**

Corporate & Strategy Reports

**Committee Consideration – 14 April 2020**

**Council Resolution – 28 April 2020**

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| **CPS06.20 List of Accounts Paid – April 2020** |

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| **Committee** | 14 April 2020 |
| **Council** | 28 April 2020 |
| **Applicant** | City of Nedlands |
| **Employee Disclosure under *section 5.70 Local Government Act 1995*** | Nil. |
| **Director** | Lorraine Driscoll – Director Corporate & Strategy |
| **Attachments** | 1. Creditor Payment Listing February 2020 2. Credit Card and Purchasing Card Payments – February 2020 (28th January – 27th February 2020) |

**Executive Summary**

In accordance with Regulation 13 of the *Local Government (Financial Management) Regulations 1996* Administration is required to present the List of Accounts Paid for the month to Council.

**Recommendation to Committee**

**Council receives the List of Accounts Paid for the month of February 2020 (refer to attachments).**

**Discussion/Overview**

**Background**

Regulation 13 of the *Local Government (Financial Management) Regulations 1996* requires a list of accounts paid to be prepared each month, showing each account paid since the last list was prepared. This list is to include the following information:

1. the payee’s name;
2. the amount of the payment;
3. the date of the payment; and
4. sufficient information to identify the transaction.

The list is to be presented to the Council at the next ordinary meeting of the Council after the list is prepared and recorded in the minutes of that meeting.

**Risk Management**

The accounts payable procedures ensure that no fraudulent payments are made by the City, and these procedures are strictly adhered to by the officers. These include the final vetting of approved invoices by the Manager Finance and the Director Corporate and Strategy (or designated alternative officers).

**Conclusion**

The List of Accounts Paid for the month of February 2020 complies with the relevant legislation and can be received by Council (see attachments)

**Consultation**

Required by legislation: Yes  No

Required by City of Nedlands policy: Yes  No

**Strategic Implications**

The 2019/20 approved budget is in line with the City’s strategic direction. Payments are made to meet the City’s spend on operations and capital expenses undertaken in accordance with the approved budget.

The 2019/20 approved budget ensured that there is an equitable distribution of benefits in the community

The 2019/20 budget was prepared in line with the City’s level of tolerance of risk and it is managed through budgetary review and control.

**Budget/Financial Implications**

The payments are made in accordance with the approved budget and achieves a surplus cashflow balance.

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| **CPS07.20 Audit & Risk Committee Member** |

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| **Committee** | 14 April 2020 |
| **Council** | 28 April 2020 |
| **Applicant** | City of Nedlands |
| **Employee Disclosure under *section 5.70 Local Government Act 1995*** | Nil. |
| **Director** | Lorraine Driscoll – Director Corporate & Strategy |
| **Attachments** | 1. Councillor Ben Hodsdon’s formal resignation letter |

**Executive Summary**

The purpose of this report is to appoint Councillor Paul Poliwka as a member of the Audit and Risk Committee, as Councillor Ben Hodsdon has resigned the position.

**Recommendation to Council**

**Council appoints Councillor Paul Poliwka to the Audit and Risk Committee for the period ending immediately prior to the next Local Government elections in 2021.**

**Discussion/Overview**

**Background**

The Audit and Risk Committee assists the Council to meet its statutory audit requirements under the *Local Government Act 1995* and related regulations.

The purpose of the Audit and Risk Committee is to assist the Council to discharge its responsibilities with regard to the exercise of due care, diligence and skill in relation to:

1. the reporting of financial information, the application of accounting policies, and the management of the financial affairs of the City, and
2. the assessment of the adequacy of the management of Risk.

Councillor Ben Hodsdon has been a long-standing member of the Audit and Risk Committee. Councillor Hodsdon has recently stepped down from the position to allow Councillor Paul Poliwka, who has recently been appointed as Councillor a chance to serve on the Committee.

**Key Relevant Previous Council Decisions:**

Councillor Paul Poliwka was elected to Council at the Extra Ordinary Election on 13 March 2020.

**Consultation**

No consultation required.

**Strategic Implications**

The purpose of the Audit & Risk Committee is to determine all risks that the City might have and ensure that the Council fulfils its strategic direction in relation to risk management.

The council and community benefit from the Audit & Risk Committee as it assists in managing and mitigating risk.

**Budget/Financial Implications**

There is no financial implication.

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| **CPS08.20 Deed of Variation – Local Government House Trust** |

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| **Committee** | 14 April 2020 |
| **Council** | 28 April 2020 |
| **Applicant** | City of Nedlands |
| **Employee Disclosure under *section 5.70 Local Government Act 1995*** | Nil. |
| **Director** | Lorraine Driscoll – Director Corporate & Strategy |
| **Attachments** | 1. Confidential Attachment - Draft Deed of Variation – Local Government House Trust 2. Confidential Attachment – Deed of Trust – Local Government House Trust |

**Executive Summary**

The Western Australian Local Government Association (WALGA) has formally written to the City of Nedlands seeking consent to a variation to the Trust Deed for the Local Government House Trust (the Trust). The City is a beneficiary of the Trust Deed.

The proposed Deed of Variation is presented to Council for consideration and is recommended that the Council consent to the proposed variation as shown in confidential Attachment 1 of this report. These minor variations are intended to strengthen WALGA’s position as an income tax exempt Trust by reinforcing its position as a State / Territory Body.

**Recommendation to Committee**

**Council:**

1. **approves the Local Government House Trust Deed of Variation as shown in attachment 1; and**
2. **authorises the CEO and Mayor to execute relevant documentation notifying WALGA of Council’s decision on this matter.**

**Discussion/Overview**

**Background**

The Local Government House Trust (the Trust) is a unit trust created for the purpose of providing building accommodation for WALGA.

The Trust’s Board of Management is seeking a Variation to the Trust Deed in order to assist the Trust’s income tax exempt status. As stipulated by the Deed, the Trust requires consent of at least 75 percent of all beneficiaries in order to execute the Deed of Variation.

The City is a unit holder and beneficiary to the Trust and as a beneficiary, the City of Nedlands is requested to consent to the proposed Deed of Variation by a resolution of Council.

The current Trust Deed (as shown in confidential attachment 2 of this report) commenced in 1993 and was amended in 2002 to reflect the merger of the metropolitan and country associations into WALGA. The current Trust Deed pronounces WALGA as Trustee and unit holders as Beneficiaries, with the Trustee holding property and associated monies “upon Trust” and in proportion to the units provided.

The Trust is exempt from income tax on the basis of being a State / Territory Body (STB) pursuant to Division 1AB of the *Income Tax Assessment Act 1936.*

**Comment**

The Chief Executive Officer of WALGA, Nick Sloan, has provided the following advice in relation to the proposed variation to the Trust Deed

“Trust Deed amendments set out in the Deed of Variation are based on legal advice and are intended to assist the Trust’s income tax exempt status by strengthening the position that the Trust is a State / Territory Body (STB).

Legal advice identified that the Trustee’s ability to retire and appoint a new Trustee might affect the Trust’s classification as a State or Territory Body (STB). This view, while based upon highly technical grounds, is a risk nonetheless.

Subsequently the Deed of Variation aims to strengthen the position that the Trust is a STB through the following amendments:

1. removing the existing Trustee’s power to retire and appoint a new Trustee (Clause 2.1 and 2.2 (22.3) of the Deed of Variation)

2. enabling the beneficiaries to appoint and remove a Trustee (Clause 2.2 (22.4) of the Deed of Variation), and

3. ensuring that the Board of Management is the ‘governing body’ of the Trust (Clause 2.3 of the Deed of Variation)

The three proposed amendments when applied to the relevant clauses inserted by the Deed of Variation dated 5 June 2002 will subsequently read as follows (proposed amendments shown in red text):

1. Variation 2.1 amends clause 22.1 to point to additional clause:

22.1 Any Trustee of the Trust may retire as Trustee of the Trust~~.~~ ~~The~~ Subject to clause 22.3, the right to appoint any new or additional trustee or trustees of the Trust is hereby vested in the retiring or continuing trustee. A corporation or incorporated association may be appointed as Trustee of the Trust.

2. Variation 2.2 inserts two new clauses:

22.3 The retiring or continuing trustee shall only be entitled to appoint any new or additional trustee of the Trust with the consent of not less than 75% of the Beneficiaries.

22.4 The Beneficiaries may at any time by Special Resolution:

(a) remove a Trustee from the office as Trustee of the Trust; and

(b) appoint such new or additional Trustee.

3. Variation 2.3 insert a new clause 13A

13A Delegation to the Board of Management

Unless the Beneficiaries otherwise direct (such direction to be given by not less than 75% of the Beneficiaries), the Trustees shall delegate all of the powers authorities and discretions contained in subclauses (a) to (x) of clause 12 to the Board of Management. The Trustees shall, at the direction of the Board of Management, do such things as may be necessary to give effect to the exercise of a power, authority or discretion by the Board of Management.

The first two amendments outlined above remove powers granted to the Trustee in the 2002 Deed Variation resulting from the merger to a single Association representing WA Local Governments. These amendments which previously facilitated the transfer of trusteeship to the then new Western Australian Local Government Association are removed, but with the clarification that any appointment must be with the consent of the beneficiaries.

The final amendment intends to confirm that power rests with the Board of Management. As the Board of Management comprises Local Governments, this satisfies the requirements of a STB for tax purposes. This amendment reflects the actual operation of the Trustee in implementing the decisions of the Board of Management whilst retaining sufficient operational discretion to place and renew investments and pay suppliers.

These amendments provide greater power to beneficiaries through the Board of Management, and as such it is anticipated they will be considered acceptable.

**Key Relevant Previous Council Decisions:**

Nil

**Officer Comment**

Officers have considered the proposed amendments to the Trust Deed and do not believe the variation will have any impact or pose any risk to the City and therefore have recommended that the Council consent the proposed Deed of Variation as shown in Attachment 1.

**Consultation**

Nil.

**Strategic Implications**

Nil.

**Budget/Financial Implications**

Nil.