



SHIRE OF
COCOS
KEELING
ISLANDS

MAJU PULU KITA | ADVANCE OUR ISLANDS

REQUEST FOR LAND LEASE

Unsolicited Proposals Process Outline

Bekerja bersama untuk maju pulu kita | Working together to advance our islands

Request for Land Lease Unsolicited Proposals Process Outline

Purpose

The following document aims to provide potential investors or developers an understanding of the process the Shire will follow when negotiating a lease of trust land thereby giving potential investors some clarity around the process and potential timelines.

Disclaimer: Whilst this document aims to provide as much certainty around the process as possible, each application for a lease will be unique and have unique and specific attributes that may require some amendment to or variation of the following process. These will be discussed in the early stages of the negotiations.

Background

The Shire of Cocos (Keeling) Islands (the Shire) is the Trustee for the following two Trusts:

1. the 1979 Trust which is for the benefit, advancement and wellbeing of the community formed by Kampong residents; and
2. the 1984 Trust which is for benefit, advancement and wellbeing of Cocos Islanders residing on land owned by the former Cocos (Keeling) Islands Council.

Therefore in all dealing relating to the disposal of Trust land, either by lease or by sale, the Shire is acting in its capacity as the Trustee and has the legal capacity to deal with land.

Any dealing with the land must be in accordance with the Trust instrument and relevant legislation. The Shire follows the requirements of the *Local Government Act 1995 (WA)(CKI)* (the Act) as defined in Section 3.58 for the disposal of land by sale or lease. Please see Appendix One for an extract of the Act, specifically Section 3.58.

Selling Land

By implication under the Trust and expressly under the *Trustee Act 1962 (WA)* (CKI), the Shire has power to sell the Trust land, provided the sale would further the purpose of the Trusts, that is the benefit, advancement and wellbeing of the community formed by Kampong residents; and the wellbeing of Cocos Islanders.

Leasing Land

The provisions of the Trusts imply that the Shire as Trustee has the power to lease land. In addition, under the *Trustees Act 1962*, the Shire may lease land for a term not exceeding 30 years and the Shire is able to seek the sanction of the Commonwealth for lease terms of more than 30 years. However, a lease may include an optional or compulsory purchasing clause. Any lease of Trust land must further the purposes of the Trusts.

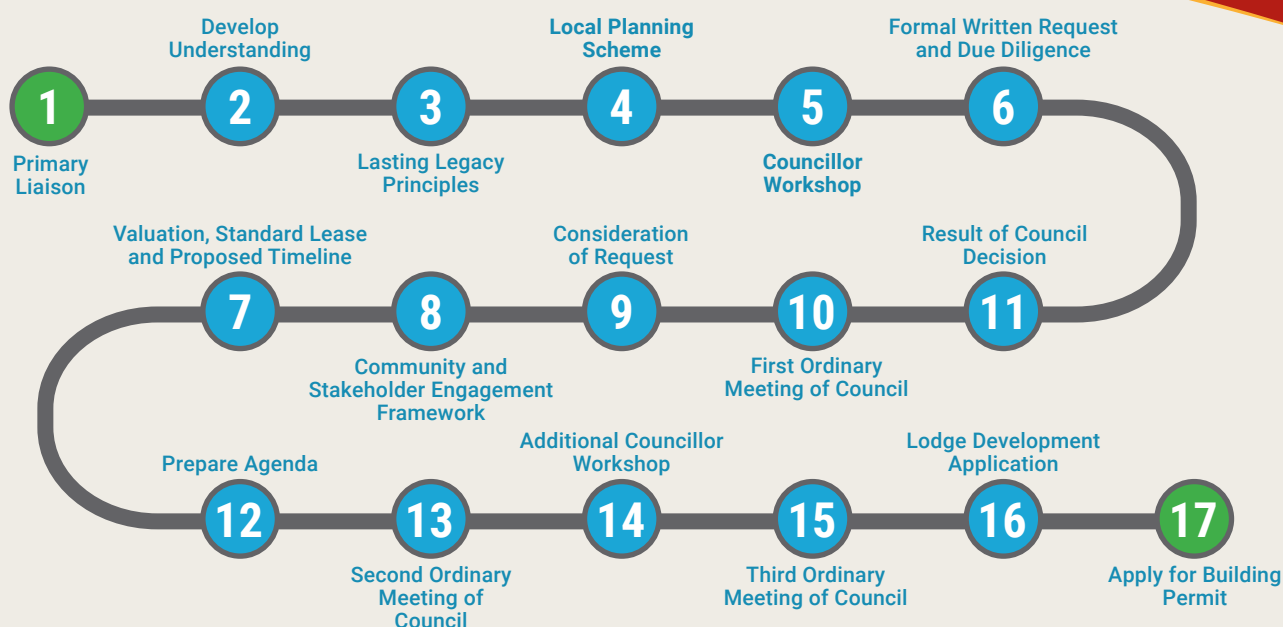
In considering and assessing the benefit of the proposed land lease and whether it furthers the purposes of the Trusts, the Shire will use the Strategic Community Plan to determine if the community objectives will be progressed or realised by the proposed lease. The Strategic Community Plan can be found at <https://shire.cc/en/your-council/council-documents.html>

Comment

This process acknowledges that preparing documents and due diligence for Council and community comes at a cost to proponents and aims to provide the proponent with some surety along the way so that proponents can consider and balance expenditure versus risk.

At the same time it tries to balance commercial confidentiality and sensitivity with transparency and the Council and community's right to know what benefits and impacts the proposed development will have on social, economic and environmental sustainability of this unique and beautiful place.

Process outline



Not all steps will be required for all approvals. For example, the number of Council meetings and workshops will depend on the complexity and scale of the proposals. Simple proposals are likely to need fewer meetings and workshops.

Action	Indicative timeframe
1 Primary Liaison Proponent seeks advice from the Shire. Shire provides this Process Outline and assigns an officer as primary liaison.	Within three business days
2 Develop Understanding Proponent and Shire meet to gain an understanding of the nature and scale of the request, and of Shire processes.	Determined by the proponent
3 Lasting Legacy Principles Proponent is provided with the Shire's <i>Lasting Legacy Principles</i> paper focusing on the Shire's commitment to sustainability on the islands.	At meeting noted at step 2 (above).
4 Local Planning Scheme Proponent is provided with a copy of the Shire's <i>Local Planning Scheme</i> to ensure proposed usage is consistent with zoning (appropriate/permitted or discretionary). If inconsistent, discuss options with the proponent – e.g. another site or re-zoning. Link to the DPLH page: https://www.dplh.wa.gov.au/lps	At meeting noted at step 2 (above).
5 Councillor Workshop Proponent is invited to present the concept at a Councillor workshop. This is not a decision-making forum but can provide Councillors with an overview and the opportunity to ask questions.	Determined by the proponent noting that workshops are held approx. every four weeks following Council meetings.

Action	Indicative timeframe
<p>6 Formal Written Request and Due Diligence</p> <p>Once the proponent chooses to progress, they will provide the Shire with a formal written request and due diligence required to be able to recommend to Council to progress to community engagement. The community requires this level of detail to be able to provide informed input.</p> <p>Items of due diligence required are:</p> <ol style="list-style-type: none"> 3. Business attributes: this would include relevant expertise, experience, skills, etc. in the type and scale of development; 4. A feasibility study or business case: to include financial modelling, capital and operational costs and projected revenue, can be marked as commercial-in-confidence and not for public viewing at the proponent's request; 5. Concepts designs and plans; 6. A map of the proposed lease area. <p>The items above to be packaged in a manner that is suitable for public information.</p>	<p>Determined by the proponent</p>
<p>7 Valuation, Standard Lease and Proposed Timeline</p> <p>Shire arranges a valuation</p>	<p>Two months usually required.</p>
<p>Shire provides proponent with a copy of the standard lease template for consideration. This ensures that, at a later stage should Council resolve to progress with a lease, there is a mutual understanding on the lease terms.</p>	<p>Approx. one month to discuss and negotiate if many areas of disagreement.</p>
<p>Shire and proponent develop a proposed timeline for development approval and actual construction for Council to consider, should the lease be awarded. This item aims to address Council's concerns where the land is leased but not developed and does not achieve the social, economic outcomes promised. The timeframes negotiated at this stage will be included in the lease and tie the proponent to some milestones and deadlines to carry out development.</p>	<p>Concurrent with dot point 6 above.</p>
<p>8 Community and Stakeholder Engagement Framework</p> <p>Shire and proponent develop a community and stakeholder engagement process (determined by the nature, scale, complexity and controversy of the proposed development) using the Shire's Community and Stakeholder Engagement Framework at the following link https://shire.cc/images/files/Community-Engagement-Framework-April-2019.pdf</p>	<p>Concurrent with dot point 6 and 7 above.</p>

Action	Indicative timeframe
<p>9 Consideration of Request</p> <p>Prepare agenda report for Council to consider request from Proponent. The Officer's Recommendation will usually be to proceed to next stage, which is the community and stakeholder engagement. If the proposed development and lease site is small, or not likely to be controversial, the Shire may suggest that at this stage the engagement can be combined with the statutory process requirement (as per Appendix One) and that no further advertising or engagement is required.</p> <p>However, larger, more complex or controversial developments will require this first process followed by more detail / due diligence on the following:</p> <ul style="list-style-type: none"> • Built Environment Performance; • Natural Environment Performance; • Social and Cultural Management/Performance; • Business Planning and Financial Modelling; • and a subsequent statutory advertising process. (NB: Council may choose not to accept the Officer's Recommendation) 	<p>Shire will need at least two weeks from receipt of formal request to prepare an agenda item.</p>
<p>10 First Ordinary Meeting of Council</p>	<p>Dates of Council meetings are advertised on the Shire's website.</p>
<p>11 Result of Council Decision</p> <p>Pending Council decision, implement community and stakeholder engagement for more complex projects or execute lease for less complex, smaller projects.</p> <p>Council may resolve to continue negotiations or defer a decision.</p>	<p>Need two or three months depending on the scale and complexity of the engagement process for the engagement. Minimum is statutory requirement to advertise for 14 days, however the Shire usually advertises for a longer period of at least 28 days.</p>
<p>12 Prepare Agenda</p> <p>Prepare agenda item for Ordinary Meeting of Council that includes report from Engagement and any proponent responses and officer's comments on queries or concerns raised during engagement. Officer's recommendation will depend on outcome of engagement.</p>	<p>Two weeks</p>
<p>13 Second Ordinary Meeting of Council</p> <p>Council may choose to execute the lease or to carry out more negotiations requiring another statutory advertising of the disposal via public submissions, or resolve to not proceed.</p>	<p>Dates of Council meetings are advertised on the Shire's website.</p>
<p>14 Additional Councillor Workshop</p> <p>For more complex projects, it may be necessary for a detailed workshop with Councillors and the proponent to further discuss details regarding the outcomes Council and the proponent are seeking. This is to ensure both parties have a mutual understanding as to what is acceptable development and what is not acceptable.</p>	<p>Determined by the proponent</p>

Action	Indicative timeframe
<p>15 Third Ordinary Meeting of Council</p> <p>Prepare agenda item for Ordinary Meeting of Council. This must include report from statutory advertising, workshop outcomes and any proponent responses and officer's comments. The Officer's recommendation will depend on public submissions and the outcome of the workshop with Councillors, and could be to execute the lease or decline the request to lease.</p>	<p>Two weeks to prepare an agenda item for Council to consider</p>
<p>Once the lease is executed – Council assumes its position to act in its capacity as a Local Government Authority, no longer as Trustees for the following processes .</p>	
<p>16 Lodge Development Application</p> <p>Prior to any development, the Proponent will lodge a Development Application for Council to consider. The Deemed Provisions can be found at the Department of Planning, Lands and Heritage website https://www.dplh.wa.gov.au/lpsregs See Appendix Two for an extract of the most pertinent information.</p> <p>See the Application for Development Approval form and checklist on the Shire website https://shire.cc/images/files/TownPlanning/Application_for_Development_Approval_and_Checklist_UPDATED.pdf</p> <p>See Application for building permit form and checklist on the Shire website https://shire.cc/images/files/TownPlanning/Application_for_Building_Permit_UNCERTIFIED_BA2.pdf</p>	<p>Two weeks to prepare an agenda item for Council to consider</p>
<p>17 Apply for Building Permit</p> <p>Prior to any constitution, the proponent must apply for a Building Permit. This is considered at an officer level – not by Council.</p>	<p>Aim to turn-around within two weeks for simple projects and four weeks for complex projects.</p>

Appendix One

Extract from the *Local Government Act 1995 (WA) (CKI)*

Retrieved 17 January 2019 from https://www.legislation.wa.gov.au/legislation/statutes.nsf/main_mrtitle_551_homepage.html

3.58. Disposing of property

- (1) In this section –
 - dispose** includes to sell, lease, or otherwise dispose of, whether absolutely or not;
 - property** includes the whole or any part of the interest of a local government in property, but does not include money.
- (2) Except as stated in this section, a local government can only dispose of property to –
 - (a) the highest bidder at public auction; or
 - (b) the person who at public tender called by the local government makes what is, in the opinion of the local government, the most acceptable tender, whether or not it is the highest tender.
- (3) A local government can dispose of property other than under subsection (2) if, before agreeing to dispose of the property –
 - (a) it gives local public notice of the proposed disposition –
 - (i) describing the property concerned; and
 - (ii) giving details of the proposed disposition; and
 - (iii) inviting submissions to be made to the local government before a date to be specified in the notice, being a date not less than 2 weeks after the notice is first given; and
 - (b) it considers any submissions made to it before the date specified in the notice and, if its decision is made by the council or a committee, the decision and the reasons for it are recorded in the minutes of the meeting at which the decision was made.
- (4) The details of a proposed disposition that are required by subsection (3)(a)(ii) include –
 - (a) the names of all other parties concerned; and
 - (b) the consideration to be received by the local government for the disposition; and
 - (c) the market value of the disposition –
 - (i) as ascertained by a valuation carried out not more than 6 months before the proposed disposition; or
 - (ii) as declared by a resolution of the local government on the basis of a valuation carried out more than 6 months before the proposed disposition that the local government believes to be a true indication of the value at the time of the proposed disposition.

Appendix Two

Extract from the Deemed Provisions:

67. Matters to be considered by local government

In considering an application for development approval the local government is to have due regard to the following matters to the extent that, in the opinion of the local government, those matters are relevant to the development the subject of the application –

- (a) the aims and provisions of this Scheme and any other local planning scheme operating within the Scheme area;
- (b) the requirements of orderly and proper planning including any proposed local planning scheme or amendment to this Scheme that has been advertised under the *Planning and Development (Local Planning Schemes) Regulations 2015* or any other proposed planning instrument that the local government is seriously considering adopting or approving;
- (c) any approved State planning policy;
- (d) any environmental protection policy approved under the *Environmental Protection Act 1986* section 31(d);
- (e) any policy of the Commission;
- (f) any policy of the State;
- (g) any local planning policy for the Scheme area;
- (h) any structure plan, activity centre plan or local development plan that relates to
 - (i) the development;
- (j) any report of the review of the local planning scheme that has been published under the
 - (i) *Planning and Development (Local Planning Schemes) Regulations 2015*;
 - (ii) in the case of land reserved under this Scheme, the objectives for the reserve and the additional and permitted uses identified in this Scheme for the reserve;
- (k) the built heritage conservation of any place that is of cultural significance;
- (l) the effect of the proposal on the cultural heritage significance of the area in which the development is located;
- (m) the compatibility of the development with its setting including the relationship of the development to development on adjoining land or on other land in the locality including, but not limited to, the likely effect of the height, bulk, scale, orientation and appearance of the development;
- (n) the amenity of the locality including the following –
 - (i) environmental impacts of the development;
 - (ii) the character of the locality;
 - (iii) social impacts of the development;

- (o) the likely effect of the development on the natural environment or water resources and any means that are proposed to protect or to mitigate impacts on the natural environment or the water resource;
- (p) whether adequate provision has been made for the landscaping of the land to which the application relates and whether any trees or other vegetation on the land should be preserved;
- (q) the suitability of the land for the development taking into account the possible risk of flooding, tidal inundation, subsidence, landslip, bush fire, soil erosion, land degradation or any other risk;
- (r) the suitability of the land for the development taking into account the possible risk to human health or safety;
- (s) the adequacy of –
 - (i) the proposed means of access to and egress from the site; and
 - (ii) arrangements for the loading, unloading, manoeuvring and parking of vehicles;
- (t) the amount of traffic likely to be generated by the development, particularly in relation to the capacity of the road system in the locality and the probable effect on traffic flow and safety;
- (u) the availability and adequacy for the development of the following –
 - (i) public transport services;
 - (ii) public utility services;
 - (iii) storage, management and collection of waste;
 - (iv) access for pedestrians and cyclists (including end of trip storage, toilet and shower facilities);
 - (v) access by older people and people with disability;
- (v) the potential loss of any community service or benefit resulting from the development other than potential loss that may result from economic competition between new and existing businesses;
- (w) the history of the site where the development is to be located;
- (x) the impact of the development on the community as a whole notwithstanding the impact of the development on particular individuals;
- (y) any submissions received on the application;
- (z) the comments or submissions received from any authority consulted under clause 66;
- (aa) any other planning consideration the local government considers appropriate.



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