development activity is governed by the *Local Government Act 1995*, *Land Administration Act 1997*, *Planning and Development Act 2005* and guidelines issues by the Department of Planning, Lands and Heritage.

The City has established a Land Management Strategy 2017-2022 (**LMS**), which is designed to provide an effective framework for managing the City's land portfolio in way that supports the financial sustainability of the City and maximises financial returns. The LMS details principles for land asset disposal, land asset purchase (including compulsory acquisitions) and joint venture considerations, and is aligned at a strategic level to the City's Strategic Community Plan, Long Term Financial Plan, Corporate Business Plan and published Revitalisation Strategies.

The City currently recognises four key strategic land projects and several other projects it expects to realise over the life of the current LMS.

The Strategic Planning Business Unit plays a central role in the City's delivery of its LMS, supporting plans and strategies, land projects and transactional land purchases and disposals.

Developer Contributions

In accordance with *State Planning Policy 3.6 Development Contributions for Infrastructure*, the City has created a Development Contribution Plan (**DCP**) for a total of 14 Developer Contribution Areas (**DCA**), of which 11 are current and three had been completed and closed-out as at 30 June 2018. All DCPs have been incorporated into Town Planning Scheme 3, which the City created and maintains in accordance with the *Planning and Development Act 2005* and *Planning and Development (Local Planning Schemes) Regulations 2015*.

The DCPs provide for developer contributions towards the delivery of community infrastructure needs created by new developments and subdivisions. Contributions can be made via payments or works-in-kind. As at 30 June 2018, the combined funds held in trust for the 11 open DCAs was \$16.1m, ranging from \$2.7m to a deficit for the most recent DCA.

DCPs are administered by the Strategic Planning team, through a dedicated Developer Contributions Officer, with support from the Coordinator Strategic Planning and other staff where required. All key procedures are documented in the DCA Procedure Manual and guidance material is presented on the City's website.

Work performed

We applied the following approach to this assignment:

- Held an initial planning meeting with the Manager Financial Services, (former) Manager Strategic Planning, Coordinator Strategic Planning and Developer Contributions Officer
- Developed an understanding of the City's processes and procedures relating to land acquisition for public works, land sale processes and developer contribution assessments through:
 - Discussions with the Manager Strategic Planning, Coordinator Strategic Planning and Developer Contributions Officer
 - Examination of relevant City policies, procedures and guidelines
- Identified and assessed the design of internal controls in place to achieve the critical success factors relating to land acquisition for public works, land sales and administration of DCPs
- Identified the population of land acquisition for public works and land sales and developer contribution assessments made since 1 July 2017
- Performed a walkthrough tests of the City's DCA contribution rate calculations to determine whether the process and supporting documentation address the City's requirements, including adherence to State Planning Policy 3.6
- Tested processes and procedures applied in practice against the City's requirements for land acquisition for public works, land sales and developer contribution assessments. Testing included discussions and walkthrough with selected project managers
- Obtained explanations and clarification from relevant project teams, Strategic Planning staff and Finance staff
- Considered areas for improvement in the City's processes and controls
- Conducted a validation meeting with the Acting Manager Strategic Planning, Coordinator Strategic Planning and Developer Contributions Officer following completion of fieldwork to discuss the results of our work and potential improvements to processes and controls.

Key Results

Positive observations

We observed that the City has:

- An experienced Strategic Planning Team, with a strong collective understanding of the City’s legislative obligations relating to land development and developer contributions. The City has used the team’s depth to accommodate the recent departure of the previous Manager Strategic Planning. The Strategic Planning Team has also demonstrated a commitment to delivering a quality, compliant and effective service, with generally strong technical practices in place to support that commitment
- Published material and guidance to inform developers and other interested parties on its approach to developing land in accordance with its land development strategy and statutory requirements
- Applied a continuous improvement approach to recognise and implement opportunities for further strengthening its systems and processes. This observation applies across the City’s business units, but also specifically to its Strategic Planning Business Unit
- Well established systems and processes in place (and documented) to manage each of the City’s Land Development and Developer Contribution functions. In particular, subject to the improvement opportunities detailed below, we observed generally strong process in place to enable:

Land Development

- Due consideration to be given to the impact on third party land when designing public works
- Land development projects to be supported by accurate feasibility assessments, in accordance with statutory requirements and in line with the City’s LMS
- Independent land valuations to be obtained and disclosed in a timely manner, in accordance with all statutory requirements
- Ongoing engagement with the City’s stakeholders in line with its LMS
- Negotiations and communications with land owners to be undertaken in a structured and transparent manner, in accordance with all statutory requirements.

Developer Contributions

- Timely levy and collection of developer contribution charges as agreed
- Application of developer contributions collected, in accordance with all statutory requirements
- The rigor and validity of DCPs to be maintained by using an independent Quantity Surveyor to provide infrastructure cost estimates
- Assessment of developer contribution charges in accordance with State Planning Policy 3.6 Development Contributions for Infrastructure, including an annual review of estimated costs
- Annual reporting of audited activity and closing balances for each DCP.

Improvement opportunities

The internal audit raises the following opportunities for the City to further improve elements of its Land Development function (two opportunities) and Developer Contribution function (two opportunities). These improvement opportunities are raised after considering the nominated critical success factors in the context of “what must go right?” in each of the Land Development and Developer Contribution functions.

Improvement opportunity	Prioritisation Rating	Primary cause
<p>1. Land Development Policy framework for compulsory land acquisition</p> <p>By setting a more instructive policy framework to guide staff and Council on how to conduct good faith negotiations and to manage related risks when purchasing land for public works, the City will be more effective in its engagement with impacted landowners, negotiation of fair compensation and its resulting management of risks involved in compulsory land acquisitions.</p>	Moderate	Process

Improvement opportunity	Prioritisation Rating	Primary cause
<p>2. Land Development Commercial approach to sale of land assets</p> <p>The City could take a more commercial approach to the sale of its land assets by delaying its required disclosure of land valuations until after negotiations with interested parties have concluded.</p>	Minor	Process
<p>3. Developer Contributions Managing the impact of cost under-estimations</p> <p>By assessing and better understanding the cause and impact of under-estimating costs at the commencement of new DCPs, the City can make more informed decisions on its options for improving the initial calculation of developer contribution charges. The City will then be able to better manage its exposure to:</p> <ul style="list-style-type: none"> • Shortfalls in contributions where it is not able to sufficiently increase charges • Potential unfair treatment of developers in the latter stage of the DCP, who face relatively higher contribution charges. 	Moderate	Process
<p>4. Developer Contributions Embedding good practice in administration of DCPs</p> <p>The City can build more confidence that its practices comply with statutory obligations for calculating and administering developer contribution charges by using the City's performance management program to measure staff performance in meeting key responsibilities.</p>	Minor	Process People

The 'Improvement opportunities' section of this report provides further detail and includes management action plans to implement each recommendation.

This report is designed to help the City to prioritise efforts to address identified improvement opportunities by rating the relative prioritisation of each improvement opportunity based on the 'Prioritisation rating' definitions set out in the Appendix. A Primary Cause Analysis is also provided to identify the relative focus on people, process or technology aspects of the matter at hand.

Impact on current risk assessment

Since operational risks 244 '*Failure to achieve an accurate analysis on the feasibility of land development*' and 247 '*Failure to collect and apply funds collected via developer contributions in accordance with the statutory requirements*' were last assessed as 'Substantial' risks, the City has implemented several improvements to its controls and practices. Combined with the observations and recommendations made by this internal audit, these improvements will help the City to further reduce its exposures and to best meet the critical success factors (what must go right) within each of its Land development and Developer contribution functions.

The City should consider the results and recommendations of this internal audit in its next assessment of the current and target rating for operational risks 244 and 247.

Acknowledgement

We thank all City personnel involved in this internal audit for their courtesy, assistance and professionalism.



Tom Rayner

Partner, Deloitte Risk Advisory Pty Ltd

Improvement opportunities

1. Land development | Policy framework for compulsory land acquisition

Prioritisation rating

Minor	MODERATE	Important	Critical
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Primary cause

People	PROCESS	Technology
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Observation, implication and recommendation	Management comment / action plan
<p>Observation</p> <p>Recently, the City has had a limited need to compulsorily acquire land. The most recent requirements relate to the Jandakot Road upgrade project and the Hammond Road improvement project. As the fieldwork for this internal audit was initially performed in 2018, the internal audit focussed on the Jandakot Road upgrade project.</p> <p><u>Compliance with Act</u></p> <p>Our examination of the compulsory acquisition process applied by the City to secure the land required for the Jandakot Road upgrade project confirmed that the process complied with the requirements of the Land Administration Act 1997 (the Act), including:</p> <ul style="list-style-type: none"> Per s241(7) - compulsory acquisition offers must be the amount of any damage suffered by the claimant due to taking of land or reduction in land value Per s241(9) - the City can offer no more than 10% of the amount otherwise offered or awarded through an independent valuation. <p>In our testing of three offers to landowners, we confirmed that the offers made by the City met the requirements of sections 241(7) and (9) of the Act, plus the letters of offer included all references required by the Act.</p> <p><u>Management of risks relating to compulsory acquisitions</u></p> <p>Although the City has demonstrated that its current process for compulsory acquisitions complies with the Act, until early 2019, it had not established a standard policy position and approach for managing all elements of the process, including principles and guidelines for Council and staff to follow to enable:</p> <ul style="list-style-type: none"> Council to recognise where genuine 'good faith' attempts are made to secure acquisition by agreement. The City has not developed a clear and consistent engagement/communications plan to help manage the expectations and understanding of landholders and Council All key risks relating to the acquisition to be recognised in a timely manner and adequately managed in accordance with the City's risk management approach. The long timeframe involved in compulsory acquiring land required for the Jandakot Road upgrade project (approximately two years, primarily due to disputes raised by landholders) had an impact on the City's ability to 	<p>Action plan</p> <p>The process drafted by the Manager Strategic Planning will be formalised into a Standard Procedure and communicated to all relevant staff.</p> <p>Responsible officer Manager Strategic Planning</p> <p>Target date December 2019</p>

Observation, implication and recommendation	Management comment / action plan
<p>manage risks relating to road use and traffic flows, particularly serious accidents occurring on the stretch of road due for development.</p> <p>At the time of our fieldwork in November 2018, the Manager Strategic Planning had drafted a process for managing compulsory land acquisitions. Strategic Planning has introduced this process to the Hammond Road improvement project, which is currently in progress.</p> <p>Implication</p> <p>With a clear policy position and approach for managing all elements of the compulsory land acquisition process, the City will be better positioned to:</p> <ul style="list-style-type: none"> • Create the clear narrative for supporting the acquisition • Demonstrate that it has appropriately recognised and managed all key risks in a timely manner • Make timely decisions regarding compulsory acquisitions. <p>Recommendation</p> <p>Develop and implement a standard policy position and approach for managing all key elements of the compulsory acquisition process, including the following principles and guidelines, which are based on the process drafted by the City’s previous Manager Strategic Planning:</p> <p>(a) Application of a clear and consistent engagement/communications plan, including consideration of all appropriate steps to be taken prior to any formal letter of valuation or instruction, such as:</p> <ul style="list-style-type: none"> o Calls or visits to the landowner to discuss and explain the benefit of the public work, emphasise the process of good faith negotiation and fair compensation, and assure the landowner that the City intends to assist them through the process o In instances where the landowner has indicated a concern, enhanced/escalated communications such as additional phone calls, emails and letters <p>(b) Provision of evidence that designs have been engineered to minimise impacts on third party land (e.g. through leveraging innovative design for public works)</p> <p>(c) Provision of the compelling story for why the public work is important and needed</p> <p>(d) Guidelines (including mandatory requirements) on the use of a series of formal letters, including:</p> <ul style="list-style-type: none"> o Overview letter expressing the narrative and process o Letter advising of instruction to valuer, including advice that the valuer is independent and expert, and that the valuer proposes to contact the landholder as part of assessment of proposed compensation o Letter advising of compensation offer and landowner’s options in respect of the offer o Letter(s) relating to subsequent negotiation, undertaken in good faith o In instances where landowner wishes to obtain a separate valuation, letter outlining the City’s funding of the valuation, subject to the landowner’s independent expert valuer being used in good faith to reach agreement and based upon agreed instructions. 	

2. Land development | Commercial approach to sale of land assets

Prioritisation rating

MINOR	<i>Moderate</i>	<i>Important</i>	<i>Critical</i>
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Primary cause

<i>People</i>	PROCESS	<i>Technology</i>
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Observation, implication and recommendation	Management comment / action plan
<p>Observation</p> <p>In line with its long-term LMS (which is current for the period 2017-2022), the City does not actively develop and sell its land holdings. The LMS provides guidance for the sale of land assets, including:</p> <ul style="list-style-type: none"> • The City’s consideration of submissions from interested parties in purchasing land for development • The appointment of real estate agents to sell Council owned property • References to the relevant sections of the Local Government Act, specifically sections 3.58 (disposing of property) and 3.59 (commercial enterprises by local governments). Note that section 3.58 amongst several other requirements of the Local Government Act states when a local government is required to give local public notice of a proposed land sale and the requirement to disclose the lands valuation and sale disclosure amount to the public. <p>While the City’s approach to land sales is methodical and transparent, we believe it has an opportunity to tighten its commercial approach to negotiating the value of land holdings with interested parties. In particular, the City’s practice to disclose the value (or range) determined by an independent valuation to interested parties prior to the advertisement of the potential sale, appears to present the potential purchaser with an advantage when negotiating offers. We understand the City’s legal obligation is limited to disclosing that valuation at the time of advertisement of the potential sale.</p> <p>We recognise that there are confidentiality and data security matters to manage when deciding on the timing and nature of disclosures which have a commercial implication. For example, the City will need to consider the impact on the level of information presented to Council.</p> <p>Implication</p> <p>The City may not obtain full commercial value from its land holdings.</p> <p>Recommendation</p> <p>Reconsider the City’s commercial approach to maintaining a transparent process for disclosing the availability of land and negotiating the value of land holdings with interested parties, particularly to specify the timing of the release of the independent valuation.</p>	<p>Action plan</p> <p>Strategic Planning will prepare an internal procedure for the sale of land assets. This procedure for example may recommend relevant options to consider at the time of sale including providing a price range to provide to agents/prospective purchasers rather than the specific valuation price.</p> <p>Responsible officer</p> <p>Manager Strategic Planning</p> <p>Target date</p> <p>February 2020</p>

3. Developer contributions | Managing the impact of cost under-estimations

Prioritisation rating

Minor	MODERATE	Important	Critical
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Primary cause

People	PROCESS	Technology
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Observation, implication and recommendation	Management comment / action plan
<p>Observation</p> <p>The City calculates developer contribution charges in accordance with State Planning Policy 3.6, including the requirement of clause 5.3.11.2 for estimated infrastructure costs for each DCP to be reviewed at least annually. The City’s structured approach to its annual review of those costs aims to comply with State Planning Policy 3.6 and relevant statutory requirements such as the <i>Local Government (Functions and General) Regulations</i>.</p> <p>As it is almost certain that estimates of cost and development activity (proportional contributions) will change over the lifespan of land developments, the City expects to and does adjust developer contribution charges annually to ensure they are commensurate with present day estimates. Two types of adjustments can be made:</p> <ul style="list-style-type: none"> • If costs had been over-estimated resulting in excess contributions collected, State Planning Policy 3.6 provides for refunds to be provided to developers/land-owners at the end of the lifespan of the DCP. This scenario is unlikely in practice (and has not occurred for the City’s DCPs to date), particularly where a development extends over a long timeframe, and where there is no allowance for likely cost escalations in the initial calculation of developer contribution charges • If costs had been under-estimated resulting in a shortfall of contributions collected to-date, the developer contribution charge can be increased. Because these increases cannot be retrospectively applied, future contributions are intended to compensate for any relative shortfall in contributions received to-date. This scenario challenges the relative fairness of the developer contribution charge over the life of the DCP, plus exposes the City to an actual shortfall where it cannot recover all required contributions. We note that the City has recently initiated Town Planning Scheme 3, Amendment 148 to allow developer contribution charges to be effectively capped in certain cases, which may also result in a shortfall in funding. <p>Strategic Planning recognises there are several options for improving the accuracy of initial estimations, and therefore the calculated developer contribution charge. Those options include:</p> <ul style="list-style-type: none"> • Application of the DCA and related DCP over a smaller timeframe to minimise the extent of cost escalation • Advanced timing of key activities such as land purchases or construction works • More accurate or more timely design and site analysis 	<p>Management comment</p> <p>Strategic Planning believes there is limited practical value in further assessing funding shortfalls to date for the following reasons:</p> <ol style="list-style-type: none"> The City already conducts long term financial planning of the basis of the minimum contributions (i.e. present day DCP rate). We are already clear on the variety of reasons why shortfalls can eventuate. The City is likely to only have one or two future DCPs (one is currently being advertised for public comment) to mitigate the potential for shortfall in the case of proposed DCP15, The City has been careful to be aware of what is to be included in the DCP and to keep the DCP scope of the items as minimal as possible. We have also utilised very recent and detailed comparison costs (from an adjacent oval just completed) rather than a broad estimate with no design basis. This does reflect the best practice we have available. <p>Despite this, we will still face these obstacles:</p> <ul style="list-style-type: none"> • The City may choose to minimise the cost to be passed onto the developers via the annually reviewed DCP rate • Construction costs are currently low due to the state of the economy and so are likely to escalate • The proposed site may have a constraint the planning to date could not have known which impacts development costs • Site specific matters such as retaining walls cannot be determined at this level of planning

Observation, implication and recommendation	Management comment / action plan
<ul style="list-style-type: none"> • More accurate provision for contingencies. Care needs to be taken to ensure the City does not improperly inflate (or is seen to do so) cost estimations and therefore, contribution charges • Greater discipline and rigour in forecasting and reporting on changes in scope, delays and other contributors to cost escalation. <p>We also recognise that the current State Planning Policy² does not provide clear guidance and support, and that the City's options can be limited. Further limitation is proposed by the draft revision to the State Planning Policy.</p> <p>Although Strategic Planning recognises the contributing factors to DCP costs being consistently underestimated, the City has not clearly outlined and communicated to Managers the cause and impact of those underestimations, particularly where the City has some control over the accuracy of its cost estimations and DCP calculations.</p> <p>Implication</p> <p>The City is exposed to:</p> <ul style="list-style-type: none"> • Actual shortfalls in contributions where it is not able to sufficiently increase future charges. e.g. where increases are capped in the interest of commercial reasonableness, particularly in the later stages of the development • Potential unfair treatment of developers in the latter stage of the DCP, who face relatively higher contribution charges. <p>Recommendation</p> <p>Clearly outline and communicate to Strategic Business Unit and Project Managers:</p> <ul style="list-style-type: none"> • The cause and impact of the City's underestimation of costs and calculated charges • Managers' responsibilities and capabilities for most accurately estimating costs, to help mitigate the City's exposure to shortfalls in contributions or potential unfair treatment of developers. 	<ul style="list-style-type: none"> • The rate of land development is not within the City's control and developers may not release land at the predicted rate. <p>Action plan</p> <p>In line with the recommendation, Strategic Planning will raise the profile and appreciation of the development contributions framework amongst the City's Strategic Business Unit and Project Managers.</p> <p>Responsible officer(s)</p> <p>(a) Manager Strategic Planning (b) Coordinator Strategic Planning</p> <p>Target date</p> <p>December 2019</p>

² A draft revision to the State Planning Policy has been released for comment, for implementation in late 2019/early 2020. The City intends to submit comments and suggestions for improvement, consistent with its recent contributions to the Department of Planning, Lands and Heritage.

4. Developer contributions | Embedding good practice in administration of DCPs

Prioritisation rating

MINOR	<i>Moderate</i>	<i>Important</i>	<i>Critical</i>
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Primary cause

PEOPLE	PROCESS	<i>Technology</i>
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Observation, implication and recommendation	Management comment / action plan
<p>Observation</p> <p>Strategic Planning is responsible for administering DCPs, and for implementing effective processes and procedures for the City’s managers (with responsibility for planning and executing development projects) to follow. The City has experienced a common challenge facing central administration roles, which is to maintain the buy-in and support of project staff and managers for applying the right procedures. For example, on occasion project teams have:</p> <ul style="list-style-type: none"> • Not provided timely and sufficient information to support transfers from reserves. This issue threatens the DCP’s transparency and level of compliance • Incorrectly removed subdivision conditions in development applications/plans without consultation or notification, resulting in a shortfall of funds collected from developer contributions. <p>In order to further improve buy-in and support of project staff, Strategic Planning has recently introduced several measures to improve the City’s management of its DCPs, including:</p> <ul style="list-style-type: none"> • Initiating a DCP training program • An electronic building application referral for checking off DCP compliance • A change to the process for setting up a capital works budget, where Strategic Planning approval is now required for all transfers from DCP reserves. <p>The City’s staff performance management program is a useful tool in building support for the City’s core obligations and processes. Key staff responsibilities and resulting performance indicators have not yet been developed for central processes such as DCP administration.</p> <p>Implication</p> <p>Without the support of the City’s structured performance management program, the City’s DCP administration is more reliant on continued training and general diligence of all staff, which in turn increases the City’s exposure to compliance issues.</p> <p>Recommendation</p> <p>Provide further support to central roles such as DCP administration by incorporating key staff obligations/responsibilities and resulting performance indicators into the City’s performance management program.</p>	<p>Management comment</p> <p>Agreed. However, this should be raised with HR and ultimately the Strategic Business Unit Managers group. It is possible that because the issue does not affect all employees there may be difficulties or resistance to the proposal.</p> <p>Action Plan</p> <p>(a) Strategic Planning will raise the proposal to incorporate key staff obligations/responsibilities and resulting performance indicators into the City’s performance management framework with HR for consideration and potentially presenting to the Strategic Business Unit Managers group</p> <p>(b) If there is agreement to proceed, the Coordinator Strategic Planning will liaise with HR Learning and Development staff to develop suitable performance indicators.</p> <p>Responsible officer(s)</p> <p>(c) Manager Strategic Planning</p> <p>(d) Coordinator Strategic Planning in liaison with Learning and Development staff.</p> <p>Target Date</p> <p>June 2020</p>

Appendix: Risk rating, prioritisation and primary cause

Risk rating/severity matrix

		Consequence				
		Insignificant	Minor	Major	Critical	Catastrophic
Likelihood	Rare	Low	Low	Low	Low	Moderate
	Unlikely	Low	Low	Moderate	Moderate	Significant
	Possible	Low	Moderate	Moderate	Significant	High
	Likely	Low	Moderate	Significant	High	Extreme
	Almost Certain	Moderate	Significant	High	Extreme	Extreme

Source: City of Cockburn Risk Management Framework – December 2017

Prioritisation rating

To assist management with prioritisation of action proposed to address identified risks, the following prioritisation is allocated to each level of risk:

Risk level	Prioritisation	Suggested action
Extreme	Critical	<ul style="list-style-type: none"> Issue represents a serious control weakness or operational exposure, which could have or is having a major adverse effect on the City's ability to achieve its process objectives Requires immediate management attention Decision by CEO.
High	Important	<ul style="list-style-type: none"> Issue represents a control weakness, which could have or is having high adverse effect on the City's ability to achieve its process objectives Management should consider action within three months Decision by CEO/ Director.
Significant/ Moderate	Moderate	<ul style="list-style-type: none"> Issue represents a control weakness, which could have or is having moderate adverse effect on the City's ability to achieve its process objectives Requires near term management attention (e.g. six to 12 months) Decision by Managers.
Low	Minor	<ul style="list-style-type: none"> Issue represents minor control weakness with minimal but reportable impact on the City's ability to achieve its process objectives Management should consider action within a reasonable time period (e.g. 12 to 24 months) Decision by Team Leaders.

Primary cause

The primary cause of each internal audit observation/risk is categorised as relating to People, Process, Technology or a combination. Identification of the primary cause is designed to assist in the allocation of resources to targeted areas.

Primary cause	Guidance
People	Persons performing the control activities do not have appropriate training and knowledge to perform the control activities effectively, or defined policies and procedures are not being followed.
Process	Policies and procedures are out-dated and do not reflect existing practice, or have not been defined in enough detail to address the risks to the business.
Technology	Technology is not appropriately implemented or configured to mitigate the risks identified.

14. ENGINEERING & WORKS DIVISION ISSUES

Nil

15. COMMUNITY SERVICES DIVISION ISSUES

Nil

16. EXECUTIVE DIVISION ISSUES

Nil

17. MOTIONS OF WHICH PREVIOUS NOTICE HAS BEEN GIVEN

Nil

**18. NOTICES OF MOTION GIVEN AT THE MEETING FOR
CONSIDERATION AT NEXT MEETING**

**19. NEW BUSINESS OF AN URGENT NATURE INTRODUCED BY
MEMBERS OR OFFICERS**

**20. MATTERS TO BE NOTED FOR INVESTIGATION, WITHOUT
DEBATE**

Nil

21. CONFIDENTIAL BUSINESS

Nil

22. CLOSURE OF MEETING