



NOTICE OF MEETING

Dear Elected Members

Please be advised that the next Ordinary Meeting of Council will be held in CRC Meeting Room, West Island on Wednesday, 26 February 2020 commencing at 4.00pm.

Andrea Selvey
Chief Executive Officer

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. 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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OUR VALUES

Service

Provide the best service we can.

We serve the community and each other.

Accountability

We take responsibility for our own actions.

We do what we say we will do.

Mistakes are an opportunity to learn.

Support

We support our team and our community.

Look for opportunities to help each other.

Respect

We respect and value others.

Our interactions are always respectful towards others.

Integrity

We will be honest and transparent with all our dealings.

Maintain confidentiality.

Trust each other.

Achievement

Being proactive and enabling the outcomes.

Be creative and think outside the square.

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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

In accordance with *Section 5.24(1) (a) of the Local Government Act 1995*, time is allocated for questions to be raised by members of the public, as follows:

(1) The minimum time to be allocated for the asking of and responding to questions raised by members of the public at ordinary meetings of councils and meetings referred to in regulation 5 is 15 minutes.

(2) Once all the questions raised by members of the public have been asked and responded to at a meeting referred to in sub regulation (1), nothing in these regulations prevents the unused part of the minimum question time period from being used for other matters.

Pursuant to *regulation 7(4) (a) of the Local Government (Administration) Regulations 1996*, questions from the public must relate to a matter affecting the local government.

In accordance with *Section 5.25 (1) (f) of the Local Government Act 1995* and the *Local Government (Administration) Regulations 1996 regulation 11(e)* a summary of each question raised by members of the public at the meeting and a summary of the response to the question will be included in the minutes of the meeting.

Where a question is taken on notice at the meeting, a summary of the response to the question will be included in the agenda for the following Council meeting.

5. LEAVE OF ABSENCE

The *Local Government Act 1995 (Section 2.25)* provides that a Council may, by resolution, grant leave of absence to a member for Ordinary Council Meetings. A member who is absent, without first obtaining leave of the Council, throughout three consecutive Ordinary meetings of the Council is disqualified from continuing his or her membership of the Council. Disqualification from membership of the Council for failure to attend Ordinary Meetings of the Council will be avoided so long as the Council grants leave prior to the member being absent. The leave cannot be granted retrospectively. An apology for non-attendance at a meeting is not an application for leave of absence.

5.1 LEAVE OF ABSENCE (PREVIOUSLY APPROVED)

Councillor	Date of Leave	Approved by Council

5.2 APPLICATION FOR LEAVE OF ABSENCE

6. PETITIONS/DEPUTATIONS/PRESENTATIONS

7. CONFIRMATION OF MINUTES OF PREVIOUS MEETING(S)

7.1 Ordinary Council Meeting held on 22 January 2020 -Attachment 7.1

OFFICER'S RECOMMENDATION

THAT, BY SIMPLE MAJORITY PURSUANT TO SECTIONS 5.22(2) AND 3.18 OF THE LOCAL GOVERNMENT ACT 1995, THE MINUTES OF THE ORDINARY COUNCIL MEETING 22 JANUARY 2020, AS PRESENTED IN ATTACHMENT 7.1 BE CONFIRMED AS A TRUE AND CORRECT RECORD OF PROCEEDINGS.

8. ANNOUNCEMENTS BY THE PRESIDING MEMBER AND COUNCILLORS

9. DECLARATION OF INTERESTS

Councillors are to complete a Disclosure of Interest Form for each item they are required to disclose an interest in. The Form should be given to the Presiding Member before the meeting commences. After the meeting, the Form is to be provided to the Governance and Risk Coordinator for inclusion in the Disclosures Register.

10. REPORT AND RECOMMENDATIONS OF COMMITTEE

10.1 FINANCE

10.1 MONTHLY STATEMENT OF FINANCIAL ACTIVITY FOR THE MONTH ENDING 31 JANUARY 2020

Report Information

Date: 21 February 2020
Location: Not Applicable
Applicant: Not Applicable
File Ref:
Disclosure of Interest:
Reporting Officer: Deputy Chief Executive Officer
Island: Shire Wide
Attachments: 10.1 Statement of Financial Activity with accompanying notes 31
January 2020

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 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>

Report Purpose

To inform Council of the financial position of the Shire at 31 January 2020 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

Available for viewing at the meeting

Nil

Background

The Monthly Financial Statements for the period 1st July 2019 to 31 January 2020 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 2019 to 31 January 2020.

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

Strategic Implications

Nil

Risk Implications

Risk Category	Description	Rating (consequence x likelihood)	Mitigation Action
Financial	That budget allocations are significantly exceeded.	Moderate (6)	Variances are monitored and highlighted to Council on a monthly basis for corrective action.
Health & Safety	N/A	N/A	N/A
Reputation	The monthly financial statements are open to public scrutiny.	Low (3)	Procedures in place to ensure all expenditure is justifiable.
Service Interruption	N/A	N/A	N/A
Compliance	The report is to be presented to Council within two months in order to comply with relevant legislation.	Low (3)	There are processes in place to ensure compliance with legislation.
Property	N/A	N/A	N/A
Environment	N/A	N/A	N/A
Fraud	That the report is manipulated.	Low (3)	Interim and end of year audits.

Risk Matrix

Consequence / Likelihood	Insignificant (1)	Minor (2)	Medium (3)	Major (4)	Extreme (5)
Almost Certain (5)	Moderate (5)	High (10)	High (15)	Extreme (20)	Extreme (25)
Likely (4)	Low (4)	Moderate (8)	High (12)	High (16)	Extreme (20)
Possible (3)	Low (3)	Moderate (6)	Moderate (9)	High (12)	High (15)
Unlikely (2)	Low (2)	Low (4)	Moderate (6)	Moderate (8)	High (10)
Rare (1)	Low (1)	Low (2)	Low (3)	Low (4)	Moderate (5)

Conclusion

That the financial statements for the period 1 July 2019 to 31 January 2020 be received.

OFFICER'S RECOMMENDATION – ITEM NO 10.1.1

THAT COUNCIL, BY SIMPLE MAJORITY, PURSUANT TO THE *LOCAL GOVERNMENT (FINANCIAL MANAGEMENT) REGULATIONS 1996* RECEIVES THE FINANCIAL STATEMENTS FOR THE PERIOD 1ST JULY 2019 TO 31ST JANUARY 2020.

10.1.2 SCHEDULE OF ACCOUNTS PAID FOR PERIOD 1 JANUARY 2020 TO 31 JANUARY 2020

Report Information

Date: 21 February 2020
 Location: Not applicable
 Applicant: Not Applicable
 File Ref:
 Disclosure of Interest:
 Reporting Officer: Senior Finance Officer
 Island: Shire Wide
 Attachments: 10.1.2 Schedule of accounts paid
 10.1.2 Credit MasterCard

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 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>

Report Purpose

To report to Council on funds disbursed under delegated authority for the period 1st January 2020 - 31st January 2020.

Relevant Documents

Available for viewing at the meeting

Nil

Background

A list of accounts paid between 1st January and 31st January 2020 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

Strategic Implications

Nil

Risk Implications

Risk Category	Description	Rating (consequence x likelihood)	Mitigation Action
Financial	That the expenditure exceeds the budget allocation.	Moderate (6)	Internal controls, procurement processes and the presentation of the monthly financial statements that highlight variances to Council.
Health & Safety	N/A	N/A	N/A
Reputation	The accounts paid report is open to public scrutiny.	Low (3)	Procurement policy and procedures to guide all purchasing decisions.
Service Interruption	N/A	N/A	N/A
Compliance	The report is to be presented to Council within two months in order to comply with relevant legislation.	Low (3)	There are processes in place to ensure compliance with relevant legislation.
Property	N/A	N/A	N/A
Environment	N/A	N/A	N/A
Fraud	That the report is manipulated.	Low (3)	Internal controls, procedures, audits and Councillor Training.

Risk Matrix

Consequence / Likelihood	Insignificant (1)	Minor (2)	Medium (3)	Major (4)	Extreme (5)
Almost Certain (5)	Moderate (5)	High (10)	High (15)	Extreme (20)	Extreme (25)
Likely (4)	Low (4)	Moderate (8)	High (12)	High (16)	Extreme (20)
Possible (3)	Low (3)	Moderate (6)	Moderate (9)	High (12)	High (15)
Unlikely (2)	Low (2)	Low (4)	Moderate (6)	Moderate (8)	High (10)
Rare (1)	Low (1)	Low (2)	Low (3)	Low (4)	Moderate (5)

Conclusion

That Council receives the list stating all accounts paid for January 2020.

OFFICER'S RECOMMENDATION – ITEM NO 10.1.2

THAT COUNCIL, BY SIMPLE MAJORITY, PURSUANT TO THE *LOCAL GOVERNMENT (FINANCIAL MANAGEMENT) REGULATIONS 1996* RECEIVES THE REPORT FROM THE CHIEF EXECUTIVE OFFICER ON THE EXERCISE OF DELEGATED AUTHORITY IN RELATION TO CREDITOR PAYMENTS FROM THE MUNICIPAL FUND FOR THE PERIOD 1 JANUARY TO 31 JANUARY 2020 INCLUSIVE OF EFT 7043 TO EFT 7088, CHQ 11577 to CHQ 11578, MASTER CARD, VIVA ENERGY & DIRECT DEBIT SUPERANNUATION TOTALLING \$335,272.60.

10.1.3 MID YEAR BUDGET REVIEW 2018/2019

Report Information

Date: 21/02/2020
 Location: Not Applicable
 Applicant: Not Applicable
 File Ref:
 Disclosure of Interest:
 Reporting Officer: Deputy Chief Executive Officer
 Island: Shire Wide
 Attachments: 10.1.3 Budget Review Report

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 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>

Report Purpose

To present the Budget Review to Council for adoption.

Relevant Documents

Available for viewing at the meeting

Nil

Background

The Local Government (Financial Management) Regulations 1996, regulation 33A as amended, requires that local governments conduct a budget review between 1 January and

31 March in each financial year. A copy of the review and determination is to be provided to the Department of Local Government within 30 days of the adoption of the review.

Comment

The budget review has been prepared to include information required by the Local Government Act 1995, Local Government (Financial Management) Regulations 1996 and Australian Accounting Standards. Council has adopted a 10% or \$20,000 (whichever is the greater) threshold for material variances for management reporting and is used in the statements of financial activity and the annual budget review.

In reviewing the 2019/20 Budget the following items are the major items included in the review.

- Financial Assistance Grant determination by the Grants Commission resulted in an increase in the level of FAG's received by approximately 7%;
- Expenditure on renewing Jalan Pantai was adjusted to reflect actual costs;
- Inclusion of the purchase of a transportable building for amenity facilities at the West Island depot;
- Expenditure on a number of plant purchases was adjusted to reflect the saving on these purchases;
- Income and associated expenditure relating to a higher level of private works jobs were adjusted.

A full list of all amendments is included in the Budget Review attachment.

Policy and Legislative Implications

Regulation 33A of the Local Government (Financial Management) Regulations 1996 requires:

Between 1 January and 31 March in each financial year a local government is to carry out a review of its annual budget for that year.

(2A) The review of an annual budget for a financial year must —

Consider the local government's financial performance in the period beginning on 1 July and ending no earlier than 31 December in that financial year;

- (b) Consider the local government's financial position as at the date of the review; and
 - (c) Review the outcomes for the end of that financial year that are forecast in the budget
- (2) Within 30 days after a review of the annual budget of a local government is carried out it is to be submitted to the council.

- (3) A council is to consider a review submitted to it and is to determine* whether or not to adopt the review, any parts of the review or any recommendations made in the review. *Absolute majority required.
- (4) Within 30 days after a council has made a determination, a copy of the review and determination is to be provided to the Department.

Financial Implications

This review proposes an end of year surplus of \$0 with transfers to reserves of \$532,524 and transfers from reserves of \$1,686,890.

Strategic Implications:

Nil

Risk Category	Description	Rating (consequence x likelihood)	Mitigation Action
Financial	Changes do not reflect current position of Council.	Low (1)	Ensure that existing policies and processes are implemented and are compliant with relevant legislation and that there are sufficient funds to meet estimated expenditure for the remainder of the year.
Health & Safety	N/A	N/A	N/A
Reputation	The Budget Review report is open to public scrutiny.	Low (3)	Procedures in place to ensure all expenditure is justifiable.
Service Interruption	N/A	N/A	N/A
Compliance	That budget review is not completed in accordance with the Local Government Act.	Low (1)	The budget review is included in the Compliance Calendar to ensure it is completed in a timely manner. An industry template is used to ensure the format complies with requirements.
Property	N/A	N/A	N/A
Environment	N/A	N/A	N/A
Fraud	N/A	N/A	N/A

Risk Matrix

Consequence / Likelihood	Insignificant (1)	Minor (2)	Medium (3)	Major (4)	Extreme (5)
Almost Certain (5)	Moderate (5)	High (10)	High (15)	Extreme (20)	Extreme (25)
Likely (4)	Low (4)	Moderate (8)	High (12)	High (16)	Extreme (20)
Possible (3)	Low (3)	Moderate (6)	Moderate (9)	High (12)	High (15)
Unlikely (2)	Low (2)	Low (4)	Moderate (6)	Moderate (8)	High (10)
Rare (1)	Low (1)	Low (2)	Low (3)	Low (4)	Moderate (5)

Conclusion

That Council adopt the budget review.

OFFICER'S RECOMMENDATION – ITEM NO 10.1.3

THAT COUNCIL, BY ABSOLUTE MAJORITY, PURSUANT TO *REGULATION 33A OF THE LOCAL GOVERNMENT (FINANCIAL MANAGEMENT) REGULATIONS 1996* RESOLVES TO ADOPT THE BUDGET REVIEW AS ATTACHED AND PROVIDE A COPY OF THE DETERMINATION TO THE DEPARTMENT OF LOCAL GOVERNMENT WITHIN 30 DAYS.

10.1.4 SECTION 7.12A(4) – 2018-19 FINANCIAL YEAR AUDIT REPORT

Report Information

Date: 17 February 2020
 Applicant: Shire of Cocos (Keeling) Islands
 File Ref:
 Location: Not Applicable
 Disclosure of Interest: Nil
 Reporting Officer: Deputy Chief Executive Officer
 Island: Shire Wide
 Attachments: 2018/2019 Audit Report

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>
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<input checked="" type="checkbox"/>	Legislative	<i>includes adopting local laws, town planning schemes and policies. Review when Council reviews decisions made by officers.</i>
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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>

Report Purpose

For Council to receive a report on a significant adverse trend identified in the Shire's 2018/19 Audit Report.

Relevant Documents

Available for viewing at the meeting

Nil

Background

In accordance with Regulation 14 of the Local Government (Audit) Regulations 1996 each local government in Western Australia must carry out an annual audit of statutory compliance

for the period 1 January to 31 December, in the form of Department of Local Government Compliance Audit Return (CAR).

The completion of this years CAR highlighted the requirements to report matters deemed 'significant' in the Shires Audit Report. The audit report has always had comments surrounding the ratios however a change in terminology used by the Office of the Auditor General when reporting these as 'significant adverse trends' has resulted in a level of reporting that has previously not been required.

A circular released by the department of local government in February 2020 advises:

If the Auditor General or a local government's appointed auditor reports a significant matter in an audit report, section 7.12A of the Local Government Act 1995 (the Act) requires a response from the local government. The requirements of this response are:

- a. Upon receipt of the auditor's report, the local government must prepare a report for its Audit Committee to address the significant matters raised and outline what action(s) the local government has taken or intends to take in respect of each of the matters raised.*
- b. The Audit Committee minutes and the report to the Minister are referred to Council for proper review and endorsement of any proposed actions.*
- c. Within 3 months of receipt of the auditor's report, a copy of the Council-endorsed report must be provided to the Minister.*
- d. Within 14 days of providing a copy of the report to the Minister, a copy must be published on the local government's website.*

A local government is not considered compliant with its statutory obligations until all of the above actions have been completed.

Comment

As this requirement has only just come to the attention of the administration the Shire will not be able to fulfil its obligation to provide a copy of the report to the minister within three months. The audit report was received on the 19th of November and to allow this report to be endorsed by council as outlined above it won't be able to be send to the minister until the 27th of February which will be 3 months and 1 week.

Below is a copy of the report that has been prepared for the minister.

REPORT

Section 7.12A(4)(a) of the Local Government Act 1995 (CKI)

Office of the Auditor General (OAG) – Financial Audit

Purpose of Report

To inform the audit committee of the significant adverse trends identified by its Auditors in their report for the 2018/19 Financial Year.

Significant Matter Identified by OAG

The following matters were raised by the Auditors:

- *The Asset Sustainability Ratio has been below the Department of Local Government, Sport and Cultural Industries (DLGSCI) standard for the past 3 years.*
- *The Own Source Revenue Coverage Ratio reported in the current year and prior year are both below the DLGSCI standard.*

Asset Sustainability Ratio:

The asset sustainability ratio is calculated as capital renewal and replacement expenditure / depreciation.

The DLGSCI basic target for this ratio is 90%.

Own Source Revenue Coverage Ratio:

The own source revenue coverage ratio is calculated as own source operating revenue / operating expense.

The DLGSCI basic target for this ratio is between 40% and 60%.

Implication

DLGSC Guidelines on Financial Ratios offers the following comments:

The Asset Sustainability ratio is an approximation of the extent to which assets managed by a local government are being replaced as these reach the end of their useful lives. It is calculated by measuring capital expenditure on renewal or replacement of assets, relative to depreciation expense. Expenditure on new or additional assets is excluded. Depreciation expense represents an estimate of the extent to which the assets have been consumed during that period. Measuring assets at fair value is critical to the calculation of a valid depreciation expense value.

The own source revenue coverage ratio is the measurement of a local government's ability to cover its costs through its own revenue efforts.

Management Comment

Asset Sustainability Ratio:

This ratio is affected by the amount of capital renewal and replacement expenditure undertaken from year to year. The 2018/2019 financial year saw a significant portion of expenditure on new assets coming from the Community Masterplanning process. This saw the asset sustainability ratio dip to 34% compared to the previous two financial years of 52% and 74% respectively.

The accuracy of the depreciation figure also needs to be considered. The Shire has almost 70 kampong houses on its asset register which are being depreciated however they are currently on a long term lease. The terms of the lease are as such that all renewal and replacement expenditure is the responsibility of the leaseholder. Therefore the depreciation for this properties is included in the ratio calculation however the Shire is not responsible for their renewal.

The ratio also specifically stipulates capital renewal and replacement expenditure. There is a significant partition of expenditure that is recognised as an operating cost which further distorts this ratios accuracy.

Own Source Revenue Coverage Ratio:

The Shire is likely to always struggle with this ratio. The small rates base with limited opportunity for expansion is likely to see the shire continue to be heavily reliant on its annual Financial Assistance Grant allocation.

Large ad hoc private works projects from the Commonwealth Government will increase this ratio as last occurred in 2017 financial year when the ratio managed to hit the target range at 50%. In that year the Shire recognised private works income of \$1 million from the Commonwealth, however this is the exception and not the rule.

A 40% increase in the Shires Financial Assistance Grant allocation in the 2019 financial year has had a negative effect of this ratio as it has allowed for increases in our operating expenses.

Action Taken or Intended to be Taken

Asset Sustainability Ratio:

The Shire has created a new Asset and Property Management Coordinator position to increase its focus on asset management and renewals. This increased focus should see an increased level of expenditure on capital renewal and replacements in the future.

Council will continue to monitor and ensure that adequate renewal projects are included in each new budget and work to get the ratio increasing and reverse the current trend.

The Shire will also investigate with the Office of Auditor General (OAG) the potential to include operating expenditure on renewal and replacement items into the ratio calculation to give a more accurate ratio. Similarly, the Shire will highlight to the OAG the distortion that the depreciation of the houses which are on a long term lease is having on this ratio and argue to have this excluded from the calculation.

Own Source Revenue Coverage Ratio:

The Shire will continue to monitor this ratio however given the unique circumstances of the Islands it is likely to always be very heavily reliant on the financial assistance grants. The Shire

will continue to encourage the Commonwealth Government to invest in projects that it can carry out as private works but this is outside the Shire's control.

Policy and Legislative Implications

Section 7.12A of the Local Government Act (CKI)

Financial Implications

Nil

Strategic Implications

Nil

Conclusion

The audit committee received the report on the significant adverse trends in the 2018/2019 Audit report and recommended that the report is formally received by Council.

AUDIT COMMITTEE RECOMMENDATION

THAT COUNCIL, PURSUANT TO *REGULATION 16 OF THE LOCAL GOVERNMENT (AUDIT) REGULATIONS 1996 (CKI):*

- 1. NOTE THE SIGNIFICANT ADVERSE TRENDS IDENTIFIED IN THE 2018/19 AUDIT REPORT FOR THE ASSET SUSTAINABILITY RATIO AND THE OWN SOURCE REVENUE COVERAGE RATIO**
- 2. IN ACCEPTING THIS REPORT, AUTHORISE THE CHIEF EXECUTIVE OFFICER TO FORWARD A COPY OF THE REPORT TO THE MINISTER IN ACCORDANCE WITH SECTION 7.12A(4)(B) OF THE LOCAL GOVERNMENT ACT 1995 (CKI); AND**
- 3. PUBLISH A COPY OF THIS REPORT ON ITS WEBSITE IN ACCORDANCE WITH THE PROVISIONS OF SECTION 7.12(4)(B).**

10.2 LEASES

All leases for consideration in this agenda are for leases of Trust Land and therefore listed in a separate part of this meeting dealing with Land Trusts matters.

10.3 PLANNING/BUILDING

10.3.1 DEVELOPMENT APPLICATION - PROPOSED FIRE STATION GARAGE EXTENSION – LOT 197 JALAN MASJID, HOME ISLAND

Report Information

Date: 5 February 2020
 Location: Lot 197 Jalan Masjid, Home Island
 Applicant: Department of Infrastructure, Transport, Cities and Regional Development
 File Ref:
 Reporting Officer: Chief Executive Officer
 Island: West Island
 Attachments: 10.3.1 Development Application – Home Island Fire Station
 10.3.1 Plans of the garage extension

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 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 checked="" 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>

Report Purpose

For Council to consider an application for development approval from the Department of Infrastructure, Transport, Cities and Regional Development (DITCRD) for an extension to existing Home Island Fire Station garage to facilitate storage of the new fire appliance which is oversized for the current station garage.

Relevant Documents

Available for viewing at the meeting

Nil

Background

DITCRD have proposed to extend the existing Home Island Fire Station garage upon Lot 197 Jalan Masjid to store the Island's new fire appliance vehicle which is oversized for the garage's current capacity. Protection of the fire truck from the weather is crucial to slow the deterioration process of the new asset.

The subject land is a Crown reserve which is classified 'Public Purposes: Fire Station'.

Currently Council does not have a delegation register in place for statutory planning approvals, meaning each application must be presented to Council for determination.

Comment

The proposed 2m long, 4.73m wide extension with a 3.32m high door clearance will be constructed of like materials to match and complement the existing fire station structure. For this reason, the application has no identified planning concerns.

Policy and Legislative Implications

Clause 2.1.2 of the *Shire of Cocos (Keeling) Islands Local Planning Scheme No.1*:

A person or body shall not use or commence or carry out development on land or within a waterway reserved under this Scheme without first applying for and obtaining development approval of the local government. In determining an application for development approval the local government shall have regard to:

(a) the matters set out in Part 9 of the deemed provisions.

(b) the ultimate purpose intended for the reserve.

Financial Implications

The item has no financial implications.

Strategic Implications

Strategic Community Plan - Key Result Area: Civic Leadership Opportunities – Outcome 4.1 An informed Council leading working with others to advance our Islands.

Risk Implications

Risk Category	Description	Rating (consequence x likelihood)	Mitigation Action
Financial	Application fee not paid	Low (2)	Permit not issued before fees paid
Health & Safety	Design of building to comply with BCA	Low (4)	Proper building certification
Reputation	Nil	Nil	Nil
Service Interruption	Nil	Nil	Nil
Compliance	Building permit not obtained prior to construction	Low (4)	Advice note added to planning approval
Property	Application not consistent with LPS	Low (4)	Conditions imposed to address identified issues
Environment	Visual amenity compromised	Low (2)	Service critical therefore risk accepted
Fraud	Nil	Nil	Nil

Risk Matrix

Consequence / Likelihood	Insignificant (1)	Minor (2)	Medium (3)	Major (4)	Extreme (5)
Almost Certain (5)	Moderate (5)	High (10)	High (15)	Extreme (20)	Extreme (25)
Likely (4)	Low (4)	Moderate (8)	High (12)	High (16)	Extreme (20)
Possible (3)	Low (3)	Moderate (6)	Moderate (9)	High (12)	High (15)
Unlikely (2)	Low (2)	Low (4)	Moderate (6)	Moderate (8)	High (10)
Rare (1)	Low (1)	Low (2)	Low (3)	Low (4)	Moderate (5)

Voting Requirements

Simple Majority

Conclusion

Given there are no relevant planning concerns the officer supports the proposal.

OFFICER'S RECOMMENDATION – ITEM NO 10.3.1

THAT COUNCIL, BY SIMPLE MAJORITY, PURSUANT TO THE *SHIRE OF COCOS (KEELING) ISLANDS LOCAL PLANNING SCHEME NO.1*, RESOLVES TO GRANT DEVELOPMENT APPROVAL FOR THE PROPOSED FIRE STATION GARAGE EXTENSION IN ACCORDANCE WITH THE

ATTACHED PLANS ON LOT 197 JALAN MASJID, HOME ISLAND SUBJECT TO THE FOLLOWING CONDITION AND ADVICE NOTES:

- 1. ALL DEVELOPMENT SHALL BE IN ACCORDANCE WITH THE ATTACHED PLANS DATE STAMPED 26 FEBRUARY 2020 AND SHALL NOT BE ALTERED WITHOUT THE PRIOR WRITTEN APPROVAL OF THE LOCAL GOVERNMENT.**

ADVICE NOTES:

- 1. THE APPLICANT BE ADVISED THIS IS PLANNING APPROVAL ONLY AND NOT A BUILDING PERMIT. A BUILDING PERMIT MUST BE OBTAINED FOR THIS DEVELOPMENT.**
- 2. STORMWATER IS TO BE MANAGED IN ACCORDANCE WITH LOCAL CONDITIONS.**
- 3. IF THE DEVELOPMENT THE SUBJECT OF THIS APPROVAL IS NOT SUBSTANTIALLY COMMENCED WITHIN A PERIOD OF TWO (2) YEARS, THE APPROVAL SHALL LAPSE AND BE OF NO FURTHER EFFECT.**
- 4. WHERE AN APPROVAL HAS SO LAPSED, NO DEVELOPMENT SHALL BE CARRIED OUT WITHOUT THE FURTHER APPROVAL OF THE LOCAL GOVERNMENT HAVING FIRST BEEN SOUGHT AND OBTAINED.**
- 5. THE APPLICANT BE ADVISED THAT "SHOULD YOU BE AGGRIEVED BY THIS DECISION, OR ANY CONDITIONS IMPOSED, THERE IS A RIGHT OF REVIEW UNDER THE *PLANNING AND DEVELOPMENT ACT 2005* (THE ACT). AN APPLICATION FOR REVIEW MUST BE SUBMITTED IN ACCORDANCE WITH PART XIV OF THE ACT WITHIN 28 DAYS OF THE DATE OF THIS DECISION TO:**

**THE STATE ADMINISTRATIVE TRIBUNAL
GPO BOX U1991
PERTH WA 6845"**

10.3.2 DEVELOPMENT APPLICATION FOR SHORT STAY ACCOMMODATION USE OF HOUSE 72 HOME ISLAND

Report Information

Date: 7 February 2020
 Location: Lot 172 (House No72) Jalan Bunga Kangkong, Home Island
 Applicant: N Chongkin
 File Ref:
 Disclosure of Interest: Nil
 Reporting Officer: Chief Executive Officer
 Island: Home Island
 Attachments: 10.3.2 Development Application

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 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 checked="" 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>

Report Purpose

To consider a development application for short stay accommodation use of House 72 Home Island for a period of two years.

Relevant Documents

Available for viewing at the meeting

Nil

Background

Council has previously granted development approval for this residential dwelling to be used for short stay accommodation. However, this approval was allowed to lapse by the applicant.

The applicant has submitted a property management, code of conduct and fire and emergency plan for the premise. The proposed maximum number of guests to be housed at any one time is eight across three rooms.

Comment

Given the subject property has previously operated as a commercial holiday home with no operational issues there is scope to provide an initial two-year approval, which on cessation can be extended by Council if deemed appropriate.

Nonetheless, Council retains a degree of control by making the approval subject to various conditions including adherence to the management plan submitted with the application. Should a breach of these conditions occur, Council, in accordance with the enforcement provisions of the local planning scheme can cancel the holiday home registration.

Policy and Legislative Implications

The *Shire of Cocos (Keeling) Islands Local Planning Scheme No.1* has been considered in preparing this item to ensure the recommendation is compliant.

Financial Implications

Nil

Strategic Implications

Shire of Cocos (Keeling) Islands Strategic Community Plan 2016 – 20206 Outcome 1.1.2: Encourage low impact tourism.

Risk Implications

Risk Category	Description	Rating (consequence x likelihood)	Mitigation Action
Financial	Nil	Nil	Nil
Health & Safety	Application to comply with WAPC Planning Bulletin 99 holiday homes guidelines	Low (4)	Proper building certification
Reputation	Nil	Nil	Nil
Service Interruption	Nil	Nil	Nil

Compliance	Unruly behaviour of guests in a residential area	Moderate (9)	Approval condition enforcement
Property	Damage to the Shire house by guests	Moderate (6)	Rental lease clauses
Environment	Nil	Nil	Nil
Fraud	Nil	Nil	Nil

Risk Matrix

Consequence / Likelihood	Insignificant (1)	Minor (2)	Medium (3)	Major (4)	Extreme (5)
Almost Certain (5)	Moderate (5)	High (10)	High (15)	Extreme (20)	Extreme (25)
Likely (4)	Low (4)	Moderate (8)	High (12)	High (16)	Extreme (20)
Possible (3)	Low (3)	Moderate (6)	Moderate (9)	High (12)	High (15)
Unlikely (2)	Low (2)	Low (4)	Moderate (6)	Moderate (8)	High (10)
Rare (1)	Low (1)	Low (2)	Low (3)	Low (4)	Moderate (5)

Voting Requirements

Simple Majority

Conclusion

As the dwelling has operated as a holiday home in the past with no concerns, the officer supports this proposal for a two-year period. Council has the option of granting a five-year extension at the completion of the two-year period.

OFFICER'S RECOMMENDATION – ITEM NO 10.3.2

THAT COUNCIL:

1. GRANTS DEVELOPMENT APPROVAL FOR THE OPERATION OF A COMMERCIAL HOLIDAY HOME UPON LOT 172 (#72) JALAN BUNGA KANGKONG, HOME ISLAND FOR A PERIOD OF TWO-YEARS COMMENCING 27 FEBRUARY 2020, SUBJECT TO THE FOLLOWING CONDITIONS:
 - a. THE OPERATION OF THE HOLIDAY HOME SHALL NOT RESULT IN ADVERSE IMPACTS ON THE AMENITY OF NEIGHBOURING PROPERTIES OR THE SURROUNDING AREA.
 - b. THE SHIRE SHOULD BE NOTIFIED OF ANY CHANGES TO THE HOLIDAY HOME THAT MAY BE DEEMED TO AFFECT THE APPROVAL OF THE DWELLING FOR SUCH A USE.
 - c. THE TOTAL NUMBER OF PEOPLE TO BE ACCOMMODATED IN THE HOLIDAY HOME SHALL NOT EXCEED EIGHT (8) GUESTS AT ALL TIMES.
 - d. THE APPLICANT IS TO DISPLAY THE PROPERTY MANAGEMENT PLAN, CODE OF CONDUCT, FIRE AND EMERGENCY PLAN WITHIN THE PREMISE AT ALL TIMES. GUESTS ARE TO BE MADE AWARE OF THESE DOCUMENTS.

- e. A FULLY MAINTAINED AND COMPLIANT FIRE EXTINGUISHER IS TO BE IN A CLEARLY VISIBLE AND ACCESSIBLE LOCATION.
 - f. BBQS ARE TO BE LIMITED TO GAS OR ELECTRIC ONLY.
 - g. SIGNAGE IS RESTRICTED TO ONE SIGN ON SITE NOT EXCEEDING 0.5M² IN SIZE AND INCORPORATED INTO THE FRONT FENCE OR FRONT OF THE BUILDING.
2. ADVISES THAT THIS APPROVAL IS ISSUED TO THE CURRENT APPLICANT AND IS NOT TRANSFERABLE TO ANOTHER PERSON OR ANOTHER PARCEL OF LAND.

10.3.3 PROPOSED INDIAN OCEAN TERRITORIES TELECOM INSTALLATION OF SOLAR POWER AND BATTERY SYSTEMS

Report Information

Date: 17 February 2020
 Location: Lot 190 Emden Walk, West Island & Part Lot 1106 Jalan Jukong, Home Island
 Applicant: Indian Ocean Territories Telecom Pty Ltd
 File Ref:
 Reporting Officer: Chief Executive Officer
 Island: West & Home Islands
 Attachments: 14.2.1 Development application plans and cover letter

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 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 checked="" 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>

Report Purpose

For Council to consider two applications for development approval from Indian Ocean Territories Telecom (IOTT) for the installation of solar photovoltaic arrays and battery storage to increase power service reliability for both the existing Home and West Islands communication transmission tower sites.

Relevant Documents

[Available for viewing at the meeting](#)

Nil

Background

IOTT is the only provider of internet and mobile services for both private and public markets throughout the Cocos (Keeling) Islands (the Islands). Due to the unreliable power network of the Islands, IOTT often experiences power outages resulting in a loss of their communication services. For this reason, IOTT has identified the opportunity to substitute the power supply of their two communications sites on both Home and West Islands with the combination of solar panels and battery storage for a clean energy reliable supply with the ability to continue the operation of their services off-grid in the case of power network blackout.

The existing Home Island transmission tower is sited on part of Lot 1106 Jalan Jukong (Trust Land); and the West Island transmission tower is sited on Lot 190 Emden Walk. On both sites the solar system will be mounted and screwed to the ground closely adjacent the existing tower and technician's hut.

Currently Council does not have a delegation register in place for statutory planning approvals, meaning each application must be presented to Council for determination.

Comment

Both tower sites are zoned 'Commercial' under the *Shire of Cocos (Keeling) Islands Local Planning Scheme No.1* (LPS1). The objective of the Commercial zone is:

- a) *To provide for retail, entertainment and other community-oriented uses which meet the needs of the local population, tourists and other visitors to the Islands; and*
- b) *To encourage high quality buildings which harmonise with the natural environmental setting of the Islands and which incorporate design features which reflect the unique culture of the local resident population.*

The proposed solar array and battery additions to both tower sites do not alter the current land use of both sites of 'Communications Antennae – Commercial', which is defined as the following by LPS1:

Means any mast, antennae, aerial, satellite dish, infrastructure of a telecommunications network, and other associated equipment used for the reception or transmission of television or radio signals or for other electronic communications where its vertical or horizontal dimensions exceed one metre.

This land use is listed as 'Discretionary' in the zoning table of LPS1, which means that the use is not permitted unless Council has exercised its discretion by granting development approval. Given the small overall footprint of the proposed developments adjacent the existing site infrastructure both applications raise no concerns with the LPS1 building design elements for Commercial zoned properties.

There may be some community concern with sunlight reflecting harshly off the solar panel arrays, but this has been proven to be a non-factor as the panels absorb all sunlight in order to generate power.

With the above in mind, and that the developments will afford reliable constant internet and mobile service connection throughout both Home and West Islands via a clean energy power supply, it is recommended Council approve both applications.

Policy and Legislative Implications

Shire of Cocos (Keeling) Islands Local Planning Scheme No.1 - as outlined above.

Financial Implications

This item has no financial implications.

Strategic Implications

*Shire of Cocos (Keeling) Islands Strategic Community Plan 2016 - 2026 – Goal 3.2.1:
Maintain and develop infrastructure in-line with community needs and the Islands environment.*

Risk Implications

Risk Category	Description	Rating (consequence x likelihood)	Mitigation Action
Financial	Application fee not paid	Low (2)	Permit not issued before fees paid
Health & Safety	Design of building to comply with BCA	Low (4)	Proper building certification
Reputation	Nil	Nil	Nil
Service Interruption	Nil	Nil	Nil
Compliance	Building permit not obtained prior to construction	Low (1)	Advice note added to planning approval
Property	Application not consistent with LPS	Low (4)	Conditions imposed to address identified issues
Environment	Sunlight reflecting harshly off the solar panel arrays	Low (2)	Non-factor. Panels absorb all sunlight in order to generate power
Fraud	Nil	Nil	Nil

Risk Matrix

Consequence / Likelihood	Insignificant (1)	Minor (2)	Medium (3)	Major (4)	Extreme (5)
Almost Certain (5)	Moderate (5)	High (10)	High (15)	Extreme (20)	Extreme (25)
Likely (4)	Low (4)	Moderate (8)	High (12)	High (16)	Extreme (20)
Possible (3)	Low (3)	Moderate (6)	Moderate (9)	High (12)	High (15)
Unlikely (2)	Low (2)	Low (4)	Moderate (6)	Moderate (8)	High (10)
Rare (1)	Low (1)	Low (2)	Low (3)	Low (4)	Moderate (5)

Voting Requirements

Simple Majority

Conclusion

Given there is no relevant planning concerns the officer supports both development applications.

OFFICER'S RECOMMENDATION 1 – ITEM NO 14.2.1

THAT COUNCIL, BY SIMPLE MAJORITY, PURSUANT TO THE *SHIRE OF COCOS (KEELING) ISLANDS LOCAL PLANNING SCHEME NO.1*, RESOLVES TO GRANT DEVELOPMENT APPROVAL FOR THE PROPOSED SOLAR POWER ARRAY AND BATTERY STORAGE SYSTEM UPON PART OF LOT 1106 JALAN JUKONG, HOME ISLAND SUBJECT TO THE FOLLOWING CONDITION AND ADVICE NOTES:

1. ALL DEVELOPMENT SHALL BE IN ACCORDANCE WITH THE ATTACHED PLANS DATE STAMPED 26 FEBRUARY 2020 AND SHALL NOT BE ALTERED WITHOUT THE PRIOR WRITTEN APPROVAL OF THE LOCAL GOVERNMENT.

ADVICE NOTES:

1. THE APPLICANT BE ADVISED THIS IS PLANNING APPROVAL ONLY AND NOT A BUILDING PERMIT. A BUILDING PERMIT MUST BE OBTAINED FOR THIS DEVELOPMENT.
2. IF THE DEVELOPMENT THE SUBJECT OF THIS APPROVAL IS NOT SUBSTANTIALLY COMMENCED WITHIN A PERIOD OF TWO (2) YEARS, THE APPROVAL SHALL LAPSE AND BE OF NO FURTHER EFFECT.
3. WHERE AN APPROVAL HAS SO LAPSED, NO DEVELOPMENT SHALL BE CARRIED OUT WITHOUT THE FURTHER APPROVAL OF THE LOCAL GOVERNMENT HAVING FIRST BEEN SOUGHT AND OBTAINED.
4. THE APPLICANT BE ADVISED THAT "SHOULD YOU BE AGGRIEVED BY THIS DECISION, OR ANY CONDITIONS IMPOSED, THERE IS A RIGHT OF REVIEW UNDER THE *PLANNING AND DEVELOPMENT ACT 2005* (THE ACT). AN APPLICATION FOR REVIEW MUST BE SUBMITTED IN ACCORDANCE WITH PART XIV OF THE ACT WITHIN 28 DAYS OF THE DATE OF THIS DECISION TO:

THE STATE ADMINISTRATIVE TRIBUNAL
GPO BOX U1991
PERTH WA 6845”

OFFICER’S RECOMMENDATION 2 – ITEM NO 14.2.1(2)

THAT COUNCIL, BY SIMPLE MAJORITY, PURSUANT TO THE *SHIRE OF COCOS (KEELING) ISLANDS LOCAL PLANNING SCHEME NO.1*, RESOLVES TO GRANT DEVELOPMENT APPROVAL FOR THE PROPOSED SOLAR POWER ARRAY AND BATTERY STORAGE SYSTEM UPON LOT 190 EMDEN WALK, WEST ISLAND SUBJECT TO THE FOLLOWING CONDITION AND ADVICE NOTES:

1. ALL DEVELOPMENT SHALL BE IN ACCORDANCE WITH THE ATTACHED PLANS DATE STAMPED 26 FEBRUARY 2020 AND SHALL NOT BE ALTERED WITHOUT THE PRIOR WRITTEN APPROVAL OF THE LOCAL GOVERNMENT.

ADVICE NOTES:

1. THE APPLICANT BE ADVISED THIS IS PLANNING APPROVAL ONLY AND NOT A BUILDING PERMIT. A BUILDING PERMIT MUST BE OBTAINED FOR THIS DEVELOPMENT.
2. IF THE DEVELOPMENT THE SUBJECT OF THIS APPROVAL IS NOT SUBSTANTIALLY COMMENCED WITHIN A PERIOD OF TWO (2) YEARS, THE APPROVAL SHALL LAPSE AND BE OF NO FURTHER EFFECT.
3. WHERE AN APPROVAL HAS SO LAPSED, NO DEVELOPMENT SHALL BE CARRIED OUT WITHOUT THE FURTHER APPROVAL OF THE LOCAL GOVERNMENT HAVING FIRST BEEN SOUGHT AND OBTAINED.
4. THE APPLICANT BE ADVISED THAT “SHOULD YOU BE AGGRIEVED BY THIS DECISION, OR ANY CONDITIONS IMPOSED, THERE IS A RIGHT OF REVIEW UNDER THE *PLANNING AND DEVELOPMENT ACT 2005* (THE ACT). AN APPLICATION FOR REVIEW MUST BE SUBMITTED IN ACCORDANCE WITH PART XIV OF THE ACT WITHIN 28 DAYS OF THE DATE OF THIS DECISION TO:

THE STATE ADMINISTRATIVE TRIBUNAL
GPO BOX U1991
PERTH WA 6845”

10.4 ADMINISTRATION

10.4.1 POLICY MANUAL REVIEW 2020

Date: 13 February 2020
 Location: Not applicable
 Applicant: Shire of Cocos (Keeling) Islands
 File Ref:
 Disclosure of Interest: Nil
 Reporting Officer: Chief Executive Officer
 Island: Shire Wide
 Attachments: 10.4.1 Policy Manual 2020

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 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>

Report Purpose

This report brings the reviewed and updated Policy Manual before Council and seeks a Council resolution to adopt the Policy Manual 2020.

Relevant Documents

Available for viewing at the meeting
 Nil

Background

DEFINITION: Policy: “A course or principle of action”

Section 2.7 of the *Local Government Act (WA) (CKI) 1995* prescribes part of the role of a Council is to “determine the local government’s policies”. The Act does not define the term “policy” and hence, for the purpose of the City it shall mean: “A general rule or principles, adopted by the Council to provide clear direction to the Chief Executive Officer on the day to day management of the local government.

Policies provide guidance to Council, staff and our community and aim to articulate and communicate Council position on matters affecting the good governance of the Shire and to enable the effective and efficient management of Shire resources. They assist in ensuring sound and equitable decision-making.

Policies are not binding on Council, instead they provide a structure to avoid ad-hoc decision making. Generally, policies are living documents that evolve through a process of review and refinement in respond to internal and external environment changes.

For this reason, it is important that a review process is in place and at the Shire of Cocos (Keeling) Islands this review takes place annually at the start of each calendar year to ensure the integrity and relevance of the policies in place.

Comment

The Policies contained in the Policy Manual have been reviewed by the Administration and were the subject of a workshop discussion with Councillors at the January workshop. The following changes are included in the Policy Manual before Council for consideration.

1. New Policies:
 - a. Councillor Training and Continuing Professional Development Policy. A new policy required as a result of changes to the *Local Government (WA)(CKI) 1995 Act*.
 - b. Bed and Breakfast Establishments Policy. To assist with applications for Planning Approval
 - c. Holiday Homes Policy. To assist with applications for Planning Approval.
2. Amendments:
 - a. Acting Chief Executive Officer Policy. Addition process for authorising CEO leave including authorising Shire President and Deputy Shire President to sign CEO leave forms for up to 8 weeks.
 - b. After Hours Use of Shire Vehicles. Removed reference to Executive Managers vehicles as their conditions should be in their contracts.
 - c. Dealing with Family Members. Remove reference to family members being employed by the Shire where they report to a family member.
 - d. Secondary Employment Policy. Added requirement that secondary employment cannot impact availability for rostered hours with the Shire.

- e. Purchasing Policy. Added a category for purchases under \$1000, and added ability to purchase directly from WALGA preferred supplier.
- f. Home Island Housing Policy. Added requirement for selection criteria to be applied to people on waiting list for houses.
- g. Naming of Roads Policy. Major rewrite as current policy provided little (no) guidance.
- h. South End Precinct Commercial Development Policy. Added statement that “Leases will be subject to Council’s standard lease processes and statutory requirements.” As requested by Councillors some months ago.
- i. The Customer Service Charter has been added to the Policy Manual. This charter has been workshopped with staff and Councillors and is our first introduction to articulating a comment to customer service while remaining flexible.

Other changes are of a minor grammatical nature, clarifying objectives and scope and / or formatting with no change to intent or content.

While the annual review provides a structure for ensuring policies do not become dated and that they continue to articulate Council’s position on matters of importance, the annual review does not preclude new policies being developed as needed at any time; nor does it preclude Council seeking an amendment to a policy during the year.

Where the Strategic Community Plan identifies a need or Council requests a policy, the Chief Executive Officer (CEO) will prepare a draft policy for Council review at a Councillor Workshop. Where the Administration has identified a need to establish a policy, a proposed policy will be presented for Council review at a Councillor Workshop.

In preparing a draft policy, the Administration will be cognisant of:

- The Statutory Environment.
- The key staff / people involved.
- The impact on internal and external stakeholders.
- Any procedures and / or delegations that would be required.
- Budget implications.

Policies will:

- Be principles focussed and guide actions.
- Be a statement mandating decision making.
- Not be procedure.
- Not be confused with the terms “protocol” or “practice”.
- Not be a statement of vision.

Where during the year, prior to the next scheduled review in January 2021, a policy amendment is deemed appropriate, the amendment to the policy will also follow the above procedures. On such occasions, the CEO is to prepare a draft for consideration by Council at a Councillor Workshop for review prior to formally presenting the draft policy for Council to consider adopting.

Once Council has adopted a new policy, amended or reviewed a policy, the Governance and Risk Coordinator will ensure that:

- The Policy Manual is updated promptly;
- All relevant staff and stakeholders are advised; and
- The Shire’s website is promptly updated.

Policy and Legislative Implications

Section 2.7 of the *Local Government Act (WA) (CKI) 1995* prescribes part of the role of a Council is to “determine the local government’s policies”.

Policies in the Policy Manual 2020 will inform and guide the decisions and activities of the Administration and form the basis of recommendations to Council.

Strategic Implications

Nil

Risk Implications

Risk Category	Description	Rating (consequence x likelihood)	Mitigation Action
Financial			
Health & Safety			
Reputation	Lack of transparency in decision making. Inconsistent decision. Perception that decisions are based on personalities rather than good policy.	High (16)	Carefully considered and communicated policies that guide administrative action and Council decisions and inform Council of a policy position rather than a response to a specific enquiry.
Service Interruption	Decisions held up due to lack of policy position – reinventing the wheel	Moderate 8	Good policies to smooth and fast track decision making and actions.
Compliance	Decisions not consistent with legislation	Moderate 8	Policies that ensure legislative compliance
Property	N/A	N/A	N/A
Environment	N/A	N/A	N/A
Fraud	N/A	N/A	N/A

Risk Matrix

Consequence / Likelihood	Insignificant (1)	Minor (2)	Medium (3)	Major (4)	Extreme (5)
Almost Certain (5)	Moderate (5)	High (10)	High (15)	Extreme (20)	Extreme (25)
Likely (4)	Low (4)	Moderate (8)	High (12)	High (16)	Extreme (20)
Possible (3)	Low (3)	Moderate (6)	Moderate (9)	High (12)	High (15)
Unlikely (2)	Low (2)	Low (4)	Moderate (6)	Moderate (8)	High (10)
Rare (1)	Low (1)	Low (2)	Low (3)	Low (4)	Moderate (5)

Voting Requirements

Simple majority

Conclusion

The draft updated Policy Manual 2020 is presented to Council after a thorough review. The officer's recommendation is that Council adopts the Policy Manual 2020, confident that new policies can be added, and amendments can be made as required throughout the year. The Policy Manual will next be reviewed in January 2021.

OFFICER'S RECOMMENDATION – ITEM NO 10.4.1

THAT COUNCIL, BY SIMPLE MAJORITY, PURSUANT TO SECTION 2.7 OF THE LOCAL GOVERNMENT ACT (WA) (CKI) 1995 RESOLVES TO ADOPT THE SHIRE OF COCOS (KEELING) ISLANDS POLICY MANUAL 2020 AND CONDUCT THE NEXT ANNUAL REVIEW OF ALL POLICIES IN FEBRUARY 2021.

10.4.2 AUTHORISED OFFICER – HEALTH ACT

Report Information

Date: 11 February 2020
 Location: Not applicable
 Applicant: Shire of Cocos (Keeling) Islands
 File Ref:
 Disclosure of Interest: Nil
 Reporting Officer: Chief Executive Officer
 Island: Shire Wide
 Attachments: Nil

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 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>

Report Purpose

To seek a Council resolution to appoint Mr Felix Neuweiler, Principal Environmental Health Officer as an authorised person for the Shire of Cocos (Keeling) Islands under the Health (Misc Provisions) Act (formerly Health Act 1911).

Relevant Documents

Available for viewing at the meeting
 Nil

Background

The Health (Misc. Provisions) Act 1911 (as amended) – s.26 continues to apply for a Local Government to appoint a person as the LGs Deputy to exercise / discharge all or any of the Local Government's powers / duties remaining in the Health (Misc. Prov) Act.

Duties and responsibilities of the Shire and therefore an officer authorised under this legislation include:

- Approval of the construction or installation of an apparatus for the treatment of sewage and disposal of effluent and liquid waste if a connection to the sewer is not available;
- Investigation of a declared infectious disease;
- Licensing and regulating of Lodging Houses;
- The safe transport and disposal of asbestos containing material (ASM);
- Dealing with nuisances;
- Regulating the pollution of water supply;
- Certification and monitoring of public buildings;
- Regulating offensive trades;
- Ensuring dwellings are fit for human habitation.

The advice from WALGA is that there is no power of delegation in this Act and therefore the appointment must be by Council resolution.

It is usual to appoint the Principal Environmental Health Officer into this role. As the Shire of Cocos (Keeling) Islands has an agreement with the Shire of Dandaragan for the provision of regulatory services, the appointment of their Principal Environmental Health Officer as an authorised officer for the Shire of Cocos (Keeling) Islands is appropriate.

Comment

Mr Neuweiler holds a Bachelor of Science (Environmental Health) degree from Curtin University which, combined with his 20+ years' experience in the field specifically in Local Government, satisfies the requirement for authorised officers to be suitably qualified.

Policy and Legislative Implications

Health (Misc Provisions) Act (formerly Health Act 1911)

Strategic Implications

Nil

Risk Implications

Risk Category	Description	Rating (consequence x likelihood)	Mitigation Action
Financial	Decisions of the Shire could be challenged	Moderate 6	Suitably qualified and properly authorised officer
Health & Safety	Inadequate oversight of Health Act requirements could put community members at Health risk	High 12	Oversight of the Shire's responsibilities under the Health Act by suitably qualified authorised officer
Reputation	Poor decisions challenged and overturned	Moderate 6	Suitably qualified and properly authorised officer
Service Interruption	Without authorisation, all items would have to be referred to the Council, slowing the process for community	Moderate 8	Suitably qualified and properly authorised officer
Compliance	Officer acting without appropriate authorisation is non-compliant	Moderate 8	Authorisation by Council as per this agenda item.
Property	N/A	N/A	N/A
Environment	N/A	N/A	N/A
Fraud	N/A	N/A	N/A

Risk Matrix

Consequence / Likelihood	Insignificant (1)	Minor (2)	Medium (3)	Major (4)	Extreme (5)
Almost Certain (5)	Moderate (5)	High (10)	High (15)	Extreme (20)	Extreme (25)
Likely (4)	Low (4)	Moderate (8)	High (12)	High (16)	Extreme (20)
Possible (3)	Low (3)	Moderate (6)	Moderate (9)	High (12)	High (15)
Unlikely (2)	Low (2)	Low (4)	Moderate (6)	Moderate (8)	High (10)
Rare (1)	Low (1)	Low (2)	Low (3)	Low (4)	Moderate (5)

Voting Requirements

Simple majority

Conclusion

Mr Felix Neuweiler is a suitably qualified and experienced senior Environmental Health Officer engaged by a professional local government and is therefore recommended as the Shire of Cocos (Keeling) Islands' authorised officer under S. 26 of the Health (Misc Provisions) Act 1911 (as amended).

OFFICER'S RECOMMENDATION – ITEM NO 10.4.2

THAT COUNCIL, BY SIMPLE MAJORITY, PURSUANT TO *SECTION 26 OF THE HEALTH (MISC PROVISIONS) ACT 1911* RESOLVES THAT:

- 1. IT IS SATISFIED THAT MR FELIX NEUWEILER, PRINCIPAL ENVIRONMENTAL HEALTH OFFICER FOR THE SHIRE OF DANDARAGAN HAS SUITABLE QUALIFICATIONS AND EXPERIENCE TO BE THE SHIRE OF COCOS (KEELING) ISLANDS AUTHORISED OFFICER UNDER *S.26 OF THE HEALTH (MISC PROVISIONS) ACT 1911*; AND**
- 2. APPOINTS MR FELIX NEUWEILER, PRINCIPAL ENVIRONMENTAL HEALTH OFFICER FOR THE SHIRE OF DANDARAGAN AS A SHIRE OF COCOS (KEELING) ISLANDS AUTHORISED OFFICER UNDER *S. 26 OF THE HEALTH (MISC PROVISIONS) ACT 1911* FOR THE DURATION OF HIS TENURE AS PRINCIPAL ENVIRONMENTAL HEALTH OFFICER FOR THE SHIRE OF DANDARAGAN AND FOR THE TERM OF THE AGREEMENT BETWEEN THE SHIRE OF COCOS (KEELING) ISLANDS AND THE SHIRE OF DANDARGAN.**

10.4.3 BLUE TAIL SKINK PROGRAM – PULU BLAN MADAR

Date: 13 February 2020
 Location: Pulu Blan Madar
 Applicant: Parks Australia
 File Ref:
 Disclosure of Interest: Nil
 Reporting Officer: Chief Executive Officer
 Island: Pulu Blan Madar
 Attachments: 10.4.2 Letter of support – M Malka

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>

Report Purpose

This report brings an update on the relocation and conversation of the Christmas Island Blue Tail Skink to the Cocos (Keeling) Islands and to seek a resolution of Council to approve the continuation of the program with a further introduction of skinks to Pulu Blan Madar.

Relevant Documents

Available for viewing at the meeting
 Nil

Background

At the Ordinary Meeting of Council on 26 September 2018, Council resolved as follows:

That the Council, by Simple Majority, subject to the Local Government Act 1995 (WA) (CKI) RESOLVES to:

1. Advise Parks Australia that the Shire of Cocos (Keeling) Island supports the proposal for the introduction of Blue-tailed skinks to the Cocos (Keeling) Islands, specifically Pulu Blan and Pulu Kembang.

The motion was put and declared CARRIED (4/0)

Following this resolution of Council, 300 Blue-tailed Skinks were introduced to Pulu Blan in September 2019. Parks Australia have monitored their survival and results have been promising. A formal study of survivorship and dispersal is planned from March to May 2020.

Comment

Parks Australia A/g Chief Ranger, Trish Flores has contacted the Shire advising of an amendment to the original plan and instead of also utilising Pulu Kembang for homing the skinks, the preference is now to utilise Pulu Blan Madar.

Pulu Blan Madar has been identified as a result of the success in the rat eradication program on that island. Pulu Blan Madar is also preferred over Pulu Kembang due ease of access for post-release monitoring of skink survivorship, noting that Parks Australia would be looking at daily, fortnightly and monthly monitoring for at least one year and then beyond.

Therefore, this item seeks a Council resolution to approve the introduction of 300 skinks to Pulu Blan Madar. Parks Australia has advised that all the skinks being introduced will have been in strict quarantine prior to their re-homing to comply with the conditions of the DAWR Import Permit.

Parks Australia has consulted with Mr Azlak Malka who represents the families responsible for the Pondok on Pulu Blan Madar and has a letter of support from Mr Malka. See attachment 10.4.2.

Policy and Legislative Implications

Nil

Strategic Implications

Nil

Risk Implications

Risk Category	Description	Rating (consequence x likelihood)	Mitigation Action
Financial	N/A		
Health & Safety	N/A		
Reputation	Pondok owners and/or community backlash	Moderate (6)	Signed letter of support from Pondok owner; broad community support for the program.
Service Interruption	N/A		
Compliance	Unauthorised importing	Moderate (8)	DAWR Import Licence. Applicant is an Australian Government Agency.
Property	N/A	N/A	N/A
Environment	Introduction of invasive species	Moderate (6)	DAWR Import Licence. Applicant is a reputable Government Agencies with specialisation in environmental management.
Fraud	N/A	N/A	N/A

Risk Matrix

Consequence / Likelihood	Insignificant (1)	Minor (2)	Medium (3)	Major (4)	Extreme (5)
Almost Certain (5)	Moderate (5)	High (10)	High (15)	Extreme (20)	Extreme (25)
Likely (4)	Low (4)	Moderate (8)	High (12)	High (16)	Extreme (20)
Possible (3)	Low (3)	Moderate (6)	Moderate (9)	High (12)	High (15)
Unlikely (2)	Low (2)	Low (4)	Moderate (6)	Moderate (8)	High (10)
Rare (1)	Low (1)	Low (2)	Low (3)	Low (4)	Moderate (5)

Voting Requirements

Simple majority

Conclusion

The officer's recommendation is to support this request considering the minimal impact on the community, Shire and the environment. The recommendation is also based on the high compliance requirements under the DAWR import licence and the support of the Pondok owner. It is also in support of a globally significant conservation program.

OFFICER'S RECOMMENDATION – ITEM NO 10.4.2

THAT COUNCIL, BY SIMPLE MAJORITY, PURSUANT TO SECTION 3.18 OF *THE LOCAL GOVERNMENT ACT (WA) (CKI) 1995* RESOLVES TO SUPPORT THE REQUEST FROM PARKS AUSTRALIA FOR THE INTRODUCTION OF BLUE-TAILED SKINKS TO PULU BLAN MADAR.

10.5 MINUTES TO BE RECEIVED

10.5.1 MINUTES FROM AUDIT AND GOVERNANCE COMMITTEE MEETING TO BE RECEIVED

Report Information

Date: 21 February 2020
 Applicant: Shire of Cocos (Keeling) Islands
 File Ref:
 Location: N/A
 Disclosure of Interest: Nil
 Reporting Officer: Deputy Chief Executive Officer
 Island: Shire Wide
 Attachments: 10.5.1-Audit Committee Meeting Minutes (Unconfirmed)
 18 February 2020

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 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>

Summary

The report formally presents the (unconfirmed) minutes of Audit and Governance Committee of Council from the previous meeting.

Background

The Shire has established the Audit and Governance Committee as a Committee of Council. The Audit and Governance Committee does not have any delegated authority; therefore, any recommendations requiring a Council decision that result from this Committee meeting must be brought before Council. This will be done via agenda items to Council.

Comment

The attached minutes are the unconfirmed minutes of the meeting of Audit and Governance Committee of Council held on the 18 February 2020.

Consultation

N/A

Financial Implications

The Officer's recommendation for Council to receive the minutes of Committee meetings carries no financial commitment for Council. Should any recommendation require a financial commitment or have any implication outside the CEO's delegated authority, the matter will be referred to Council as a specific agenda item.

Risk Implications

Nil

Policy Implications

Nil

Statutory Implications

Administration regulation 11 sets out the content that the minutes of council or committee meetings must contain, including:

- the names of members present at the meeting;
- details of each motion moved, the mover and the outcome of the motion;
- details of each decision made at the meeting; and
- written reasons for each decision made at a meeting that is significantly different from the committee's or council employee's recommendation.

Section 5.22(2) and (3) of the Act requires that the minutes of a council or committee meeting are to go to the next meeting of the council or committee for confirmation and signing by the person presiding to certify the confirmation.

Strategic Implications

Shire of Cocos (Keeling) Islands Strategic Community Plan 2013 – Outcome 4.1.2 Continue to improve organisational planning.

Voting Requirements

Simple majority

Conclusion

That the minutes of the Audit and Governance Committee meeting held on the 18 February 2020 be received.

OFFICER'S RECOMMENDATION – ITEM NO 10.5.1

THAT COUNCIL BY SIMPLE MAJORITY PURSUANT TO SECTION 3.18 OF THE LOCAL GOVERNMENT ACT 1995 RESOLVES TO:

- 1. RECEIVE THE MINUTES OF THE AUDIT AND GOVERNANCE COMMITTEE MEETING HELD ON 18 FEBRUARY 2020.**

- 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. MATTERS RELATING TO THE LAND TRUSTS**



MATTERS RELATING TO THE LAND TRUST 1979 AND LAND TRUST 1984

14.1 TRUSTS ADMINISTRATION

14.1.1 LAND TRUSTS GOVERNANCE

Date: 18 February 2020
 Location: Not applicable
 Applicant: Shire of Cocos (Keeling) Islands
 File Ref:
 Disclosure of Interest: Nil
 Reporting Officer: Chief Executive Officer
 Island: Shire Wide
 Attachments: 14.1.1 1979 Trust Deed
 14.1.1 1984 Trust Deed
 14.1.1 Correspondence from Australian Government Solicitor,
 August 2016
 14.1.1 Trust Fact Sheet, Australian Government, Department of
 14.1.1 Infrastructure and Regional Development [circa 2016]

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 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>

Report Purpose

This report brings information from the Australian Government Solicitor (AGS) and the Australian Government's [former] Department of Infrastructure and Regional Development (DIRD) regarding the governance of the Land Trusts before Council. The report seeks a resolution from Council on the governance of the Land Trusts based on this advice.

Relevant Documents

Available for viewing at the meeting

Nil

Background

The Australian Government transferred ownership of portions of land on the Cocos (Keeling) Islands, under two separate deeds, to the Territory's local government being the Cocos (Keeling) Islands Council. On 1 July 1992 the Territories Law Reform Act came into effect by which the Commonwealth Government applied Western Australian laws to the Cocos (Keeling) Islands. The Local Government (Transition) Ordinance 1992 established the Shire of the Cocos (Keeling) Islands by absorbing the Cocos (Keeling) Islands Council. By this arrangement, the body corporate called the Shire of Cocos (Keeling) Islands became the Trustee for both Land Trusts. Decisions relating to the Trust are made by Council as the decision-making arm of the body corporate.

The 1979 Deed (see attachment 14.1.1): The 1979 Trust Deed applies to all of the land above the high-water mark on Home Island, except Lot 13, Lot 14 and Pulu Gangsa (Cemetery Island). The Deed states that the land is to be held 'upon trust for the benefit, advancement and wellbeing of the community formed by the Kampong residents.' No other terms were expressed in the Deed. 'Kampong residents' were described in the 1979 Trust Deed as 'the residents from time to time of the Kampong area'.

The 1984 Deed (see attachment 14.1.1): the 1984 Trust Deed applies to all parcels of land situated and being above high-water mark within the Cocos (Keeling) Islands, including North Keeling Island, but not including parcels of land as described in the First Schedule of the 1984 Trust Deed (see attachment 14.1.1)

This transferred land was to be held by the Council (and later, by its successor, the Shire) 'upon trust for the benefit, advancement and wellbeing of the Cocos (Keeling) Islanders resident in the Territory on land owned by the Council.'

Advice from the Australian Government Solicitor (AGS) via correspondence to the General Manager of the Indian Ocean Territories Branch of DIRD in 2016 (see Attachment 14.1.1) provided guidance to improve understanding of the Trusts and how best to manage Trust business.

The AGS advised that the Trusts are valid charitable purposes trusts, the purposes being the benefit of a group of society, not specific beneficiaries. Therefore, the advice proceeds by stating that the administration and management of Trust property is for the achievement or benefit of a purpose, not for the benefit of persons.

The AGS also advised in the same document (i.e. 2106 correspondence, page 4), that the Shire as the Trustee of the Trusts has certain responsibilities (see attachment 14.1.1). These include an overriding duty to promote the object of the Trusts, execute the Trusts so as to benefit the relevant community. There is also a duty to be familiar with the terms of the Trusts.

The Trustee must also administer the Trust personally, that is not permit others to administer the Trusts on their behalf. That does not preclude the Trustee from obtaining advice as needed in order to made decisions on matters relating to the Trusts.

The AGS was asked specifically to comment on whether separate meetings were required for Trust business and whether each Trust needed a separate meeting. The AGS advice was that there is “no hard and fast answer to this question” however, the AGS does proceed to advise that a clear delineation (either in the form of a separate meeting or a separate part of a meeting) between Shire conducting business as the Shire and the Shire conducting business as Trustee may assist in ensuring that the duty to avoid conflict and to administer the trusts personally and to avoid delegations are met” (AGS correspondence, 2106, p.5).

Advice from the AGS and DIRD posits that there is “no fundamental incompatibility between the role of the Shire as the Local Government and as Trustee” and that the *Local Government Act 1995* does not limit the Shire’s ability to act as a Trustee. The *Local Government Act 1995* implicitly recognises that a local government may hold property, including land or property in Trust.

It should be noted that there are specific legislative requirements regarding the keeping of Trust accounts, including that Trust finances be held separately from Shire finances. This requirement for separate accounting is consistent with the requirements of the *Local Government Act (WA)(CKI) 1995*. While this has not previously been done in the history of the Trusts, the Shire has received funding from the Australian Government to separate trust accounts from Shire accounts. This work is currently being carried out by Moore Stephens and the CEO and DCEO are meeting with representatives of Moore Stephens in Perth on Monday 9 March to get an update and settle any outstanding queries.

Comment

Whilst decision making in relation to the Trusts has been carried out by Council as part of its business during Ordinary Meetings of Council in the past, the agenda for the Ordinary Meetings of Council will now clearly separate and delineate the part of the meeting that deals with Trust matters in accordance with advice received. At the point in the agenda when matters relating to the Trusts are brought before Council, they will be presented at the conclusion of other Shire business and a cover page that highlights the purpose of the Trusts and legislative framework for the management of Trusts will be included to ensure it is clear decisions from that point in the agenda must be based on furthering the charitable purpose of the trusts.

However, the Shire also operates under the *Local Government Act (WA) (CKI) 1995* and hence needs to continue to observe the legislative, policy and procedural frameworks of the Shire of Cocos (Keeling) Islands whilst meeting on matters relating to the Trusts. This matter is further explained under the Policy and Legislative Implications heading.

The Trust instruments (the Deeds) do not provide any criteria or measures for the Shire as Trustee to assess how a particular decision may or may not further the purposes of the Trusts. Therefore, the officer’s recommendation is that until this matter is fully considered by the Trustee and measures are documented for use, criteria is that decisions on matters relating

to the Trust should align with the goals of the Strategic Community Plan 2016-2026 (SCP). This measure is recommended as the SCP was developed in strong consultation with the Kampong residents and Cocos Islanders resident in the Territory on land owned by the Council; and while other stakeholders were consulted, the main constituent groups consulted in the preparation of the SCP, were Kampong residents and Cocos Islander residents.

Policy and Legislative Implications

As a Local Government, the Shire operates under numerous pieces of legislation, particularly *the Local Government Act (WA)(CKI) 1995* and subsidiary regulations.

The Shire also works under policy and procedural frameworks such as Local Laws, Policies as adopted by Council and the Code of Conduct.

In addition, when considering matters relating to the Trusts, the Shire will also need to consider the Trust instruments (the Deeds), the *Trustees Act (WA)(CKI) 1962*, the *Charitable Trusts Act (WA)(CKI) 1962*.

In preparing agenda items for Council in matters relating to the Trust, officers will consider and report on the statutory framework and will ensure that recommendations are compliant with statutory requirements.

Strategic Implications

Nil

Risk Implications

Risk Category	Description	Rating (consequence x likelihood)	Mitigation Action
Financial	Trust finances are not reported separately from Shire finances.	High	Work being undertaken to separate the Trust finances from the Shire finances.
Health & Safety	N/A		
Reputation	Decisions of the Trustee are challenged.	High (10)	Carefully considered decisions that are well documented and based on legal advice.
Service Interruption	N/A		
Compliance	Decisions not consistent with legislation	Moderate 8	Advice from the AGS, DIRD
Property	N/A	N/A	N/A
Environment	N/A	N/A	N/A

Fraud	N/A	N/A	N/A
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Risk Matrix

Consequence / Likelihood	Insignificant (1)	Minor (2)	Medium (3)	Major (4)	Extreme (5)
Almost Certain (5)	Moderate (5)	High (10)	High (15)	Extreme (20)	Extreme (25)
Likely (4)	Low (4)	Moderate (8)	High (12)	High (16)	Extreme (20)
Possible (3)	Low (3)	Moderate (6)	Moderate (9)	High (12)	High (15)
Unlikely (2)	Low (2)	Low (4)	Moderate (6)	Moderate (8)	High (10)
Rare (1)	Low (1)	Low (2)	Low (3)	Low (4)	Moderate (5)

Voting Requirements

Simple majority

Conclusion

The officer's recommendation provides a way forward for Council in managing the Trusts that is consistent with advice from the AGS and provides a more rigorous and defensible position for the Shire in meeting its obligations as the Trustee.

OFFICER'S RECOMMENDATION – ITEM NO 14.1.1

THAT COUNCIL, BY SIMPLE MAJORITY, PURSUANT TO SECTION 3.18 OF *THE LOCAL GOVERNMENT ACT (WA) (CKI) 1995 RESOLVES TO:*

- 1. NOTE THE ADVICE FROM THE AUSTRALIAN GOVERNMENT SOLICITOR AND DEPARTMENT OF INFRASTRUCTURE AND REGIONAL DEVELOPMENT REGARDING THE GOVERNANCE AND DECISION MAKING ON MATTERS RELATING THE TO THE 1979 TRUST DEED AND THE 1984 TRUST DEED;**
- 2. DELINEATE THE PART OF THE MEETING THAT DEALS WITH MATTERS OF THE TRUSTS;**
- 3. CONTINUE TO OBSERVE THE REQUIREMENTS OF LOCAL GOVERNMENTS IN WESTERN AUSTRALIA AND THE SHIRE OF COCOS (KEELING) ISLANDS IN ALL ASPECTS OF MANAGING AND ADMINISTERING THE TRUSTS.**
- 4. INVESTIGATE A MEANS TO MEASURE DECISIONS AGAINST THE PURPOSES OF THE 1979 TRUST DEED (BEING THE BENEFIT, ADVANCEMENT AND WELLBEING OF THE COMMUNITY FORMED BY THE KAMPONG RESIDENTS) AND THE 1984 TRUST DEED (BEING THE BENEFIT, ADVANCEMENT AND WELLBEING OF THE COCOS (KEELING) ISLANDERS RESIDENT IN THE TERRITORY ON LAND OWNED BY THE COUNCIL), AS PART OF THE MAJOR REVIEW OF THE STRATEGIC COMMUNITY PLAN IN 2020.**

14.2 TRUSTS LEASE

14.2.1 REQUEST TO LEASE PORTION OF LOT 1106 – INDIAN OCEAN TERRITORIES TELECOM TOWER

Report Information

Date: 20 February 2020
 Location: Part Lot 1106, Jln Jukung
 Applicant: Indian Ocean Territories Telecom Pty Ltd
 File Ref:
 Disclosure of Interest:
 Reporting Officer: Asset & Property Management Coordinator
 Island: Home Island
 Attachments:

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 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>

Report Purpose

To present the request and supporting documentation for a lease for Part Lot 1106 for consideration.

Relevant Documents

[Available for viewing at the meeting](#)

Background

A request has been received from Indian Ocean Territories Telecom Pty Ltd (IOTT) for a formal 5-year lease with a 5-year option on part lot 1106 on Home Island. IOTT has had communications infrastructure on this site since approx. 2000 and it currently provides internet, IP transit, and mobile network services for the Cocos (Keeling) Islands. There was previous a peppercorn lease in place for this site however this expired in 2006. No formal arrangements have been entered into since.

IOTT is the only provider of internet and mobile services for the local community, government agencies, and local businesses in the islands.

Comment

IOTT provides an important service to the community and has operated from this site for many years.

The Shire has obtained a sqm rate that it can apply for each different land use for small portions of vacant land (2,000 sqm or less) as the costs of obtaining a registered valuation for each and every lease can be prohibitive given the often minimal lease fees. By applying that formula to this small portion of land (216sqm) the total annual lease fee would be \$216. Noting that this \$216 lease fee would not cover the administrative costs associated with the preparation and ongoing administration of lease, officers are proposing a minimum annual lease fee of \$1,000 to take into consideration the administrative costs – similar to the manner in which minimum rates are applied. Shire rates would also be raised on the area if this lease is approved.

Policy and Legislative Implications

Section 3.58 of the Local Government Act 1995 as amended

Financial Implications

A lease fee of \$1,000pa plus annual CPI increase will be payable to the land trust. Shire rates will also be raised. A GRV will need to be obtained for this site however the minimum rate amount this year was \$705.

Strategic Implications

Shire of Cocos (Keeling) Islands Corporate Business Plan 2018/19 – 2021/22 – Economic Objective 3 – Promote potential developments that foster economic development and diversification – Outcome ED1.1.3.3 Promote and seek out potential for economic development.

Risk Implications

Risk Category	Description	Rating (consequence x likelihood)	Mitigation Action
Financial	Expenditure on the lease exceeds income	Moderate (8)	Minimum lease fee proposed
Health & Safety	N/A		
Reputation	An informal agreement (as currently exists) lacks professionalism.		A formal lease, with a minimum lease fee proposed.
Service Interruption	Infrastructure is essential for service delivery		Lease would provide security of tenure for essential infrastructure
Compliance	Informal agreements (as currently exists) could be perceived as non-compliant.		Formal lease proposed
Property	N/A		
Environment	N/A		
Fraud	Potential for an informal agreement to be misused.		Formal lease proposed.

Risk Matrix

Consequence / Likelihood	Insignificant (1)	Minor (2)	Medium (3)	Major (4)	Extreme (5)
Almost Certain (5)	Moderate (5)	High (10)	High (15)	Extreme (20)	Extreme (25)
Likely (4)	Low (4)	Moderate (8)	High (12)	High (16)	Extreme (20)
Possible (3)	Low (3)	Moderate (6)	Moderate (9)	High (12)	High (15)
Unlikely (2)	Low (2)	Low (4)	Moderate (6)	Moderate (8)	High (10)
Rare (1)	Low (1)	Low (2)	Low (3)	Low (4)	Moderate (5)

Voting Requirements

Simple majority.

Conclusion

The request for a new lease if presented to the Trustee for consideration and the officer's recommendation is that the request is approved based on:

1. The proposed lease progresses the purpose of the Trust in that it will increase revenue, provide direct benefit to Kampong residents, and support strategic outcomes as outlined in the Strategic Community Plan.
2. IOTT is the only local provider of internet and mobile services for the local community, government agencies, and local businesses in the islands.

OFFICER'S RECOMMENDATION – ITEM NO 10.2.1

THAT THE COUNCIL AS TRUSTEE FOR THE COCOS ISLANDS 1979 LAND TRUST , BY SIMPLE MAJORITY, PURSUANT TO *SECTION 3.58 OF THE LOCAL GOVERNMENT ACT 1995* RESOLVES TO ENTER INTO A LEASE FOR PART LOT 1106 JALAN JUKUNG WITH AN INITIAL FIVE YEAR TERM WITH A FIVE YEAR OPTION WITH INDIAN OCEAN TERRITORIES TELECOM PTY LTD SUBJECT TO MEETING ALL THE REQUIREMENTS OF SECTION 3.58 OF LOCAL GOVERNMENT ACT 1995 (WA) (CKI) RELATING TO THE DISPOSAL OF PROPERTY.

15. CLOSURE