



# Agenda Attachments

## Finance, Policy, Operations and Legislation Committee

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Wednesday, 11 March 2020 at 6.00 pm

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Attachment 1 – Private Apartment Investment Policy



**DEED OF VARIATION**

**LOCAL GOVERNMENT HOUSE TRUST**



LAW

PERTH

11 Mounts Bay Road, Perth WA 6000

Telephone (08) 9429 2222 Facsimile: (08) 9429 2434

[eylawperth@au.ey.com](mailto:eylawperth@au.ey.com) [www.ey.com](http://www.ey.com)

Our Ref: 4WAL / 2004 7043

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**THIS DEED** dated the \_\_\_\_\_ day of \_\_\_\_\_ 2019

**BY**

**WESTERN AUSTRALIAN LOCAL GOVERNMENT ASSOCIATION** of Level 1, 170 Railway Parade, West Leederville in the State of Western Australia (the 'Trustee')

**RECITALS**

- A. By Deed of Trust undated but stamped 12 February 1980 ('Original Trust Deed') made between CHARLES WILSON TUCKEY, LYAL GORDON RICHARDSON, GORDON LAWRENCE KILPATRICK, HARRY STICKLAND and MAXWELL RAY FINLAYSON (the 'Original Trustees') and THE LOCAL GOVERNMENT ASSOCIATION OF WESTERN AUSTRALIA and the COUNTRY SHIRE COUNCILS ASSOCIATION (the 'Retired Trustees') the Original Trustees declared that they would hold the property therein referred to as the Headquarters and the monies therein referred to as the Trust Fund upon trust for the beneficiaries specified in the second schedule to the Original Deed upon the terms and conditions therein contained (the 'Original Trust').
- B. By Deed dated 2 October 1981 made between the Original Trustees and the Retired Trustees the Original Trustees retired and appointed the Retired Trustees as the trustees of the Original Trust in their place.
- C. By Deed dated 4 May 1994 (the 'New Deed') the Retired Trustees (in the New Deed referred to as THE LOCAL GOVERNMENT ASSOCIATION OF WESTERN AUSTRALIA (INC) and THE COUNTRY SHIRE COUNCILS' ASSOCIATION OF WESTERN AUSTRALIA (INC)) agreed that the proceeds from the sale of the Headquarters and the Trust Fund and the income thereof should be from 17 February 1993 held upon the terms and conditions set out in the New Deed (the 'Trust').
- D. By Deed of Variation dated 5 June 2002 the Retired Trustees varied the New Deed (collectively, the 'Trust Deed') to provide for a new Clause 22 which provides that any trustee of the Trust may retire as trustee of the Trust and appoint a new trustee to act as trustee of the Trust and that notwithstanding that the original number of trustees of the Trust was five where a corporation or incorporated association is appointed as trustee of the Trust then it shall not be obligatory to appoint more than one new trustee.
- E. By Deed dated 6 June 2002 made between the Retired Trustees and the Trustee, the Retired Trustees retired and appointed the Trustee as the trustee of the Trust.
- F. Clause 21.1 of the Trust Deed provides that the Trustees may at any time and from time to time (with the consent of not less than 75% of the Beneficiaries) by deed revoke add to or vary the trusts of the Trust Deed or declare (inter alia) any new or other powers, authorities or discretions concerning the management, control or investment of the Trust Fund upon the terms contained therein.
- G. The Trustee wishes to add to and vary the Trust Deed and declare (inter alia) new or other powers, authorities and discretions concerning the management, control or investment of the Trust Fund in accordance with the terms of this Deed.
- H. More than 75% of the Beneficiaries have consented in writing to the variations to the New Deed and the records relating to this consent will be placed with the original of this Deed.

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**NOW THIS DEED WITNESSES****1. DEFINITIONS AND INTERPRETATION**

In this Deed, unless the context otherwise requires:

- 1.1 a word importing the singular includes the plural and vice versa, and a word of any gender includes other genders;
- 1.2 another grammatical form of a defined word or expression has a corresponding meaning;
- 1.3 a reference to a clause, paragraph, recital, schedule or annexure is to a clause, paragraph or recital of, or schedule or annexure to, this Deed, and a reference to this Deed includes any schedule or annexure;
- 1.4 a reference to a document or instrument includes the document or instrument as varied, novated, altered, supplemented or replaced from time to time;
- 1.5 a reference to a person includes a natural person, the estate of an individual, a partnership, body corporate, the trustee of a trust (in the trustee's capacity as trustee of the trust), association, governmental or local authority or agency or other entity;
- 1.6 a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- 1.7 the meaning of general words is not limited by specific examples introduced by 'including, for example' or similar expressions;
- 1.8 Recitals A to H inclusive form part of and are included in this Deed;
- 1.9 headings are for ease of reference and do not affect interpretation;
- 1.10 'Deed' means this deed;
- 1.11 unless specified otherwise, terms which are defined in the Trust Deed and used in this Deed bear the same meanings in this Deed which are ascribed to them in the Trust Deed; and
- 1.12 in the event of any inconsistency between the provisions of the Trust Deed and the provisions of this Deed, the provisions of this Deed will prevail.

**2. OPERATIVE PART**

The Trustee in exercise of the power given to the Trustee by clause 21.1 of the Trust Deed and with the consent of more than 75% of the Beneficiaries hereby adds to and varies the Trust Deed and declares (inter alia) the following new or other powers authorities and discretions concerning the management, control or investment of the Trust Fund as follows:

- 2.1 delete the word "The" appearing after the words "Any trustee of the Trust may retire as trustee of the Trust." in the existing clause 22.1 and replace it with the words "Subject to clause 22.3, the";

2.2 insert after clause 22.2 the following:

“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.

For the purposes of this clause 22.4, “Special Resolution” means a resolution passed or decision made by not less than 75% of the Beneficiaries.”

2.3 insert a new clause 13A as follows:

“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.”

3. **SEVERABILITY**

3.1 If any provision of this Deed is found by a competent authority (including without limitation a Court) to be void or unenforceable, then such finding shall not affect the other provisions of this Deed.

3.2 If making a subsequent amendment to this Deed avoids any invalidity or unenforceability of any provision of this Deed, the parties may elect to make that amendment, which shall be deemed for all purposes to be effective immediately prior to the occurrence of that invalidity or unenforceability.

4. **FURTHER ASSURANCES**

All parties shall make, execute and do all acts, deeds, documents and things and sign all documents which may reasonably be required to give full effect to this Deed, and the Trustee shall bear the costs of observing, performing and complying with this clause.

5. **COSTS**

The Trustee shall bear and pay the costs of and incidental to the preparation, execution and stamping of this Deed.

6. **RATIFICATION AND CONFIRMATION**

In all other respects the terms of the Trust Deed are hereby ratified and confirmed.

7. **PROPER LAW**

This Deed shall be governed by the laws of the State of Western Australia and the parties submit to the jurisdiction of the Courts of the State of Western Australia.

**EXECUTED** as a Deed

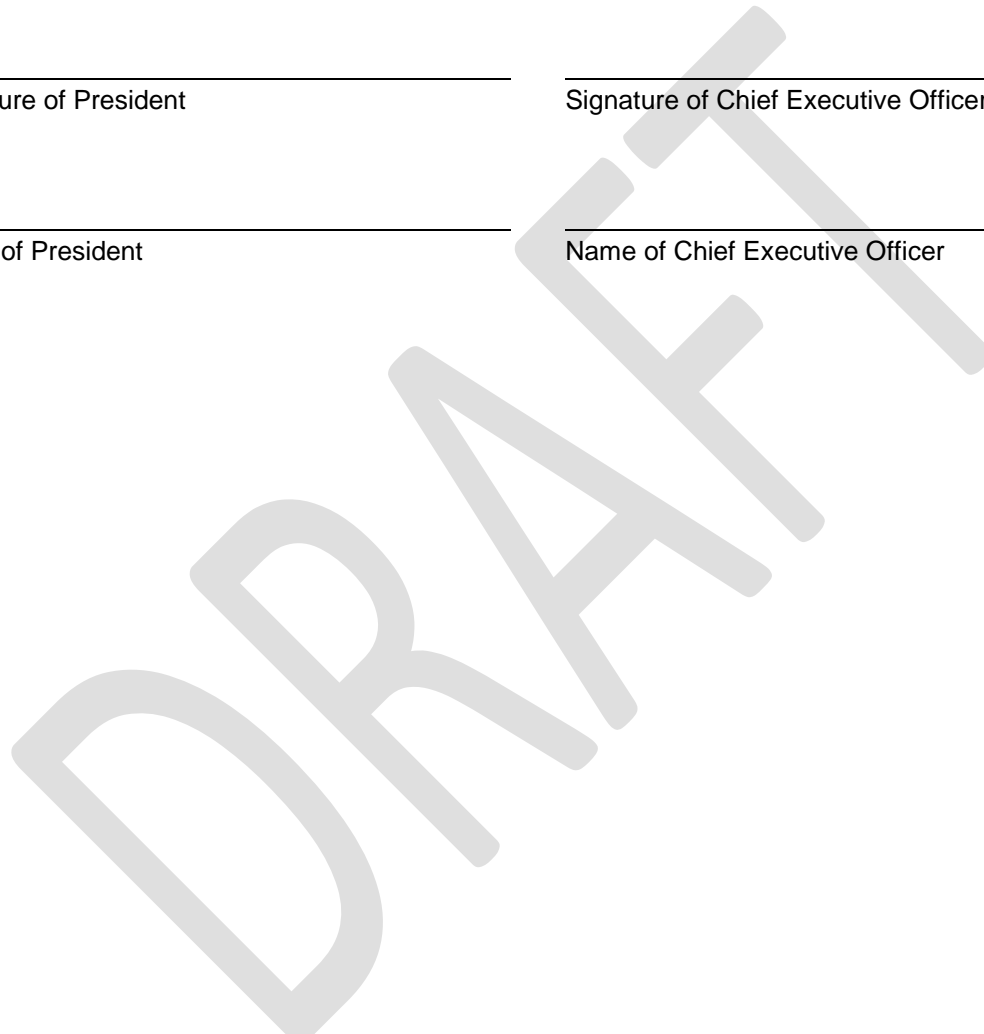
**THE COMMON SEAL** of **WESTERN** )  
**AUSTRALIAN LOCAL GOVERNMENT** )  
**ASSOCIATION** is hereunto affixed in the )  
presence of: )

\_\_\_\_\_  
Signature of President

\_\_\_\_\_  
Signature of Chief Executive Officer

\_\_\_\_\_  
Name of President

\_\_\_\_\_  
Name of Chief Executive Officer





**FPOL2003-6 PROPOSED PRIVATE APARTMENT INVESTMENT POLICY****ATTACHMENT 1 – Private Apartment Investment Policy****Private Apartment Investment policy****Objectives**

The objective of the Policy is to provide for the short term investment by Council in certain development proposals, in cases where the development is one which is likely to have a beneficial and catalytic impact on economic development within the CBD, or, where outside the CBD, the development is one that significantly contributes to housing diversity and affordability.

The proposed policy will provide guidelines for consideration if circumstances arise where significant progress is made towards reaching sales milestone for residential apartment development within the CBD of Fremantle, but where a very small number (up to two (2) of sales is needed to achieve the milestone.

**TYPES OF DEVELOPMENT**Located in CBD:

Primarily, any consideration should be limited to the CBD of Fremantle as this is the primary location in achieving significant economic outcomes through residential development. This would ensure improved catchment for weekday economic activity, the CBD is well serviced by alternative transport services and would add to general vibrancy expected in a CBD environment.

Located Outside CBD:

Consideration could be provided for supporting apartment development outside the CBD area. Any development would need to meet sound sustainability and design principles and demonstrate innovation in diversity and affordability.

**PRE-CONDITIONS FOR PURCHASE**Milestone Target

Any consideration to invest/purchase should only be made where the development can demonstrate a legitimate opportunity for development threshold to be met and therefore the development would commence upon council purchase and construction would commence within twelve (12) months of milestone being met. To be clear, any proposal for the City to purchase must be the final required purchase to meet the milestone.

The development must also demonstrate that a genuine attempt is being made to achieve the development milestone and be satisfied that the purchase is necessary to ensure the development proceeds.

Put Option Contract

The investment/purchase is only to be made via a “Put Option” contract, whereby the development will continue to market the property/s for sale and the City is only required to finalise a purchase if the property is not sold at the point of final payment being required. If

another purchaser provides a written contract offer for the apartment/s that Council has offered to purchase or the sales milestone is met through other apartment purchases during the construction period, the contractual agreement is terminated and the City's deposit and any other payments towards purchase are to be refunded.

The City may also choose to market the property for sale or sell the contracted apartments during the construction period.

The purchase contract will also contain a condition that the contract is terminated within twelve (12) months of being signed.

#### Purchase Price

The purchase payment price for council is to be no more than 90% of the listed sales price or to be no more than 90% of an independent valuation obtained no more than six (6) months prior to the purchase date.

#### Maximum Number of Apartments being Purchased

The maximum number of apartments to be purchased in any single development is to be two (2).

#### Type of Apartments Purchased

The type of apartments purchased by the City to be either single or double bedroom apartments that suit entry level type property and keeps the financial level of investment reasonable.

### **FINANCING OF PURCHASE AND ASSESMENT OF BUSINESS CASE**

#### Business Case

Any decision to purchase should only be made if supported by a positive business case to do so. Criteria would need to be established for developing the business case and the term of the business case should cover a maximum of three years. If an appropriate return cannot be achieved within three (3) years, then support should not be offered.

The business case criteria would include;

<b>Cost</b>	
Purchase Cost	Purchase price should be a maximum of 90% of the advertised sales price or independent market valuation. Other purchase costs such as fitout etc.
Holding Costs	These would include loan interest, risk interest and maintenance costs property management fees, insurance etc.
Future Sales Costs	Agent selling fees, valuations costs
<b>Revenue</b>	
Holding Revenue	Rent income from tenant leasing whilst holding.
Rates	Consideration of additional rate revenue provided from the completed development.

Future Sale	Income received from future sale of the property. Future value to be determined by past 5 year average of REIWA growth rates for the relevant suburb.
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### Financing Purchases

Purchases should only be made via specific external loan borrowings, subject to the City's borrowing limit and financial capacity. The investment is to be supported by a net positive business case. There are limits on the City's capacity to borrow, and consequently an assessment will be made of the City's borrowing limit and financial capacity on a case by case basis. This will also include an assessment of other current or anticipated loan obligations.

### **HOLDING PERIOD**

#### Uses

The respective property will only be used for a residential purpose. The property will be managed on a commercial basis and leased through a qualified real estate agent for a term of no greater than twelve (12) month periods. This will allow council to consider selling options at regular intervals.

#### Holding Review

The property value should be reviewed at regular intervals of approximately twelve (12) months to consider whether an opportunity exists to sell. This could align with the tenancy agreements mentioned above. Once the property value has achieved a level to cover associated costs of purchasing and holding costs the property will be listed for sale.