



NOTICE OF MEETING

Dear President and Councillors,

I advise that the Ordinary Meeting of Council will be held in the Council Chamber, Home Island on Wednesday, 23 May 2018 commencing at 1.00pm.

Joanne Soderlund
Acting Chief Executive Officer

COUNCILLORS PLEASE NOTE:

DISCLAIMER

The advice and information contained herein is given by and to the Council without liability or responsibility for its accuracy. Before placing any reliance on this advice or information, a written inquiry should be made to the Council giving entire reasons for seeking the advice or information and how it is proposed to be used.

Please note this agenda contains recommendations which have not yet been adopted by Council.

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Disclaimer

Members of the public should note that in any discussion regarding any planning or other application that any statement or intimation of approval made by any member or officer of the Shire during the course of any meeting is not intended to be and is not to be taken as notice of approval from the Shire. No action should be taken on any item discussed at a Council meeting prior to written advice on the resolution of the Council being received. Any plans or documents contained in this document may be subject to copyright law provisions (Copyright Act 1968, as amended) and the express permission of the copyright owner(s) should be sought prior to the reproduction.

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- 1. OPENING/ANNOUNCEMENTS OF VISITORS**

- 2. ATTENDANCE/APOLOGIES/LEAVE OF ABSENCE**

- 3. RESPONSE TO PREVIOUS PUBLIC QUESTIONS TAKEN ON NOTICE**

- 4. PUBLIC QUESTION TIME**

- 5. APPLICATIONS FOR LEAVE OF ABSENCE**

- 6. PETITIONS/DEPUTATIONS/PRESENTATIONS**

- 7. CONFIRMATION OF MINUTES OF PREVIOUS MEETINGS**

Recommendation

That the minutes of the Ordinary Meeting of Council held on 18 April 2018 be confirmed as a TRUE and CORRECT RECORD.

- 8. ANNOUNCEMENTS BY THE PRESIDING MEMBER AND COUNCILLORS**

- 9. DECLARATION OF INTERESTS**

- 10. REPORT AND RECOMMENDATIONS OF COMMITTEE**

10.1 FINANCE

10.1/F1 MONTHLY STATEMENT OF FINANCIAL ACTIVITY FOR THE MONTH ENDING 30 APRIL 2018

Report Information

Location: Not Applicable
 Applicant: Not Applicable
 File Ref:
 Reporting Officer: Acting Chief Executive Officer
 Island: Shire Wide

AUTHORITY / DISCRETION

Definitions

<input type="checkbox"/>	Advocacy	<i>When Council advocates on its own behalf or on behalf of its community to another level of government/body/agency.</i>
<input type="checkbox"/>	Executive	<i>The substantial direction setting and oversight role of the Council. E.g. adopting plans and reports, accepting tenders, directing operations, setting and amending budgets.</i>
<input checked="" type="checkbox"/>	Legislative	<i>Includes adopting local laws, town planning schemes and policies. Review when Council reviews decisions made by officers.</i>
<input type="checkbox"/>	Quasi-Judicial	<i>When Council determines an application / matter that directly affects a person's right and interest. The judicial character arises from the obligations to abide by the principles of natural justice. Examples of Quasi-Judicial authority include town planning applications, building licenses, applications for other permits / licenses.</i>
<input type="checkbox"/>	Information	<i>Includes items provides to Council for information purposes only that do not require a decision of Council (i.e. – for noting).</i>

Recommendation

That the Financial Statements for the period 1st of July 2017 to 30th of April 2018 be RECEIVED.

Report Purpose

To inform Council of the financial position of the Shire at 30 April 2018 in compliance with the provisions of Section 6.4 of the Local Government Act 1995 and Regulation 34 of the Local Government (Financial Management) Regulations 1996.

Relevant Documents

Attachments

Statement of Financial Activity with accompanying notes

Available for viewing at the meeting

Nil

Background

The Monthly Financial Statements for the period 1st July 2017 to 30th April 2018 are presented for consideration.

Comment

The Monthly Financial Report is prepared in accordance with the requirements of the Local Government Act 1995 and Local Government (Financial Management) Regulations.

A statement of Financial Activity with accompanying notes is attached for the period 1 July 2017 to 30 April 2018.

Policy and Legislative Implications

Regulation 34 of the Local Government (Financial Management) Regulations 1996 requires all Local Governments to prepare each month a Statement of Financial Activity reporting on the revenue and expenditure for the month in question.

Financial Management Regulation 34 also requires this statement to be accompanied by:-

- a. An explanation of the composition of the net current assets, less committal assets and restricted assets;
- b. An explanation of material variances; and
- c. Such supporting information that is relevant to the Local Government

Financial Implications

Nil

Strategic Implications

Nil

Conclusion

That the financial statements for the period 1st of July 2017 to 30th April 2018 be received.

10.1/F2 SCHEDULE OF ACCOUNTS PAID FOR PERIOD 1ST APRIL 2018 TO 30TH APRIL 2018

Report Information

Location: Not Applicable
 Applicant: Not Applicable
 File Ref:
 Reporting Officer: Senior Finance Officer
 Island: Shire Wide

Authority / Discretion

Definitions

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Recommendation

That the list showing all accounts paid between 1/04/18 to 30/04/18, inclusive of Municipal EFT 5821 to EFT 5879, Direct Debit Superannuation & MasterCard Payments: totaling 223,767.06 be RECEIVED.

Report Purpose

To inform Council of funds disbursed for the period 1st April 2018 – 30th April 2018

Relevant Documents

Attachments

Master Card
Schedule of accounts paid

Available for viewing at the meeting
Nil

Background

A list of accounts paid between 1st and 30th April 2018 is attached.

Comment

The schedule of accounts paid is submitted in accordance with regulation 13(1) of the Local Government (Financial Management) Regulations 1996.

Policy and Legislative Implications

Nil

Financial Implications

Nil

Strategic Implications

Nil

Conclusion

That council receives the list stating all accounts paid for April 2018.

10.3/F3 DIFFERENTIAL RATING 2018/2019 FINANCIAL YEAR

Report Information

Location: Not applicable
 Applicant: Not applicable
 File Ref:
 Reporting Officer: Acting Chief Executive Officer
 Island: Shire Wide

AUTHORITY / DISCRETION

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<input type="checkbox"/>	Information	<i>Includes items provides to Council for information purposes only that do not require a decision of Council (i.e. – for noting).</i>

Recommendation

That Council **ADVERTISES** its intention to adopt the following differential rates and minimum payments for each of the following rating categories in the 2018/2019 financial year.

<u>Rating Category</u>	<u>Rate in the Dollar</u>	<u>Minimum Rates</u>
GRV General Developed	0.1106	\$ 690
GRV Undeveloped	0.2185	\$ 805
GRV Business	0.1158	\$ 690
GRV Holiday Accommodation	0.1623	\$ 690

Report Purpose

To obtain Council approval to advertise its intention to adopt differential rates and minimum payments for the 2018/2019 financial year.

Relevant Documents

Attachments

Nil

Available for viewing at the meeting

Nil

Background

The Local Government Act 1995 as amended, provides that, before imposing differential general rates or a minimum payment applying to a differential rate category, a local government is to give 21 days' local public notice of the intention to do so. Where a local government proposes to modify the proposed rate or minimum payment after considering any submissions received during the advertising period, it is not required to give local public notice of the modified rate or minimum payment.

The Local Government Act 1995 as amended provides that a local government may impose differential general rates according to any, or a combination, of the following characteristics –

- a) the purpose for which the land is zoned under a town planning scheme in force under the Town Planning and Development Act 1928;
- b) the predominant purpose for which the land is held or used as determined by the local government;
- c) whether or not the land is vacant; or
- d) Any other characteristic or combination of characteristics prescribed.

Comment

Every four years the Office of the Valuer General undertakes a revaluation of all properties. This process was last completed for rates beginning the 1st of July 2015, therefore there will be no change to the overall valuations until the rate year beginning 1 July 2019.

As this is not a revaluation year both the rates in the dollar and minimum rate for each rating category has been increase by approximately 3%. The only exception to this is the minimum rate for vacant land which has been increased by a higher amount to encourage development of vacant blocks of land.

The application of differential rates aims to provide a more equitable solution for the rates charged according to the use of the property. The land use being the recommended way to determine the categories and following are the intended differential rates for the 2018/2019 financial year.

RATING CATEGORY	RATE IN \$ 2018/19	MINIMUM RATE 2018/19	TOTAL RATE REVENUE 2018/19	RATE IN \$ 2017/18	MINIMUM RATE 2017/18	TOTAL RATE REVENUE 2017/18
GRV General Developed	.1106	\$ 690	\$231,181	.1074	\$670	\$224,452
GRV Undeveloped	.2185	\$ 805	\$16,707	.2122	\$670	\$16,018
GRV Business	.1158	\$ 690	\$108,520	.1125	\$670	\$105,164
GRV Holiday Accommodation	.1623	\$ 690	\$43,591	.1576	\$670	\$42,321

Section 6.33 (3) of the Local Government Act 1995 as amended provides that *in imposing a differential general rate a local government is not to, without the approval of the Minister, impose a differential general rate which is more than twice the lowest differential general rate imposed by it.* Section 6.35 of the Local Government Act 1995 as amended also sets out limitations on the minimum payments allowed:

(4) A minimum payment is not to be imposed on more than 50% of —

(a) The number of separately rated properties in the district; or

(b) The number of properties in each category referred to in

Subsection (6), unless the general minimum does not exceed the prescribed amount.

Policy and Legislative Implications

Sections 6.33, 6.35 & 6.36 of the Local Government Act 1995 as amended

Financial Implications

If imposed the above rates would yield revenue of \$400,001 comprising an average 3% increase in the rates in the dollar compared to 2017/2018 year.

Strategic Implications

Nil

Conclusion

That the proposed differential rates and minimum payments be considered by Council for advertising.

10.2 LEASES

10.2/L1 LIGHT INDUSTRIAL AREA PART LOT 24, WEST ISLAND

Report Information

Location: Part Lot 24, Sydney Hwy
 Applicant: N/A
 File Ref:
 Reporting Officer: Acting Chief Executive Officer
 Island: West Island

Authority / Discretion

Definition

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<input type="checkbox"/>	Information	<i>Includes items provides to Council for information purposes only that do not require a decision of Council (i.e. – for noting).</i>

Recommendation

Subject to undertaking the required legislative processes that Council agrees to lease a 13m by 30m portion of Lot 24 adjacent to the light industrial sheds to Maxine McCarthy for a term of 1 year at market valuation plus outgoings for the purpose of completing construction of her houseboat.

Report Purpose

To enter into a lease agreement for a portion of Lot 24 West Island.

Relevant Documents

Attachment

Nil

Available for viewing at the meeting

Email Request

Landgate Valuation

Background

On the 17th of May 2018 a request was received from Maxine McCartney to lease a portion of land adjacent to the Shires 3 new Light Industrial Area sheds on Lot 24 West Island. Maxine has requested the land for somewhere to store her houseboat while it is completed. The houseboat is currently stored on an area of Commonwealth land and needs to be moved from this site. A request to move this houseboat to the Clam Farm on West Island was presented to Council at the April 2018 meeting on behalf of Mr John Clunies Ross. Maxine has subsequently notified the Shire that although Mr Clunies Ross has been involved with the project that she is the financial owner of the houseboat.

"I am following up on a discussion I had with you regarding the houseboat currently located on the side of the runway.

I had been made aware (after the fact) that there had been a Council meeting about the possibility of having the houseboat moved to the clam farm. During my conversation I expressed my concerns about the boat being moved to that location, and you told me there was a new meeting coming up to discuss another possible location.

As the financial owner of the houseboat, I would like to ask that the following be considered. I also believe that John Clunies Ross has approached you with the same request.

I would like to request to lease an area of land near the new Shire sheds, in the new LIA, to the north of the power station, with a minimum of a 12 month lease. I believe there is an area of land that was previously offered to another party, and that option was not taken up, so I am assuming that this land would still be available.

I have had Peter McCartney approach me with the interest and expertise to get in and supervising the finishing of this project, and the facilities available on and around the Shire land at the new sheds lends itself for this to take place, as the boat needs to be stripped back re welded in many areas. Being able to lease land in this location would allow this project to be continued and completed in a timely manner.

I realise that the boat has sat untouched for a lengthy period of time, and this has been much to my distress and frustration. I would really like to see this project finished from both a financial and emotional perspective, and I feel that while Peter is here this would be a reality and an opportunity not to be missed. The priority would be to complete this project as quickly as possible and in the time frame of the lease.”

Comment

The Shire has an area adjacent to the new Light Industrial Area sheds that it recently completed on Lot 24 West Island that would be suitable for the houseboat to be relocated to. As indicated the applicant is requiring somewhere to complete the construction of the house boat including welding works. As this land is zoned Industrial there is no conflict between what the applicants request and the Shire Town Planning Scheme.

The houseboat has sat untouched on a piece of vacant Commonwealth land for several years however a new RAAF project has meant that it can no longer be situated in that location.

Council need to be cautious that the houseboat does not end up sitting in the new location untouched like it has previously, having a negative effect on the amenity of the area for a prolonged period of time. Entering into a lease for a 1 year period mitigates this risk as Council will have the option to assess progress if after this time period the houseboat is not completed.

The lessee will be required to pay full market rent for this land which was valued by Landgate at \$1950/annum on the 11th of November 2016. An updated valuation will be sought but it is not anticipated that this lease amount would have changed significantly since then. The lessee will also be required to pay outgoings including Shire rates.

As with all Shire leases the lease agreement will include a clause requiring the area to be kept neat, tidy and well presented at all times.

Policy and Legislative Implications

Shire of Cocos (Keeling) Town Planning Scheme
Section 3.58 of the Local Government Act 1995 (WA) (CKI) relating to disposal of property.

Financial Implications

The leasing of the area will increase the rental income the shire receives.

Strategic Implications

Goal 1 – 1.5 Promote employment and stable business environment and attraction of new business

Conclusion

That council leases an area of vacant land on Part Lot 24 West Island to Maxine McCartney.

10.3 PLANNING/BUILDING

10.3/PB1 BIG BARGE CARETAKERS

Report Information

Location: Big Barge, Part Lot 100 Sydney Hwy
 Applicant: Emma Washer
 File Ref: WL100.01
 Reporting Officer: Acting Chief Executive Officer
 Island: West Island

Authority / Discretion

Definition

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<input type="checkbox"/>	Information	<i>Includes items provides to Council for information purposes only that do not require a decision of Council (i.e. – for noting).</i>

Recommendation

That Council grants approval for Mike and Jen Roberts to occupy the caretakers located at the “Big Barge” from the 23 June 2018 to the 21 July 2018 on the following conditions:

- that the opening hours of the Big Barge Art Centre remain the same during this period; and
- no payment for rent is received for occupying the caretakers.

Report Purpose

To obtain Councils approval for someone other than the owner of the Big Barge Art Centre to occupy the caretakers accommodation during an extended period of time.

Relevant Documents

Attachment

Nil

Available for viewing at the meeting

Nil

Background

Council resolved at the 27th February 2008 council meeting to approve the application form Emma Washer to develop a caretaker's dwelling in conjunction with the Big Barge Art Company on Part Lot 100 Sydney Hwy West Island subject to a number of conditions.

Condition 6 was that *"the applicant give a written undertaking that the caretakers dwelling is not to be used for any other purpose than for the sole occupancy for the applicant, it shall not be sublet, or leased to any other person for any other use whatsoever. Should the applicant intend on being off-island for an extended period of time, the dwelling shall not be occupied without first obtaining permission from Council"*.

The following email has been received on the 4 April 2018:

"Pete and I are going to be off island from June 23rd to July 21st. We have asked Mike and Jen Roberts if they are available to come and look after the business for us and they are free and willing to do so. This would involve them operating full business hours, looking after the grounds and staying in the caretaker's residence. It is written in the lease that correspondence is to be made to you for your approval when short term managers are required to stay in the caretaker's house. Can you please get back to me to confirm that this is all ok, that would be fantastic."

Comment

The request is for the 23 June 2018 to the 21 July 2018, which is 4 weeks.

Council has previously approved such requests when the owners of the Big Barge have been off island on the condition that the operating hours remain unchanged and no rent is paid to the owners in exchange for someone living in the caretakers. The Barges opening hours are Monday, Wednesday and Friday from 10.00am – 3.00pm.

The request is a reasonable request and as such should be supported by Council.

Policy and Legislative Implications

Nil

Financial Implications

Nil

Strategic Implications

Nil

Conclusion

That Council grant approval for Mike and Jen Roberts to occupy the caretakers located at the "Big Barge" from the 23 June 2018 to the 21 July 2018.

10.3/PB2 RETROSPECTIVE PLANNING APPROVAL - SIGNAGE

Report Information

Location: Airport Café
 Applicant: Tony Lacy - Saltmakers
 File Ref:
 Reporting Officer: Acting Chief Executive Officer
 Island: West Island

Authority / Discretion

Definition

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<input type="checkbox"/>	Information	<i>Includes items provides to Council for information purposes only that do not require a decision of Council (i.e. – for noting).</i>

Recommendation

That Council GRANT retrospective planning approval to Tony Lacy - Saltmakers for signage erected at:

- West Island – Airport Café (North facing above serving area 60cm x 100cm)
- West Island – Airport Café (West facing wall 90cm x 200cm)

Report Purpose

To obtain retrospective planning approval from Council for a recently installed signs by Tony Lacy – Saltmakers.

Relevant Documents

Attachment

Email from Tony Lacy.

Available for viewing at the meeting

Nil

Background

Tony Lacy had recently installed a total of two (2) signs on West Island airport café without first having received planning approval from Council.

The signs are 60cm x 100cm and 90cm x 200cm, they are made from canvas and aluminium. The signs are illustrated below.



Comment

The Shire's Town Planning Scheme and the "deemed provisions" of the Planning and Development (Local Planning) Schemes Regulations 2015, Schedule 2 require planning approval.

The Chief Executive Officer does not have delegated authority for granting planning approval, and as such requires Council approval.

The signs do not detract from the amenity of the area and as such it is recommended that Council grant retrospective planning approval.

Policy and Legislative Implications

61. Development for which development approval not required
- (1) Development approval of the local government is not required for the following works —
- (f) temporary works which are in existence for less than 48 hours, or a longer period agreed by the local government, in any 12 month period;
 - (g) the temporary erection or installation of an advertisement if —
 - (i) the advertisement is erected or installed in connection with an election, referendum or other poll conducted under the *Commonwealth Electoral Act 1918* (Commonwealth), the *Electoral Act 1907* or the *Local Government Act 1995*; and
 - (ii) the primary purpose of the advertisement is for political communication in relation to the election, referendum or poll; and
 - (iii) the advertisement is not erected or installed until the election, referendum or other poll is called and is removed no later than 48 hours after the election, referendum or other poll is conducted;
 - (h) the erection or installation of a sign of a class specified in a local planning policy or local development plan that applies in respect of the sign unless the sign is to be erected or installed —
 - (i) on a place included on a heritage list prepared in accordance with this Scheme; or
 - (ii) on land located within an area designated under this Scheme as a heritage area;.....etc.

Financial Implications

Nil

Strategic Implications

Shire of Cocos (Keeling) Islands Strategic Community Plan 2013 – 2023 – Goal 1 Economic Development –1.5 Promote employment and stable business environment and attraction of new businesses.

Conclusion

That Council grant retrospective planning approval to Tony Lacy - Saltmakers for signage erected.

10.3/PB3 CARETAKER’S DWELLING PART LOT 100 SYDNEY HWY

Report Information

Location: Part Lot 100 Sydney Hwy
 Applicant: John Clunies Ross
 File Ref:
 Reporting Officer: Acting Chief Executive Officer
 Island: West Island

Authority / Discretion

Definitions

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<input type="checkbox"/>	Information	<i>Includes items provides to Council for information purposes only that do not require a decision of Council (i.e. – for noting).</i>

Recommendation

That Council **ADVISES** the applicant, that Council can only fully consider his request for a Caretakers Dwelling after a full development application has been made with the required accompanying material, but that it would consider approving a Caretakers Dwelling with the following conditions:

- That any proposed caretaker that is not the applicant is first approved in writing by Council. A maximum of 4 requests will be considered by Council in any calendar year.
- That any occupants of the caretakers dwelling that are not the applicant is limited to a maximum of two adults.
- That the Caretakers Dwelling is limited to a one bedroom dwelling.
- That the Caretakers Dwelling can only continue to be used while the Clam Farm remains an operating commercial venture.
- That the residential design codes apply.

Report Purpose

For Council to consider an application for a caretakers dwelling on part lot 100 Sydney Highway at the Clam farm.

Relevant Documents

Attachments

Nil

Available for viewing at the meeting

Nil

Background

John Clunies Ross wrote to the then Shire's Chief Executive Officer on the 11 May 2017 requesting Council to re visit the request for a caretaker's residence at the Clam Farm, providing an updated application for Councils consideration. The request was not brought to Council at that time. Mr Clunies Ross resent the application on the 30th March 2018 to be tabled for consideration.

"This application has been triggered because we have recently lost some of our Derasa stock which was over 12 years old due an error and compounded by a lack of monitoring. We occasionally drain the holding tanks (raceways) do kill the weed growing in the tanks as this interferes with the growth of the clams. The raceway is allowed to dry out for an hour or two the clams can survive this, but it kills most of the seaweed. It also cuts down on the number of predatory snails, fish and crabs. Much more than 2 hours can cause fatalities. I was called away from the Clam farm on one of my other jobs and forgot to return. We lost approx. 20 twelve year old Derasa clams. These are clams that are technically regarded as extinct in the Cocos lagoon. With onsite caretaker this would have been rectified in time. Over the years this has or

similar issues have happened once or twice a year with the resultant loss of Stock. As the clam farm expands we will have more and more valuable stock in raceways that require better monitoring.

We would like to turn off the pumps at dusk and save 40% on our power bill. Our power bill runs approx. \$250 a week. An automated system would not suffice as such a procedure is fraught with risks. The system has Foot valves (one way valve) on the ocean end this can be fouled by weed, sand rocks and the like. So the pump could start unprimed leading to damage. Initiating this procedure would need to be closely monitored to ensure that it was practicable. Once it we were satisfied of its applicability it would require ongoing daily monitoring. Even with automation it would need monitoring on every occasion.

The main pump costs about \$5000 installed. It is quite robust, but a fracture in the intake pipe can cause it to burn out all of its seals and on occasion its bearings too. A rebuild costs in the order of \$1000 and approx. a half day's labour. This has happened a number of times over the years as coconut logs drift down the beach. 5 times in one month was the highest frequency.

We are in the process of applying for permits for both Coral and Cherabin. These species will also require higher monitoring as we have yet to work out the practical aspects of their care. It took us a few years to make the Clam farm operate properly. We had to learn the detailed biology of the animal, its ecological and dietary requirements. This would be true of these next two species too. It would be hard to justify further diversification without an onsite caretaker to supervise and monitor the new species.

There are a number of visits to the clam farm by Tourists every week. Some have permission, many do not. I would like to have them limited to set times as they can be rather disruptive to work and procedures. This would be a lot more feasible if the site was manned full time. This would also allow a more tourist friendly experience.

Sometimes I cannot even visit the clam farm twice in a week. This especially true when the shell tanker is in. I manage the on-board fuel technicians on shift work. We are generally on 15 hour days. Prior to the tanker arriving I carry out commercial dive work and when the tanker leaves we carry out some more. These are strategic jobs that facilitate the supply of fuel to the community and disposal of sewerage waste from Home and West Island.

Casual labour is getting harder and harder to source on West Island. Finding a caretaker for the Clam farm and some casual work associated is very hard. Ideally a half hour inspection 3 times a day would be sufficient. Driving in and out of town to do this is very time consuming. Having a caretakers residence can help attract a worker. Housing is expensive on West Island. The current market cost is too high to pay a "living wage" for someone paying West Island rent costs. Home island residents would not be able to monitor the end of day procedure (like pump shut down).

It would seem that the current policy on caretaker's residences is going against the evolving policy regarding small business. Decisions on how to run a business are best left to the leaseholder/business.

I think it would be unreasonable for council to expect me to leave my house in town so I can have better monitoring of the clam farm. As the owner/manager of the business it would be more than reasonable for me to appoint the caretakers duties to another and remunerate them for it.

We feel that we have satisfied the overall criteria that council seek for the long term use of a commercial block. We have a viable business. It has run now for over 10 years going from strength to strength. The primary object of the block to date has been the production of clams. This will remain true. I would expect that a caretakers minimal duties would allow them time seek other gainful employment on a casual basis. I will of course always have casual work available at the clam farm.”

The issue of a Caretakers Residence at the Clam Farm has been raised on two other separate occasions in the past.

At the August 2010 Council meeting Council resolved as follows:

Moved Cr Arkrie Seconded Cr Minkom that Council advises Mr Clunies-Ross that it would accept an Application for Development Approval for the proposal to establish a Caretakers Dwelling on Pt Lot 100 Sydney Highway and also plans and specifications for Building Approval associated with the development. In receiving the above information, Council would consider that application and would impose the following conditions in relation to the application:-

- 1. That prior to granting final approval for the development, the applicant is required to clean-up the leased land to the satisfaction of Council;*
- 2. The proposed development is to be a single bedroom structure and have a habitable area of not greater than 60m²;*
- 3. The application is to provide detailed information regarding environmental sustainable considerations with regard to composting, or low water use toilets, and approved grey water reuse system;*
- 4. The applicant is to provide a minimum rainwater storage capacity of 10,000 litres, with the appropriate roof plumbing system to ensure that roof runoff capture is maximised;*
- 5. The applicant is to provide signage to the entrance of the property indicating the hours of the Clam Farm and any other facilities associated with the development is open to the public (e.g., tours of the farms operations).*
- 6. The applicant is to give a written undertaking that the Caretaker’s dwelling is not to be used for any other purpose than for the sole occupancy for the applicant, it shall not be sublet, or leased to any other person for any other use whatsoever. However, should the applicant intend being off island for an extended period of time, the dwelling may be occupied by another person providing approval is requested and given (in writing) by Council;*
- 7. In addition to the annual lease fee, the applicant shall pay Council rates associated with the change of use of the site, and that the lease fee will be reviewed to reflect the residential nature of the site at the completion of the current lease period.*
- 8. The applicant shall meet all costs associated with the redrafting of the lease to permit the applicant to reside on the subject Lot; and*

9. *Should the applicant fail to observe the conditions of approval associated with the lease, Council may consider terminating the lease.*

The then CEO wrote to Mr Clunies Ross advising of the above resolution. In response Mr Clunies Ross raised the following Concerns:

The requirement to clean up the leased land to the satisfaction of Council – further details of works required was requested.

The requirement for signage to the entrance of the property indicating the hours of the Clam Farm and any other facilities associated with the development is open to the public - issues were raised that there would be insurance implications for MR Clunies Ross, and that they already co-operate with tour operators on island who carry their own insurance.

The requirements that the caretakers dwelling is not to be used for any other purpose than for the sole occupancy for the applicant – Mr Clunies Ross had indicated it will not be for him but for a caretaker appointed by him.

The requirement that the lease fee will be reviewed to reflect the residential nature of the site – Mr Clunies Ross agree that there would be a more complex usage of the site, but would not agree to the change of zoning (usage) to residential and would wanted an estimate of the increase charges and their breakdown before agreeing.

The issue of a caretakers residence was raised again at the July 2015 Ordinary Council Meeting where it was resolved to advertise Mr Clunies Ross's proposal for community feedback.

The proposal and the resulting community feedback were then considered by Council at the September 2015 Ordinary Council Meeting where the following was resolved:

That Council ADVISES the applicant, that Council will only grant planning approval for a caretaker's residence with the following condition:

- *The applicant is to give a written undertaking that the caretaker's dwelling is not to be used for any other purpose than for the sole occupancy for the applicant, it shall not sublet, or lease to any other person for any other use whatsoever. However, should the applicant intend being off island for an extended period of time, the dwelling may be occupied by another person providing approval is requested and given (in writing) by Council*

And as the caretakers is not to be used for the sole occupancy by the applicant that planning approval is NOT GRANTED.

Comment

The initial request in 2010 resulted in 4 issues that were not agreed to / dealt with, with the previous approval in principle.

- 1) The requirement to clean up leased land cannot be a condition of the planning approval. This is a separate matter and should have been dealt with under the lease agreement. If the Council wanted the property to be cleaned up, simply

enforcing and invoking conditions of the current lease would require Mr Clunies Ross to do so, or face the possibility of the lease being terminated.

- 2) The requirement for a signage to the entrance to the property and when it is open to the public. Given the nature of the Clam Farm as a working aquaculture site being open to the public may bring with it some level of risks which may not be acceptable to the leaseholder. However the applicant does mention in his updated application about having some limited hours open to the public.
- 3) The caretakers dwelling not to be used for any other purpose than for the sole occupancy for the applicant is discussed in more detail further in this report.
- 4) The communication about the residential nature between the Shire and Mr Clunies Ross was ambiguous. There will be no change of zoning to residential, this would require a scheme amendment and is not supported. The change in planning approval would be the addition of a caretakers dwelling to the current aquaculture approved use. If approval for caretakers is granted, the value of the site increases due to the additional permitted use and as such increased lease payments will be required. A valuation can be sought prior to approval.

At the close of the public comment and feedback process in 2015 two submissions were received and the following four issues were raised:

- 1) *Is the caretakers residence being developed by the Shire or will it be developed by the applicant and in the future if the applicant no longer requires the residence, for example he has left the islands will the residence be transferred to the shire as the trustee of the land.*

All costs for developing the caretakers would be borne by the applicant. Under the terms of the lease of any shire controlled trust land, the lessee is required to at the end of the lease return the land back to the natural state clear of any improvements etc. as requested by the Shire. This could include the removal of the caretakers residence, however it would be unlikely that this would be required if the caretakers was in a reasonable condition and habitable, and could simply become a shire asset.

- 2) *If the residence is provided for workers are they full time? If not this would create the situation where they have full time accommodation and work a limited amount of hours, which doesn't confirm the requirements for a caretakers residence. How would council be able to monitor the caretaker's residence for short term accommodation to ascertain if it is being used as just another accommodation provider?*

If Council decides to vary the previous requirements whereby the caretakers can only be used for the sole occupancy of the applicant, then the amount of hours, details of employment, provision of documentation etc. would need to be determined. A caretaker does not only have to be fulltime it could simply require permanency. Many caretakers for example are required to be on site overnight, however are not employed for all these hours.

Any condition(s) that required certain criteria's to be met with regards to employment and hours worked would however create significant compliance headaches and costs for the Shire. A more straightforward control measure could be that the Shire first needs to approve each caretaker who is not the applicant before they can occupy the dwelling so council can be comfortable that the residence would not turn into a short term accommodation option.

- 3) *If Council decision is to allow the caretakers residence to be constructed and used by others than the applicant, this will allow others that have or will be constructing caretakers residence to do the same and provide short term holiday accommodate, and use the same excuse that people in the residence is providing some sort of service.*

Previously approved caretakers, whether built or not, have been given approval with the following condition:

“The applicant is to give a written undertaking that the caretaker’s dwelling is not to be used for any other purpose than for the sole occupancy for the applicant, it shall not sublet, or lease to any other person for any other use whatsoever. However, should the applicant intend being off island for an extended period of time, the dwelling may be occupied by another person providing approval is requested and given (in writing) by Council.”

This condition can only be removed by Council. IF Council approves the Clam Farm Caretakers without the above requirement, any change to other approvals would have to first satisfy Council of why there is a need for change, and would be considered on a case by case situation.

- 4) *If the decision is approved will council put some restriction on the type of dwelling? Does the residence have to be a certain level of construction? Will council approve temporary (bus) type accommodation during construction. What facilities would council consider necessary prior to allowing and sort of accommodation on site, eg sewerage, water etc. Any time restrictions from approval?*

No temporary accommodation would be approved before, during or after the construction of the caretakers if planning approval is granted. The caretakers will be required to be, as per all other buildings built on Cocos compliant with the Australian Building codes, and will require building approval from the shires building officer. Whether a bus, boat or any other item could be incorporated into a caretaker’s residence would be dependent on whether it could be designed to be compliant with the Australian Building codes.

A building approval is valid for 2 years and requires the construction of the building to have been substantially started within this time. A condition of planning approval should Council approve the request for a caretaker’s residence that should be considered, is that building approval must be sought and obtained within 12 months of receiving planning approval.

There are currently two caretaker's dwellings that have been approved by Council. The first approved caretaker's was for the Big Barge Art Centre. This caretaker's is now completed. The second caretaker's dwelling that has planning approval is for the proposed red claw aquaculture project.

For the two caretakers already approved by Council, a strict condition was place on both that:

"The applicant is to give a written undertaking that the caretaker's dwelling is not to be used for any other purpose than for the sole occupancy for the applicant, it shall not sublet, or lease to any other person for any other use whatsoever. However, should the applicant intend being off island for an extended period of time, the dwelling may be occupied by another person providing approval is requested and given (in writing) by Council."

The concern from Council, at the time, and concerns that continues to be raised by residents is preventing "caretakers" dwelling being used as defacto holiday houses, tourist accommodation or a cheap housing alternative. The concern is a valid concern given that potentially the requested primary use of the trust land could easily cease, and then the only use is the caretaker's. Given these concerns a condition has previously been placed on the last applicant for a caretakers that it can only be occupied whilst the primary use remains operating.

The Clam farm has been operational for some time, and as such the applicant can show that it is a continuing business. The applicant has expressed a desire to both expand the business which would require closer monitoring and change some operating procedures around being able to turn off pumps overnight. Council need to decide if this is enough reasoning to divert from previous Council precedent and allow the Caretakers to be occupied by someone other than the applicant? As the applicant owns a house in town it could be seen as reasonable that they instead appoint a genuine caretaker to reside at the Clam Farm to carry out the required duties.

It should be council's view that the provision of a caretakers dwelling can only ever be incidental and ancillary to the predominant use of the land upon which it is to be established, and that it is only prepared to grant approval to an application to use land or a building for a caretakers dwelling where it can be justified.

It should be pointed out that changes to planning legislation gazetted on the 2nd August 2013 now allow for Auxiliary accommodation (granny flats) to not have to be used solely by a family member but can now be built on any residential zoned land (minimum 450m²) and rented out to anyone. Normal planning requirements still however apply for example setbacks and density etc. Mr Clunies Ross has the ability to construct an auxiliary accommodation at his residential property that could then be used to house any worker that is required for his clam farm.

Council needs to consider if they feel there is enough justification for why the caretakers needs to be located at the Clam Farm itself and that this application is not instead attempting to gain access to cheaper land for housing. Having the tight restrictions on the use of the Caretakers Dwelling i.e. maximum of one bedroom and two adults would go some way to ensuring that is it for bona fide caretaker use.

Mr Clunes Ross was send the list of conditions in the recommendation to allow him the opportunity to respond to them. His response is as follows:

1) *No serious contest.*

2 &3) *I am seeking to have someone other than me (the business owner) to reside in a caretakers unit on the clam Farm.*

For some reason you seek to limit my ability to hire people arbitrarily by allowing only a single bedroom. I was unable to ascertain why you would not allow a family during our conversation. A family lives in the block next door. While on council I was not aware of any negative aspects of a family living in that caretaker's residence. In fact permission was given to them change their business model and expand their operations and leases.

This is hard to address other than using my specific situation. In the last 2-3 years I have had Gavin and Pete work with me on the Clam farm. There have been others that have worked for me. They were mostly single. They were not very stable in their lives. The last single person I employed left on two days' notice, the previous one had visa issues and also left on short notice. Neither have returned to Island. Both Gav and Pete have been very good and stable employees. Helpful, mature, skilled, sensible and family men. I do not personally know of any other persons suited to this job, so there would be costs in recruiting and of course the risk of getting a dud employee if I could not house either of these families.

Peter is also a registered builder, so could easily take this whole project on. This would be ideal for me. I should be able to start building as soon as the approvals got through. I do not think I would get any priority in his work schedule if he is unable to inhabit the building on completion, so the project would probably roll into 3-4 years. This does not seem very onerous until you near retirement age like myself.

I know many of the councillor's misgivings as I have had a number of conversations over the years. They seem to pivot around the spurious application for caretakers. In my instance this is clearly not the case. The business is up and running and has valid reasons for the application. There seemed also to be an issue about using the accommodation for tourism. I can categorically say that this is neither my intention or an allowed purpose under my lease or something that I am insured to undertake.

I seek the harness the good will intended in the land trust to encourage and harbour local business. I believe that I am a good citizen of Cocos Islands. I can assure you that I have no nefarious intentions or any wish to inconvenience the council or community in any way.

I feel that the current lease and normal zoning requirements are control enough for my small endeavour. There is no need to make the business climate on Cocos any harder than it already is. I know how to run my business and with respect I do not feel that Council should be trying to influence my personnel hiring policy.

5) *Agreed. I think that is stated in the lease already.*

5) *Agreed.*

Policy and Legislative Implications

Shire of Cocos (Keeling) Islands Town Planning Scheme No.1

Environmental Protection and Biodiversity Conservation Act 1999

Financial Implications

Nil

Strategic Implications

Shire of Cocos (Keeling) Islands Strategic Community Plan 2013 – 2023 – Goal 1
Economic Development – *Promote employment and stable business environment and attraction of new businesses.*

Corporate Business Plan Strategy 1.5 – “Support Employment and Promote Business Opportunities”

Conclusion

That council considers the request for a caretakers dwelling at the Clam Farm.

10.4 ADMINISTRATION

10.4/A1 APPOINTMENT OF ACTING CEO

Report Information

Location: Not Applicable
 Applicant: Not Applicable
 File Ref:
 Reporting Officer: Executive Support Officer
 Island: All

Authority / Discretion

Definition

<input type="checkbox"/>	Advocacy	<i>When Council advocates on its own behalf or on behalf of its community to another level of government/body/agency.</i>
<input checked="" type="checkbox"/>	Executive	<i>The substantial direction setting and oversight role of the Council. E.g. adopting plans and reports, accepting tenders, directing operations, setting and amending budgets.</i>
<input type="checkbox"/>	Legislative	<i>Includes adopting local laws, town planning schemes and policies. Review when Council reviews decisions made by officers.</i>
<input type="checkbox"/>	Quasi-Judicial	<i>When Council determines an application / matter that directly affects a person's right and interest. The judicial character arises from the obligations to abide by the principles of natural justice. Examples of Quasi-Judicial authority include town planning applications, building licenses, applications for other permits / licenses.</i>
<input type="checkbox"/>	Information	<i>Includes items provides to Council for information purposes only that do not require a decision of Council (i.e. – for noting).</i>

Recommendation

That Council:

1. **Appoint Joanne Soderlund as Acting Chief Executive Officer of the Shire of Cocos (Keeling) Island until the 25th of June 2018 when the incoming CEO Andrea Selvey is contracted to commence.**
2. **Is satisfied Joanne Soderlund is suitably qualified for the position of Acting Chief Executive Officer.**
3. **Remunerate the Acting Chief Executive Officer at a higher duty allowance at a rate of 20% of the Deputy Chief Executive Officer's current salary.**

Report Purpose

For Council to appoint an Acting CEO for the period 1 June 2018 – 25 June 2018.

Relevant Documents

Attachment

Nil

Available for viewing at the meeting

Nil

Background

The Shire of Cocos (Keeling) Islands Chief Executive Officer (CEO) resigned on the 14th of November 2017, with his employment concluding on the 27th of November 2017.

At a Special Meeting of Council on the 29th of November 2017 the Council resolved the following:

That Council:

- 1. Appoint Joanne Soderlund as Acting Chief Executive Officer of the Shire of Cocos (Keeling) Islands until a replacement CEO is recruited but for a period not exceeding 6 months as of 30 November 2017.*
- 2. Is satisfied Joanne Soderlund is suitably qualified for the position of Acting Chief Executive Officer.*
- 3. Remunerate the Acting Chief Executive Officer at a higher duty allowance at a rate of 20% of the Deputy Chief Executive Officer's current salary.*

Comment

The recruitment process for a new Chief Executive Officer has been finalised with Andrea Selvey being appointed to the position. Andrea is due to commence in the role on the 25th of June 2018.

Joanne Soderlund was appointed Acting CEO on the 29th of November while Council undertook the recruitment process. Joanne was appointed for a period not exceeding 6 months. The 6 month period will conclude on the 31st of May 2018. Therefore to ensure the day to day functions of the Shire can continue an additional appointment of the Acting CEO position needs to be made for the period from the 1st of June 2018 concluding on the 25th of June 2018.

The Council is responsible for the appointment of a CEO under Section 5.36 of the Local government Act. Section 5.36 (2) states that 'A person is not to be employed in the position of CEO unless the council believes that the person is suitably qualified for the position'.

Regulation 18A of the Local Government (Administration) Regulations 1996 states:

18A. Vacancy in position of CEO or senior employee to be advertised (Act s. 5.36(4) and 5.37(3))

(1) If a position of CEO, or of a senior employee, of a local government becomes vacant, the local government is to advertise the position in a newspaper circulating generally throughout the State unless it is proposed that the position be filled by —

- (a) a person who is, and will continue to be, employed by another local government and who will fill the position on a contract or contracts for a total period not exceeding 5 years; or
- (b) a person who will be acting in the position for a term not exceeding one year.

Policy and Legislative Implications

Local Government Act 1995

Part 5 Division 4

Section 5.36 Local Government Employees (extract)

(1) A local government is to employ —

(a) A person to be the CEO of the local Government; and

(2) A Person is not to be employed in the position of CEO unless the council —

(a) Believes that the person is suitably qualified for the position;

Part 5 Division 4

Section 5.39 Contracts for CEO and senior employees (extract)

(1a)(a) An employee may act in the position of a CEO or a senior employee for a term not exceeding one year without a written contract for the position in which he or she is acting

Local Government (Administration) Regulations 1996

Part 4

Regulation 18A Vacancy in position of CEO or senior employee to be advertised

s5.36 (4) and 5.37(3) (extract)

(1) If a position of CEO, or of a senior employee, of a local government becomes vacant, the local government is to advertise the position in a newspaper circulating generally throughout the State unless it is proposed that the position be filled by-

(b) A person whom will be acting in the position for a term not exceeding one year.

Financial Implications

The 2017/18 budget contains amounts for the remuneration of a CEO.

Strategic Implications

Goal 5 – Optimise Local Government 5.2 Attract and retain quality staff

Conclusion

That Council appoint an Acting CEO for the period 1 June 2018 – 25 June 2018.

10.5 WORKS

Nil

11. ELECTED MEMBERS MOTION OF WHICH PREVIOUS NOTICE HAS BEEN GIVEN

12. MOTIONS WITHOUT NOTICE WITH LEAVE OF COUNCIL

13. MATTERS BEHIND CLOSED DOORS

14. CLOSURE OF BUSINESS