



MINUTES

of the

Ordinary Council Meeting

held

Tuesday 26 May 2020

in the

Council Chambers
11-13 Waldeck Street, Dongara

I certify that this copy of the Minutes is a true and correct record of the meeting held on Tuesday 26 May 2020

Signed:
Presiding Elected Member

Date:

Disclaimer


The Shire of Irwin advises that the purpose of an Ordinary Council Meeting is to discuss and, where possible, make resolutions about items appearing in the agenda. No person should rely or act on the basis of any decision, advice or information provided by a Member or Officer, or on the content of any discussion occurring during the course of the meeting. No person should rely on the decisions made by Council until formal written advice of the Council is received by that person.

The Shire of Irwin expressly disclaims any liability for any loss or damage whatsoever and howsoever caused arising out of reliance by any person or legal entity on any such act, omission or statement or intimation occurring during Council or Committee Meetings.



Shane Ivers
CHIEF EXECUTIVE OFFICER

The following public notice was released 20 May 2020:



Change of Place for Council Meetings 2020

In accordance with the Local Government Act 1995 section 5.25(g) and Local Government (Administration) Regulations 1996, notice is hereby given of a change of place for the Ordinary Council Meetings listed in the below schedule.

In accordance with the Local Government Act 1995 section 5.25(1)(ba) and the Local Government (Administration) Regulations 1996, regulation 14D, a council meeting may be held by electronic means if a public health emergency or a state of emergency exists in the whole of the district of a local government.

As restrictions on gatherings have been relaxed by the WA Government, the below listed meetings will now be held by both Webex Video and in-person:

Agenda Briefing at 5.00pm
Councillor Information Session at 5.15pm
Ordinary Council Meeting at 6.00pm

- 26 May 2020
- 23 June 2020
- 28 July 2020

Agendas and associated attachments for the meetings will be placed on the Shire of Irwin website www.irwin.wa.gov.au on the Friday preceding the Meetings.

Due to the current 20 person gathering restriction, members of the community are kindly asked to register by **12 noon the day prior to the meeting** if they wish to attend the meeting, so that staff can coordinate attendance numbers and sufficient spacing in line with current WA Government guidelines.

Public Questions
Questions will be accepted at the meeting from those in attendance as well as those submitted in writing via email to dchandler@irwin.wa.gov.au by **12 noon the day prior to the meeting**.

Please contact the Shire on 9927 0000 for further information.

Shane Ivers
Chief Executive Officer

PMB 21, 11-13 Waldeck Street Dongara WA 6525 | t 9927 0000 | e reception@irwin.wa.gov.au | www.irwin.wa.gov.au

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ORDINARY COUNCIL eMEETING

held

Tuesday 26 May 2020

at 6.00pm

MINUTES

1. DECLARATION OF OPENING / ANNOUNCEMENT OF VISITORS

The Shire President welcomed Councillors and Staff and opened the meeting at 6.00pm.

2. RECORD OF ATTENDANCE / APOLOGIES / LEAVE OF ABSENCE

Members

Councillor M T Smith	Shire President
Councillor B Wyse	Deputy Shire President
Councillor G S Eva	
Councillor A J Gilliam	
Councillor M Leonard	
Councillor I Scott	
Councillor H M Wells	
Councillor I F West	

Staff

Mr S D Ivers	Chief Executive Officer
Mr B Jeans (via teleconference)	Manager Regulatory Services
Mrs J Goodbourn	Supervisor Finance
Mrs D K Chandler	Governance & Executive Coordinator

Approved Leave of Absence

Nil.

Apologies

Nil.

Gallery

L Beatty – Journalist, Geraldton Guardian / Midwest Times
J Arden – Premier Circle, Port Denison

3. RESPONSE TO PREVIOUS PUBLIC QUESTIONS TAKEN ON NOTICE

Nil.

4. PUBLIC QUESTION TIME

Nil.

5. APPLICATIONS FOR LEAVE OF ABSENCE

Nil.

6. PETITIONS AND DEPUTATIONS

Nil.

7. CONFIRMATION OF MINUTES

7.1. Minutes of the Ordinary Council Meeting held 29 April 2020

A copy of the minutes of the 29 April 2020 Ordinary Council Meeting have been provided to all Councillors under separate cover.

COUNCIL DECISION 010520:	
MOVED: Cr Wyse	SECONDED: Cr Gillam
That the Minutes of the Ordinary Council Meeting, held 29 April 2020, as previously circulated, be adopted as a true and accurate recording of that meeting.	
VOTING DETAILS:	Carried 8/0

8. ANNOUNCEMENTS BY THE PERSON PRESIDING WITHOUT DISCUSSION

Media

14 May 2020 Interviewed for an article published in the Farm Weekly, Thursday 14 May 2020, regarding fracking

Correspondence In

21 April 2020 Letter from the Hon Rita Saffioti MLA regarding Development Assessment Panels: Configuration and Membership

11 May 2020 Letter from the Premier of WA regarding the transition to a COVID-safe Australia

15 May 2020 Letter from the Hon Ben Wyatt MLA and the Hon David Templeman MLA regarding the Western Australian Treasury Corporation Borrowing Facility

22 May 2020 Email from the Hon Melissa Price, Federal Member for Durack regarding the funding allocations for the Local Roads and Community Infrastructure Program Durack.

9. REPORTS

9.1. Officer Reports

CORPORATE AND COMMUNITY		CC01- 05/20
Subject:	CC01-05/20 Accounts for Payment	
Author:	S Clarkson, Finance Officer	
Responsible Officer:	J Goodbourn, Supervisor Finance	
File Reference:	Minute Book	
Voting Requirements:	Simple Majority	

Council Role:

- Advocacy** When Council advocates on its own behalf or on behalf of its community to another level of government/body/agency.
- Executive** The substantial direction setting and oversight role of the Council e.g. adopting plans and reports, accepting tenders, directing operations, setting and amending budgets.
- Legislative** Includes adopting local laws, local planning schemes and policies.
- Review** When Council reviews decisions made by Officers.
- Quasi-judicial** When Council determines an application/matter that directly affects a person's rights and interests. The judicial character arises from the obligation to abide by the principles of natural justice e.g. local planning applications, building permits, other permits/licences (e.g. under Health Act, Dog Act or local laws) and other decisions that may be appealable to the State Administrative Tribunal (SAT).

Report Purpose:

To receive the list of accounts paid under delegated authority during April 2020.

Background:

A list of accounts paid under delegated authority is attached showing all payments made during the month of April 2020.

Officer's Comment:

Nil

Consultation:

Nil

Statutory Environment:

The Local Government (Financial Management) Regulations 1996 provides as follows:

13. *Payments from municipal fund or trust fund by CEO, CEO's duties as to etc.*

- (1) *If the local government has delegated to the CEO the exercise of its power to make payments from the municipal fund or the trust fund, a list of accounts paid by the CEO is to be prepared each month showing for each account paid since the last such list was prepared —*
- (a) *the payee's name;*
 - (b) *the amount of the payment;*
 - (c) *the date of the payment; and*
 - (d) *sufficient information to identify the transaction.*
- (3) *A list prepared under sub-regulation (1) or (2) is to be —*

- (a) presented to the council at the next ordinary meeting of the council after the list is prepared; and
- (b) recorded in the minutes of that meeting.

Policy Implications:

Under Delegation CEO3 Council has delegated authority to the Chief Executive Officer to authorise all payments by Council.

Financial/Resource Implications:

Nil

Strategic Implications:

Strategic Community Plan 2017 - 2027

Strategy 4.2.1 Ensure compliance whilst embracing innovation and better practice principles Strategy

4.3.2 Adopt and follow better practice processes

Attachments:

Attachment Booklet – May 2020

Attachment CC01 - Accounts for Payment – April 2020

Officer Recommendation:

OFFICER RECOMMENDATION AND COUNCIL DECISION 020520:

MOVED: Cr Leonard

SECONDED: Cr Gillam

That Council, receives the Accounts paid during April 2020 as presented in Attachment Booklet – May 2020, represented by:

Payment Type/Numbers	Total Amount
EFT 25797 – 25796	\$1,031,603.66
Direct Debit – Telstra	\$8,974.95
Direct Debit – Solar Panel Repayments 04/20	\$1,947.66
Direct Debit – Credit Card	\$2,826.24
Direct Debit – Superannuation	\$28,409.40
Grand Total	\$1,073,761.91

VOTING DETAILS:

Carried 8/0

CORPORATE AND COMMUNITY		CC02-05/20
Subject:	CC02-05/20 Monthly Financial Statements for the Period Ended 30 April 2020	
Author:	J Goodbourn, Supervisor Finance	
Responsible Officer:	S Ivers, Chief Executive Officer	
File Reference:	Minute Book	
Voting Requirements:	Simple Majority	

Council Role:

- Advocacy** When Council advocates on its own behalf or on behalf of its community to another level of government/body/agency.
- Executive** The substantial direction setting and oversight role of the Council e.g. adopting plans and reports, accepting tenders, directing operations, setting and amending budgets.
- Legislative** Includes adopting local laws, local planning schemes and policies.
- Review** When Council reviews decisions made by Officers.
- Quasi-judicial** When Council determines an application/matter that directly affects a person's rights and interests. The judicial character arises from the obligation to abide by the principles of natural justice e.g. local planning applications, building permits, other permits/licences (e.g. under Health Act, Dog Act or local laws) and other decisions that may be appealable to the State Administrative Tribunal (SAT).

Report Purpose:

To consider and receive the Monthly Financial Statements for the period 1 July 2019 to 30 April 2020.

Background:

It was discovered at the 29 April 2020 Ordinary Council Meeting that the 31 March 2020 Financials contained a column on page 7, headed 'Forecast' that should not have been included as the information was incorrect. The monthly financials template has been reviewed with Bob Waddell Consulting and it was confirmed that the forecast section is not yet operational. The forecast figures should not have been included in the monthly report as they are currently not linking to the correct sections of the amended budget. The revised monthly statements for the period ended 31 March 2020 are included as Attachment 2 for Councillor's reference.

The Monthly Financial Statements to 30 April 2020 are prepared in accordance with the requirements of the *Local Government Act 1995* and the *Local Government (Financial Management) Regulations 1996* and includes the following statutory reports:

- Statement of Financial Activity by Program
- Statement of Financial Activity by Nature & Type
- Explanation of Material Variances
- Net Current Funding Position

The Statements also include various other financial information not required by legislation, but for Council information.

Officer’s Comment:

The financial position to the end of April 2020 is detailed in the attached report and summarised as follows relative to year to date budget expectations:

30/04/2020		YTD Actual	Variance to YTD Budget
	Operating Revenue	7,456,534	-4%
	Operating Expenditure	(9,580,128)	4%
	Net Operating	(2,123,594)	
	Non-Operating Revenue	2,539,483	44%
	Non-Operating Expenditure	(2,671,515)	-14%
	Net Non-Operating	(132,032)	
	Cash at Bank	2,053,903	
	Cash at Bank Restricted	376,298	
	Reserve Bank	1,322,615	
	Total Cash Funds	3,752,816	

The attached statements (Attachment 1) provide explanatory notes for items greater than 10% or \$10,000. This commentary provides Council with an overall understanding of how the financial position is situated in relation to the adopted budget.

Consultation:

Nil.

Statutory Environment:

Local Government Act 1995

- Section 6.4 Financial report

Local Government (Financial Management) Regulations

- Section 34 Financial activity statement report provides as follows:

- (1) *A local government is to prepare each month a statement of financial activity reporting on the sources and applications of funds, as set out in the annual budget under regulation 22(1)(d), for that month in the following detail -*
 - (a) *annual budget estimates, taking into account any expenditure incurred for an additional purpose under section 6.8(1)(b) or (c);*
 - (b) *budget estimates to the end of the month to which the statement relates;*
 - (c) *actual amounts of expenditure, revenue and income to the end of the month to which the statement relates;*
 - (d) *material variances between the comparable amounts referred to in paragraphs (b) and (c); and*
 - (e) *the net current assets at the end of the month to which the statement relates.*

- (2) *Each statement of financial activity is to be accompanied by documents containing -*
 - (a) *an explanation of the composition of the net current assets of the month to which the statement relates, less committed assets and restricted assets;*
 - (b) *an explanation of each of the material variances referred to in sub-regulation (1)(d); and*
 - (c) *such other supporting information as is considered relevant by the local government.*

- (3) *The information in a statement of financial activity may be shown -*
 - (a) *according to nature and type classification;*
 - (b) *by program; or*
 - (c) *by business unit.*

- (4) *A statement of financial activity, and the accompanying documents referred to in sub-regulation (2), are to be -*
 - (a) *presented to the council -*
 - (i) *at the next ordinary meeting of the council following the end of the month to which the statement relates; or*
 - (ii) *if the statement is not prepared in time to present it to the meeting referred to in subparagraph (i), to the next ordinary meeting of the council after that meeting; and*
 - (b) *recorded in the minutes of the meeting at which it is presented.*

Policy Implications:

Nil.

Financial/Resource Implications:

Any issues in relation to expenditure and revenue allocations or variance trends are identified and addressed each month.

Strategic Implications:

Strategic Community Plan 2017 - 2027

Strategy 4.2.1 Ensure compliance whilst embracing innovation and better practice principles

Strategy 4.3.2 Adopt and follow better practice processes

Attachments:

Attachment Booklet – May 2020

CC02 Attachment 1: Financial Statements for the Period Ended 30 April 2020

CC02 Attachment 2: Amended Financial Statements for the Period Ended 31 March 2020

Officer Recommendation:

OFFICER RECOMMENDATION AND COUNCIL DECISION 030520:

MOVED: Cr West

SECONDED: Cr Eva

That Council receives the Monthly Financial Statements for the period 1 July 2019 to 30 April 2020 as provided in Attachment Booklet – May 2020.

VOTING DETAILS:

Carried 8/0

OFFICE OF CEO		CEO01-05/20
Subject:	CEO01-05/20 National Redress Scheme – Shire of Irwin Participation	
Author:	D Chandler, Governance & Executive Coordinator	
Responsible Officer:	S Ivers, Chief Executive Officer	
File Reference:	3.00046	
Voting Requirements:	Simple Majority	

Council Role:

- Advocacy** When Council advocates on its own behalf or on behalf of its community to another level of government/body/agency.
- Executive** The substantial direction setting and oversight role of the Council e.g. performance of the Local Government’s function under law, administration of Local Laws, adopting plans and reports, accepting tenders, directing operations, setting and amending budgets.
- Legislative** Includes adopting local laws and local planning schemes.
- Review** When Council reviews decisions made by Officers.
- Quasi-judicial** When Council determines an application/matter that directly affects a person’s rights and interests. The judicial character arises from the obligation to abide by the principles of natural justice e.g. local planning applications, building permits, other permits/licences (e.g. under Health Act, Dog Act or local laws) and other decisions that may be appealable to the State Administrative Tribunal (SAT).

Report Purpose:

For Council to note the background information and the WA Government’s decision in relation to the National Redress Scheme, note the key considerations and administrative arrangements for the Shire of Irwin to participate in the National Redress Scheme, formally endorse the Shire of Irwin’s participation as part of the WA Government’s declaration in the National Redress Scheme and grant authority to the CEO to execute a service agreement with the State, if a Redress application is received.

Background:

The Royal Commission into Institutional Responses to Child Sexual Abuse (Royal Commission) was established in 2013 to investigate failures of public and private institutions to protect children from sexual abuse. The Royal Commission released three reports throughout the inquiry:

- Working with Children Checks (August 2015);
- Redress and Civil Litigation (September 2015); and
- Criminal Justice (August 2017).

The Royal Commission’s Final Report (15 December 2017) incorporated findings and recommendations of the three previous reports and contained a total of 409 recommendations, of which 310 are applicable to the Western Australian Government and the broader WA community.

The implications of the Royal Commission’s recommendations are twofold: the first is accountability for historical breaches in the duty of care that occurred before 1 July 2018 within any institution; the second is future-facing, ensuring better child safe approaches are implemented holistically moving forward.

The scope of this report addresses only the historical element of institutional child sexual abuse through the National Redress Scheme.

All levels of Australian society (including the WA local government sector and the Shire of Irwin) will be required to consider leading practice approaches to child safeguarding separately in the future.

National Redress Scheme

The Royal Commission's *Redress and Civil Litigation (September 2015)* Report recommended the establishment of a single National Redress Scheme (the Scheme) to recognise the harm suffered by survivors of institutional child sexual abuse.

The Scheme acknowledges that children were sexually abused, recognises the suffering endured, holds institutions accountable and helps those who have been abused access counselling, psychological services, an apology and a redress payment.

The Scheme commenced on 1 July 2018, will run for 10 years and offers eligible applicants three elements of Redress:

- A direct personal response (apology) from the responsible institution, if requested;
- Funds to access counselling and psychological care; and
- A monetary payment of up to \$150,000.

All State and Territory Governments and many major non-government organisations and church groups have joined the Scheme. The WA Parliament has passed the legislation for the Government and WA based non-government organisations to participate in the National Redress Scheme. The Western Australian Government (the State) started participating in the Scheme from 1 January 2019. Under the *National Redress Scheme for Institutional Child Sexual Abuse Act 2018* (Cth), local governments may be considered a State Government institution.

A decision was made at the time of joining the Scheme to exclude WA local governments from the State Government's participation declaration. This was to allow consultation to occur with the sector about the Scheme, and for fuller consideration of how the WA local government sector could best participate.

Following extensive consultation, the State Government (December 2019):

- Noted the consultations undertaken to date with the WA local government sector about the National Redress Scheme;
- Noted the options for WA local government participation in the Scheme;
- Agreed to local governments participating in the Scheme as State Government institutions, with the State Government covering payments to the survivor; and
- Agrees to the Department of Local Government, Sport and Cultural Industries (DLGSC) leading further negotiations with the WA local government sector regarding local government funding costs, other than payments to the survivor including counselling, legal and administrative costs.

The following will be covered for local governments participating in the Scheme as a State Government institution and part of the State's declaration:

- Redress monetary payment provided to the survivor;
- Costs in relation to counselling, legal and administration (including the coordination of requests for information and record keeping in accordance with the *State Records Act 2000*); and
- Trained staff to coordinate and facilitate a Direct Personal Response (DPR – Apology) to the survivor if requested (on a fee for service basis with costs to be covered by the individual local government – see below for further explanation).

State Government financial support for local government participation in the Scheme, as set out, will ensure that Redress is available to as many WA survivors of institutional child sexual abuse as possible.

Individual local governments participating in the Scheme as a State Government institution, with the State will be responsible for:

- Providing the State with the necessary (facilities and services) information to participate in the Scheme;
- Resources and costs associated with gathering their own (internal) information and providing that information (Request for Information) to the State (if they receive a Redress application); and
- Costs associated with the delivery of a DPR (apology), if requested (based on a standard service fee, plus travel and accommodation depending on the survivor's circumstance). The State's decision includes that all requested DPR's will be coordinated and facilitated by the Redress Coordination Unit – Department of Justice, on every occasion.

The WALGA State Council meeting of 4 March 2020:

1. Acknowledged the State Government's decision to include the participation of Local Governments in the National Redress Scheme as part of the State's declaration;
2. Endorsed the negotiation of a Memorandum of Understanding and Template Service Agreement with the State Government, and
3. Endorsed by Flying Minute the Memorandum of Understanding prior to execution, in order to uphold requirements to respond within legislative timeframes.

The State and WALGA will sign a Memorandum of Understanding to reflect the principles of WA local governments participating in the Scheme as State Government institutions and being part of the State's declaration.

State agencies (led by DLGSC), WALGA and Local Government Professionals WA will support all local governments to prepare to participate in the Scheme from 1 July 2020 (or earlier, subject to completing the necessary arrangements).

Officer's Comment:

The State's decision allows for the WA Government's Scheme participation declaration to be amended to include local governments and this report seeks endorsement of the Shire of Irwin's participation in the Scheme.

As an independent entity and for absolute clarity, it is essential that the Shire of Irwin formally indicates via a decision of Council, the intention to be considered a State Government institution (for the purposes on the National Redress Scheme) and be included in the WA Government's amended participation declaration.

The Shire of Irwin will not be included in the State's amended declaration, unless it formally decides to be included.

The financial and administrative coverage offered by the State will only be afforded to WA local governments that join the Scheme as a State Government institution, as part of the State's amended declaration.

The option also exists for the Shire of Irwin to formally decide not to participate in the Scheme (either individually or as part of the State's declaration).

Should the Shire of Irwin formally decide (via a resolution of Council) not to participate with the State or in the Scheme altogether, considerations for the Shire of Irwin include:

- Divergence from the Commonwealth, State, WALGA and the broader local government sector's position on the Scheme (noting the Commonwealth's preparedness to name-and-shame non-participating organisations).
- Potential reputational damage at a State, sector and community level.
- Complete removal of the State's coverage of costs and administrative support, with the Shire of Irwin having full responsibility and liability for any potential claim.
- Acknowledgement that the only remaining method of redress for a victim and survivor would be through civil litigation, with no upper limit, posing a significant financial risk to the Shire of Irwin.

Considerations for the Shire of Irwin

Detailed below is a list of considerations for the Shire of Irwin to participate in the Scheme:

1. *Executing a Service Agreement*

All Royal Commission information is confidential, and it is not known if the Shire of Irwin will receive a Redress application. A Service Agreement will only be executed if the Shire of Irwin receives a Redress application. The Shire of Irwin needs to give authority to an appropriate position / officer to execute a service agreement with the State, if a Redress application is received. Timeframes for responding to a Request for Information are 3 weeks for priority applications and 7 weeks for non-priority applications. A priority application timeframe (3 weeks) will be outside most Council meeting cycles and therefore it is necessary to provide the authorisation to execute an agreement in advance.

2. *Reporting to Council if / when an application is received*

Council will receive a confidential report, notifying when a Redress application has been received. All information in the report will be de-identified but will make Council aware that an application has been received.

3. *Application Processing / Staffing and Confidentiality*

Administratively the Shire of Irwin will determine:

- Which position(s) will be responsible for receiving applications and responding to Requests for Information;
- Support mechanisms for staff members processing Requests for Information.

The appointed person(s) will have a level of seniority in order to understand the magnitude of the undertaking and to manage the potential conflicts of interest and confidentiality requirements.

4. *Record Keeping*

The State Records Office advised (April 2019) all relevant agencies, including Local Governments, of a 'disposal freeze' initiated under the *State Records Act 2000* (the Act) to protect past and current records that may be relevant to actual and alleged incidents of child sexual abuse. The Shire of Irwin's record keeping practices as a result, have been modified to ensure the secure protection and retention of relevant records. These records (or part thereof) may be required to be provided to the State's Redress Coordination Unit in relation to a Redress application.

The Redress Coordination Unit (Department of Justice) is the state record holder for Redress and will keep copies of all documentation and RFI responses. Local Governments will be required to keep their own records regarding a Redress application in a confidential and secure manner, and in line with all requirements in *The Act*.

5. *Redress Decisions*

The Shire of Irwin should note that decisions regarding Redress applicant eligibility and the responsible institution(s), are made by Independent Decision Makers, based on the information received by the applicant and any RFI responses. The State Government and the Shire of Irwin do not have any influence on the decision made and there is no right of appeal.

Consultation:

The State, through the Department of Local Government, Sport and Cultural Industries (DLGSC), consulted with the WA local government sector and other key stakeholders on the Royal Commission into Institutional Responses to Child Sexual Abuse (in 2018) and the National Redress Scheme (in 2019).

The consultation throughout 2019 has focused on the National Redress Scheme with the aim of:

- raising awareness about the Scheme;
- identifying whether WA local governments are considering participating in the Scheme;
- identifying how participation may be facilitated; and
- enabling advice to be provided to Government on the longer-term participation of WA local governments.

Between March and May 2019, DLGSC completed consultations that reached 115 out of 137 WA local governments via:

- Webinars to local governments, predominately in regional and remote areas;
- Presentations at 12 WALGA Zone and Local Government Professional WA meetings;
- Responses to email and telephone enquiries from individual local governments.

It was apparent from the consultations local governments were most commonly concerned about the:

- potential cost of Redress payments;
- availability of historical information;
- capacity of local governments to provide a Direct Personal Response (apology) if requested by Redress recipients;
- process and obligations relating to maintaining confidentiality if Redress applications are received, particularly in small local governments;
- lack of insurance coverage of Redress payments by LGIS, meaning local governments would need to self-fund participation and Redress payments.

LGIS published and distributed an update (April 2019) regarding the considerations and (potential) liability position of the WA local government sector in relation to the National Redress Scheme.

The WALGA State Council meeting on 3 July 2019 recommended that:

1. *WA local government participation in the State's National Redress Scheme declaration with full financial coverage by the State Government, be endorsed in principle, noting that further engagement with the sector will occur in the second half of 2019.*

2. *WALGA continue to promote awareness of the National Redress Scheme and note that local governments may wish to join the Scheme in the future to demonstrate a commitment to the victims of institutional child sexual abuse.*

DLGSC representatives presented at a WALGA hosted webinar on 18 February 2020 and presented at all WALGA Zone meetings in late February 2020.

The State's decision, in particular to cover the costs / payments to the survivor, has taken into account the feedback provided by local governments during the consultation detailed above.

Statutory Environment:

The Shire of Irwin in agreeing to join the Scheme, is required to adhere to legislative requirements set out in the *National Redress Scheme for Institutional Child Sexual Abuse Act 2018* (Cth).

Authorisation of an appropriately appointed person to execute a service agreement with the State, if a Redress application is received, will be in accordance with s.9.49A(4) of the *Local Government Act 1995*.

Policy Implications:

Nil.

Financial/Resource Implications:

The State's decision will cover the following financial costs for local governments:

- Redress monetary payment provided to the survivor;
- Costs in relation to counselling, legal and administration (including the coordination or requests for information and record keeping); and
- Trained staff to coordinate and facilitate a Direct Personal Response (DPR – Apology) to the survivor if requested (on a fee for service basis with costs to be covered by the individual local government – see below).

The only financial cost the local government may incur will be the payment of the DPR's, which is on an 'as requested' basis by the survivor. This will be based on the standard service fee of \$3,000 plus travel and accommodation depending on the survivor's circumstances. All requested DPR's will be coordinated and facilitated by the Redress Coordination Unit – Department of Justice.

The State's decision also mitigates a significant financial risk to the local government in terms of waiving rights to future claims. Accepting an offer of redress has the effect of releasing the responsible participating organisation and their officials (other than the abuser/s) from civil liability for instances of sexual abuse and related non-sexual abuse of the person that is within the scope of the Scheme. This means that the person who receives redress through the Scheme, agrees to not bring or continue any civil claims against the responsible participating organisation in relation to any abuse within the scope of the Scheme.

Strategic Implications:

Strategic Community Plan 2017 - 2027

Strategy 4.3.3 Adopt and follow better practice processes

Attachments:

Attachment Booklet – May 2020

CEO01 – Attachment 1: Local Government Information Paper (December 2019)

Officer Recommendation:

OFFICER RECOMMENDATION AND COUNCIL DECISION 040520:

MOVED: Cr Scott

SECONDED: Cr Gillam

That Council:

- a) **Notes the consultation undertaken and information provided by the Department of Local Government, Sport and Cultural Industries in regarding the National Redress Scheme and the participation of WA local governments;**
- b) **Notes that the Shire of Irwin will not be included in the WA Government’s amended participation declaration (and afforded the associated financial and administrative coverage), unless the Shire of Irwin makes a specific and formal decision to be included;**
- c) **Endorses the participation of the Shire of Irwin in the National Redress Scheme as a State Government institution and included as part of the State Government’s declaration;**
- d) **Grants authority to the Chief Executive Officer to execute a service agreement with the State, if a Redress application is received; and**
- e) **Notes that a confidential report will be provided if a Redress application is received by the Shire of Irwin.**

VOTING DETAILS:

Carried 8/0

OFFICE OF CEO		CEO02-05/20
Subject:	CEO02-05/20 Local Government House Trust – Deed of Variation	
Author:	D Chandler, Governance & Executive Coordinator	
Responsible Officer:	S Ivers, Chief Executive Officer	
File Reference:	3.0252	
Voting Requirements:	Simple Majority	

Council Role:

- Advocacy** When Council advocates on its own behalf or on behalf of its community to another level of government/body/agency.
- Executive** The substantial direction setting and oversight role of the Council e.g. performance of the Local Government’s function under law, administration of Local Laws, adopting plans and reports, accepting tenders, directing operations, setting and amending budgets.
- Legislative** Includes adopting local laws and local planning schemes.
- Review** When Council reviews decisions made by Officers.
- Quasi-judicial** When Council determines an application/matter that directly affects a person’s rights and interests. The judicial character arises from the obligation to abide by the principles of natural justice e.g. local planning applications, building permits, other permits/licences (e.g. under Health Act, Dog Act or local laws) and other decisions that may be appealable to the State Administrative Tribunal (SAT).

Report Purpose:

For Council to consider consenting to a variation to the Trust Deed for the Local Government House Trust (the Trust).

The Shire of Irwin is a unit holder and beneficiary to the Local Government House Trust, holding 3 units as advised in WALGA’s recent Quarterly Report Q4 2019 (Attachment 3).

The Trust’s Board of Management is seeking to vary 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 per cent of all beneficiaries in order to execute this variation. As a beneficiary, the Shire of Irwin is requested to consent to the Deed of Variation (Attachment 1) supported by a resolution of Council.

Background:

The Local Government House Trust (“The Trust”) exists primarily to provide building accommodation for the Western Australian Local Government Association. Since January 2014, the Trust has provided WALGA with accommodation at 170 Railway Parade West Leederville.

The current trust deed 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.

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.

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*.

Trust Deed Variation

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.

Officer's Comment:

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.

Consultation:

This report was written in consultation with the WA Local Government Association (WALGA) Chief Executive Officer.

Statutory Environment:

Income Tax Assessment Act 1936

- Division 1AB

Policy Implications:

Nil.

Financial/Resource Implications:

Nil.

Strategic Implications:

Strategic Community Plan 2017 - 2027

Strategy 4.2.3 Adopt a risk and asset management approach.

Attachments:

Attachment Booklet – May 2020

CEO02 – Attachment 1: Deed of Variation (*copy only; this does not require signing*)

CEO02 – Attachment 2: Clause 12 of Trust Deed 1994 (*excerpt*)

CEO02 – Attachment 3: WALGA Quarterly Report Q4 2019

CEO02 – Attachment 4: Local Government House Trust Update January 2020

Officer Recommendation:

OFFICER RECOMMENDATION AND COUNCIL DECISION 050520:

MOVED: Cr West

SECONDED: Cr Leonard

That Council:

- a) Consents to the Deed of Variation for the Local Government House Trust, provided as Attachment 1 in Attachment Booklet – May 2020; and**
- b) Authorises the Chief Executive Officer to communicate this consent in writing to the WA Local Government Association (WALGA).**

VOTING DETAILS:

Carried 8/0

OFFICE OF CEO		CEO03-05/20
Subject:	CEO03-05/20 CP20 Purchasing Policy - Amended for the Declared State of Emergency	
Author:	Y Robb, Coordinator Process Improvement	
Responsible Officer:	S Ivers, Chief Executive Officer	
File Reference:	CM.PO.1	
Voting Requirements:	Simple Majority	

Council Role:

- Advocacy** When Council advocates on its own behalf or on behalf of its community to another level of government/body/agency.
- Executive** The substantial direction setting and oversight role of the Council e.g. adopting plans and reports, accepting tenders, directing operations, setting and amending budgets.
- Legislative** Includes adopting local laws, local planning schemes and policies.
- Review** When Council reviews decisions made by Officers.
- Quasi-judicial** When Council determines an application/matter that directly affects a person’s rights and interests. The judicial character arises from the obligation to abide by the principles of natural justice e.g. local planning applications, building permits, other permits/licences (e.g. under Health Act, Dog Act or local laws) and other decisions that may be appealable to the State Administrative Tribunal (SAT).

Report Purpose:

For Council to consider the adoption of revised purchasing policy CP20 which has been amended to include regulation changes for the declared State of Emergency.

Background:

Due to the declared state of emergency under the *Emergency Management Act 2005*, His Excellency the Governor, in Executive Council has approved regulation amendments to the *Local Government (Function and General) Regulations 1996*. Amended regulations include 11(1), (2)(aa), (h) (ja) and (3). These amendments apply to vary the application of Council Policy CP20 Purchasing.

Officer’s Comment:

Upon advice from the Department of Local Government, Sport and Cultural Industries, the Shire has amended Council Policy CP20 Purchasing to include the amendments created for the declared State of Emergency.

The amended policy is expected to only be applicable while the State of Emergency is in force, then revert back to the original purchasing policy for standard operations once the declaration ceases to be in effect.

The corresponding delegation, also amended for the State of Emergency, is included as a separate item on the agenda for adoption at this meeting.

The following policy was reviewed and revised:

CP20 Purchasing – Amended for the declared State of Emergency

This policy was revised to include a new threshold of \$250,000 as per the regulations. Also other regulation amendments and clarity for corresponding purchasing processes.

Consultation:

These policies were reviewed in consultation with the CEO and relevant legislation.

Statutory Environment:

Local Government Act 1995

- s3.57 Tenders for providing goods or services
- s5.42 Delegation of some powers and duties to CEO
- s5.43 Limits on delegations to CEO

Local Government (Functions and General) Regulations 1996

- Regulation 11. *When tenders have to be publicly invited*

(1A) In this regulation — state of emergency declaration has the meaning given in the Emergency Management Act 2005 section 3.

(1) Tenders are to be publicly invited according to the requirements of this Division before a local government enters into a contract for another person to supply goods or services if the consideration under the contract is, or is expected to be, more, or worth more, than \$250 000 unless subregulation (2) states otherwise.

(2) Tenders do not have to be publicly invited according to the requirements of this Division if —

(aa) the supply of the goods or services is associated with a state of emergency;

(h) the following apply —

(i) the goods or services are to be supplied by —

(I) a person registered on the Aboriginal Business Directory WA published by the Chamber of Commerce and Industry of Western Australia Limited ABN 96 929 977 985; or

(II) Australian Indigenous Minority Supplier Office Limited (trading as Supply Nation) ABN 50 134 720 362;

(ja) the contract is a renewal or extension of the term of a contract (the original contract) where—

(i) the original contract is to expire within 3 months; and

(ii) the renewal or extension is for a term of not more than 12 months from the expiry of the original contract; and

(iii) the contract for renewal or extension is entered into at a time when there is in force a state of emergency declaration applying to the district, or part of the district, of the local government;

(3) For the purposes of subregulation (2)(aa) a supply of goods or services is associated with a state of emergency if —

(a) the contract for the supply is entered into while there is in force a state of emergency declaration applying to the district, or part of the district, of the local government; and

(b) the local government considers that the goods or services are required for the purposes of addressing a need arising from the hazard, or from the impact or consequences of the hazard, to which the state of emergency declaration relates.

Policy Implications:

These Council Policies link to the Delegations relating to purchasing and the *Local Government (Functions and General) Regulations 1996*. Reference to the relevant Delegation for each Council Policy will be made within the Policy control box.

Financial/Resource Implications:

No financial impact, the policy will ensure better practice and procedures.

Strategic Implications:

Strategic Community Plan 2017 - 2027

Strategy 4.2 Effective governance, management and prudent financial responsibility.

Strategy 4.2.1 Ensure compliance whilst embracing innovation and best practice principles.

Strategy 4.3.2 Adopt and follow better practice processes.

Attachments:

Attachment Booklet – May 2020

CEO03 Attachment 1: Revised Council Policy CP20 Purchasing

Officer Recommendation:

OFFICER RECOMMENDATION AND COUNCIL DECISION 060520:

MOVED: Cr Eva

SECONDED: Cr Gillam

That Council adopt the revised Council Policy - CP20 Purchasing - Amended for a Declared State of Emergency, with the provision that the amended version ceases to be applicable once the declaration has been revoked.

VOTING DETAILS:

Carried 8/0

OFFICE OF CEO		CEO04-05/20
Subject:	CEO04-05/20 Council to CEO Delegation CEO01 Tenders for Goods and Services – Amended for a Declared State of Emergency	
Author:	Y Robb, Coordinator Process Improvement	
Responsible Officer:	S Ivers, Chief Executive Officer	
File Reference:	3.0219	
Voting Requirements:	Absolute Majority	

Council Role:

- Advocacy** When Council advocates on its own behalf or on behalf of its community to another level of government/body/agency.
- Executive** The substantial direction setting and oversight role of the Council e.g. adopting plans and reports, accepting tenders, directing operations, setting and amending budgets.
- Legislative** Includes adopting local laws, local planning schemes and policies.
- Review** When Council reviews decisions made by Officers.
- Quasi-judicial** When Council determines an application/matter that directly affects a person’s rights and interests. The judicial character arises from the obligation to abide by the principles of natural justice e.g. local planning applications, building permits, other permits/licences (e.g. under Health Act, Dog Act or local laws) and other decisions that may be appealable to the State Administrative Tribunal (SAT).

Report Purpose:

For Council to consider the adoption of an amended Council to CEO delegation which has been amended to include regulation changes for the declared State of Emergency.

Background:

Due to the declared state of emergency under the *Emergency Management Act 2005*, His Excellency the Governor, in Executive Council has approved regulation amendments to the *Local Government (Function and General) Regulations 1996*. The regulations amended include 11(1), (2)(aa), (h) (ja) and (3). These amendments apply to vary the Council to CEO delegation in regards to procurement.

Officer’s Comment:

Upon advice from the Department of Local Government, Sport and Cultural Industries and WALGA, the Shire has amended the Council to CEO Delegation to include the amendments created for the declared State of Emergency.

The amended delegation is expected to only be applicable while the State of Emergency is in force, then revert back to the original delegation for standard operations once the declaration ceases to be in effect.

The corresponding Council Policy - CP20 Purchasing has also been amended for the State of Emergency and is included as a separate item for adoption at this meeting.

Local Government (Functions and General) Regulations 1996

Regulation 11. When tenders have to be publicly invited

(1A) In this regulation — state of emergency declaration has the meaning given in the Emergency Management Act 2005 section 3.

(1) Tenders are to be publicly invited (1) according to the requirements of this Division before a local government enters into a contract for another person to supply goods or services if the

consideration under the contract is, or is expected to be, more, or worth more, than \$250 000 unless subregulation (2) states otherwise.

(2) Tenders do not have to be publicly invited according to the requirements of this Division if —

(aa) the supply of the goods or services is associated with a state of emergency;

(h) the following apply —

(i) the goods or services are to be supplied by —

(I) a person registered on the Aboriginal Business Directory WA published by the Chamber of Commerce and Industry of Western Australia Limited ABN 96 929 977 985; or

(II) Australian Indigenous Minority Supplier Office Limited (trading as Supply Nation) ABN 50 134 720 362;

(ja) the contract is a renewal or extension of the term of a contract (the original contract) where—

(i) the original contract is to expire within 3 months; and

(ii) the renewal or extension is for a term of not more than 12 months from the expiry of the original contract; and

(iii) the contract for renewal or extension is entered into at a time when there is in force a state of emergency declaration applying to the district, or part of the district, of the local government;

(3) For the purposes of subregulation (2)(aa) a supply of goods or services is associated with a state of emergency if —

(a) the contract for the supply is entered into while there is in force a state of emergency declaration applying to the district, or part of the district, of the local government; and

(b) the local government considers that the goods or services are required for the purposes of addressing a need arising from the hazard, or from the impact or consequences of the hazard, to which the state of emergency declaration relates.

In line with the *Local Government (Function and General) Regulations 1996*, the following delegation has been proposed for incorporation into the Register:

CEO01 – Tenders for Good and Services – Amended for a declared State of Emergency –

- 1. Authority to call tenders [F&G r.11(1)].*
- 2. Authority to, because of the unique nature of the goods or services or for any other reason it is unlikely that there is more than one supplier, determine a sole supplier arrangement [F&G r.11(f)].*
- 3. Authority to undertake tender exempt procurement, in accordance with the Purchasing Policy requirements, where the total consideration under the resulting contract is \$250,000 or less [F&G.r.11(2)].*

Also including the new amendments to the regulations under r.11.

Consultation:

These delegations were reviewed in consultation with the CEO and were developed in line with legislation amendments as advised by the Department of Local Government, Sport & Cultural Industries.

Statutory Environment:

Local Government Act 1995

- s5.18 - Register of delegations to committees
- s5.42 - Delegation of some powers and duties to CEO
- s5.43 - Limits on delegations to CEO
- s5.46 - Register of, and records relevant to, delegations to CEO and employees
- s5.103 - Codes of conduct

Local Government (Functions and General) Regulations 1996

- r.11 When tenders have to be publicly invited

- r.11(1), (2)(aa), (h) (ja) and (3).

Policy Implications:

This delegation links with Council Policy - CP20 Purchasing Amended for a Declared State of Emergency. Reference to the council policy will be on the delegation and within the final Register of Delegations – Council to CEO.

Financial/Resource Implications:

Delegations allow for a more streamlined and timely service which is an effective use of Council’s human resources. However, there will be increased resourcing requirements over the coming months to update the entire delegations register using the WALGA template.

Strategic Implications:

Strategic Community Plan 2017 - 2027

Strategy 4.2.1 Ensure compliance whilst embracing innovation and best practice principles.

Attachments:

Attachment Booklet – May 2020

CEO04 Attachment 1 – Council to CEO Delegation CEO01

Officer Recommendation:

OFFICER RECOMMENDATION AND COUNCIL DECISION 070520:

MOVED: Cr Wyse

SECONDED: Cr Leonard

That Council, by Absolute Majority:

- 1. Adopt the new Delegation – CEO01 – Tenders for Goods and Services - Amended for a Declared State of Emergency, with the provision that the amended version ceases to be applicable once the declaration has been revoked.**
- 2. Approve the CEO to update the Register of Delegations – Council to CEO accordingly.**

VOTING DETAILS:

Carried by Absolute Majority 8/0

9.2. Committee Reports

Nil.

10. MOTIONS OF WHICH PREVIOUS NOTICE HAS BEEN GIVEN

Nil.

11. QUESTIONS BY MEMBERS OF WHICH DUE NOTICE HAS BEEN GIVEN

Nil.

12. URGENT BUSINESS APPROVED BY PERSON PRESIDING OR BY DECISION

Nil.

13. MATTERS FOR WHICH THE MEETING IS CLOSED TO THE PUBLIC

Nil.

14. CLOSURE

There being no further business, the Presiding Member declared the meeting closed at 6.07pm.

An electronic copy of the Minutes are available for download from the Shire's website
<http://www.irwin.wa.gov.au/Agendas-Minutes.aspx>