

13.2 Deed of Variation - Local Government House Trust

Location	Town-wide
Reporting officer	Peter Scasserra
Responsible officer	Jon Morellini
Voting requirement	Simple majority
Attachments	<ol style="list-style-type: none">1. CONFIDENTIAL REDACTED - Deed of Trust 2002 LGHT [13.2.1 - 50 pages]2. CONFIDENTIAL REDACTED - Deed of Variation new version draft [13.2.2 - 5 pages]

Recommendation

That Council:

1. Consent to the proposed amendments to the Local Government House Trust as outlined in the draft Deed of Variation – Local Government House Trust, and
2. Authorise the Mayor and Chief Executive Officer to execute relevant documentation notifying the Western Australian Local Government Association of Council's decision on this matter.

Purpose

To seek Council consent to a Deed of Variation for the Local Government House Trust as requested by the Western Australian Local Government Association (WALGA).

In brief

- WALGA is seeking consent from the Town of Victoria Park for a variation to the Trust Deed for the Local Government House Trust in order to assist the Trust's income tax-exempt status.
- The 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).
- The Town is a Unit Holder and Beneficiary to the Local Government House Trust and holds two unit shares in the Trust.
- As stated by the Deed, the Trust requires the consent of at least 75 percent of all beneficiaries in order to execute the variation.
- The proposed Deed of Variation is presented to Council for consideration and it is recommended that the Council consent to the Draft Deed of Variation – Local Government House Trust as attached to this report (noted as "Deed of Variation new version draft").

Background

1. The Local Government House Trust is a unit trust created for the purpose of providing building accommodation for WALGA. Since January 2014 the Trust has provided WALGA with accommodation at 170 Railway Parade West Leederville.
2. 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.

3. As stated in the Deed, the Trust required consent of at least 75% of all beneficiaries in order to execute the Deed of Variation.
4. The Town is a unit holder and a beneficiary to the Trust and as a beneficiary, the Town is requested to consent to the proposed Deed of Variation by a resolution of Council.
5. The current Trust Deed commenced in 1993 and was amended in 2002 to reflect the merger of the Local Government Association of Western Australia and the Country Shire Council's Association into a single association, being WALGA.
6. The current Trust Deed declares WALGA as Trustee and unitholders as Beneficiaries, with the Trustee holding property and associated monies 'upon Trust' and in proportion to the units provided.
7. The commencement date of the current Deed is 17 February 1993, with a vesting date 79 years from commencement, which means that the Trust ends in 2072.
8. The Trust is exempt from income tax on the basis of being a State/Territory Body pursuant to Division 1AB of the Income Tax Assessment Act 1936.

Strategic alignment

Civic Leadership	
Strategic outcome	Intended public value outcome or impact
CL08 - Visionary civic leadership with sound and accountable governance that reflects objective decision-making.	With the endorsement of the Deed of Variation, the Town will be abiding by correct and accountable governance for the benefit of ratepayers.

Engagement

Internal engagement	
C-Suite	C-Suite have considered the proposal and collectively agree with the amendments in the Deed of Variation.
Property Development and Leasing	Have reviewed and provided input into the report.

Legal compliance

[Income Tax Assessment Act 1936 Volume 1 Part 3 Division 1AB](#)

Risk management consideration

Risk impact category	Risk event description	Consequence rating	Likelihood rating	Overall risk level score	Council's risk appetite	Risk treatment option and rationale for actions
Financial	If the Deed of Variation is not approved then the Local Government	Unknown financial tax impact.	Unlikely	Cannot Calculate	Low	TREAT risk by agreeing to the Deed of Variation.

	House Trust may not maintain its tax exemption status. And may incur tax costs.					
Environmental	Not Applicable					
Health and safety	Not Applicable					
Infrastructure/ ICT systems/ utilities	Not Applicable					
Legislative compliance	If the Deed of Variation is not approved then the Local Government House Trust may not maintain its tax exemption status under the Income Tax Assessment Act 1936.	Minor	Unlikely	Low	Low	TREAT risk by agreeing to the Deed of Variation.
Reputation	Not Applicable					
Service delivery	Not Applicable					

Financial implications

Current budget impact	Nil.
Future budget impact	Not applicable.

Analysis

9. Legal advice obtained by WALGA identified that the Trustee's ability to retire and appoint a new Trustee might affect the Trust's classification as a State/Territory Body. This view, while based upon highly technical grounds, is a risk nonetheless.
10. Subsequently, the Deed of Variation aims to strengthen the position that the Trust is a State/Territory Body through the following amendments:
 - a. 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),
 - b. Enabling the Beneficiaries to appoint and remove a Trustee (Clause 2.2 (22.4) of the Deed of Variation), and

- c. Ensuring the Board of Management is the 'governing body' of the Trust (Clause 2.3 of the Deed of Variation).
11. 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:
- a. Variation 2.1 - Amends clause 22.1 to point to the additional clause:
- 22.1 Any Trustee of the Trust may retire as Trustee of the Trust. 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.
- b. 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.
- c. Variation 2.3 - Inserts 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.
12. Variations 2.1 and 2.2 outlined above remove powers granted to the Trustee in the 2002 Deed of 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 the appointment of any new or additional trustee must be with the consent of the beneficiaries.
13. Variation 2.3 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 State/Territory Body 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.
14. WALGA's legal advice concludes that these amendments provide greater power to beneficiaries through the Board of Management, and as such, it is anticipated that they will be considered acceptable.
15. Officers of the Town has considered the proposed amendments to the Trust Deed and do not believe the variation will have any impact or pose any risk to the Town, and therefore have recommended that Council consent to the proposed Deed of Variation.

Relevant documents

Not applicable.