

# Park Lands Foundation - update

Tuesday, 12 July 2022

Council

Strategic Alignment - Environmental Leadership

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Public

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## EXECUTIVE SUMMARY

The City of Adelaide has considered an opportunity to establish a philanthropic foundation which has Deductible Gift Recipient (DGR) status under the *Income Tax Account Act 1997 (Cth)* to support certain activities in the Park Lands.

At its meeting held on 13 October 2020, Council resolved that Administration provide an options framework to establish a legally independent Adelaide Park Lands Foundation which would be a public fund and have DGR status. Council noted the stringent rules surrounding DGR status and requested that Administration investigate a governance model to meet Council's required objectives.

At its meeting held on 9 November 2021, Council received a report regarding the establishment of a philanthropic foundation with DGR status. It was advised that the only DGR category relevant for a philanthropic foundation of the nature envisaged by Council would be to establish a public fund that is on the Register of Environmental Organisations (REO Fund). As a result of that report, Council supported that additional work be undertaken to determine the best approach to establish an Adelaide Park Lands Foundation (the Foundation) with DGR status.

This report seeks the support from Council to establish a Park Lands Foundation that meets the requirements of a DGR.

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## RECOMMENDATION

### THAT COUNCIL

1. Approves the establishment of a Park Lands Foundation, that meets the requirements of a Deductible Gift Recipient.
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## IMPLICATIONS AND FINANCIALS

City of Adelaide 2020-2024 Strategic Plan	Strategic Alignment – Environmental Leadership
Policy	Not as a result of this report
Consultation	Not as a result of this report
Resource	Not as a result of this report
Risk / Legal / Legislative	Establishment of a Park Lands Foundation, that meets the requirements of a Deductible Gift Recipient.
Opportunities	To increase opportunities to enhance and conserve the Adelaide Park Lands through philanthropic means.
22/23 Budget Allocation	Not as a result of this report
Proposed 23/24 Budget Allocation	Budget allocation for the establishment of a Park Lands Foundation will be considered as part of the first quarter review of the 2022/2023 Budget.
Life of Project, Service, Initiative or (Expectancy of) Asset	Ongoing
22/23 Budget Reconsideration (if applicable)	Not as a result of this report
Ongoing Costs (eg maintenance cost)	Not as a result of this report
Other Funding Sources	Not as a result of this report

## DISCUSSION

1. The City of Adelaide is considering an opportunity to establish a philanthropic foundation which has DGR status under the *Income Tax Account Act 1997 (Cth)* to support certain activities in the Park Lands.
2. On 9 November 2021 Council endorsed the progression of work to establish a Park Lands Foundation. Such further investigations were to include the preparation of a detailed business case for establishing an independent Adelaide Park Lands Foundation, providing:
  - 2.1. Clear objectives and purpose (noting the parameters presented for Register of Environmental Organisations).
  - 2.2. Detailed costings for establishing the Foundation and ongoing operational costs.
  - 2.3. An appropriate governance and decision-making framework for developing projects for the purposes of the Foundation.
  - 2.4. The process for accessing donated funds for projects and their expenditure and acquittal.
3. This report primarily addresses the objectives and purpose of the Foundation which is to provide a vehicle to receive tax deductible donations, and the best option to establish the Foundation.
4. Providing a vehicle to receive tax deductible donations could provide a means to broaden 'ownership' of the Park Lands and encourage a wider range of people to take a more active interest in them.
5. Attaining and retaining DGR status requires that funds raised by the Foundation must be spent on projects which align to the requirements of the relevant category, in this instance the REO, and involves either:
  - 5.1. The protection and enhancement of the natural environment, or, of a significant aspect of the natural environment.
  - 5.2. The provision of information or education, or the carrying on of research, about the natural environment or a significant aspect of the natural environment.
6. Since the report to Council in November 2021, Administration has made further enquiries as to whether the Adelaide Park Lands Fund (APL Fund) is eligible to obtain DGR status as well as review recent legislative amendments relating to the DGR framework. As a result, the following options to establish a Foundation have been explored:

### **Establishing a relationship with an existing charitable fund with DGR status**

- 6.1. It is understood that the desire of Kadaltilla/Park Lands Authority (the Authority) and Council is that a bespoke Foundation be established for donors to financially contribute to the activities in the Park Lands. While there may be existing charitable foundations with which we could partner in the short term, on further investigation there are no obvious partners who are closely aligned with the purposes sought for the Park Lands.
- 6.2. As a result of these investigations, this option is not recommended.

### **Utilising the existing APL Fund for the Foundation**

- 6.3. Upon examination it was determined that the APL Fund is not a desirable vehicle for the Foundation, and this option is not recommended.
- 6.4. Whilst the APL Fund, as presently constituted, does not meet the requirements for DGR status, it might be possible to supplement the APL Fund arrangements and governance to meet REO Guideline requirements.
- 6.5. However, the APL Fund has express intended purposes that should not be confused or diluted by proposals to endorse it as a REO Fund.
- 6.6. The APL Fund continues to be available as a conduit for fundraising for expenditure consistent with the *Adelaide Park Lands Act 2005* and the Fund Purposes, albeit it will not be able to provide tax deductibility in relation to any gifts, grants or donations from individuals.
- 6.7. This may be important because the scope for expenditure by the APL Fund in accordance with the APL Fund purposes is broader than the purposes for which funding raised in a REO Fund can be used given the REO Fund's *natural environment* 'principal purpose' limitations.

## **Establishing a public fund as a REO Fund**

- 6.8. It is recommended that the Authority and Council establish a foundation with DGR status; that is, a charitable trust with limited purposes and a public gift fund and register it with the Australian Charities and Not-for-profits Commission (ACNC).
- 6.9. This would entail:
  - 6.9.1. Drafting and settling a Trust Deed compliant with the REO Guidelines
  - 6.9.2. Identifying one or more settlor(s) for the Trust
  - 6.9.3. Selecting initial trustees for the Trust (individuals or a corporate trustee) and management committee for the public fund
  - 6.9.4. Obtaining an ABN and registering the charity with the ACNC - current timeframes are approximately 6 months
  - 6.9.5. Applying to the Department of Agriculture, Water and Environment (the Department) for endorsement of the Trust and public fund in accordance with the REO Guidelines - current timeframes are approximately 12 months.
- 6.10. There are mandatory inclusions specified in the REO Guidelines, including in relation to the entity and the public fund administered by the entity.
- 6.11. The Trust Deed would include:
  - 6.11.1. the principal purpose requirements – this would be achieved by including the Statutory Purpose in relation to the Adelaide Park Lands in the objects of the trust contained in the Trust Deed
  - 6.11.2. not-for-profit and winding up provisions
  - 6.11.3. responsible person requirements in relation to the REO Fund's management committee
  - 6.11.4. establishment and maintenance of a dedicated gift fund able to take money or property from the public with a separate bank account (discrete from the organisation's other funds) and management committee appointed by the organisation – this gift fund only holds moneys provided for the principal purpose and does not receive any other money or property
  - 6.11.5. other prescribed provisions (eg requirement to provide statistical information to the Department, comply with conduit policies and agreement to abide by Ministerial Rules)
- 6.12. The public fund to be endorsed as a REO Fund must have:
  - 6.12.1. its own name (separate from the entity)
  - 6.12.2. its own objects (in the context of the Register, the environmental purpose of the organisation)
  - 6.12.3. its own management committee
  - 6.12.4. its own bank account (separate to the environmental organisation)
  - 6.12.5. its own rules (as specified in the Trust Deed).
- 6.13. The REO Fund must be an independent body in all things. In essence this means the City of Adelaide is not able to exert influence on how any of the funds donated to the REO Fund can be expended. This is a decision only for the Board of Trustees of the Foundation (and this Board must be approved by the Commonwealth Government).
- 6.14. While there are strict governance arrangements around the operations of a REO Fund, they do offer a breadth of use and Administration is confident that this approach is the most suitable option for the Foundation.
- 6.15. Administration has identified a foundation in New South Wales which operates in substantially the same way that it is recommended the Park Lands Foundation would run. The Centennial Parklands Foundation (CPF) is a charitable organisation established by the Centennial Park and Moore Park Trust (the CPMP Trust) and has DGR status. The CPF is administered by the Western Sydney Parklands which conducts activities and projects with similar objectives to those undertaken by the Authority.
- 6.16. Following discussions with the Western Sydney Park Lands and other enquiries, Administration has identified the following in relation to the CPF:

- 6.16.1. It is an independent charitable organisation established to raise funds, generate awareness and engender community support to protect and enhance the green open spaces of Centennial Parklands.
- 6.16.2. The Centennial Parklands is self-funded for its day to day running costs and relies on the Centennial Parklands Foundation to seek donations, sponsorship and philanthropic contributions for projects that would otherwise not be possible.
- 6.16.3. It has a specific REO Fund which is listed on the Register of Environmental Organisations.
- 6.16.4. The New South Wales State Government gifts the time and costs, including on-costs of two public servants to the CPF.
- 6.16.5. It has a Board of Governors in place to oversee the strategic and investment decisions of the entity. On a day-to-day basis, the CPF is managed by the Greater Sydney Parklands.
- 6.16.6. It identifies ways to support the Park Lands which include making an annual donation, donating to a specific project, making a gift to support the daily running of the Park Lands, dedicating a bench within the Park Lands and leaving a gift in your Will.
- 6.16.7. It received \$313,020 in donations in the year ended June 2019. In 2020 donations amounted to \$192, 948, and in 2021 donations of \$381,181 were received.
- 6.16.8. The CPF raises funds through campaigns, micro activities such as 'on site tap and go stations', board connections, relationships, and introductions. It spends money by contributing to major projects. They often partner with private companies, governments and other not for profits.
- 6.16.9. It's total revenue by fund was \$585,500, \$383,611 and \$709,119 respectively in the years ending 2019, 2020 and 2021.
- 6.16.10. It's Board of Governors are volunteers who are tasked with raising funds and building connections.
- 6.16.11. It has a contemporary approach to philanthropy which focusses on planned giving for tax deductible wealth transfer and target high net individuals for major seed funding.
- 6.17. The CPMP Trust was appointed by the New South Wales Government. Members of the CPMP Trust board of trustees also sit on the board of the Greater Sydney Parklands agency.
- 6.18. It has been established that the success of the CPF is largely attributed to the strong relationship between the members of the consolidated board for the Greater Sydney Parklands and the CPF Board of Governors.
- 6.19. It is recommended that the Authority and Council establish the Park Lands Foundation in substantially the same way that the CPF has been established.
7. Consultation on the Draft Annual Business Plan and Budget 2022/23 was undertaken from 13 May to 6 June 2022. The consultation sought feedback from City of Adelaide ratepayers and residents, community and key stakeholders. A theme from the consultation was that the Park Lands are a key area of interest for the community, with respondents' comments focusing on their protection, preservation and maintenance. Submissions received in response to the consultation requested that Council consider funding degraded areas of the Park Lands, sought improved biodiversity and Park Lands protection, and identified that sustainability is seen as very important. Feedback such as that received during the consultation process further supports the establishment of the Foundation.
8. If Council supports the recommendation to establish a Park Lands Foundation, an internal project team, led by the Park Lands, Policy & Sustainability Program, will be established to develop a comprehensive project plan for the establishment of the Foundation. That project plan will include and address detailed costings for establishing the Foundation and ongoing operational costs, an appropriate governance and decision-making framework for developing projects for the purposes of the Foundation, and the process for accessing donated funds for projects and their expenditure and acquittal.
9. Budget allocation for the establishment of the Foundation will be considered as part of the first quarter review of the 2022/23 Budget.
10. It is estimated that it will take approximately up to 12 months to set up the Foundation with operations commencing and scaling post establishment.

## ATTACHMENTS

Nil

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- END OF REPORT -